

the account being sheltered from taxation. This strategy may not be beneficial if the taxpayer has IRAs containing deductible contributions. In such case, the amount of taxable conversion income that may result would have to be considered. A taxpayer may not maintain nondeductible contributions in a separate IRA, because they are aggregated for distribution purposes.

Q 3:17 When are amounts converted after 2009 from an IRA to a Roth IRA included in income?

In general, an IRA-to-Roth-IRA conversion occurring after 2010 is subject to the same income inclusion rules that currently apply (that is, the income resulting from the conversion is included on the return for the tax year in which funds are transferred or withdrawn from the IRA). However, if the conversion occurs in 2010, unless a taxpayer elects otherwise, none of the gross income from the conversion is included in income in 2010; half of the income resulting from the conversion is includible in gross income in 2011 and the other half in 2012. The election is irrevocable after the due date for such taxable year. No provision was made for tax years after 2010, thus the taxable amount of a conversion contribution from an employer's plan in taxable years beginning after 2010 to a Roth IRA will have to be included in gross income in the tax year the distribution takes place. [I.R.C. §§ 408A(d)(3)(A)(iii), as amended by TIPRA (Pub. L. No. 109-222)] [I.R.C. §§ 408A(d)(3)(A)(iii), 408A(d)(3)(E)(i), as amended by TIPRA]

Note. The four-year spread rules under Code Section 408A(d)(3)(E) for 1998 conversions discussed in Q 3:15 were amended to become the two-year spread rules for conversions made in 2010.

Example. Lavern's IRA has a \$50,000 balance, consisting of deductible contributions and earnings. She does not have a Roth IRA. In 2010, Lavern converts her traditional IRA to a Roth IRA. As a result of the conversion, \$50,000 is includible in gross income. Unless Lavern elects otherwise (i.e., unless she elects to include the entire conversion in income for 2010), \$25,000 of the income resulting from the conversion is included in income in 2011 and \$25,000 in 2012. [TIPRA Conf. Rep.]

Income Acceleration for Converted Amounts Distributed Before 2012. Income inclusion is accelerated if converted amounts are distributed before 2012 (whether a distribution consists of converted amounts is determined under the pre-TIPRA-law ordering rules discussed in Q 4:1). In that case, the amount included in income in the year of the distribution is increased by the amount distributed, and the amount included in income in 2012 (or 2011 and 2012 in the case of a distribution in 2010) is the lesser of: (1) half of the amount includible in income as a result of the conversion; and (2) the remaining portion of such amount not already included in income (see Q 4:1, Example 1). [I.R.C. § 408A(d)(3)(E)(i), as amended by TIPRA Section 512; see also Senate Finance Committee, Summary of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) (Pub. L. No. 109-222)] Unless an exception applies, the taxable amount withdrawn

(accelerated into income) is also subject to the 10 percent premature distribution penalty (see Q 4:1, and Examples; see also Qs 4:10, 4:14, 4:17, 4:22).

Death of Distributee. In general, if the individual who is required to include amounts in gross income because of the income acceleration rules dies before all such amounts are included, all remaining amounts shall be included in gross income for the taxable year, which includes the date of death. [I.R.C. § 408A(d)(3)(E)(ii)(I)] A surviving spouse beneficiary may have other options, if such spouse acquires the individual's entire interest on account of death.

Special Rule for Surviving Spouse. If the individual who is required to include amounts in gross income because of the income acceleration rules dies, and his or her spouse acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is made (or properly allocable), the spouse may elect to treat the remaining amounts as includible in the spouse's gross income in the taxable years of the spouse, ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year, which includes the date of death. [I.R.C. § 408A(d)(3)(E)(ii)(II)]

Q 3:18 Does income tax withholding apply to a distribution from a traditional IRA that is converted to a Roth IRA?

Yes. A distribution from a traditional IRA that is converted (i.e., rolled over or transferred) to a Roth IRA is subject to federal income tax withholding. [I.R.C. §§ 408A(a), 3405(e), 7701(a)(37); Treas. Reg. § 1.408A-6, Q&A 12] It is important to note, however, that the IRA owner may elect not to have federal income tax withholding apply. [I.R.C. §§ 3405(a), 3405(b)] The mandatory withholding rules applicable to a qualified rollover distribution from an employer's plan to a Roth IRA are discussed in Q 3:62.

Example. Michelle has a traditional IRA valued at \$100,000. She is eligible to convert her traditional IRA to a Roth IRA and decides to do so during 2009. Knowing she will owe federal income taxes on the converted amounts for the 2009 tax year, she has the traditional IRA withhold 10 percent, or \$10,000, of the distribution and converts the remaining \$90,000 to her Roth IRA. The entire conversion amount is taxed on Michelle's 2009 tax return. If Michelle is under age 59½, the \$10,000 not converted will be subject to the 10 percent premature distribution penalty.

Q 3:19 Are Roth IRA distributions that are part of a series of substantially equal periodic payments begun under a traditional IRA before conversion subject to the 10 percent premature distribution penalty if they are also subject to income acceleration?

No. The 10 percent premature distribution penalty under Code Section 72(t) does not apply to distributions that are part of substantially equal periodic