

**Rosen Seymour Shapss Martin & Company LLP**  
*Certified Public Accountants & Profitability Consultants*

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## BENEFITS BLAST

**Greetings!**

*Welcome to the Employee Benefits & Executive Compensation Service Group's Benefits Blast!* (a publication of Rosen Seymour Shapss Martin & Company LLP). Here is where you will receive periodic updates on all your employee benefits and executive compensation needs.

Employee benefits programs and executive compensation issues are more complex than ever - tax laws and other statutes are continually changing, and increasingly employers must consider international implications. These issues also are critical to maintaining continuity in your workplace and retaining key employees.

We welcome your questions or comments about the topics discussed or related ones. Please feel free to contact us at 212-303-1806 or e-mail us at [aneumark@rsmcpa.com](mailto:aneumark@rsmcpa.com) and let us know how we can be of assistance.

Sincerely,

Avery E. Neumark, CPA, JD  
 Partner-in-Charge of Employee Benefits & Executive Compensation

**YOU CAN GET A SECOND CHANCE  
 - IRA AND ROTH IRA  
 RECHARACTERIZATIONS AND  
 RECONVERSIONS**

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**Rosen Seymour Shapss  
 Martin & Company LLP**

**757 Third Avenue  
 New York, NY 10017**

**Telephone 212-303-1800  
 Facsimile 212-755-5600  
 Email [info@rsmcpa.com](mailto:info@rsmcpa.com)**

**Please visit our website at  
[www.rsmcpa.com](http://www.rsmcpa.com)**

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Last year was, by any economic standard, an unusual year. IRA contributions or conversions made during 2008, based on anticipated earnings and projections may not have turned out as expected. Fortunately, nothing is written in stone. You have a window of opportunity to change your mind. The following are examples of situations where you are still able to reverse last year's transaction:

- **Traditional IRA to ROTH IRA Conversion No Longer Desired**

If during 2008 you converted part or all of a traditional IRA to a ROTH IRA, the conversion is considered a distribution from your traditional IRA and subject to tax. In addition, if that portfolio decreased in value during 2008, you are subject to a tax on the **initial** amount of conversion. For example, if you converted \$100,000 in 2008 and the converted assets declined to \$60,000, you will still have to pay taxes on \$100,000. In effect, you are paying taxes on assets you may no longer have.

You still have a window of opportunity to undo the 2008 conversion. If you act before the extended due date of your 2008 return (October 15, 2009), you can authorize your IRA custodian to "recharacterize" the conversion. The amount converted plus earnings to the date of your election will revert back to a traditional IRA, as if the original conversion never took place. Even if you filed your return on or before April 15 without obtaining an extension, there is a special rule that you can use to extend the time to recharacterize and file an amended return until October 15, 2009.

It is important to properly authorize the IRA custodian to act. You simply cannot transfer funds between accounts. You will need to correctly report the 2008 1099-R for the original deemed distribution on your tax return so as to negate any tax due or to amend your return to properly reflect the recharacterization. We at RSSM are available to assist you in the intricacies of the recharacterization process.

- **IRA to ROTH IRA Reconversion**

But wait, it can even get better. Converting from a traditional IRA to a ROTH IRA can still be a great idea, **if your timing is right**. You may have gotten it wrong on the first try. But 2009 is a new year and your IRA portfolio is probably worth considerably less (\$60,000 in our example) than it was last year (\$100,000) when you first converted it to a ROTH IRA, only to later reverse ("recharacterize") the conversion. You can now decide to "reconvert" back to a ROTH IRA. The tax required to be paid on the new reconversion to a ROTH IRA will be considerably lower than on the earlier cancelled conversion. This may be especially advantageous if you believe assets currently held in your IRA will appreciate in value **after** you reconvert it back to a ROTH IRA.

There are various timing restrictions on reconversions. In our example, you must wait a minimum of 30 days after your recharacterization to reconvert any or all of your previously

recharacterized funds. Failure to correctly apply the time limits can result in a failed conversion, which if uncorrected, would result in a tax on excess contributions. RSSM is here to assist you in getting the timing of the reconversion right.

- **Failed Contributions or Conversions**

The ability to make a ROTH IRA contribution is based both on your filing status and modified adjusted gross income ("MAGI"). For single taxpayers the ability to make a 2008 ROTH IRA contribution was phased out with MAGI between \$101,000 and \$116,000, married filing jointly \$159,000 and \$169,000 and married filing separately \$0-\$10,000. The ability to convert a traditional IRA to a ROTH IRA in 2008 was limited to those taxpayers with MAGI of \$100,000 or less (no matter your filing status).

If you made a contribution or converted part or all of a traditional IRA to a ROTH IRA and you inadvertently exceeded any of the above limits, you could be subject to a tax on excess contributions, if you fail to correct the mistake by recharacterizing the 2008 contribution or conversion. As above, you have until the extended due date of your 2008 return to make the correction, even if you previously filed the return without an extension. Again, you must properly notify the IRA custodian and correctly report any distribution reported on a 1099-R, or take advantage of a deduction for a traditional IRA contribution. If your 2008 return has already been filed, you will need to amend it accordingly.

- **Missed Opportunities - Roth versus Traditional IRA Contribution**

You may have wanted to make a contribution to a ROTH IRA for 2008, but because your anticipated income exceeded the limit to permit such a contribution (see above), you put your 2008 contribution into a traditional IRA instead. Due to the economic downturn, your projections were incorrect and you could have made the ROTH IRA contribution for 2008. Or because of lower income, the current tax savings on a traditional IRA contribution vis-à-vis a ROTH IRA contribution was not that great, and you now wish you had made a ROTH contribution instead.

Again, you can elect to recharacterize your traditional IRA contribution as a ROTH contribution and you have until the extended due date of your 2008 return to make the change, even if you previously filed the return without an extension. As before, you must properly notify the IRA custodian and correctly report any income or deduction on your 2008 return or amend it accordingly. In this case, you will lose the tax deduction you previously took for the traditional IRA contribution.

### **Do It Right**

There are numerous rules involving recharacterizations and reconversions, most significantly involving the number and timing of the transactions. **It is important that any income, distributions or deductions resulting from recharacterizations or reconversions be properly reflected on your income tax**

**return.** If you have any questions on the desirability of such "makeovers", or how to accomplish them, please contact us for further information.

## **THE TAX CALENDAR HAS CHANGED. AND SO HAS THE DEADLINE FOR SOME PLAN SPONSORS TO MAKE THEIR RETIREMENT PLAN CONTRIBUTIONS**

Partnerships and Limited Liability Companies ("LLCs"), with a very limited number of exceptions, are required to have a December 31st year end. Prior to last year, the deadline, including extensions, for those partnerships and LLCs to file their federal income tax returns was October 15th. The extended deadline to file 2008 returns for such entities has now been moved up to September 15th. In order to deduct a pension or profit sharing plan contribution on a sponsor's return, the contribution must be made by the due date, including extension, of the sponsor's return. Thus in order for a partnership or LLC to deduct a contribution on a sponsor's 2008 federal income tax return, it must now be made by September 15th, 2009, not October 15th.

In addition, the sponsor is required to file a Form 5500 Annual Return/Report of Employee Benefit Plan by July 31st for calendar year plans. A two and 1/2 month extension of time is available. Until now, a partnership or LLC could use the extension filed for their federal income tax returns to extend the time required to file the Form 5500 until October 15th. Now, however, the maximum time allowed to file a partnership return is September 15th, not October 15th. If a sponsor wishes to extend the filing of Form 5500 until October 15th, rather than September 15th, they must file a separate Form 5558 extension request for the plan no later than July 31, 2009.

### **EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION SERVICES GROUP**

**Rosen Seymour Shapss Martin & Company LLP**

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Rosen Seymour Shapss Martin & Company LLP | 757 Third Avenue | New York | NY | 10017