Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Mr. Brad Davidson
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Dear Mr. Davidson:

This is in response to your letter to Martin Slate, Director of the Employee Plans Technical and Actuarial Division, dated December 24, 1992, in which you requested general information regarding valuation of assets in Individual Retirement Accounts and Individual Retirement Annuities ("IRAs"). In your letter, you posed the following questions: (1) Is an IRA required to value its assets on an annual basis? (2) Is an IRA required to value "hard to value" assets (e.g. partnerships, closely-held stock, collectibles, etc.) as well as exchange-traded securities? (3) Are non-traded asset value standards the same for IRAs as for defined benefit ("DB") plans and defined contribution ("DC") plans? (4) Who is responsible for insuring an IRA's assets are properly valued? (5) Can a fiduciary evade its valuation responsibilities by having the client sign a release, indemnification or other instrument?

Section 408(i) of the Internal Revenue Code of 1986 (the "Code") requires the trustee of an individual retirement account and the issuer of an endowment contract or an individual retirement annuity to make certain reports regarding such account, contract, or annuity to the Secretary of the Treasury and to the individual for whom such account, contract or annuity is maintained. Section 408(i) of the Code gives the Secretary authority to prescribe the manner of providing such reports and to determine the information required to be provided.

Section 1.408-5 of the Income Tax Regulations provides that the trustee of an individual retirement account or the issuer of an individual retirement annuity shall make annual calendar year reports concerning the status of the account or the annuity. The information required in the annual reports by trustees and issuers of IRAs includes: the amount of contributions, the amount of distributions, the amount of the premium paid for an endowment contract allocable to the cost of life insurance, the name and address of the trustee or issuer, and such other information as the Commissioner of Internal Revenue may require.

Internal Revenue Service Form 5498, Individual Retirement Arrangement Information, is the prescribed form for satisfying the annual reporting requirements of section 408(i) of the Code and the regulations thereunder. The instructions to Form 5498 require the trustee or issuer to report the fair market value of the IRA account as of December 31 of each year.

In response to your questions, first, based on the fact that the Internal Revenue Service (the "Service) requires that the fair market value of the assets as of December 31 be reported on Form 5498, an IRA is required to value its assets on an annual basis. Similarly, the requirement that fair market value be determined annually for purposes of Form 5498 necessitates the valuation of all IRA assets, including "hard to value" assets.

With respect to your third question, Revenue Ruling 59-60, 1959-1 C.B. 237, as modified by Revenue Ruling 65-193, 1965-2 C.B. 370, sets forth the proper approach to use to value corporate stock for estate and gift tax purposes. Revenue Ruling 68-609, 1968-2 C.B. 327, states that the general approach, methods and factors outlined in Revenue Ruling 59-60 are equally applicable to valuations of corporate stock for income and other tax purposes. The general approach, methods and factors also apply to valuations of corporate stock in IRAs.

With respect to your fourth question, the person responsible for insuring that an IRA's assets are properly valued is the IRA trustee or issuer, because under the Service's reporting requirements that person is responsible for reporting the correct fair market value of assets.

Finally, the IRA trustee or issuer cannot evade valuation responsibility by having the participant sign a release, indemnification or other instrument, because the trustee's or issuer's responsibility for valuation derives from the Service's reporting requirements, which cannot be waived by participant action.

We believe this information will be of assistance to you. This is not a ruling, however, and may not be relied upon with respect to any specific transaction.

Sincerely,

John G. Riddle, Jr.

John G. Riddle, Jr.
Acting Chief, Employee Plans
Rulings Branch