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**Steve Leimberg's Employee Benefits and Retirement Planning Email Newsletter Archive Message #709**

**Date:12-Sep-19**

**Subject: Mary Vandenack on Revenue Ruling 2019-19: Uncashed Retirement Plan Distribution Checks**

*"In Revenue Ruling 2019-19, the Internal Revenue Service ruled that an individual is taxed on a retirement plan distribution check from a retirement plan in the year the check is received even if the individual does not cash the check. The employer obligation to withhold and report the distribution is unaffected by whether the individual cashes the check. The rule does not apply if the individual could cash the check."*

**Mary E. Vandenack** provides readers with commentary on an IRS ruling dealing with uncashed retirement plan distribution checks.

**Mary E. Vandenack** is founding and managing member of **Vandenack Weaver LLC** in Omaha, Nebraska. Mary is a highly regarded practitioner in the areas of tax, benefits, private wealth planning, asset protection planning, executive compensation, equity fund development, business and business succession planning, tax dispute resolution, and tax-exempt entities. Mary's practice serves businesses and business owners, executives, real estate developers and investors, health care providers, companies in the financial industry, and tax exempt organizations. Mary is a member of the American Bar Association Real Property Trust and Estate Section where she serves as Co-Chair of the Futures Task Force, Co-Chair of the Law Practice Group and on the Planning Committee.  Mary is a member of the American Bar Association Law Practice Division where she currently serves as Editor-in-Chief of Law Practice Magazine. Mary was named to ABA LTRC 2018 Distinguished Women of Legal Tech, received the James Keane Award for e-lawyering in 2015, and serves on ABA Standing Committee on Information and Technology Systems. Mary is a frequent writer and speaker on tax, benefits, asset protection planning, and estate planning topics as well as on practice management topics including improving the delivery of legal services, technology in the practice of law and process automation.

Here is her commentary:

## EXECUTIVE SUMMARY:

In Revenue Ruling 2019-19,[i] the Internal Revenue Service ruled that an individual is taxed on a retirement plan distribution check from a retirement plan in the year the check is received even if the individual does not cash the check. The employer obligation to withhold and report the distribution is unaffected by whether the individual cashes the check. The rule does not apply if the individual could cash the check.

## FACTS:

The facts specified in the ruling are as follows:

- Employer, as plan administrator is required to make a distribution to a participant.
- Employer makes the distribution and withholds tax pursuant to IRC §3405(d)(2). Employer mailed the check to the participant.
- The participant received the check, did not make a rollover contribution and did not cash the check.

## COMMENT:

Internal Revenue Code Section §402 provides as follows:

> Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the of the distributee in which distributed, under section 72 (relating to annuities).

In Revenue Ruling 2019-19, the Internal Revenue Service ruled that absent another exception to §402, the distribution is includible in the participant's income in the year distributed. Failure to cash the check does not permit exclusion from income.

Internal Revenue Code §3405 provides an obligation for an employer to withhold from designated distributions unless an individual elects not to have withholding. A "designated distribution" generally includes any distribution from an employer retirement plan, an IRA or a commercial annuity.[ii] Exceptions apply for distributions to the extent the distributions can be reasonably determined to likely be excludible from income (ROTH-IRA distribution). The Internal Revenue Service ruled that failure of a participant to cash a check does not change the employer obligations to withhold income.

Internal Revenue Code §6047(d) provides an obligation for an employer to report distributions on Form 1099-R. The Internal Revenue Service ruled that failure of the participant to cash the check does not alter the employer's obligation to report. In the ruling, the Internal Revenue Service noted that the ruling applies whether the individual keeps the check, sends it back, destroys it, or cashes it in a subsequent year.

This ruling is generally consistent with the "constructive receipt" doctrine. The constructive receipt doctrine recognizes as income such income that is constructively received by a taxpayer as a result of amounts being set aside for the taxpayer or otherwise made available to the taxpayer. [iii]

The ruling does specify that "a distribution was required to be made." Thus, presumably, the ruling will not apply in those instances where a distribution is made that should not have been made and the fact of an incorrect distribution is the reason for not cashing the check. See for example, McGaugh v. Commissioner, No. 16-2987 (7th Cir. 2017) and my previous commentary thereon.[iv]

**HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!**

*Mary Vandenack*

**CITE AS:**

## CITATIONS:

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[i] Rev. Rul. 2019-19, I.R.B. 2019-36, August 14, 2019.

[ii] Internal Revenue Code 3405€(1).

[iii] United States v. Fletcher, 562 F. 2d 839, 843 (7th Cir. 2009).

[iv] Employee Benefits and Retirement Planning Newsletter #679 (August 7, 2017).