

IRA Rulings of 2024

From Ed Slott's IRA Advisor (January 2025)

Written with Seymour Goldberg, CPA MBA, JD | Goldberg & Goldberg, PC | Melville, NY

Statutes of Limitations

During 2024, Seymour Goldberg, senior partner at Goldberg & Goldberg, a law firm in Melville, NY, submitted a letter to the Treasury Department about the statute of limitations for excise taxes imposed on excess IRA contributions and insufficient RMDs. Under current law, effective December 29, 2022, (covering 2022 and future years), the statute of limitations is 6 years for excess contributions and 3 years for RMD shortfalls, except as Goldberg describes.

Now, the statute of limitations begins running when an individual tax return (Form 1040) for the relevant year has been filed. “However,” says Goldberg, “there still may be times when the statute of limitations won’t take effect, even after a tax return is filed.”

Example 4: Amy fails to take an RMD of \$80,000 from her IRA for 2023. Further assume that Amy tells her tax preparer Beth, who is permitted to practice before the IRS, of this shortfall. Beth tells Amy to ignore the issue and file her Form 1040 for 2023 without attaching a Form 5329. Further, Beth tells Amy the statute of limitations regarding the assessment of \$20,000 (25% of the \$80,000 shortfall) is only three years. Amy tells Beth that she is okay with not submitting a Form 5329 with her Form 1040 for 2023.

Is Beth correct in advising Amy that the statute of limitations is three years from the time she filed this Form 1040 for 2023 on April 15, 2024? (Subsequently, the IRS cannot assess the additional tax of \$20,000.) The answer to this question is no. Section 6501(c) of the Tax Code provides for exceptions to the statute of limitations for RMD shortfalls. Goldberg points out that in the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed at any time.

“Accordingly,” says Goldberg, “there should be no statute of limitations because her Form 1040 for 2023 deliberately did not include a Form 5329. She knew what she was doing and cannot use the defense that Beth, her tax preparer, approved what she decided to do.”

Without relief from the statute of limitations, RMD shortfalls can be hit with a 25% excise tax (10% if timely corrected).

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Credentials

SEYMOUR GOLDBERG, CPA, MBA, JD, is a senior partner in the law firm of Goldberg & Goldberg, P.C., Melville, New York. Professor Emeritus of Law and Taxation at Long Island University. Former Director of the Tax Institute of the C.W. Post Campus of Long Island University. Recipient of the American Jurisprudence Award in Federal Estate and Gift Taxation from St. John's University School of Law.

CLE instructor for many professional organizations including the New York State Bar Association, American Bar Association, NJICLE, City Bar Center for CLE, local bar associations and law schools. Mr. Goldberg is admitted to practice law in New York State.

Mr. Goldberg authored 4 manuals for the American Bar Association on IRAs and on Trusts as well as for other organizations such as the AICPA on the IRA Distribution Rules. His first Guide entitled "A Professional's Guide to IRA Distribution Rules" was published by the Foundation for Accounting Education for the years 1993-1998. He has been interviewed on many technical IRA issues for Ed Slott's IRA Advisor.

Mr. Goldberg handles probate matters, tax disputes with the IRS and the IRS appeals office, IRA penalty waivers and New York State Department of Taxation tax disputes. Represents clients in IRS ruling requests (over 75). Wrote an amicus brief in the 2014 inherited IRA Supreme Court Case, *Clark v. Rameker*.

His manuals for the American Bar Association can be found in well over 100 law school libraries throughout the United States. He is a member of the Relations with the IRS Committee of the New York State Society of Certified Public Accountants. He was formerly associated with the Internal Revenue Service.

Mr. Goldberg has conducted continuing education courses with the IRS on the retirement distribution rules. He has recommended corrections to IRS Publication 590 working pro bono with the IRS and then Congressman Steve Israel. This resulted in IRS revisions and the adoption of IRS Publication 590-A and IRS Publication 590-B.

He is the recipient of Outstanding Discussion Leader Awards from both the AICPA and the Foundation for Accounting Education. He has conducted well over 300 CPE programs in the field of taxation including over 100 CPE programs involving IRAs and IRA Compliance issues.

Mr. Goldberg has conducted many continuing education programs on the Uniform Principal and Income Act (UPAIA). He has written a Guide for the American Bar Association entitled "Fundamentals of Trust Accounting Income and Principal Rules under the Revised New York State Laws," publication date 2/4/2014, 184 pages.

Mr. Goldberg has been quoted in the New York Times, Forbes, Fortune, Money Magazine, U.S. News & World Report, Business Week and the Wall Street Journal. He has also been interviewed on CNN, CNBC and WCBS.

Mr. Goldberg can be reached at 516-222-0422 or by email at info.goldbergira@gmail.com.