THE RETIREMENT PLAN ROLLOVER DECISION:
A NON-EXHAUSTIVE LIST OF FACTORS TO CONSIDER

If you have funds in a retirement plan that you're considering transferring to another employer-sponsored retirement plan or IRA, you have much to think about. The Plan Administrator of the plan in which you participate may have given you a written explanation of the tax consequences of the distribution options available to you under the plan, including the cash-out option where you receive your distribution, keep it rather than roll it to another plan or IRA, and pay the tax and any applicable tax penalty associated therewith. The Internal Revenue Service makes available a so-called "model notice" that Plan Administrators may give to plan participants that explains the tax consequences of various plan distribution options. The most current (as of March 24, 2017) version of that model notice may be found at: https://www.irs.gov/pub/irs-drop/n-18-74.pdf.[1]

This Newsletter is a brief educational piece for retirement plan participants who've elected to forego the cash-out option after giving it due consideration, and are deciding among keeping their plan account in the plan it's now in, transferring their plan account to another employer-sponsored retirement plan, and rolling their plan account to an IRA.

Before you make your stay-go decision, first find out the choices you have. Ask the employer sponsoring the plan in which you participate if you may keep your funds in the plan after you leave its employ. If you're not allowed to do so and you're leaving the plan sponsor's employ to start a new job, ask your new employer if you may transfer your current plan balance to a plan it sponsors. If you have a choice of the current plan, the new plan, or both plans, and you're also wondering whether you should instead roll your plan account to an IRA, listed below are *some*[2] of the factors you might want to consider before making your decision.

1. If you're still employed with the employer sponsoring the plan in which you participate but intend to leave its employ after turning age 55, after doing so you may be able to access your plan account without incurring the Internal Revenue Code's pre-age 59½ 10% early withdrawal penalty. [Check the plan's terms on account access, and see Internal Revenue Code section 72(t)(2)(A)(v).] This "separation from service" rule does not apply to IRA withdrawals.

2. If you're still employed with the employer sponsoring the plan in which you participate but intend to leave its employ before you turn age 55, or if you left a job before you turned age 55 but still have an account balance under a plan your former employer sponsored, you can avoid the Internal Revenue Code's pre-age 59½ 10% early withdrawal penalty by rolling the plan account balance to an IRA and taking from the IRA a so-called series of substantially equal periodic payments ("SOSEPP"). The SOSEPP option is available even to IRA owners less than age 55. If the plan in which you participate permits SOSEPPs (check the plan's terms), you must separate from service with the employer sponsoring the plan before the payments begin for this pre-age 59½ 10% early withdrawal penalty exception to apply. For more on SOSEPPs, see:**https://www.irs.gov/Retirement-Plans/Retirement-Plans-FAQs-regarding-Substantially-Equal-Periodic-Payments**.

[1] All references herein are current as of March 24, 2017.

[2] It very likely is not possible to make a list of factors that everyone would agree is "all-inclusive." Indeed, on March 24, 2017 using the query "IRA rollover factors to consider", one search engine returned "About 360,000 results (0.62 seconds)", and another search engine returned "1,160,000 RESULTS"!

NOTE: See Internal Revenue Code Section 72 for more exceptions to the Code's pre-age 59½ 10% early withdrawal penalty, some of which apply only to IRAs, and some of which apply only to qualified plans. Think about whether you might need early access to your retirement money, and if so, which penalty exceptions will most likely be applicable to your situation.

3. If you're still employed with the employer sponsoring the plan in which you participate, you intend to continue working for that employer past your age 70½, you don't own more than 5% of the employer, *and* the plan allows (check the plan's terms), you may be able to avoid taking required minimum distributions while still working. [See Internal Revenue Code section 401.] This option is not available to owners of "traditional IRAs" (i.e., non-ROTH IRAs), even if they are still working post-age 70½.

4. Maybe you don't have all the choices you think you do. Perhaps you are party to one or more legal documents (e.g., pre-nuptial agreement, post-nuptial agreement, judgment for dissolution of marriage, etc.) that require you to keep your plan account where it was on the legal document's effective date unless and until the document is modified by the parties to it or by a court decree. Consult with an attorney if you're unsure whether this factor applies to you.

5. If 4, above, does not apply to you and you are married and want to name as primary beneficiary of your plan account someone other than your spouse, or name multiple primary beneficiaries including your spouse, we understand that federal law prohibits you from doing so without your spouse's written consent made before a plan representative or notary public. We also understand that federal law does not require your spouse's written consent to such beneficiary designations if your funds are in an IRA rather than a qualified plan. (State community property laws may provide otherwise, however.) Consult with an attorney if this is a topic of interest to you.

6. If you were born *before* January 2, 1936 and want to preserve for your beneficiaries certain special tax rules presently available for so-called "lump sum distributions", those options would not be available if you rolled the funds to an IRA. See Internal Revenue Service Tax Topic 412 - Lump-Sum Distributions, available at: **https://www.irs.gov/taxtopics/tc412.html**.

7. If a ROTH account may be in your future, consider how important it is to you to be able to recharacterize (undo) a ROTH conversion. If the plan in which you participate allows in-plan ROTH conversions — the plan does not have to do so — an in-plan conversion once done cannot be undone. Presently, an IRA owner that converts some or all of an IRA to a ROTH IRA can, within certain time limits, undo the conversion: Maybe with the benefit of hindsight, you'll decide the conversion wasn't in your best tax and financial interests. For more on the differences between a ROTH IRA and a Designated ROTH Account in a plan, see: **https://www.irs.gov/pub/irs-tege/roth_differences.pdf**.

8. Determine whether the plan or the IRA fits better with your estate plan: Not all plans and IRAs offer the same distribution/beneficiary options. If you want to name a trust as beneficiary of your plan account/IRA because, e.g., you're concerned about how the funds will be spent or how quickly they'll be spent, make sure the plan/IRA's governing documents permit a trust in general and the type of trust you have in particular, to be named a beneficiary.

If you have children and grandchildren and want — in the event a child dies before you — that your grandchildren receive the plan/IRA share their parent (your child) would have received had the child

survived you (a so-called per stirpes distribution), make sure the plan/IRA's governing documents permit a per stirpes distribution (there is no requirement that they do), and make sure that if they do permit a per stirpes distribution that they define per stirpes the way you understand that term to operate. You may be surprised (and disappointed) by what you find.

9. If you have employer stock in your plan account, check the plan's terms to see if you have the ability to take advantage of the net unrealized appreciation ("NUA") option for the employer stock portion. If you do, next consider whether it's to your advantage to make use of that option. The NUA option is not available if you roll the entire account to an IRA. For more on NUA, see Internal Revenue Code section 402 (e)(4), and Internal Revenue Service Publication 575, available at: **https://www.irs.gov/pub/irs-pdf/p575.pdf**.

10. Inquire about the distribution options available to you under the plan and the IRA. The plan and IRA must satisfy Internal Revenue Code requirements for when distributions must begin and how rapidly distributions will be made, but beyond that, not all plans and IRAs offer the same array of distribution options. Distribution options that satisfy Internal Revenue Code requirements but require quicker distribution than other options may result in more rapid recognition of taxable income, make Social Security benefits taxable when they otherwise might not have been or make more of those benefits taxable than what otherwise would have been the case, and may result in increased Medicare premiums.

11. If protecting retirement funds for you is important to you ─ lawsuits do arise ─ decide whether the plan/applicable state and federal law, or the IRA/ applicable state and federal law, offers the better protection combination. If protecting retirement funds for your beneficiaries is important to you and you want to use a trust to protect your beneficiaries ─ we understand IRAs inherited by individual non-spouse beneficiaries are not accorded the same creditor protection enjoyed by IRA owners ─ make sure the IRA's governing documents permit a trust in general and the type of trust you have in particular, to be named a beneficiary.

12. Consider how important it is to you to be subject to, or to not be subject to federal income tax withholding on your retirement distributions: Taxable IRA distributions are not subject to mandatory federal income tax withholding; "eligible rollover distributions" from qualified plans that are not rolled over to a qualified plan or IRA are subject to mandatory 20% federal income tax withholding.

13. Look at the investment choices the plan and the IRA Custodian make available to you: Which alternative (plan or IRA) better enables you to build a diversified portfolio, and better fits with investments you may have in taxable accounts? Does the plan offer you access to an investment option that you could not get if you rolled your plan account to an IRA, and would losing that access be meaningful to you? If you want to currently invest part of your plan account in assets not available on the plan's investment platform (e.g., real estate; closely-held stock) or you think you might want to do so in the future, look to see which IRA Custodians will hold such assets; not all IRA Custodians are willing to hold non-publicly traded assets.

14. If you need/want life insurance and can't afford to pay the premiums with your taxable resources, look to see if your new employer's plan permits you ─ it doesn't have to do so ─ to use some of your account balance to pay for life insurance *as a plan asset (*i.e., not for a policy you own outside the plan). Even if the plan permits you to do so, also consider the tax and financial consequences the policy will trigger when you eventually leave the new employer's plan, and the impact using some of your account balance to pay for life insurance premiums will have on your retirement nest egg.

NOTE: Buying life insurance inside an IRA is a prohibited transaction that triggers draconian tax consequences.)

15. Investigate the costs associated with the current and new plans that are assessed to the participants (e.g., record-keeping, compliance), as well the costs associated with the investment options (e.g., mutual fund expense ratios, etc.): Different share classes of the same mutual fund can have quite different annual expense ratios; the expense ratios impact the fund's net return to investors.

Take into account the costs of potential IRA providers, including but not limited to the annual custodial fee, if any, sales loads, brokerage commissions, trailing commissions, 12b-1 fees, and the fees of an outside advisor, if any, whose services you engage to manage your IRA. If you presently have an account with an outside advisor that charges advisory fees based on a percentage of the assets under management, ask the advisor if adding new funds to the relationship via a plan-to-IRA rollover will result in you reaching a fee "breakpoint". If you presently have an account with an outside advisor that operates under a transaction-based (e.g., commission) model, find out the asset level at which commission "breakpoints" occur. Here too, investigate the costs associated with the investment options (e.g., mutual fund expense ratios, sales loads, etc.): Different share classes of the same mutual fund can have quite different annual expense ratios; the expense ratios impact the fund's net return to investors.

16. Consider how important it is to you to have flexibility when it comes to taking your required minimum distributions. In general, you must take your required minimum distribution from each qualified plan in which you have an account balance. If you have multiple IRAs and they are of "like kind" (i.e., they are all IRAs you originated, as opposed to an IRA you originated and an IRA you inherited), you must separately calculate your required minimum distribution for each IRA, but you can take the required minimum distribution from any of your "like-kind" IRAs.

17. As between the plan and the IRA, which option offers you the better ability to research the available investments? Some plans use proprietary mutual funds that make doing due diligence more difficult and less illuminating than is the case with analyzing non-proprietary funds.

18. Consider whether the plan provides access to investment advice, planning tools, telephone help lines, educational materials and workshops, and whether you found having that access valuable.