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# STILL SHORT OF ITS GOAL: A CRITICAL LOOK AT INDIVIDUAL RETIREMENT ACCOUNTS

PETER A. ARNTSON\*

The Employee Retirement Income Security Act of 1974 (ERISA) introduced a new concept into the tax law known as the Individual Retirement Account (IRA).<sup>1</sup> Numerous articles in technical as well as family publications have been written discussing the provisions of the new law; in general, the comments have been favorable.<sup>2</sup> The purpose of this article is not to cover old ground, or discuss the distinctions between the IRA and qualified plans, but rather to point out a major flaw which still remains in an otherwise good idea.<sup>3</sup>

The principal defect in the new law is its exclusion of anyone who is a participant in a qualified plan even though the current contributions by the employer under the plan are non-existent for that year or fall short of the IRA limits<sup>4</sup> and the effect that this exclusive

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<sup>1</sup> I.R.C. §408. Beginning in 1975, individuals who are not participants in a Government retirement plan (other than Social Security or Railroad retirement) or any qualified tax retirement plan, became eligible to take a deduction on their tax return for contributions to an individual retirement program. The deductions may be in an amount of up to 15% of earned income or \$1,500, whichever is less. I.R.C. §219.

<sup>2</sup> BETTER HOMES AND GARDENS, October, 1975, at 3033; JURIS DOCTOR, September, 1975, at 48; A.B.A.J. January, 1975, at 109; THE WASHINGTONIAN, November, 1976, at 252; The Washington Post, November 15, 1976, at M-1 to M-10.

<sup>3</sup> When this article was first drafted there were two additional problems with the IRA. First, distributions from terminated plans did not meet the technical definitions of lump sum distributions and therefore, were not eligible to be rolled-over into an IRA, or in the alternative, to be taxed at capital gains or under the ten-year averaging rules. This problem was corrected by the Act of April 15, 1976, Pub. L. No. 94-267, 90 Stat. 365, which was retroactive to July 4, 1974. The second problem involved the exclusion of otherwise eligible taxpayers from contributing to IRAs solely because they were members of the Reserves or National Guard and therefore, potentially might receive a small government retirement from their part-time job if they completed 20 years of service and attained the age of 60. 10 U.S.C. § 1331(a)(1970). Under Section 219(c)(4) as amended by the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, otherwise eligible members of the Reserve components may now contribute to IRAs providing they do not serve on active duty, other than for training, for more than 90 days during any one year. See Arntson, 44 J. TAX 157 (1976).

<sup>4</sup> See note 1 *supra*. Because of the restrictions in the IRA, Congress has apparently unintentionally adopted a policy which in practice penalizes almost everyone, from an income tax standpoint, who changes employment. Most individuals who change jobs receive no contribution for the year under either the plan of the employer they are leaving or the plan of the employer they are joining. However, if they were participants

characteristic may have on many qualified plans. The provisions of §219<sup>5</sup> specifically prohibit anyone from contributing to an IRA who is a participant in a qualified plan during any part of the taxable year, irrespective of the amount contributed during that year for his benefit. This treatment may seem reasonable, for as the House Report explains, otherwise a taxpayer “. . . would receive tax-supported retirement benefits for the same year both from the qualified plan and the retirement savings deduction.”<sup>6</sup> It should be noted, however, that this rule is not applicable to any of the qualified plans provided under the Code. Businesses are able to deduct for contributions to both pension and profit-sharing plans providing the total annual employer contributions do not exceed 25% of compensation to the participants.<sup>7</sup> Also, persons who are covered under corporate plans or plans of tax-exempt organizations and who also receive income from self-employment are eligible to establish Keogh Plans with respect to their self-employment income.<sup>8</sup>

The problem is not just the unfairness of the exclusion, but also its potentially adverse impact on new as well as existing qualified plans. Many qualified plans provide for employer contributions of less than 15%. Profit sharing plans often are designed so that the annual contribution may be determined in the discretion of the Board of Directors at the end of the fiscal year after reviewing the current profits of the business, if any, considering as well the other competing demands upon the organization's resources. When the business operates at a loss or profits are low, the contributions are low or non-existent. Whether contributions are discretionary or fixed, the amount contributed may be less than the 15% allowed to IRAs. In the case of an employee receiving an annual salary of \$10,000, if the amount of the overall contribution for a particular year was 5% of the

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in the plan of the former employer when they left, they are ineligible to contribute to an IRA for that tax year. This is an especially unfortunate result for persons, such as engineers, who change jobs frequently and for whose benefit Congress had incorporated into the IRA the concept of “portability.”

<sup>5</sup> The Internal Revenue Code is codified in 26 U.S.C. §§ 1 *et seq.* (1970), *as amended.*

<sup>6</sup> H.R. REP. No. 807, 93d Cong. 2d Sess. 412, *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4670, 4794. In a letter dated June 6, 1975, Laurence N. Woodworth, Chief of Staff of the Joint Committee on Internal Revenue Taxation, reiterated that the reason for excluding those already “covered” by a qualified plan was “to avoid granting duplicate benefits . . . .” Whether or not a participant in a qualified plan really is “covered” would seem to depend upon the adequacy of the Plan, which to a substantial degree might be measured by the amount of the employer's annual contributions.

<sup>7</sup> I.R.C. § 404(a)(7).

<sup>8</sup> Treas. Reg. § 1.401-10(b)(3)(ii) (1963). *See also* Rev. Rul. 69-569, 1969-2 C.B.91.

compensation of participants, then the amount allocated to his account would be \$500. If this same employee had not been in a qualified plan, he would have been eligible to make a contribution of 15%, but not more than \$1,500, to an IRA.<sup>9</sup> An employee with the same

<sup>9</sup> The following computations indicate the tax loss resulting when a taxpayer is denied a deduction for contribution to an IRA, because of his participation in a qualified plan which is funded at less than 15% of compensation.

## 5% CONTRIBUTION

Adjusted Gross Income	Employer Contribution-5%	Potential Contribution to IRA	Make-up Contribution to IRA	Tax Cost to Participant
\$ 7,000	\$ 350	\$1,050	\$ 700	\$106
\$10,000	\$ 500	\$1,500	\$1,000	\$190
\$15,000	\$ 750	\$1,500	\$ 750	\$165
\$20,000	\$1,000	\$1,500	\$ 500	\$125
\$25,000	\$1,250	\$1,500	\$ 250	\$ 70

## 8% CONTRIBUTION

Adjusted Gross Income	Employer Contribution-8%	Potential Contribution to IRA	Make-up Contribution to IRA	Tax Cost to Participant
\$ 7,000	\$ 560	\$1,050	\$ 490	\$ 76
\$10,000	\$ 800	\$1,500	\$ 700	\$133
\$15,000	\$1,200	\$1,500	\$ 300	\$ 66
\$20,000	\$1,600	\$1,500	—0—	—0—
\$25,000	\$2,000	\$1,500	—0—	—0—

Discretionary contribution in profit sharing plan during year when business has no profit.

Adjusted Gross Income	Employer Contribution-0	Potential Contribution to IRA	Make-up Contribution to IRA	Tax Cost to Participant
\$ 7,000	0	\$1,050	\$1,050	\$159
\$10,000	0	\$1,500	\$1,500	\$278
\$15,000	0	\$1,500	\$1,500	\$330
\$20,000	0	\$1,500	\$1,500	\$375
\$25,000	0	\$1,500	\$1,500	\$420

The taxes have been computed for married couples with two dependents, taking standard deduction and filing joint returns. The tax loss for three years of the participant with adjusted gross income of \$10,000 would have been \$601 for an average of \$200.33 annually.\* If an average of \$1066 were deposited annually for 30 years with interest at 7 ½% annually, the total contributions would only be \$31,980, however the value of the fund at the end of the 30-year period would be \$127,931.28. If instead the individual had contributed the after-tax amount of \$865 (\$1066—\$201) and this fund had been allowed to grow through after-tax interest at 6% (7 ½% less tax at 18.5%), the fund would be approximately \$74,997.58. The difference to the taxpayer over 30 years is \$52,933.71. Of course, the larger figure has never been taxed while the other has been. Also, the computations assume a

company earning \$20,000 would have had \$1,000 contributed to his account and fall \$500 short of the limit available for someone receiving one-half of his salary who was not in a qualified plan. The problem is more complicated for a plan integrated with Social Security,<sup>10</sup> in which the employer is given credit for its payment to Social Security and therefore pays nothing or a lesser amount with respect to salaries below a certain amount.<sup>11</sup> In those plans where no contribution is made for salaries below the integration level the employees receiving compensation below that amount are not hurt since they remain eligible to deduct for contribution to an IRA.<sup>12</sup> The higher paid employees having at least \$1,500 contributed to their accounts annually also are not adversely affected. However, those employees whose compensation barely exceeds the integration limits have good reason to be concerned because they will receive a minimum of benefits under their employer's qualified plan, which will be enough to cause them to be excluded from making a contribution to an IRA.<sup>13</sup> One means of dealing with the problem is for the employer to design its plan so that employees would have the option to elect not to participate in the plan and thereby make themselves eligible to con-

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static situation throughout the 30 years during which there are no changes in salary, exemptions, inflation or contributions. The difference, however, is sufficient to justify congressional investigation as to the benefit to persons of medium- and low-income. Savings Growth Table Annual Deposits Daily Compounding, Chart No. 742096, pages 5 and 13, Financial Publishing Company.

\* The maximum makeup contribution for such persons over the three-year period would have been \$3,200 for an average of \$1066 annually.

<sup>10</sup> Every private employer is already paying for a Government pension plan for its employees through its payments for Social Security taxes. By integrating its private pension or profit sharing plan with Social Security the employer gets credit for some portion of these payments. In effect, the employer is able to make its plan part of one overall plan which embraces Social Security.

<sup>11</sup> See generally Rev. Rul. 71-446, 1971-2 C.B. 187.

<sup>12</sup> Unfortunately, the fact that an individual is excluded from a plan due to Social Security apparently does not necessarily mean that he is not a "participant" in the eyes of the Internal Revenue Service. Letter from Max Weil, President, Max Weil Associates, Inc., to author March 8, 1976. Mr. Weil is a member of the Senate Business Advisory Committee of IRS and Chairman of its Pension Subcommittee.

<sup>13</sup> See text accompanying note 5 *supra*. For instance, in a flat-benefit excess plan in which the integration level is \$9,000, an employee with a salary of \$12,000 would receive \$150 on a 5% contribution by his employer or \$450 on a 15% contribution by his employer; his participation in his employer's qualified plan would disqualify him from making a \$1500 contribution to an IRA, or from making up the difference. Clearly, the restrictions in § 219 are not in his best interests.

tribute to an IRA.<sup>14</sup> However, this alternative should be viewed with caution because of the danger that under the "coverage of employee" test, the plan might be disqualified if substantial numbers of employees declined participation.<sup>15</sup>

An amendment to §219 to allow participants in qualified plans to contribute to an IRA the difference between the amount allocated to his account in a qualified plan and the IRA limits would not only strengthen the private retirement system, but also help such individuals to provide for their own retirements. Unfortunately, all of the proposals to date which would have accomplished this have been rejected. President Nixon's message to Congress in December, 1971, regarding Private Pension Legislation, proposed that a deduction be allowed not only for individuals who were not covered by any plan, but also for those participating in employer-financed plans. In the latter case, the limit on contributions was to be reduced to reflect the contributions made by the employer.<sup>16</sup> More recently, the Ford Administration proposed that taxpayers covered by qualified retirement plans at a level below 15% be allowed to make sufficient contributions to an IRA to bring the total annual retirement savings up to 15%, but not in excess of the \$1,500 IRA ceiling.<sup>17</sup> The Administration's proposal recognized that it was not only the individual with no employer retirement plan that needs help from the tax system, but also the individual with an inadequate plan who is also deserving of the government's attention.<sup>18</sup> The House version of H.R. 10612 included a section which would have allowed an active participant in a qualified plan or §403(b) annuity contract to make contributions to an IRA.<sup>19</sup> Unfortunately, the Senate and Conference bills deleted this provision.<sup>20</sup>

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<sup>14</sup> H.R. REP. No. 807, 93d Cong., 2d Sess. 412, reprinted in [1974] U.S. CODE CONG. & AD. NEWS 4670, 4794.

<sup>15</sup> I.R.C. § 410(b). See also H.R. REP. No. 658, 94th Cong. 2d Sess. 1, 346 n.2 (1976).

<sup>16</sup> Message from the President of the United States concerning the Pension Reform Program, 7 WEEKLY COMP. OF PRES. DOC. 1628 (Dec. 8, 1971). The Administration's Bill was introduced as H.R. 12272 on December 14, 1971.

<sup>17</sup> See H.R. 9293 introduced on August 1, 1975, by Congressman William A. Steiger.

<sup>18</sup> See statement by Treasury Secretary William E. Simon, July 31, 1975, to the House Ways and Means Committee accompanying *The Administration's Tax Program for Increased National Savings*. See note 38 *infra*.

<sup>19</sup> House Version, § 1502. See note 39 *infra*.

<sup>20</sup> S. Rep. (Committee on Finance) No. 94-938, 94th Cong. 2d Sess. June 10, 1976-448. The Senate apparently deleted the House Bill provisions allowing make-up contributions because they only applied to persons in private plans and did not apply to

Repeatedly throughout its various reports, Congress has proclaimed that one of the principal objectives of ERISA was to make the tax laws relating to retirement plans fairer, by providing greater equality and more equitable tax treatment under such plans for the different taxpayer groups involved.<sup>21</sup> Specifically, the IRA was designed to be “. . . available to the widest possible group of taxpayers.”<sup>22</sup> Notwithstanding these pronouncements, the original Nixon proposal was rejected not because it was unfair, unequal, or inequitable to certain groups of taxpayers, but rather “. . . because of the administrative difficulties and substantial revenue loss that would be involved.”<sup>23</sup> This is a short-sighted view since it means that under ERISA, millions of taxpayers in the lower- and middle-income brackets are being intentionally denied the privilege, available to others, of providing for their eventual retirement with before-tax dollars.<sup>24</sup>

As enacted and amended, the IRA is a maverick which does not complement the other members of the tax retirement family; if not changed, it will cause substantial, unnecessary and apparently unintended damage to the private retirement system. In allowing group IRAs to be established by employers, Congress envisioned that such

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individuals who were participants in governmental plans. While the Government employees may have a complaint, the enactment of a “make-up” provision for non-governmental employees should not be tied to a provision for government employees since Congress, through ERISA, established the policy of approaching the problems of governmental and non-governmental retirement programs separately. Section 4, Title I and § 3031, Title III, ERISA.

<sup>21</sup> H.R. REP. No. 807, 93d Cong., 2d Sess. 316-17, reprinted in [1974] U.S. CODE CONG. & AD. NEWS 4670, 4698.

<sup>22</sup> *Id.* at 410, [1974] U.S. CODE CONG. & AD. NEWS 4670, 4792.

<sup>23</sup> Letter of Laurence N. Woodworth, note 6 *supra*. Neither of these reasons should be determinative. While there admittedly would be administrative problems, these can be minimized by having the amount contributed by an employer to a qualified plan shown on the employee's Form W-2. If the employee has put too much into his IRA account, he has until April 15 under ERISA to withdraw the excess without penalty. See note 40 *infra*. As to the loss of revenue, Congress seems to say we want to treat taxpayers equally, or at least fairly, but some (those in plans to which contributions are usually below 15%) less so than others. The decrease in tax revenues has been estimated to be \$355,000,000 for Calendar Year 1981. H.R. REP. No. 658, 94th Cong. 2d Sess. 1, 353. This would seem to be a small price to pay if it would help to reduce the dependence on the Social Security system in the future.

<sup>24</sup> This reverse “loophole” might properly be called a “tax trap.” The unfortunate group of taxpayers are being discriminated against, not by their employer, but by Congress.

plans might eventually lead to the establishment of a significant number of new qualified retirement plans by employers.<sup>25</sup>

An employer who believes he cannot afford the entire cost of a retirement plan can start by contributing small amounts for employee individual retirement accounts, can increase his contributions over the years (providing it does not exceed the . . . annual limits per participant), and then can subsequently convert to an employer-qualified plan.<sup>26</sup>

This statement presumably does not contemplate that the employer-sponsored IRA itself will be converted to a qualified plan since existing law does not provide for such a conversion. While the funds held in an IRA may be "rolled-over" into another IRA, they are eligible to be "rolled-over" into a qualified plan only if they were derived from a qualified plan.<sup>27</sup> Rather, Congress anticipated that employers would start with group IRA plans and graduate to qualified plans. However, the presence of IRA in its present restrictive form does not provide an environment which is conducive to the establishment of new qualified plans or for the continuation of the many existing qualified plans which are generally funded at less than the 15% level.<sup>28</sup> While plan terminations are currently at a high rate,<sup>29</sup> this present wave is apparently a reaction to the new administrative reporting and liability burdens introduced by ERISA, coupled with the added expense of amending the plans to comply with the new law.<sup>30</sup> Because of the

<sup>25</sup> H.R. REP. NO. 807, 93d Cong. 2d Sess. 318, reprinted in [1974] U.S. CODE CONG. & AD. NEWS 4670, 4700.

<sup>26</sup> *Id.*, [1974] U.S. CODE CONG. & AD. NEWS at 4700.

<sup>27</sup> I.R.C. § 408(d)(3)(A)(i) and (ii); see also I.R.C. § 402(a)(5).

<sup>28</sup> Employers should not establish plans unless they will be able to contribute consistently near the 15% level, otherwise lower and middle income employees will be disadvantaged and eventually may become dissatisfied with their employer's plan.

<sup>29</sup> *Pension Plans Folding At Twice Expected Rate*. *Washington Post* May 2, 1975. This is an article on the House Oversight Hearings held on ERISA.

<sup>30</sup> Interim Report on Pension Forms by Senator Nelson (D-Wis., Chairman of Senate Small Business Committee and Senate Finance Subcommittee on Private Pension Plans). A comparison of the Determination Letters issued by the Internal Revenue Service regarding corporate profit-sharing and stock bonus plans during the three years prior to 1976 indicates some alarming trends.

Determination letters issued	1975	1974	1973
1. Plans approved	14,720	26,806	25,665
Terminations	3,558	2,027	1,908

New starts have been down substantially and terminations have been up sharply. Unfortunately, the figures for ERISA plans divide the categories between defined

restrictive nature of IRA, it may reasonably be expected that there may be a second wave of terminations unrelated to the first. The plans affected will be principally profit-sharing plans, money purchase pension plans funded at levels below 15%, as well as integrated plans funded at all levels. Many of these terminations may be at the request or demand of "covered" employees. The pressure from employees to terminate qualified plans has apparently been slow to start.<sup>31</sup> This is perhaps because employees in lower-income groups who are participants in plans funded below 15% are not fully aware that they could set aside more for their retirement if they were not covered. They may not have been aware of the IRA alternative when they prepared their 1975 income tax returns in early 1976.<sup>32</sup> After computing the tax cost of not being eligible to make a contribution to IRA,<sup>33</sup> many such employees may feel like requesting their employers to increase contributions to such plans to the maximum limits or terminate the plans and instead contribute to IRAs. From the employer's standpoint, there is very little incentive to make substantial contributions to an IRA (at least on the same scale that it would be willing to contribute to a qualified plan) because the employer's contributions vest immediately 100% in the employee,<sup>34</sup> and are really indistinguishable from a bonus except that the tax on, and the use of, the amount contributed is deferred. In other words, an employer which continues its plan will have to make greater contributions in the future to keep pace with those employees who could be contributing more to an IRA. If an employer terminates its qualified plan and instead contributes to IRAs, it may do so at the same level or lower. In fact, the employer can eliminate payment for marginal employees,

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contribution and defined benefit plans, not making the further distinction between profit-sharing plans and money purchase pension plans (both of which are defined benefit plans) so that a meaningful comparison as to the impact of ERISA and IRA cannot be made from the 1976 statistics available from the Internal Revenue Service.

<sup>31</sup> The various reports to date have not mentioned the inability of employees to contribute to IRAs as a reason for terminating the plans.

<sup>32</sup> 1975 was the first year in which any reference to deductions for contributions to IRAs appeared on an individual's tax return. The computation of the amount of the deduction was made on Form 5329 to be attached to the individual's Form 1040.

<sup>33</sup> See note 9 *supra*.

<sup>34</sup> One reason why employers are willing to establish qualified plans is that the employee becomes vested in the amount contributed to his account over a period of years. Therefore, an employee who is not fully vested must think twice before terminating his employment while those who remain with the company are rewarded by vesting 100%. In principle, the risk of forfeiture is one of the factors which help to hold down the rate of employee turnover. It might be noted also that group IRAs are not subject to the discrimination provision applicable to qualified plans.

i.e., it can be selective. Under present tax law, the alternatives available to management are weighted in favor of plan termination.<sup>35</sup>

Unfortunately, the presence of the restrictive IRA may force the termination of many plans, good as well as marginal, if some or all of the participants receive contributions below the IRA levels. There is no room for plan growth in terms of benefits. Profit-sharing plans will be hardest hit since the employer normally makes a discretionary contribution at the end of the year based upon its profits. If there are no profits or if they are low, then the contribution will probably be small. The participants in such plans will not be able to augment their retirement programs by contributing to IRAs. Since one of the stated purposes of ERISA is "to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants . . .,"<sup>36</sup> and, in broad outline, ". . . the objective is to increase the number of individuals participating in employer-financed plans . . .,"<sup>37</sup> it would be hoped that Congress would seriously consider allowing employees who are participants in qualified plans to augment their retirement through such plans by contributing before-tax dollars either to such plans or to IRAs. While administrative burdens will have to be overcome, these have been overemphasized. By amending §219 to include participants in qualified plans, Congress would make the IRA more compatible with the older, more established members of the tax retirement family, and would give ERISA a better opportunity to achieve one of its major objectives, that of making retirement plan tax laws fairer by providing greater equality and more equitable tax treatment for the various taxpayer groups under retirement plans.<sup>38</sup>

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<sup>35</sup> Congress should be especially concerned about plan terminations since an employer who has gone to the time and expense of creating a qualified plan, and has then had to terminate, will be very reluctant to start a new plan later on; his fingers have been burned once.

<sup>36</sup> 29 U.S.C. § 1302 (Supp. IV 1974); admittedly this statement refers to the purposes for which the Pension Benefit Guaranty Corporation was formed, but it would also seem applicable to ERISA in general.

<sup>37</sup> H.R. Rep. No. 807, 93d Cong., 2d Sess. 294, *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4670, 4676.

<sup>38</sup> H.R. 10612, later enacted as the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, reported favorably by the Committee on Ways and Means on November 12, 1975, would have allowed an active participant in a qualified plan, or § 403(b) annuity contract to make contributions to an IRA; in addition, the Bill created a special account "Limited Employee Retirement Account," LERA, which would have allowed an active participant in a qualified plan which was in existence on September 2, 1974, to deduct employee contributions to the employer's qualified plan. The IRA limits on deductions would have continued to apply, although they would have been

## CONCLUSION

The Individual Retirement Account is a unique concept which could alleviate the growing burden on the Social Security System by providing all persons with earned income a means of putting aside some before-tax dollars for their retirement. However, the IRA must be made more compatible with the other members of the tax retirement family; unless its exclusive nature is modified, its restrictions will cause the termination of many qualified plans and hinder the establishment of new plans as well. The law as written penalizes almost all persons during the year when they change employment and in addition hurts many taxpayers (primarily those in lower- and middle-income brackets) in almost all plans, healthy as well as marginal. Only those qualified plans which are not integrated with Social Security and to which the employer also regularly contributes 15% of compensation annually will not cause a tax loss to any taxpayer. In short, the IRA in its present form unnecessarily favors creation of IRAs and the termination of many qualified plans to the detriment of their participants.<sup>39</sup>

The solution would not seem to be too difficult. Section 219 should be amended to allow deductions, subject to the normal limitations, "reduced by the amount contributed for such individual under a qualified plan." In addition, employers could be required to indicate on the Statement of Withholding (Treasury Form W-2) the total amount contributed to an employee's account for the year. This information, in addition to Form 5329, which is also required to be filed with the employee's tax return, should assist the employee in avoid-

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reduced by the amount of employer contributions allocable to the employee. H.R. REP. No. 658, 93d Cong., 2d Sess. 1, 346. In short, an LERA would have been comparable to an employer-sponsored IRA married to a qualified plan. All of the characteristics of IRAs such as prohibitions against their use as collateral for a loan, timing of withdrawals, etc., would have applied to LERA's.

<sup>39</sup> While not dealing directly with the problem in the Tax Reform Act of 1976, Congress did recognize a need for further changes in the IRA and specifically mandated the Joint Committee on Taxation with the responsibility to prepare a study with respect to broadening the class of individuals who are eligible to contribute to an IRA to include participants in qualified retirement plans, as well as individuals in governmental plans. § 1509, The Tax Reform Act of 1976, P.L. 94-455.

ing excess IRA contributions<sup>40</sup> and the Service in overseeing such retirement accounts.

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<sup>40</sup> On or before January 31, employers are required to furnish every employee with two copies of a statement on Form W-2 for taxes withheld during the preceding year. Treas. Reg. § 31.6051-1. For tax years beginning after December 31, 1976, § 219(b)(3) and the new § 220 (which allows deductions with respect to certain married individuals) provide that contributions made within 45 days after the end of the tax year will be treated as having been made as of the end of the preceding tax year. If the employer was required to indicate on Form W-2, the gross amount of contributions to a qualified plan on behalf of the employee, the employee would have the opportunity to contribute the precise difference to an IRA by February 14, or to withdraw overpayments by April 15, without incurring a penalty. I.R.C. §§ 408(d)(4) and 4973(b). Tax Reform Act of 1976, Pub. L. No. 94-455, § 1509, 90 Stat. 1520. Form W-2 for 1975 as well as 1976 included a block for the employer to indicate whether the employee was or was not a participant in a qualified plan during the year.

