

2005 DRAFTING REQUEST

Bill

Received: 12/07/2004

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Steve Wieckert (608) 266-3070**

By/Representing: **Scott**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Tax, Individual - income**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Wieckert@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

No individual retirement account early withdrawal penalty if purchasing long-term care insurance

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	mshovers 12/07/2004	jdyer 12/09/2004	pgreensl 12/09/2004	_____	mbarman 12/09/2004	lemery 03/04/2005	

FE Sent For: 12/09/2004.

<END>

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/?							State
/1	mshovers 12/07/2004	jdyer 12/09/2004	pgreensl 12/09/2004		mbarman 12/09/2004		

FE Sent For: 4/1"

<END>

Scott 12/9/04

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1? mshovers

1/12/04
jld

12/9
p8

12/9
p8/RO

FE Sent For:

<END>

Shovers, Marc

From: Champagne, Rick
Sent: Tuesday, December 07, 2004 7:44 AM
To: Shovers, Marc
Cc: Becher, Scott

Marc:

I received a call yesterday from Scott Becher in Rep. Wieckert's office. He would like a bill to remove the Wisconsin income tax penalty for using early-withdrawal IRA moneys to purchase long-term care insurance. Scott may be called if you have questions. Thanks.

Rick Champagne
Senior Staff Counsel
Legal Section
Wisconsin Legislative Reference Bureau
1 East Main St.
Suite 200
Madison, WI 53703
(608) 266-9930
FAX (608) 264-6948
rick.champagne@legis.state.wi.us

From 2004 Federal TAX COURSE

Chapter 3—Retirement Plans

¶1336

erty except a common or trust investment fund; (3) the account must be nonforfeitable.

NOTE: Banks are allowed to offer free checking, free checks or other free services based on the balance in an IRA or Keogh. For example, assume Mr. Smith banks at First National Bank. He has \$2,000 in his checking account and \$10,000 in his IRA. First National offers free checking to all customers with at least \$5,000 in the bank. Smith can count his IRA toward the \$5,000 limit and he easily qualifies for the bank's money-saving offer.

Individual retirement annuities. Individual retirement annuities are annuity or endowment contracts issued by an insurance company to individual participants [IRC Sec. 408(b)]. The contract must be nonforfeitable and must contain no life insurance element. The annual premium on behalf of an individual may not exceed \$3,000 in 2003. Also, payout provisions similar to those above apply here.

Investment in collectibles. You can invest your IRA savings in platinum coins as well as gold, silver, platinum or palladium bullion of a specified minimum fineness [IRC Sec. 408(m)(3)]. Investments in "collectibles" are, however, generally not permitted [IRC Sec. 408(m)]. In fact, the acquisition by an IRA of any collectible will be treated as a distribution from the account in an amount equal to the cost of the collectible. The term "collectible" means any work of art, any rug or antiques, any metal or gem, any stamp or coin, any alcoholic beverage, any musical instrument, any historical objects such as documents or clothes [Prop. Reg. Sec. 1.408-10(b)].

¶1336

TAX ON IRA DISTRIBUTIONS

Generally, you are taxed on traditional IRA payouts as ordinary income in the year you actually receive the cash payments [IRC Sec. 408(d)]. No tax is due on withdrawals to the extent they are allocable to your original nondeductible contributions [¶1330(c)]. The allocation is based on a ratio of your nondeductible contributions to the total balance in all of your traditional IRAs. As discussed in ¶1337, distributions from Roth IRAs generally are tax free.

You can withdraw nondeductible contributions completely tax-free (i.e., no allocation between deductible and nondeductible contributions) at any time up to the tax return deadline, including extensions, for the year the contribution was made. However, you must withdraw all earnings attributable to the contributions as well [IRC Sec. 408(d)(4)].

NOTE: IRA distributions are not eligible for capital gains treatment, or the special 10-year averaging rule available to retirement plan participants. However, an IRA distribution is income eligible for the credit for the elderly and disabled [¶2403].

(a) Premature IRA Distributions Subject to 10 Percent Penalty Tax.

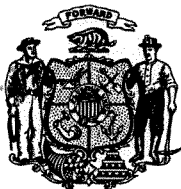
Premature distributions are amounts you withdraw from your IRA before you are age 59½ [IRC Sec. 72(1)(2)(A)(i)]. These are subject to a 10 percent nondeductible excise tax. The 10 percent early withdrawal penalty tax applies to actual

as well as “deemed” distributions [IRC Sec. 72(t)(1); Reg. Sec. 1.408-10(f)]. Thus, if you benefit from a “prohibited transaction” with the money in the IRA account which could include borrowing money from the IRA or using the IRA as a security for a loan, the 10 percent penalty tax can apply to the amount of the benefit [IRC Sec. 408(e)(2)(A)]. An investment by an IRA or any other qualified plan in collectibles (art, rugs, antiques, gems, stamps, coins, alcoholic beverage or other item of tangible personal property specified in IRC Sec. 408(m)) will be treated as a distribution of the cost of the item and will result in the 10 percent penalty tax. You can invest your IRA savings in platinum coins as well as gold, silver, platinum or palladium bullion of a specified minimum fineness without paying the 10 percent penalty [IRC Sec. 408(m)]. See ¶1335.

Exception to 10 percent penalty tax for IRA distributions. The 10 percent penalty does not apply to the following IRA withdrawals:

- **Post-age 59½ distributions.** Distribution made after reaching age 59½ are not subject to the 10 percent penalty tax [IRC Sec. 72(t)(2)(A)(i)];
- **Taxpayer death.** Distributions made because the taxpayer establishing the IRA has died [IRC Sec. 72(t)(A)(ii)];
- **Taxpayer disability.** Distributions made because the taxpayer establishing the IRA is totally or permanently disabled [IRC Sec. 72(t)(2)(A)(iii)]. Taxpayers will be considered “disabled” if unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or be of a long-continued and indefinite duration [IRC Sec. 72(m)(7)]. The term “substantial gainful activity” refers to the activity, or a comparable activity in which the plan participant customarily engaged prior to the impairment [Reg. Sec. 1.72-17A(f)(1)]. Examples approved by the IRS include the following: loss of use of two limbs; certain progressive diseases, which result in physical loss or atrophy of a limb, such as diabetes, multiple sclerosis, or Buerger’s disease; diseases of the heart, lungs, or blood vessels; inoperative and progressive cancer; brain damage; mental diseases such as psychosis; nearly total vision loss; permanent and total loss of speech; and, total deafness uncorrectible by a hearing aid [Reg. Sec. 1.72-17A(f)(2)(i)-(ix)]. Clinical depression is not a disability that will excuse a premature IRA withdrawal.¹ A mental disease is one that requires continued institutionalization or constant supervision. Periodic visits with a psychiatrist are insufficient. Without proof that a mental illness requires constant supervision, you will be unable to prove that it qualifies as a disability for purposes of eliminating the 10 percent premature penalty imposed on premature IRA withdrawals [Reg. Sec. 1.72-17A(f)(2)(vi)].

Example: Betty is age 45 but after a car accident is totally and permanently disabled. She can withdraw her IRA savings without paying the 10 percent early withdrawal penalty be-



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1160/1

MES#.....

JW RMR

2005 BILL

gen ✓

1 AN ACT ...; relating to: eliminating a penalty for certain early withdrawals from
2 an individual retirement account. ✓

Analysis by the Legislative Reference Bureau

Under current federal law, an individual who receives a distribution from his or her individual retirement account (IRA) before reaching the age of 59 and one-half is subject to a 10 percent nondeductible excise tax, or penalty tax, unless certain exceptions apply. Under current state law, an individual who is subject to such a federal tax, or penalty, is also liable for 33 percent of the federal penalty unless the income received is exempt from taxation.

Under this bill, an individual who receives a distribution from his or her IRA before reaching the age of 59 and one-half and is subject to the 10 percent federal penalty tax is not liable for the additional 33 percent state penalty if the individual uses the proceeds from the distribution to purchase long-term care insurance. *tax*

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 71.83 (1) (a) 6. of the statutes is amended to read:
4 71.83 (1) (a) 6. 'Retirement plans.' Any natural person who is liable for a
5 penalty for federal income tax purposes under section 72 (m) (5), (q), (t) and (v), 4973,

BILL

1 4974, 4975 or 4980A of the ~~internal revenue code~~ Internal Revenue Code is liable for
 2 ~~33%~~ 33 percent of the federal penalty unless the income received is exempt from taxation under
 3 s. 71.05 (1) (a) or unless the proceeds of the distribution to which the penalty under
 4 section 72 (t) of the Internal Revenue Code applies are used solely to purchase a
 5 long-term care insurance policy, as that term is defined in s. 71.05 (6) (b) 26. a. The
 6 penalties provided under this subdivision shall be assessed, levied and collected in
 7 the same manner as income or franchise taxes.

History: 1987 a. 312; 1989 a. 31, 90; 1991 a. 39, 190, 269, 315; 1993 a. 16, 112, 213; 1995 a. 428, 453; 1997 a. 27, 237, 283, 323; 1999 a. 32; 2001 a. 109.

SECTION 2. Initial applicability.

9 (1) This act first applies to a distribution from an individual retirement account
 10 that is received on the effective date of this subsection.

(END)

Emery, Lynn

From: Emery, Lynn
Sent: Tuesday, March 01, 2005 3:40 PM
To: Becher, Scott
Subject: LRB 05-1160/1 (attached as requested)



05-1160/1

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us

Barman, Mike

From: Becher, Scott
Sent: Friday, March 04, 2005 9:44 AM
To: Barman, Mike
Subject: FW: Using IRAs for Long-Term Care Insurance – Co-Sponsorship LRB – 1160/1

Please jacket lrb 1160

-----Original Message-----

From: Rep. Wieckert
Sent: Friday, March 04, 2005 9:39 AM
To: *Legislative Assembly Republicans; *Legislative Assembly Democrats; *Legislative Senate Republicans; *Legislative Senate Democrats
Subject: Using IRAs for Long-Term Care Insurance - Co-Sponsorship LRB - 1160/1

TO: All Legislators

FROM: Rep. Steve Wieckert

DATE: Friday, March 4, 2005

RE: Using IRAs for Long-Term Care Insurance - Co-Sponsorship LRB - 1160/1

Nursing Home Security for Seniors

This legislation would allow an individual who has an IRA to use IRA funds to pay for long-term care insurance without being subject to a state tax penalty for early withdrawal.

One of the largest challenges we face as legislators in trying to put together a responsible budget is the enormous growth of the Medicaid program. Many people do not realize that a very large portion of the MA budget goes to pay for nursing home care. This happens because Medicare does not cover the costs of nursing home or other types of long-term care. Therefore, the senior who needs this type of assistance must pay out of their own pocket as long as they can afford to, and then eventually many will rely on the MA program to pay for their accommodations.

This is a long-term, statewide, and national problem. This new type of legislation begins to provide some partial solutions to run-away MA budgets. The more individuals who purchase long-term care insurance, the more we can get a better handle on increasing MA costs. It's part of a structural solution. It is certainly not a quick fix. But, by encouraging the use of long-term care insurance, there will be long-term gain for everybody.

A number of years ago, Wisconsin became the state that made long-term care insurance tax deductible to also encourage its purchase.

This innovative bill allows individuals who have IRAs an additional option of having the financial resources to purchase LTC insurance, based on their case-by-case financial condition.

If you would like to cosponsor **LRB - 1160/1**, please call Scott Becher at 6-3070 or reply to this e-mail by March 14, 2005.



05-11601.pdf

Memo

To: Senator

Representative

Wieckert

(The Draft's Requester)

Per your request: ... the attached fiscal estimate was prepared for your un-introduced 2005 draft.

LRB Number: LRB

-1160

Version: " / **1** "

Fiscal Estimate Prepared By: (agency abbr.)

DOR

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail:

12 / 27 / 2004

* * * * *

To: LRB - Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

> **If redrafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.

> **If introduced** ... and the version of the attached fiscal estimate is for a **previous version** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

> **If introduced** ... and the version of the attached fiscal estimate is for the **current version** ... please write the draft's introduction number below and give to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2005

AB335

Barman, Mike

From: Barman, Mike
Sent: Monday, December 27, 2004 8:33 AM
To: Rep.Wieckert
Cc: Becher, Scott
Subject: LRB 05-1160/1 (FE by DOR - attached - for your review)



FE_Wieckert.PDF