

Year 2011-2012 Cost of Living Adjustments

IRA, SIMPLE

	2011		2012	
Maximum Contribution – Traditional IRA, Roth IRA	Age Under 50	\$5,000	Age Under 50	\$5,000
	Age Over 50	\$6,000	Age Over 50	\$6,000
Maximum SIMPLE Salary Reduction	Age Under 50	\$11,500	Age Under 50	\$11,500
	Age Over 50	\$14,000	Age Over 50	\$14,000
IRA Deductibility Phase Out begins at:	Single Filer	\$56,000	Single Filer	\$58,000
	Joint Filer	\$90,000	Joint Filer	\$92,000

EMPLOYER SPONSORED RETIREMENT ACCOUNTS

Maximum Salary Deferral, 401(k), 403(b) (TSA), or Government 457 Plan	Age Under 50	\$16,500	Age Under 50	\$17,000
	Age Over 50	\$22,000	Age Over 50	\$22,500
Maximum Plan Compensation	\$245,000		\$250,000	
Defined Benefit Plan Dollar Limitation	\$195,000		\$200,000	
Defined Contribution Dollar Limitation	\$49,000		\$50,000	
Highly Compensated Employee	\$110,000		\$115,000	

SOCIAL SECURITY

Taxable Wage Base	\$106,800	\$110,100
Benefit Increase From Prior Year	0%	3.6%
Average Retirement Benefit, all retirees	\$1,186	\$1,229
Maximum Retirement Benefit	Age 66, \$2,366	Age 66, \$2,513
Maximum earnings, early retirement, before reduction of benefits	\$14,160	\$14,640

ESTATE PLANNING

Applicable Credit Equivalent	\$5,000,000	\$5,120,000
Generation Skipping Transfer Tax Exemption	\$5,000,000	\$5,120,000
Annual Gift Tax Exclusion	\$13,000	\$13,000
Lifetime Gift Exclusion	\$5,000,000	\$5,120,000
Dollar Amount Used to Compute "2 percent" Portion of 6166 Calculation	\$1,360,000	\$1,390,000
Section 2032A "Special Use" Qualified Real Property Value Reduction Limit	\$1,020,000	\$1,040,000
Annual Gift Tax Exclusion, Non-US Citizen Spouse	\$136,000	\$139,000

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May a Grantor of an ILIT Pay Premiums Directly to the Life Insurance Company?

Readers working in the estate-planning market are well aware of the complexities and procedures involved with setting up a *Crummey* power irrevocable life insurance trust (ILIT). Although details may vary from case to case, here's a simplified set of steps usually recommended for payment of premium:

1. An ILIT is drafted by the estate-planning attorney and executed by the grantor.
2. The trustee of the ILIT obtains a federal taxpayer ID number for the trust and opens a trust checking account.
3. The grantor writes a check to the trustee for deposit in the trust checking account.
4. The trustee deposits the check and sends out *Crummey* letters to each trust beneficiary.
5. After the applicable waiting period when the beneficiaries do not demand distribution of their share of the gift (typically 30 days), the trustee writes a check to the insurance company for the premium payment.

To many this seems an unnecessarily complicated procedure. Perhaps the greatest objection is why a trust checking account has to be set up when it will probably have no more than two transactions a year: (1) the deposit of the grantors gift, and (2) the writing of a check to pay the premium. Others object to having to send out *Crummey* letters each time a gift is received by the trust and view it as a meaningless formality.

Some ask why not just have the grantor write the premium check directly to the life insurance company and bypass all the rigmarole.

Surprisingly, a recent Tax Court case, *Turner v. Commissioner*, T.C. Memo. 2011-209 (August 30, 2011) lends support for this theory. However, we recommend continuing the standard procedure until it is clear whether the IRS and appeals courts uphold this ruling.

What's the problem with the grantor paying the premium directly?

The IRS has consistently taken the position that payment of the premium by the grantor directly is a *future*

interest gift. In order to qualify for the annual exclusion from gift tax, a gift must be a *present interest* gift; therefore if the grantor pays the premium directly, it will be a gift subject to gift tax. However, over the years a concept known as *Crummey powers* has developed. The main case approving of these powers is *Crummey v. Commissioner*, 397 F. 2d, 88 (9th Cir. 1968). Following the *Crummey* case numerous later federal court rulings and IRS rulings have refined the concept.

Thus, the procedure enumerated above has developed saying that if a gift is made to the trustee, the trustee holds the money for some period (typically 30 days), advises each beneficiary of the right to demand a share of the gift, and after receiving no demand for a share of the gift, the trustee uses the money to pay a life insurance premium, it will be treated as a present interest gift and be eligible for the annual gift tax exclusion of \$13,000 per year per donee.

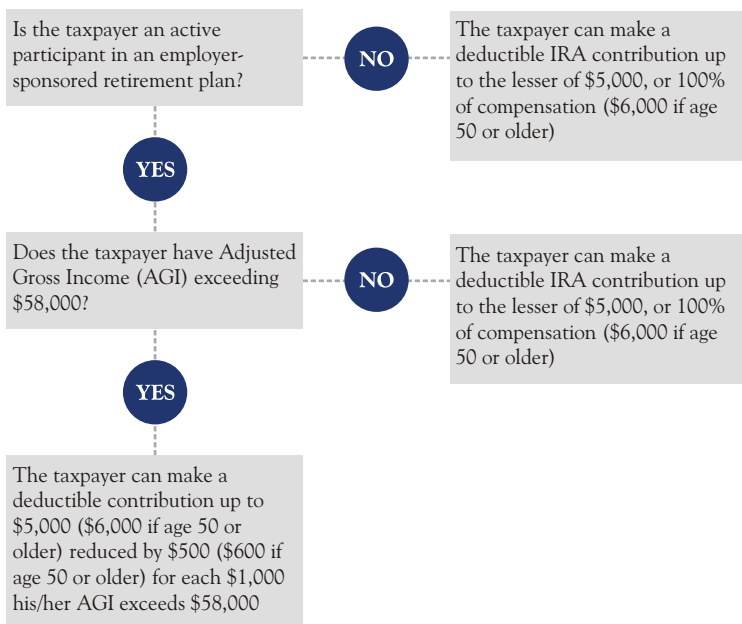
In the *Turner* case the grantor made insurance premium payments directly to the insurance company, and the Tax Court held that the payments did qualify as present interest gifts. Under the trust terms trust beneficiaries had the right to demand their share of gifts, and the court held that was sufficient without anything further needed.

Turner is a fascinating decision, and it will be interesting to see the IRS and appellate court reaction.

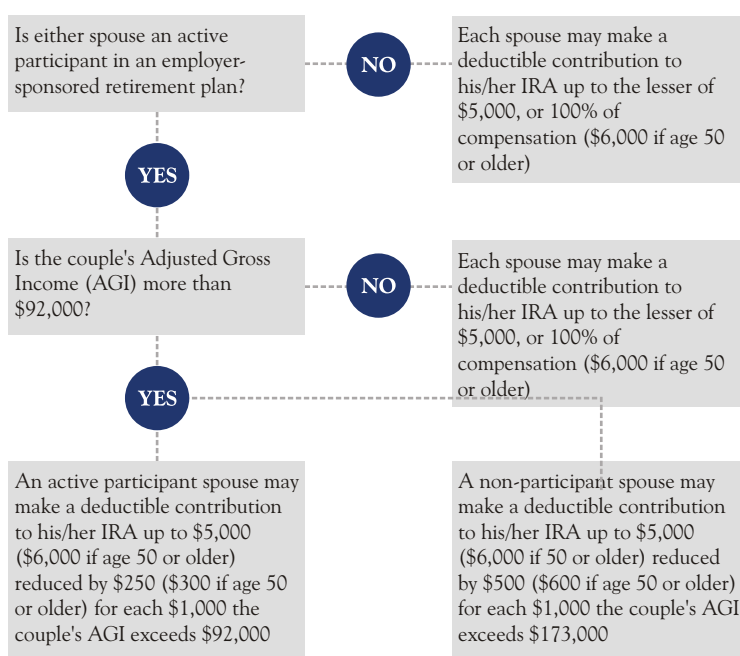


2012 Traditional IRA Contributions - A Flow Chart

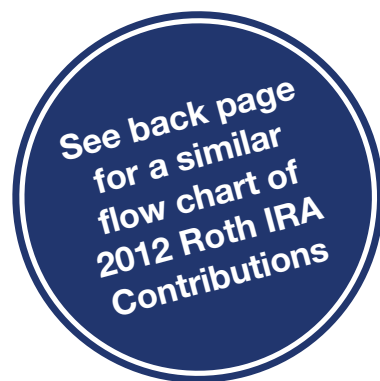
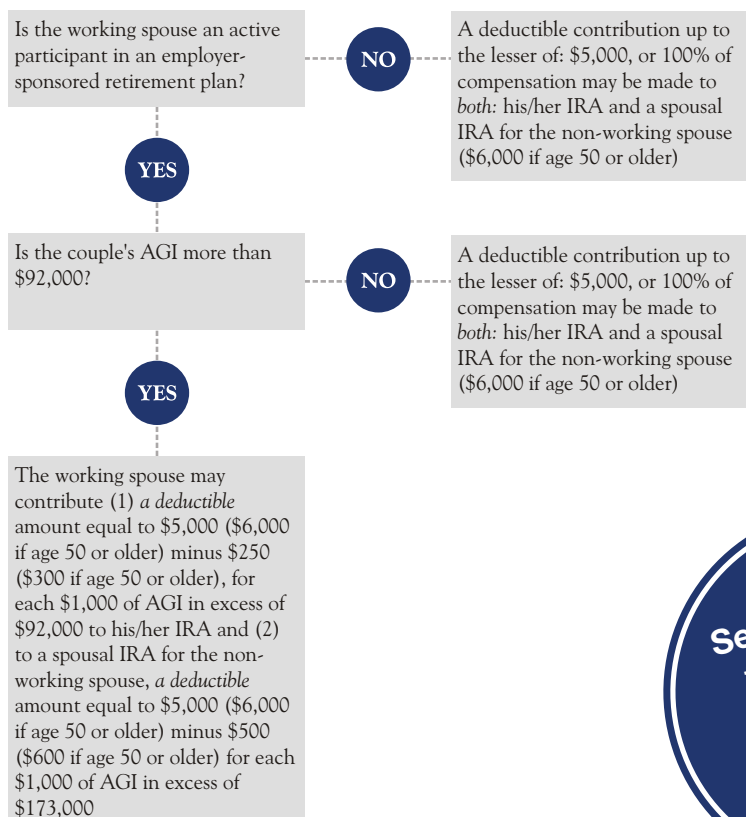
Single Taxpayer



Married Couple Filing Jointly - Both Working



Married Couple Filing Jointly - Only One Spouse Working





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2012 Roth IRA Contributions - A Flow Chart

Single Taxpayer

Is the taxpayer's Adjusted Gross Income (AGI) more than \$110,000?

YES

NO

The taxpayer can make a Roth IRA contribution up to \$5,000 (\$6,000 if age 50 or older) reduced by \$333.33 (\$400 if age 50 or older) for each \$1,000 of AGI in excess of \$110,000 and further reduced dollar for dollar for contributions made to a traditional IRA

The taxpayer can make a Roth IRA contribution up to the lesser of \$5,000 (\$6,000 if age 50 or older) or 100% of compensation, reduced dollar for dollar for contributions made to a traditional IRA

Married Couple Filing Jointly - Both Working

Does the couple's AGI exceed \$173,000?

YES

NO

Each spouse can make a Roth IRA contribution up to \$5,000 (\$6,000 if age 50 or older) reduced by \$500 (\$600 if age 50 or older) for each \$1,000 of AGI in excess of \$173,000 and further reduced dollar for dollar for contributions made to a traditional IRA

Each spouse can make a Roth IRA contribution up to the lesser of \$5,000 (\$6,000 if age 50 or older) or 100% of compensation, reduced dollar for dollar for contributions made to a traditional IRA

Married Couple Filing Jointly - Only One Spouse Working

Does the couple's AGI exceed \$173,000?

YES

NO

The working spouse may contribute up to \$5,000 (\$6,000 if age 50 or older) reduced by \$500 (\$600 if age 50 or older) for each \$1,000 that AGI exceeds \$173,000, to both his/her Roth IRA and a spousal Roth IRA for the non-working spouse, further reduced dollar for dollar for contributions made to a traditional IRA in the name of that spouse

The working spouse may contribute the lesser of \$5,000 (\$6,000 if age 50 or older) or 100% of compensation to both his/her Roth IRA and a spousal Roth IRA for the non-working spouse, reduced dollar for dollar for contributions made to a traditional IRA in the name of that spouse