Retirement Update
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Internal Revenue Service

IRS Announces Changes to Employee Plans Determination Letter Processing

To enhance processing efficiency, the IRS released Announcement 2015-01 on December 19, 2014, which identifies changes to the employee plans determination letter protocols that will take effect in 2015. http://www.irs.gov/pub/irs-drop/a-15-01.pdf Information contained in the Announcement will be included in the determination letter procedures that will be published in Rev. Proc. 2015-6, which will be effective on February 1, 2015.

Procedural requirements for incomplete applications have been revised as follows:

- Upon receipt of the timely filed determination letter application, the IRS will ascertain whether the filing is complete, including a completed copy of the Procedural Requirements Checklist set forth in Forms 5300, 5307, 5310 and 5316.
- If an application is incomplete, the applicant will be contacted in writing and asked to submit the missing information within 30 days of the date of the letter. Failure to submit the information will result in the closure of the case. The Announcement addresses the consequences of the incomplete filing.
- According to the Announcement, the IRS intends to develop a "Reference List" that applicants may use to indicate the specific provisions in the plan document that reflect the items in the Cycle E Cumulative List.

It is important to note that the IRS will not conduct technical review of an application until it is procedurally complete.

2014 Cumulative List of Changes in Plan Qualification Requirements

IRS Notice 2014-77, which was released December 22, 2014, is to be used by plan sponsors and practioners submitting determination letter applications for plans during the period beginning February 1, 2015 and ending January 31, 2016. http://www.irs.gov/irb/2014-52_IRB/ar08.html As explained in the notice, this Cumulative List will apply primarily to single employer individually designed defined contribution plans and single employer individually designed defined benefit plans that are in Cycle E. As a reminder, terminating plans must include all law changes in effect as of time of termination.

Note that the IRS updated a chart noting the cumulative list of changes in retirement plan qualification requirements. http://www.irs.gov/Retirement-Plans/Cumulative-List-of-Changes-in-Retirement-Plan-Qualification-Requirements The chart lists and links all relevant notices from 2004 forward.

IRS Advises Taxpayers that Legislation Permitted Tax-Free IRA Transfers to Eligible Charity in 2014

Information Release 2014-117, which was published December 23, 2014, states that IRA owners age 70 ½ and older had until December 31, 2014 to make a direct transfer of part or all of their IRA distributions to an eligible IRA. http://www.irs.gov/uac/Newsroom/Tax-Free-Transfers-to-Charity-Renewed-For-IRA-Owners-70-and-One-Half-or-Older-Rollovers-This-Month-Can-Still-Count-For-2014

According to the Information Release, The Tax Increase Prevention Act (https://www.govtrack.us/congress/bills/113/hr5771/text), which was enacted December 19, 2014, extended the provision authorizing qualified charitable distributions, which had expired at the end of 2013, until the end of 2014. As a result, an IRA owner, age 70½ or over, continues to be able to directly transfer, tax-free, up to $100,000 per year to an eligible charity, regardless of whether the owner itemizes his or her deductions. Note that distributions from employer-sponsored retirement plans, including SIMPLE IRA plans and simplified employee pension (SEP) plans, are not eligible. As stated in the Information Release, amounts transferred to a charity from an IRA are counted in determining whether the owner has met the IRA's required minimum distribution.

IRS Guidance on Allocation of Pre-Tax and Post-Tax Amounts Upon Multiple Disbursements Supplemented

The IRS recently released proposed regulations on the tax treatment of distributions from Roth accounts under retirement plans as well as Notice 2014-54 that will permit a taxpayer to direct after-tax and pretax amounts under 401(a), 403(b) and governmental 457(b) plans that are simultaneously disbursed to multiple destinations. https://www.federalregister.gov/articles/2014/09/19/2014-22324/removal-of-allocation-rule-for-disbursements-from-designated-roth-accounts-to-multiple-destinations; http://www.irs.gov/pub/irs-drop/n-14-54.pdf. [This guidance was summarized in the October 9, 2014 edition of *Retirement Update*.]

The allocation rules generally apply to distributions made on or after January 1, 2015. The guidance also includes transition rules effective for disbursements made on or after September 18, 2014. Recently, the IRS supplemented the guidance by adding two additional Questions and Answers in response to multiple inquiries.

> ***Can I roll over just the after-tax amounts in my account to a Roth IRA and leave the remaining amounts in the plan (i.e., take a partial distribution of just the after-tax amounts)?***
>
> *No. The guidance provided in Notice 2014-54 does not alter the requirement that each distribution from a plan must include a proportional share of the pretax and after-tax amounts in the account. Accordingly, any partial distribution from the plan must include some of the pretax amounts you have in your account -- you cannot take a distribution of only the after-tax amounts and leave the pretax amounts in the plan. In order to roll over all of your after-tax contributions to a Roth IRA, you could take a distribution of the full amount (all pretax and after-tax amounts) in your account, roll over all the pretax amounts in a direct rollover to a traditional IRA or another eligible retirement plan, and roll over all the after-tax amounts in a direct rollover to a Roth IRA.*
>
> ***I want to roll over my after-tax contributions to a Roth IRA and roll over earnings on my after-tax contributions to a traditional IRA. Can I do that?***
>
> *Yes. Earnings associated with after-tax contributions are pretax amounts in your account. Thus, after-tax contributions can be rolled over to a Roth IRA without also including earnings. Under the guidance, all pretax amounts in a distribution may be rolled over to a traditional IRA and, in that case, will not be included in income until distributed from the IRA.*

IRS Advisory Committee Seeks Input from 403(b) Plan Sponsors and Service Providers

A confidential online survey has been produced by the Employee Plans Subgroup of the IRS Advisory Committee on Tax-Exempt and Government Entities seeking information about compliance issues. https://www.surveymonkey.com/s/IRS403b 403(b) plan sponsors and service providers are being surveyed to identify problems faced in administering 403(b) programs and what steps/actions could be taken by the IRS to improve the compliance process.

Final Regulations Issued on Savings Bond for *my*RA

On December 15, 2014, final regulations were published in the Federal Register on the new nonmarketable savings bond for the *my*RA. https://www.federalregister.gov/articles/2014/12/15/2014-29334/regulations-governing-retirement-savings-bonds The final regulations are effective on December 15, 2014.

Background

On January 29, 2014, President Obama issued a Presidential Memorandum directing the Treasury Department to create *my*RA. The highlights are as follows:

- *Starter Savings Account*: Those lacking access to workplace retirement savings plans would be able to start saving for retirement.

- *Safe and Secure:* The product, which is offered via a Roth IRA account, will benefit from principal protection, as the account will be backed by the government. Savers will earn interest at the same variable interest rate as the federal employees' Thrift Savings Plan (TSP) Government Securities Investment Fund. The total value of a retirement savings bond that may be held by the designated Roth IRA custodian on behalf of any program participant cannot exceed $15,000, or for a maximum of 30 years, in their accounts before transferring their balance to a private sector Roth IRA.

- *User-Friendly for Savers:* Initial investments could be as low as $25 and contributions that are as low as $5 could be made through easy-to-use payroll deductions. The account would be portable when workers change jobs and can be rolled into a private-sector retirement account at any time. Contributions can be withdrawn tax-free at any time.

- *Widely Available:* This saving opportunity is available to households earning up to $191,000 a year. The accounts are described as being little to no cost and easy for employers to use, since employers will neither administer the accounts nor contribute to them.

Final Regulations

The United States Department of the Treasury, Bureau of the Fiscal Service, offers a new nonmarketable, electronic retirement savings bond for *my*RA. This final regulation establishes the terms and conditions of the retirement savings bonds, which will be issued to a designated custodian for Roth individual retirement accounts established under *my*RA. As explained in the introduction of the final regulation, this new savings bond is only available to participants in the retirement savings program and will protect the principal contributed while earning interest at a rate previously available only to federal employees invested in the Government Securities Investment Fund (G Fund) of their TSP.

Future Expansion

On December 15, 2014, John J. Canary, Director, Office of Regulations and Interpretations, Department of Labor Employee Benefits Security Administration responded to an inquiry from J. Mark Iwry, Senior Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health Policy, Department of the Treasury, regarding the ERISA status of the *my*RA. http://www.dol.gov/ebsa/regs/ILs/il121514.html (See also "Department of Labor Does Not Consider myRA to be ERISA Employee Benefit Plan" in the Department of Labor section below).

It is interesting to note that the Department of Labor response indicates that Treasury plans to expand the *myRA* in the future to allow individual savers, including self-employed individuals, to make contributions by means other than payroll deductions, such as by direct transfers from the saver. There is also a suggestion that Treasury may allow employers to implement automatic enrollment in the future, which may prompt further Department of Labor scrutiny.

Treasury Department Seeks Approval to Collect Information About Retirement Savings Enhancements

On December 12, 2014, the Treasury Department submitted an information collection request to the Office of Management and Budget (OMB) for review and clearance so that Treasury can explore several approaches for enabling low and middle income individuals to open and put savings into the retirement accounts. One option may encourage individuals to open and fund the accounts when they file their federal tax forms.
https://www.federalregister.gov/articles/2014/12/12/2014-29095/submission-for-omb-review-comment-request

As described, a voluntary survey will be available when participants file their federal income taxes. The specifics of the program are as follows:

> *The Department contracted with the Center for Social Development (CSD) at Washington University in St. Louis to assist with research on this topic. CSD currently administers an annual privately-funded survey, the Household Financial Survey (HFS), through which it gathers savings information from low- to moderate-income tax filers immediately after they have filed their tax forms. This national survey is integrated into the no-cost version of Intuit's TurboTax tax preparation software, and it reaches a significant sample of people who could be eligible for the accounts.*
>
> *Starting in the 2015 tax filing season, CSD will add a Treasury-funded Retirement Savings Module to the 2015 HFS survey. The module will consist of a series of questions focused on individuals' current retirement savings goals, practices, and attitudes surrounding retirement, along with questions designed to glean insights on the potential demand for the new retirement savings accounts, such as what aspects of the program would be desirable to low- to moderate income consumers, and whether these taxpayers may be interested in opening an account at tax time.*

IRS Announces of Work Realignment between the Tax Exempt and Government Entities Division and Office of Associate General Counsel

Announcement 2014-34 explains how technical work will be realigned at the beginning of 2015 between the Tax Exempt and Government Entities Division (TE/GE) and Office of Associate General Counsel (Tax Exempt and Government Entities.) http://www.irs.gov/pub/irs-drop/a-14-34.pdf According to the announcement, the technical responsibility for preparing revenue rulings, revenue procedures, and certain other forms of published guidance, and issuing technical advice and certain letter rulings, will shift from TE/GE to the Office of Associate Chief Counsel (TEGE Counsel).

After January 1, 2015, the Employee Plans office of TE/GE (Employee Plans) will retain the authority to issue letter rulings on the following subject matters:

- Computation of the exclusion ratio under 72;
- Waiver of the 60-day rollover requirement under 402(c)(3) and 408(d)(3) for distributions;
- Whether individual retirement accounts established by employers or associations of employers meet the requirements of 408(c);
- The tax consequences of prohibited transactions under 503 and 4975;
- Roth IRA recharacterization relief; and
- A change in the plan year of an employee retirement plan and the trust year of a tax-exempt employees' trust.

Retirement News for Employers' Article Discusses Roth Contribution Failure Correction

Retirement News for Employers dated December 18, 2014 includes a link to the following article on *Correcting a Roth Contribution Failure*. http://www.irs.gov/pub/irs-tege/rne_1214.pdf
http://www.irs.gov/Retirement-Plans/Fixing-Common-Mistakes-Correcting-a-Roth-Contribution-Failure

Fixing Common Mistakes - Correcting a Roth Contribution Failure

The issue

Many employers have added a Roth feature to their 401(k), 403(b) or governmental 457(b) plans. This feature allows employees to choose to designate some or all of their elective contributions as Roth contributions. Employees must make this designation before the deferral is withheld from their salary. A Roth contribution differs from a pre-tax elective contribution in that the Roth contribution amount is included in gross income.

The problem

A common mistake we've encountered in the operation of a Roth feature is that the employer doesn't follow the employee's election as to the type of elective deferral.

The employee elects a Roth contribution, but the employer treats it as a pre-tax deferral.

Example 1: The ABC Corporation 401(k) Plan includes a Roth feature. In 2013, Marcie elected to defer $5,000 of her salary as a Roth contribution to the plan. In 2014, the plan administrator discovered that Marcie's contribution was made as a pre-tax deferral and not the Roth contribution that she elected.

Fixing the mistake

To fix the mistake of not following an employee's election to designate the contribution as a Roth contribution you must transfer the deferrals, adjusted for earnings, from the pre-tax account to the Roth account. There are two options on how to report this transfer:

1. *The employer issues a corrected Form W-2 and Marcie must file an amended Form 1040 for the year of the failure (2013).*

2. *The employer includes the amount transferred from the pre-tax to the Roth account in Marcie's compensation in the year it's transferred (2014). If the employer elects, it may compensate Marcie for the additional amount she owes in income tax in 2014. This must be included in Marcie's 2014 income.*

The employee elects pre-tax deferral, but the employer treats it as a Roth contribution.

Example 2: In 2013, Marco elected to contribute $6,000 to the XYZ Corporation 401(k) Plan, which allows both pre-tax and Roth contributions. Marco elected to make a pre-tax deferral. Despite Marco's election, the XYZ Corporation realized in 2014 that Marco's contribution for 2013 was made as a Roth contribution and not the pre-tax deferral that he elected.

Fixing the mistake

The XYZ Corporation can transfer the erroneously deposited deferrals, adjusted for earnings, from the Roth account to the pre-tax account. The XYZ Corporation would file a corrected W-2 and Marco would file an amended 1040 for the year of the failure (2013).

Correction programs available

The plan sponsor can use the Voluntary Correction Program (VCP) (if the error is significant and it meets the other conditions of VC). The error can be self-corrected, without IRS approval, if the mistake is insignificant or, if significant, if the plan sponsor corrects the mistake within two years. A plan sponsor can use self-correction only if the plan has practices and procedures in place designed to promote overall tax law compliance. If the plan is under IRS examination, then mistakes are generally corrected under a closing agreement using the Audit Closing Agreement Program.

Making sure it doesn't happen again

Establish procedures that ensure that the participants' elections are correctly implemented. This could include educating those responsible for processing the deferral elections on how to interpret and implement the information on the election forms. In addition, periodically check the process of withholding, classifying and depositing salary deferrals so that you can timely fix errors and adjust internal controls, as needed.

Information about Maintaining Retirement Plan Records

Employee Plan News Issue 2014-22, December 9, 2014, includes a link to an important article detailing records that must be maintained for retirement plans. http://www.irs.gov/Retirement-Plans/Maintaining-Your-Retirement-Plan-Records. Employee plans, which include pension, annuity, profit sharing and stock bonus plans, IRAs, SEPs, SIMPLEs, tax sheltered annuities, and 457 plans, must keep their books and records available for review by the IRS.

A plan sponsor should keep the documents listed below. It is important to note that such plan records should be kept until the trust or IRA has paid all benefits and enough time has passed that the plan will not be audited.

- The plan and trust document, recent amendments, determination and approval letters, related annuity contracts and collective bargaining agreements.
- Trust records such as investment statements, balance sheets, and income statements.
- Participant records such as census data, account balances, contributions and earnings, loan documents and information, compensation data and participant statements and notices.

Under additional resources, Revenue Procedure 98-25 identifies the basic requirements for recordkeeping when a taxpayer maintains their records in an automatic data processing system. http://www.irs.gov/Businesses/Automated-Records

Department of Labor

Advance Copies of Form 5500 Series Released

On December 15, 2014, the Department of Labor's Employee Benefits Administration, the IRS and the Pension Benefit Guaranty Corporation released advance informational copies of the 2014 Form 5500 annual return/report and related instructions. http://www.dol.gov/ebsa/newsroom/2014/EBSA121514.html As stated in the news release, these advance copies are for informational purposes only and cannot be used to file an annual return/report. Links to the 2014 forms can be found at http://www.dol.gov/ebsa/5500main.html#2014.

Selected modifications to Form 5500 and Form 5500-SF, and their schedules and instructions for plan year 2014 as identified in the instructions include the following:

- ***Signature and Date.*** *The Form 5500 and Form 5500-SF instructions for "Signature and Date" have been updated to caution filers to check the Filing Status. If the filing status is "Processing Stopped" or "Unprocessable," the submission may not have had a valid electronic signature, and depending on the error, may be considered not to have been filed.*

- ***Active Participant Information.*** *Filers are now required to provide the total number of active participants at the beginning of the plan year and at the end of the plan year on both forms.*

- ***Terminated Participant Vesting Information.*** *Form 5500-SF filers now must provide the number of participants that terminated employment during the plan year with accrued benefits that were not fully vested.*

- ***Schedule H.*** *The instructions for line 1c(13) have been enhanced to set out what is an investment company registered under the Investment Company Act of 1940.*

Department of Labor Does Not Consider *my*RA to be ERISA Employee Benefit Plan

On December 15, 2014, John J. Canary, Director, Office of Regulations and Interpretations, Department of Labor Employee Benefits Security Administration responded to an inquiry from J. Mark Iwry, Senior Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health Policy, Department of the Treasury, regarding the ERISA status of the *my*RA. http://www.dol.gov/ebsa/regs/ILs/il121514.html At issue is whether an employer would be establishing or maintaining an "employee benefit plan" as defined by ERISA by facilitating and encouraging participation by employees through payroll withholding contributions in the *my*RA program.

Looking at the intent of Congress when ERISA was enacted, the Department of Labor concluded that Congress did not foresee that a federal government retirement savings program created and operated by the Treasury Department would be subject to the extensive reporting, disclosure, fiduciary duty, or other requirements of ERISA.

Thus, given the character of the program, including its voluntary nature, its establishment, sponsorship, and administration by the federal government, and the absence of any employer funding or role in its administration or design, the Department is of the view that an employer would not be establishing or maintaining an "employee pension benefit plan" within the meaning of section 3(2) of ERISA based solely on the facts that employees participate through payroll withholding contributions and that the employer distributes information, facilitates employee enrollment, and otherwise encourages employees to make deposits to myRA accounts owned and controlled by employees.

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