

Part IV. Items of General Interest

Notice of Proposed Rulemaking Notice of Public Hearing

Relief From Disqualification for Plans Accepting Rollovers

REG-245562-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed regulations; amendment.

SUMMARY: This document contains an amendment to the proposed regulations that implements section 1509 of the Taxpayer Relief Act of 1997 (TRA '97). The proposed regulations provide guidance on the qualification of retirement plans which accept rollover contributions from employees. This amendment to the proposed regulations clarifies that it is not necessary for the distributing plan to have a favorable IRS determination letter in order for the receiving plan administrator to reach a reasonable conclusion that a contribution is a valid rollover contribution. This amendment applies to any qualified retirement plan receiving or distributing eligible rollover distributions.

DATES: Written comments must be received by March 17, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-245562-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-245562-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1995, Final Income Tax Regulations (T.D. 8619) under sections 401(a)(31) and 402(c) were published in the **Federal Register** (60 FR. 49199). The final regulations provide guidance for complying with the Unemployment Compensation Amendments of 1992 (UCA). A proposed amendment to the regulations under section 401(a)(31) was published in the **Federal Register** on September 19, 1996 (REG-245562-96) (61 FR. 49279).

UCA expanded the types of distributions from a qualified plan that are eligible to be rolled over to an individual retirement account or individual retirement annuity, or to another qualified plan that accepts rollovers (collectively referred to as eligible retirement plans). Such distributions are referred to as eligible rollover distributions. UCA also added a new qualification provision under section 401(a)(31) that requires qualified plans to provide employees with a direct rollover option. Under a direct rollover option, an employee may elect to have an eligible rollover distribution paid directly to an eligible retirement plan. The direct rollover option is provided in addition to the pre-existing rollover provisions under section 402. Thus, an employee who receives an eligible rollover distribution but who does not elect a direct rollover still has the option to roll over the distribution to an eligible retirement plan within 60 days of receipt.

The final regulations under section 401(a)(31) provide that a plan that accepts a direct rollover from another plan will not fail to satisfy section 401(a) or 403(a) merely because the plan making the distribution is, in fact, not qualified under section 401(a) or 403(a) at the time of the distribution if, prior to accepting the rollover, the receiving plan reasonably concluded that the distributing plan was qualified under section 401(a) or 403(a). The regulations provide, by way of example, that the receiving plan may reasonably conclude that the distributing plan was qualified under section 401(a) or 403(a) where, before the receiving plan accepted the rollover, the plan administra-

tor of the distributing plan provided the receiving plan with a statement that the distributing plan had received an IRS determination letter indicating that the plan was qualified.

The relief provided in the 1996 proposed regulations under section 401(a)(31) would expand and clarify the guidance previously issued in the Final Income Tax Regulations under sections 401(a)(31) and 402(c). First, the proposed regulations would clarify and expand the relief from disqualification currently provided for plans that accept direct rollovers. The protection would be expanded to be available not only if the plan administrator reasonably concludes the distributing plan is qualified under section 401(a) or 403(a) (even if later it is determined that the distributing plan is not a qualified plan), but also if the plan administrator reasonably concludes that a distribution meets the other requirements to be an eligible rollover distribution (but later it is determined that this conclusion was incorrect). Second, the regulations would extend this expanded relief from disqualification to plans that accept rollover contributions other than direct rollover contributions.

The 1996 proposed regulations do not mandate any particular documentation or procedures that a plan administrator must use in order to reach a reasonable conclusion that a rollover is valid. The 1996 proposed regulations contain a series of examples to illustrate the types of documentation and procedures that would be sufficient to support this conclusion. In each example, the employee making the rollover contribution provides the plan administrator with a letter from the plan administrator of the distributing plan stating that the distributing plan has received an IRS determination letter indicating that the distributing plan is qualified under section 401(a). In response to concerns that the examples might be read to imply that only a distribution from a plan with a favorable IRS determination letter could support a reasonable conclusion that a rollover was valid, section 1509 of TRA '97 directs the IRS to issue guidance clarifying that it is not necessary for the distributing plan to have a favorable IRS determination letter in order for the plan

administrator of the receiving plan to reasonably conclude that a contribution is a valid rollover contribution.

Explanation of Provisions

This amendment to the 1996 proposed regulations is being issued in response to the congressional directive in section 1509 of TRA '97 to clarify that it is not necessary for a distributing plan to have a favorable IRS determination letter in order for the receiving plan administrator to reasonably conclude that a contribution is a valid rollover contribution. Accordingly, the proposed regulations have been amended to provide explicitly that it is not necessary for the distributing plan to have a favorable IRS determination letter in order for the plan administrator of the receiving plan to reach a reasonable conclusion that a contribution is a valid rollover contribution. In addition, an example has been added in which an employee does not provide a statement from the plan administrator of the distributing plan that the distributing plan has received a favorable IRS determination letter, but provides a statement from the distributing plan administrator relating to the qualification of the distributing plan. Of course, this example and the other examples in the 1996 proposed regulations are not intended to describe the only types of information that a plan administrator can find to be sufficient and, thus, the examples are not intended to preclude reliance on other types of information, such as opinions or statements regarding the plan's qualification provided by appropriate professionals expert in plan qualification requirements.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or comments transmitted via Internet that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Pamela R. Kinard, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(a)(31)-1 as proposed on September 19, 1996, at 61 FR. 49279, is amended as follows:

1. Under Q&A-14, paragraph (a) is amended by adding a sentence immediately after the second sentence.

2. Under Q&A-14, paragraph (c) is amended by redesignating *Example 2* and *Example 3* as *Example 3* and *Example 4* respectively, and adding a new *Example 2*.

The additions read as follows:

§1.401(a)(31)-1 Requirement to offer direct rollover of eligible rollover distributions; questions and answers.

* * * * *

A-14: (a) *Acceptance of Invalid Rollover Contribution.* * * * While evidence that the distributing plan is the subject of a determination letter from the Commissioner indicating that the distributing plan is qualified would be useful to the receiving plan administrator in reasonably concluding that the contribution is a valid rollover contribution, it is not necessary for the distributing plan to have such a determination letter in order for the receiving plan administrator to reach that conclusion. * * *

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(c) *Examples.* * * *

Example 2. (a) The facts are the same as *Example 1*, except that, instead of the letter provided in paragraph (c) of *Example 1*, Employee A provides the plan administrator of Plan M with a letter from the plan administrator of Plan O representing that Plan O satisfies the requirements of section 401(a) (or representing that Plan O is intended to satisfy the requirements of section 401(a) and that the administrator of Plan O is not aware of any Plan O provision or operation that would result in the disqualification of Plan O).

(b) Based upon such a letter, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the amount paid as a direct rollover is an eligible rollover distribution.

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John M. Dalrymple,
Acting Deputy Commissioner
of Internal Revenue.

(Filed by the Office of the Federal Register on December 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1998, 63 FR. 70356)