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IRS Releases Final Regulations Regarding Roth Contributions

The IRS recently issued final regulations respecting Roth contributions to 401(k) plans. The final regulations generally focus on the administrative aspects of such contributions, rather than on the taxation of distribution of Roth contributions. Proposed regulations addressing the taxation issues are expected in the near future.

Included below are the more salient administrative issues addressed by the final regulations.

Minimum distribution rules apply: The final regulations confirm that Roth contributions to a 401(k) plan are subject to the minimum distribution rules under Section 401(a)(9) of the Internal Revenue Code, *i.e.*, the age 70½ distribution rules, despite the fact that Roth IRAs are exempt while the IRA owner is alive.

Regular 401(k) must be offered: The final regulations clarify that as Roth contributions are to be made in lieu of all or any portion of pre-tax contributions, a 401(k) plan may not offer solely Roth contributions.

Roth-to-Roth rollovers permitted: The final regulations confirm that a direct rollover of Roth contributions may only be made to another 401(k) plan permitting Roth contributions or to a Roth IRA. However, the final regulations provide that, in applying the direct rollover rules (which may be limited to amounts equal to or greater than \$200), a plan is permitted to treat the Roth balance as a separate plan. Thus, a plan is not required to offer a direct rollover election if the total Roth account is less than \$200.

Determination of excess HCE contribution rollbacks: The final regulations retain the somewhat controversial rule in the earlier proposed regulations permitting a highly compensated employee (HCE) – with both pre-tax elective contributions and Roth contributions and facing a rollback of contributions as a result of a failing ADP test – to elect whether the excess contribution will be attributed to the pre-tax or Roth contribution. However, the final regulations confirm that this option is not a mandated plan provision. Thus, a plan is permitted to provide the method by which the rollback will be effectuated.

Roth allowable as default contribution: Finally, the regulations confirm that a plan with a “negative election” or automatic enrollment feature is permitted to designate Roth contributions as the default contribution.

To view the final regulations, click on this link:

http://www.treas.gov/press/releases/reports/roth401k_reg_atrch.pdf