

## Rev. Proc. 97-29

### SECTION 1. PURPOSE

This revenue procedure (1) provides a model amendment that may be used, prior to January 1, 1999, by a sponsor of a prototype individual retirement account or annuity (IRA) to establish a SIMPLE IRA (an IRA designed to accept contributions under a SIMPLE IRA Plan described in § 408(p)) of the Internal Revenue Code; (2) provides guidance on obtaining opinion letters to drafters of prototype SIMPLE IRAs; (3) provides permissive amendments to sponsors of nonSIMPLE IRAs (IRAs that are designed to accept contributions other than under SIMPLE IRA Plans); (4) announces the opening of a program for prototype SIMPLE IRA Plans; and (5) provides transitional relief for users of SIMPLE IRAs and SIMPLE IRA Plans that have not been approved by the Internal Revenue Service.

### SECTION 2. BACKGROUND AND GENERAL INFORMATION

.01 Code § 408(p), added by § 1421(a) of the Small Business Job Protection Act of 1996 (“SBJPA”), Pub. L. No. 104-188, describes a new type of retirement arrangement, a SIMPLE IRA Plan, which, generally, may be used by small employers who maintain no other qualified plans. Under a SIMPLE IRA Plan, an employer makes contributions to a SIMPLE IRA.

.02 Subsections (a) and (b) of § 408 set forth general requirements for individual retirement accounts and individual retirement annuities, respectively.

.03 Rev. Proc. 87-50, 1987-2 C.B. 647, provides the procedures for a sponsoring organization or a mass submitter (a “prototype sponsor”) to apply to the Service for an opinion letter on whether a prototype nonSIMPLE IRA meets the requirements of § 408(a) or (b).

.04 Section 408(p)(1) requires that a SIMPLE IRA established for use with a particular employer’s SIMPLE IRA Plan only accept contributions from that employer pursuant to its SIMPLE IRA Plan or from another employer pursuant to that employer’s SIMPLE IRA Plan. However, a SIMPLE IRA established by or for a particular employee may also accept that employee’s rollovers or

transfers of property from another SIMPLE IRA of that employee.

.05 In 1996, the Service released Forms 5305-S and 5305-SA, model SIMPLE IRAs for use as trust or custodial accounts, respectively. A prototype sponsor that wants to offer Service-approved SIMPLE IRAs may (1) use one or both of these model SIMPLE IRAs, (2) use the model amendment procedure contained in section 3, or (3) apply for an opinion letter pursuant to section 4.

.06 In 1996, the Service also released two model SIMPLE IRA Plans, Form 5305-SIMPLE (Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution) and Form 5304-SIMPLE (Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not Subject to the Designated Financial Institution Rules).

.07 Notice 97-6, 1997-2 I.R.B. 26 (January 13, 1997), contains questions and answers relating to the implementation and operation of SIMPLE IRA Plans described in § 408(p), including the election and notice requirements regarding these plans. The Service intends to supplement Notice 97-6 with additional guidance.

.08 Rev. Proc. 97-8, 1997-1 I.R.B. 187 (January 6, 1997), provides guidance to taxpayers for complying with the user-fee program as it pertains to matters under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations).

### SECTION 3. ADOPTION OF MODEL AMENDMENT

.01 Procedural requirements. A prototype sponsor with an approved prototype nonSIMPLE IRA may create an approved prototype SIMPLE IRA using the model amendment procedure in this section 3 by complying with section 3.02 and .03 below. Following the model amendment procedure results in two approved prototype IRAs: (1) an existing unchanged prototype nonSIMPLE IRA and (2) a newly established prototype SIMPLE IRA.

.02 Use of model language. In order to create an approved prototype SIMPLE IRA using the model amendment, the prototype sponsor must use an Eligible IRA as a basis and follow the instructions in the Appendix. An “Eli-

gible IRA” is a prototype nonSIMPLE IRA that either (1) has a favorable opinion letter dated after January 31, 1990, or (2) has a favorable opinion letter dated on or before that date and has adopted the minimum distribution language contained in section 6 of Rev. Proc. 92-38, 1992-1 C.B. 859. The model language must be adopted on a word-for-word basis unless otherwise specified in the Appendix.

.03 *Application to the Service.*

(1) *Opinion letter request.* A prototype sponsor must request an opinion letter from the Service on the SIMPLE IRA in order to establish a prototype SIMPLE IRA using an Eligible IRA. The Service will not accept an opinion letter request submitted pursuant to this section 3 by a prototype sponsor after December 31, 1998.

(2) *Information required.* The prototype sponsor must apply for the opinion letter using Form 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Account, with “SIMPLE IRA model amendment” written on the top of the form and the file folder number of the Eligible IRA written on line 2c(3). The prototype sponsor should not complete Part II of the form and should not submit either the Eligible IRA or the SIMPLE IRA to the Service pursuant to this model amendment procedure.

(3) *Certification.* The prototype sponsor must certify that the model language contained in the Appendix has been added on a word-for-word basis to an Eligible IRA (as defined in section 3.02) and that no other changes have been made.

(4) *Address.* The prototype sponsor must mail the application to: Internal Revenue Service, Attention CP:E:EP, P.O. Box 14073, Ben Franklin Station, Washington, DC 20044.

(5) *Mass submitters.* Mass submitters must provide the information and certification described in section 3.03(2) and (3), above, on behalf of each sponsoring organization that is an identical adopter of the mass submitter and that wishes to use this model amendment procedure to establish a SIMPLE IRA.

(6) *User fee.* The prototype sponsor must pay a user fee of \$50 for each prototype SIMPLE IRA established pursuant to this section 3. This fee can be paid by money order or check only and must accompany each application. The

money order or check must be made payable to the Internal Revenue Service.

.04 *New opinion letter.* After verifying the information provided by the applicant on each Eligible IRA, the Service will issue a new opinion letter on each prototype SIMPLE IRA to the prototype sponsor.

.05 *Reliance.* An individual who uses a SIMPLE IRA that has received an opinion letter pursuant to section 3.04 and who complies with the terms of the SIMPLE IRA may rely upon the opinion letter that the SIMPLE IRA is qualified under § 408(p). However, the opinion letter may not be relied on with respect to whether the SIMPLE IRA Plan, under which contributions are made to the SIMPLE IRA, satisfies the requirements of § 408(p).

.06 *Disclosure statements.* A prototype sponsor that amends an Eligible IRA pursuant to this section 3 must change the corresponding disclosure statement, required pursuant to § 408(i), to reflect the contents of the SIMPLE IRA. The prototype sponsor must distribute the amended disclosure statement to each individual using the SIMPLE IRA.

#### **SECTION 4. OPINION LETTERS FOR NONMODEL SIMPLE IRAS**

.01 *Prototype program.* A prototype sponsor may apply to the Service for an opinion letter on a SIMPLE IRA submitted pursuant to this section 4. The same procedures and user fees apply to a submission for an opinion letter for a SIMPLE IRA as those that apply for a nonSIMPLE IRA, with the exception described in section 4.02. (See Rev. Procs. 87–50 and 97–8.)

.02 *No opinion letters.* The Service will not issue an opinion letter to a prototype sponsor on a SIMPLE IRA that, by its terms, can be used either as a SIMPLE IRA or a nonSIMPLE IRA.

.03 *Sample language.* Sample language (also known as Listing of Required Modifications, or LRMs) that the Service finds acceptable for SIMPLE IRAs and nonSIMPLE IRAs may be obtained by writing to the Service at: Internal Revenue Service, 1111 Constitution Avenue NW, Attention CP:E:EP, Room 6550, Washington, DC 20224. “LRM Request” should be clearly printed on the envelope. Alternatively, a request for LRMs may be faxed to Nancy Arrington at (202) 622–6199.

#### **SECTION 5. PERMISSIVE AMENDMENTS FOR NONSIMPLE IRAS**

.01 *Amendment for all nonSIMPLE IRAs.*

(1) *Background.* An employer’s contribution under a SIMPLE IRA Plan must be deposited into an employee’s SIMPLE IRA. A SIMPLE IRA Plan contribution deposited into a nonSIMPLE IRA could result in adverse tax consequences to the employee. Similar adverse tax consequences could occur if, prior to the expiration of the 2-year period beginning on the date an employee first participated in any SIMPLE IRA Plan maintained by the employee’s employer, the employee rolls over or transfers to a nonSIMPLE IRA funds from the employee’s SIMPLE IRA.

(2) *Permissive amendment.* A prototype nonSIMPLE IRA may be amended by the prototype sponsor to prohibit the deposits described in section 5.01(1) that could result in adverse tax consequences to an employee. Prototype sponsors and individuals who use this amended nonSIMPLE IRA do not lose reliance on a current opinion letter because of this amendment. Therefore, a prototype sponsor that amends its nonSIMPLE IRA as suggested in this paragraph should not submit the amended nonSIMPLE IRA to the Service for a new opinion letter.

.02 *Amendment for spousal nonSIMPLE IRAs.*

(1) *Background.* Section 1427(a) of the SBJPA amended § 219(c) to increase from \$250 to \$2,000 the maximum deductible amount that can be contributed to nonSIMPLE IRAs established for certain married individuals. This increase applies to an individual’s taxable years that begin after December 31, 1996.

(2) *Permissive amendment.* Section 6.03 of Rev. Proc. 87–50 states that an amendment to an approved IRA solely to facilitate IRA contributions up to the maximum amount deductible under § 219 will not affect the status of the IRA and should not be submitted to the Service. Accordingly, a prototype sponsor that amends a nonSIMPLE IRA solely to reflect the increase in the deductible limit for spousal nonSIMPLE IRAs does not lose reliance on its current favorable opinion letter and should not submit the document to the Service for an opinion letter on the amendment.

.03 *Disclosure statements.* A proto-

type sponsor that amends its nonSIMPLE IRA as suggested in sections 5.01(2) or 5.02(2) must change the corresponding disclosure statement, required pursuant to § 408(i), to reflect the amendment(s) to the nonSIMPLE IRA. The prototype sponsor must distribute the amended disclosure statement to individuals using the amended nonSIMPLE IRA.

#### **SECTION 6. PROTOTYPE SIMPLE IRA PLAN PROGRAM**

.01 *New prototype program.* The Service will issue an opinion letter on the form of a prototype SIMPLE IRA Plan submitted by a sponsoring organization or mass submitter (as these terms are defined in Rev. Proc. 87–50) provided that the requirements of § 408(p) and this section 6 are satisfied.

.02 *User fees.* The user fees and address for a SIMPLE IRA Plan prototype submission are the same as for a prototype simplified employee pension (SEP) submission, as listed in Rev. Proc. 97–8.

.03 *Sample language.* Sample language that the Service finds acceptable for use in a SIMPLE IRA Plan may be obtained by writing to the address indicated in section 4.03.

.04 *Application form.* The Service anticipates that an application form will be developed to accommodate a request for an opinion letter on a SIMPLE IRA Plan. Until a new form is available, applicants must use Form 5306–SEP, Application for Approval of Prototype Simplified Employee Pension—SEP, writing “SIMPLE IRA Plan Request” on top of the form and answering all questions except 3, 7 and 8 (relating to items unique to SEPs).

.05 *No opinion letters.* The Service will not issue an opinion letter to a prototype sponsor for a SIMPLE IRA Plan that combines a SIMPLE IRA Plan and a SIMPLE IRA in the same document.

#### **SECTION 7. TRANSITIONAL RELIEF**

.01 *SIMPLE IRAs.* A SIMPLE IRA must be established for an employee prior to the first date a SIMPLE IRA Plan contribution is required to be deposited into the employee’s SIMPLE IRA. An employee or employer who establishes a trust, custodial account or annuity contract as a SIMPLE IRA in 1997 using a document that has not been approved for use as a SIMPLE IRA by the Service is deemed to have used a document that has been approved

for this use by the Service provided the conditions in (1) through (4) below are satisfied:

(1) The employee or employer used a document provided by a prototype sponsor to establish the "SIMPLE IRA."

(2) On or before December 31, 1997, the prototype sponsor applies to the Service for an opinion letter on the document described in section 7.01(1). The prototype sponsor must apply for the opinion letter using the procedures contained in either section 3 or section 4 of this revenue procedure.

(3) The employee or employer adopts the approved document within 120 days after the later of: (a) the date the Service issues a favorable opinion letter on the document to the prototype sponsor, and (b) if the prototype sponsor seeks approval of the document from one or more state insurance departments not later than 90 days after the Service issues a favorable opinion letter on the document, the date the document is approved by all such state insurance departments. If, as a result of amendments to the document required by a state insurance department, the prototype sponsor applies to the Service for an opinion letter on the amended document within 90 days after it is approved by such state insurance department, the date in (a) in the preceding sentence is the date the Service issues a favorable opinion letter on the amended document.

(4) The employer making contributions to the SIMPLE IRA, the employee on whose behalf contributions are made, and the trustee, custodian or issuer of the SIMPLE IRA comply in operation with § 408(p) for the period beginning on the date the first SIMPLE IRA Plan contribution was deposited into a trust, custodial account or annuity contract established under the original document through the date the employee or employer adopts the approved document.

.02 *SIMPLE IRA Plans.* An employer must establish a SIMPLE IRA Plan using a document that meets the requirements of § 408(p). An employer who establishes a plan as a SIMPLE IRA Plan in 1997 using a document that has not been approved for use as a SIMPLE IRA Plan by the Service is deemed to have established a SIMPLE IRA Plan using a document that has been approved for this use by the Service provided the conditions in (1) through (4) below are satisfied:

(1) The employer used a document provided by a prototype sponsor to establish the "SIMPLE IRA Plan."

(2) On or before December 31, 1997, the prototype sponsor applies to the Service for an opinion letter on the document described in section 7.02(1). The prototype sponsor must apply for the opinion letter using the procedures contained in section 6 of this revenue procedure.

(3) Within 120 days after the Service issues a favorable opinion letter on the document to the prototype sponsor, the employer adopts the approved document.

(4) The employer making contributions under the SIMPLE IRA Plan, the employees on whose behalf contributions are made, and the trustees, custodians or issuers of the SIMPLE IRAs established for use with the SIMPLE IRA Plan comply in operation with § 408(p) for the period beginning on the date the document was first used by the employer as a SIMPLE IRA Plan and through the date the employer adopts the approved document.

## **SECTION 8. EFFECT ON OTHER DOCUMENTS**

Section 6.06 of Rev. Proc. 97-8 is modified by sections 3.03(6) and 6.02 of this revenue procedure, and section 6.02 of Rev. Proc. 87-50 is modified by sections 3 and 4.02 of this revenue procedure.

## **SECTION 9. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1543.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 3.03(2), 3.03(3), 3.03(5), 4.01, 4.03, 6.01 and 6.03. This information is required to ascertain whether the request meets the requirements of § 408(p) so that an opinion letter can be issued to the applicant. The likely respondents are (1) businesses or other for-profit institutions and (2) not-for-profit institutions.

The estimated total annual reporting burden is 25,870 hours.

The estimated annual burden per respondent varies from 0.5 hours to 16 hours, depending on individual circumstances, with an estimated average of 8.07 hours. The estimated number of respondents is 3,205.

The estimated annual frequency of responses is three requests per applicant. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, an application for an opinion letter for a prototype plan is treated as an application for a determination letter and is subject to the disclosure rules of § 6104.

## **DRAFTING INFORMATION**

The principal author of this revenue procedure is Roger Kuehnle of the Employee Plans Division. For further information regarding this revenue procedure, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6074/75 (not toll-free numbers) between 1:30 and 3:30 p.m., Eastern Time, Monday through Thursday.

## **APPENDIX**

### **Model Language**

1. To establish a SIMPLE IRA using an Eligible IRA and the model amendment described in section 3, a prototype sponsor must follow the procedures in that section and the instructions below. A prototype sponsor that replaces one or more of the words "contribution," "participant" and "trustee" in the model language, as authorized by sections 3, 4, 5, and 6 in this appendix, is considered to have adopted the model language on a word-for-word basis.

2. The document must be identified as a SIMPLE IRA.

3. The prototype sponsor must delete the applicable sections in the Eligible IRA document dealing with acceptable contributions (from any source) and add the following (if different terms are used in the Eligible IRA document, the words "contribution" and "participant" must be replaced by the other terms used in lieu of these terms):

This SIMPLE IRA will accept only cash contributions made on behalf of the participant pursuant to the terms of a SIMPLE IRA Plan described in section 408(p) of

the Internal Revenue Code. [The following sentence is optional on the part of the prototype sponsor: "A rollover contribution or a transfer of assets from another SIMPLE IRA of the participant will also be accepted."] No other contributions will be accepted.

4. The prototype sponsor must add the following paragraph to the Eligible IRA document (if different terms are used in the Eligible IRA document, the words "contribution," "participant" and "trustee" must be replaced by the other terms used in lieu of these terms):

If contributions made on behalf of the participant pursuant to a SIMPLE IRA Plan maintained by the participant's employer are received directly by the trustee from the employer, the trustee will provide the employer with the summary description required by section 408(l)(2) of the Internal Revenue Code.

5. If the document is to be used with respect to a SIMPLE IRA by a trustee, custodian or issuer that is a designated financial institution within the meaning of § 408(p)(7), the prototype sponsor

must add the following paragraph to the Eligible IRA document (if different terms are used in the Eligible IRA document, the words "contribution" and "participant" must be replaced by the other terms used in lieu of these terms):

If this SIMPLE IRA is maintained by a designated financial institution (within the meaning of section 408(p)(7) of the Internal Revenue Code) under the terms of a SIMPLE IRA Plan of the participant's employer, the participant must be permitted to transfer the participant's balance without cost or penalty (within the meaning of section 408(p)(7)) to another IRA.

(For further information concerning the obligations of a designated financial institution, see Q&As J-1 through J-5 in Notice 97-6. Note that if a trustee, custodian or issuer with respect to a SIMPLE IRA is not a designated financial institution, the employer must permit the participant to select the financial institution to which the employer will make contributions. (See Q&A E-4 in Notice 97-6.))

6. The prototype sponsor must add the following paragraph to the Eligible

IRA document (if different terms are used in the Eligible IRA document, the words "contribution" and "participant" must be replaced by the other terms used in lieu of these terms):

Prior to the expiration of the 2-year period beginning on the date the participant first participated in any SIMPLE IRA Plan maintained by the participant's employer, any rollover or transfer by the participant of funds from this SIMPLE IRA must be made to another SIMPLE IRA of the participant. Any distribution of funds to the participant during this 2-year period may be subject to a 25-percent additional tax if the participant does not roll over the amount distributed into a SIMPLE IRA. After the expiration of this 2-year period, the participant may roll over or transfer funds to any IRA of the participant that is qualified under section 408(a) or (b) of the Internal Revenue Code.

7. The prototype sponsor must delete any definition of compensation contained in the Eligible IRA document.