

Rev. Proc. 2003-13

SECTION 1. PURPOSE

This revenue procedure provides guidance for employers that want to amend their plans qualified under § 401(a) of the Internal Revenue Code to include “deemed IRAs” described in § 408(q). The revenue procedure also provides a sample plan amendment that may be used, in conjunction with IRA language, to amend a qualified plan to provide for deemed IRAs.

SECTION 2. BACKGROUND

.01 Section 408(q) was added to the Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), Pub. L. 107-16, effective for plan years beginning after December 31, 2002. Section 408(q) provides

that if a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and under the terms of the qualified employer plan such account or annuity meets the applicable requirements of § 408 or 408A for an individual retirement account or annuity, then such account or annuity shall be treated under the Code in the same manner as an IRA and not as a qualified employer plan. The Internal Revenue Service and Treasury expect to issue regulations under Code § 408(q) in the near future.

.02 Notice 2001-42, 2001-2 C.B. 70, provides a remedial amendment period under § 401(b), ending no earlier than the end of the first plan year beginning on or after January 1, 2005, in which any needed retroactive EGTRRA plan amendment may be adopted (the “EGTRRA remedial amendment period”). The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of a good faith EGTRRA plan amendment.

.03 Notice 2001-57, 2001-2 C.B. 279, provides sample plan amendments that satisfy, in form, the “good faith EGTRRA plan amendment” requirement described in the preceding paragraph. Although not containing a sample plan amendment for deemed IRAs under Code § 408(q), the notice provides that the good faith plan amendment requirement applies to § 408(q).

The notice also provides that, until further notice, the Service will not consider EGTRRA in issuing determination, opinion or advisory letters.

.04 Rev. Proc. 2002-10, 2002-4 I.R.B. 401, requires all prototype sponsors with currently approved IRAs, SEPs, and SIMPLE IRA plans to amend these documents and submit applications for opinion letters on the amended documents by December 31, 2002.

SECTION 3. REQUIRED LANGUAGE FOR DEEMED IRAS

.01 Plan sponsors that want to provide for deemed IRAs must have such provisions in their plan documents and must have deemed IRAs in effect for employees no later than the date deemed IRA contributions are accepted from such employees. Notwithstanding the preceding sentence, plan sponsors that want to provide for deemed IRAs for plan years beginning before January 1, 2004, (but after December 31, 2002) are not required to have such provisions in their plan documents before the end of such plan years. Plan sponsors must otherwise comply with the rules in Notice 2001-57. To satisfy the requirements for the EGTRRA remedial amendment period, the provisions must reflect a reasonable, good-faith interpretation of the statute. The sample plan amendment contained in the appendix to this revenue pro-

cedure, when used in conjunction with IRA language described in section 3.02 below, is a reasonable, good-faith interpretation of the statute.

.02 In addition to the sample plan amendment in the Appendix, a plan that intends to comply with Code § 408(q) must also contain language that satisfies § 408 or 408A, relating to traditional and Roth IRAs, respectively. The Service provides sample language (a “Listing of Required Modifications,” or “LRMs”) that satisfies §§ 408 and 408A on the Service’s Web Site at www.irs.gov/ep. A plan will satisfy the “reasonable, good-faith interpretation of the statute” requirement with respect to IRA language if the language addresses every applicable point in the IRA LRMs.

DRAFTING INFORMATION

The principal author of this revenue procedure is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact Employee Plans’ taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday. Mr. Kuehnle can be reached at 202-283-9888 (not a toll-free number).

APPENDIX

Sample Plan Amendment

(The following sample plan amendment may be adopted only by plans trusteeed by a person eligible to act as a trustee of an IRA under § 408(a)(2) and plans that designate an insurance company to issue annuity contracts under § 408(b). Additional language that satisfies § 408 or 408A must also be added to the plan.)

SECTION _____ . DEEMED IRAs

1. Applicability and effective date. This section shall apply if elected by the employer in the adoption agreement and shall be effective for plan years beginning after the date specified in the adoption agreement.

2. Deemed IRAs. Each participant may make voluntary employee contributions to the participant’s _____ [insert “traditional” or “Roth”] IRA under the plan. The plan shall establish a separate _____ [insert “account” or “annuity”] for the designated IRA contributions of each participant and any earnings properly allocable to the contributions, and maintain separate recordkeeping with respect to each such IRA.

3. Reporting duties. The _____ [insert “trustee” or “issuer”] shall be subject to the reporting requirements of section 408(i) of the Internal Revenue Code with respect to all IRAs that are established and maintained under the plan.

4. Voluntary employee contributions. For purposes of this section, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2) of the Code) that is made by the participant and which the participant has designated, at or prior to the time of making the contribution, as a contribution to which this section applies.

5. IRAs established pursuant to this section shall be held in _____ [insert “a trust” or “an annuity”] separate from the trust established under the plan to hold contributions other than deemed IRA contributions and shall satisfy the applicable requirements of sections 408 and 408A of the Code, which requirements are set forth in section _____ [insert the section of the plan that contains the IRA requirements].

(Adoption agreement provisions)

Section _____ of the plan, Deemed IRAs: (check one)

___ shall be effective for plan years beginning after December 31, ___ (enter a year later than 2001).

___ shall not apply.