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## Internal Revenue Service

### **Employee Plan News Highlights Roth IRA Changes for 2010**

The Winter 2010 edition of *Employee Plan News*, which is published by the IRS, explains that a taxpayer will be able to roll over to a Roth IRA without having to consider income or filing status beginning in 2010. <http://www.irs.gov/pub/irs-tege/win10.pdf> Roth IRA rollovers can be made from a:

- Traditional IRA
- SEP IRA
- SIMPLE IRA
- Eligible rollover distribution from the participant's or the deceased participant's employer sponsored retirement plan. Such plans include 401(a)(k), 403(b) and governmental 457 (b) plans.

As explained in the IRS publication, a special 2-year option will apply for conversions and rollovers in 2010 only. Under this 2-year option, only half the taxable portion of the rollover is included in gross income for 2011 and half in 2012. A taxpayer could elect to include the entire amount in gross income for 2010.

Other topics discussed in *Employee Plan News* include the following:

- The requirements for a qualified distribution under a Roth IRA, including Roth IRAs made up of only regular Roth IRA contributions as well as rollover contributions or traditional IRAs converted to Roth IRAs.
- The taxation of distributions from Roth IRAs that are not qualified and the applicability of the 10% early distribution tax.
- The 2009 Required Minimum Distributions (RMDs) paid from a defined contribution plan between January 1, 2010 and April 1, 2010 must have 20% federal income tax withheld from them if they otherwise qualify as an eligible rollover distribution.
- A business owner or self employed individual has until the due date of the 2009 income tax return, including extensions, to both set up and fund a SEP plan for 2009.

### **403(b) Plan Amendment Guidance Released**

According to Announcement 2009-89, the IRS plans to publish a revenue procedure explaining how opinion letters can be obtained for prototype 403(b) or other "pre-approved" 403(b) plans. Subsequently, the IRS will publish a revenue procedure discussing how an individual 403(b) plan can obtain a determination letter. <http://www.irs.gov/pub/irs-drop/a-09-89.pdf>

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A written 403(b) plan intended to satisfy all code and regulatory requirements must be adopted on or before December 31, 2009. If the plan sponsor satisfies this condition, a remedial amendment period retroactive to January 1, 2010 will be available to correct any defects.

If an employer first establishes a plan after December 31, 2009 by adopting a written plan intended to satisfy the requirements of 403(b) and applicable regulations, the plan sponsor will also have reliance beginning on the effective date of the plan. The employer must either adopt a pre-approved plan with a favorable opinion letter or apply for an individual determination letter and correct any defects in the form of the plan retroactive to the plan's effective date.

## **IRS Releases 2010 Covered Compensation Table**

The IRS released Rev. Rul. 2009-40, which details covered compensation with respect to an employee and is used to calculate pension contributions and/or payments under certain retirement plans. <http://www.irs.gov/pub/irs-drop/rr-09-40.pdf>

Covered compensation is defined as the average of the contribution and benefit bases in effect under the Social Security Act for each year in the 35-year period ending with the year in which the employee attains social security retirement age. Note that in determining covered compensation for the 2010 year, the taxable wage base is \$106,800.

## **Department of Labor**

### **Employee Benefits Security Administration Holds Question and Answer Session**

On December 9, 2009, Phyllis Borzi, Assistant Secretary for the Employee Benefits Security Administration (EBSA), hosted a live Web chat to discuss the EBSA regulatory agenda. <http://www.dol.gov/regulations/chat-ebsa-static.htm> The Labor Department's entire regulatory agenda can be found at [http://www.dol.gov/asp/regs/unifiedagenda/fall\\_2009\\_Regulatory\\_Plan.pdf](http://www.dol.gov/asp/regs/unifiedagenda/fall_2009_Regulatory_Plan.pdf).

Comments of interest to retirement plans include the following:

- The proposed regulation on the provision of investment advice is slated for release in February 2010.
- EBSA intends to issue proposed regulations in June 2010 to amend the regulatory definition of a "fiduciary" for plan investment advisers to include pension consultants and other plan advisers who do not meet the current regulatory definition.
- Along with the Treasury Department, the EBSA will be releasing a Request for Information (RFI) to explore a wide variety of issues related to the offering and selection of life time income products by defined contribution and other plans in an effort to identify both perceived and real impediments.
- There are no plans to reopen the Qualified Default Investment Alternatives (QDIA) regulations to revisit the use of stable value investments as an option.
- EBSA is working on checklists for fiduciaries and participants to help them to better understand target date funds in addition to other forms of informal guidance. EBSA is also coordinating with the Securities and Exchange Commission (SEC) on these issues.
- Plan sponsor fee disclosure regulation is anticipated to be completed by May 2010. In addition, the agenda also includes participant fee disclosure rules that are to be finalized by September 2010.
- There are plans to release transition guidance in response to questions raised on the new Form 5500 annual reporting requirements for 403(b) plans that are subject to ERISA and are effective for the 2009 plan year.

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- A final regulation addressing posthumous domestic relations orders is expected to be issued in April 2010.
- A final rule on plan assets that provides a bright line safe harbor for employers who remit retirement plan contributions promptly should be published by January 2010.

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