Section 401. -- Qualified Pension, Profit-Sharing, and Stock Bonus Plans

(Also §§ 401(a)(31), 402(c), 408(d)(3); 26 CFR 1.401(a)(31)-1)

Rollovers to Qualified Plans

Rev. Rul. 2014 –9

ISSUE

In the following situations, may the plan administrator for a plan that is qualified under § 401(a) of the Internal Revenue Code reasonably conclude that a potential rollover contribution is a valid rollover contribution under § 1.401(a)(31)-1, Q&A-14(b)(2), of the Income Tax Regulations?

FACTS

Situation 1

Employer X maintains Plan M, a profit-sharing plan qualified under § 401(a) of the Code that covers a class of its employees. Plan M provides that any employee of Employer X who is in the covered class may make a rollover contribution to Plan M. Plan M does not accept rollover contributions of after-tax amounts or amounts attributable to designated Roth contributions. Employee A is an employee of Employer X who is eligible to make rollover contributions to Plan M. Employee A has a vested account balance in Plan O (a retirement plan maintained by Employee A's prior employer) and is eligible for a distribution under the terms of Plan O.

In 2014, Employee A requests a distribution of her vested account balance in Plan O and elects that it be paid to Plan M in the form of a direct rollover. The trustee for Plan O distributes Employee A's vested account balance in a direct rollover to Plan M by issuing a check payable to the trustee for Plan M for the benefit of Employee A, and provides the check to Employee A. Employee A provides the plan administrator for Plan M with the name of Employee A's prior employer and delivers the check, with an attached check stub that identifies Plan O as the source of the funds, to the plan administrator. Employee A also certifies that the distribution from Plan O does not include after-tax contributions or amounts attributable to designated Roth contributions.

The plan administrator for Plan M accesses the EFAST2 database maintained by the Department of Labor at www.efast.dol.gov and searches for the most recently filed Form 5500 for Plan O. The latest Form 5500 for Plan O that the plan administrator for Plan M locates in the database is the Form 5500 filed for the plan year beginning

January 1, 2012, and ending December 31, 2012. On that filing, line 8a does not include code 3C (for a plan not intended to be qualified under Code § 401, 403, or 408).

Situation 2

The facts are the same as in Situation 1, except as follows.

Employee A has an account balance in IRA N, which is titled "IRA of Employee A." IRA N is a traditional IRA within the meaning of § 1.408A-8, Q&A-1(a)(2) (rather than a Roth IRA or a SIMPLE IRA as described in § 408(p)), and is not an inherited IRA within the meaning of § 408(d)(3)(C)(ii). Employee A requests a distribution of her account balance in the form of a direct payment from IRA N to Plan M. The trustee for IRA N issues a check payable to the trustee for Plan M for the benefit of Employee A and provides the check to Employee A. Employee A delivers the check, including a check stub that identifies "IRA of Employee A" as the source of the funds, to the plan administrator for Plan M. Employee A certifies that her distribution from IRA N includes no after-tax amounts. Employee A also certifies that she will not have attained age 70½ by the end of the year in which the check is issued.

LAW AND ANALYSIS

Section 401(a)(31) provides that a trust does not constitute a qualified trust unless the plan of which the trust is a part provides that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan and specifies the eligible retirement plan to which the distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer.

Section 402(a) provides generally that any amount distributed from a trust described in § 401(a) that is exempt from tax under § 501(a) is taxable, in the taxable year of the distributee in which distributed, under § 72.

Section 402(c) provides taxability rules for an amount that is rolled over from a qualified trust to an eligible retirement plan. Subject to certain exceptions, § 402(c)(1) provides that if any portion of an eligible rollover distribution paid to the employee from a qualified trust is transferred to an eligible retirement plan, the portion of the distribution so transferred is not includible in gross income in the taxable year in which paid.

Under § 402(c)(4), an eligible rollover distribution for purposes of § 402(c) generally means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust. However, certain distributions are not eligible rollover distributions: a distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; a distribution to the extent such distribution is required under § 401(a)(9) of the Code; and a hardship distribution.

Section 402(c)(8) provides that an eligible retirement plan is an individual retirement account described in § 408(a) or individual retirement annuity described in § 408(b) (IRA), a qualified trust described in § 401(a), an annuity plan described in § 403(a), or an annuity contract described in § 403(b). An eligible retirement plan also includes an eligible plan under § 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Sections 403(a)(4)(A), 403(b)(8)(A), and 457(e)(16)(A) provide that if any portion of an eligible rollover distribution from a § 403(a) plan, § 403(b) plan, or eligible governmental § 457(b) plan, respectively, is transferred to an eligible retirement plan, the portion of the distribution so transferred is not includible in gross income in the taxable year in which transferred. Sections 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B) provide that the rules of paragraphs (2) through (7), (9), and (11) of § 402(c) apply for purposes of §§ 403(a)(4)(A), 403(b)(8)(A), and 457(e)(16)(A), respectively. Sections 403(a)(5), 403(b)(10), and 457(d)(1)(C) provide that requirements similar to the requirements of § 401(a)(31) apply to a § 403(a) plan, a § 403(b) plan, and an eligible governmental § 457(b) plan, respectively.

Section 408(d)(1) provides that any amount distributed from an IRA generally is included in the gross income of the distributee as provided in § 72.[1] Section 408(d)(2) provides that, for purposes of applying § 72 to a distribution from an IRA, all IRAs of an individual shall be treated as one contract and all distributions during any taxable year shall be treated as one distribution.

Section 408(d)(3)(A) provides that, subject to certain limitations, amounts distributed from an IRA that are paid into an eligible retirement plan are not included in gross income. Section 408(d)(3)(A)(ii) provides that the maximum amount which may be paid from an IRA into an eligible retirement plan (other than an IRA) as a rollover contribution may not exceed the portion of the distribution that otherwise would have been includible in income. In the case of a rollover contribution, § 408(d)(3)(H) provides special rules for determining the character of the distribution either as includible in income or as after-tax amounts.

Section 408(d)(3) further provides that amounts required to be distributed under § 408(a)(6) or (b)(3) and amounts distributed from inherited IRAs may not be transferred to a plan as a rollover contribution. In addition, § 408(d)(3)(G) provides that a distribution from a SIMPLE IRA during the 2-year period beginning on the date an individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under § 408(p)(2) may not be transferred as a rollover contribution to a plan other than another SIMPLE IRA. Further, § 1.408A-6, Q&A-17, provides that any amount distributed from a Roth IRA and contributed to another type of retirement plan (other than a Roth IRA) is treated as a distribution from the Roth IRA that is neither a rollover contribution for purposes of § 408(d)(3) nor a qualified rollover

[1] The transfer of funds from one IRA trustee to another without the IRA owner having direct control and use of such funds is not a distribution under § 408(d)(1). See Rev. Rul. 78-406, 1978-2 C.B. 157.

contribution within the meaning of § 408A(e) to the other type of retirement plan. This treatment also applies to any amount transferred from a Roth IRA to any other type of retirement plan unless the transfer is a recharacterization described in § 1.408A-5.

Section 1.401(a)(31)-1, Q&A-4, provides that a trustee of a plan may accomplish a direct rollover by providing a distributee with a check made payable to the trustee of another eligible retirement plan for the benefit of the distributee and instructing the distributee to deliver the check to the eligible retirement plan.

Section 1.401(a)(31)-1, Q&A-14, provides that if a plan accepts an invalid rollover contribution, the contribution will be treated, for purposes of applying the qualification requirements of § 401(a) or 403(a) to the receiving plan, as if it were a valid rollover contribution if two conditions are satisfied. First, when accepting the amount from the employee as a rollover contribution, the plan administrator for the receiving plan must reasonably conclude that the contribution is a valid rollover contribution. Second, if the plan administrator for the receiving plan later determines that the contribution was an invalid rollover contribution, the plan administrator must distribute the amount of the invalid rollover contribution, plus any earnings attributable thereto, to the employee within a reasonable time after such determination.

Under § 1.401(a)(31)-1, Q&A-14(b)(1), an invalid rollover contribution is an amount accepted by a plan as a rollover that is not an eligible rollover distribution from a qualified plan or an amount that does not satisfy the requirements of § 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or rollover contribution. Under § 1.401(a)(31)-1, Q&A-14(b)(2), a valid rollover contribution is a contribution that is accepted by a plan as a rollover within the meaning of § 1.402(c)-2, Q&A-1, or as a rollover contribution within the meaning of § 408(d)(3), and that satisfies the requirements of § 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or a rollover contribution.

Section 1.402(c)-2, Q&A-3 and Q&A-4, provides a list of distributions that are not eligible rollover distributions for purposes of § 402(c).

Section 1.401(a)(31)-1, Q&A-14, provides a number of examples illustrating situations in which the administrator for a receiving plan may reasonably conclude that a distributing plan is a qualified plan and that a potential rollover contribution is a valid rollover contribution. The regulation notes that a distributing plan is not required to have a determination letter in order for the plan administrator for the receiving plan to reasonably conclude that a potential rollover contribution is a valid rollover contribution.

The Code has been amended a number of times since § 1.401(a)(31)-1, Q&A-14, and § 1.402(c)-2, Q&A-4, were first published. For example, the Code has been amended to provide that a rollover of a hardship distribution is not permitted, and that a rollover of an eligible rollover distribution from a § 403(a) plan, a § 403(b) plan, or an eligible governmental § 457(b) plan to an eligible retirement plan is permitted. Additionally, the requirement that a rollover of a distribution from an IRA to a qualified

plan may only be made if the IRA is a "conduit IRA" (an IRA to which the only contributions consist of rollover contributions from one or more qualified plans) has been eliminated. However, the regulations under §§ 401(a)(31) and 402(c) have not been updated to reflect these changes.

The Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation jointly developed the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan to enable employee benefit plans to satisfy annual reporting requirements under Title I and Title IV of the Employee Retirement Income Security Act (ERISA) and under the Code. These forms are part of an overall reporting and disclosure framework that is intended to assure that employee benefit plans are operated and managed in accordance with certain prescribed standards.

A Form 5500 or Form 5500-SF is required to be filed for all pension benefit plans covered by Title I of ERISA, except as otherwise provided in regulations, the instructions to such forms, or other guidance issued by the Department of Labor. Pension benefit plans for which a Form 5500 or a Form 5500-SF is required to be filed include defined benefit plans, defined contribution plans, annuity arrangements under § 403(b)(1), custodial accounts established under § 403(b)(7) for regulated investment company stock, IRAs established by an employer under § 408(c), and church pension plans electing coverage under § 410(d). The plan administrator for the plan must enter codes representing applicable characteristics of the plan on Line 8a of Form 5500 or on Line 9a of Form 5500-SF. The 2012 Instructions for these forms contain a List of Plan Characteristic Codes to be used by the plan administrator in completing these lines. Code 3C is the code used by the plan administrator to indicate that the plan is not intended to be qualified under Code § 401, 403, or 408.

Certain pension benefit plans covered by Title I of ERISA are not required to file Form 5500 or Form 5500-SF. These include a SIMPLE IRA plan under § 408(p) and a simplified employee pension (SEP) under § 408(k) that conforms to an alternate method of compliance described in 29 CFR 2520.104-48 or 2520.104-49. Other types of plans do not file Form 5500 or Form 5500-SF because they are not covered by Title I of ERISA. These include a governmental plan, a church pension benefit plan not electing coverage under § 410(d), and an individual retirement account or individual retirement annuity not considered a pension plan under 29 CFR 2510.3-2(d). Although certain plans that cover only owners and their spouses are not required to file Form 5500 or Form 5500-SF, the plan administrators for these plans may elect to file Form 5500-SF in lieu of the otherwise applicable Form 5500-EZ.

Effective January 1, 2010, all Form 5500 Annual Returns/Reports and Form 5500-SF Annual Returns/Reports (including any required schedules and attachments) must be completed and filed electronically using the EFAST2 system. All these filings, except those filed by plans electing to file Form 5500-SF in lieu of Form 5500-EZ, are available to the public in the EFAST2 database through the Department of Labor Web site www.efast.dol.gov.

In Situation 1, the plan administrator for Plan O did not enter code 3C on line 8a of the Form 5500 filed for Plan O. By completing the form in this manner, the plan administrator made a representation that Plan O is intended to be a plan qualified under § 401, 403, or 408. As a result of this filing, it is reasonable for the plan administrator for Plan M to conclude that Plan O is intended to be a qualified plan. The trustee for Plan O issued a check payable to the trustee for Plan M for the benefit of Employee A, which indicates that the plan administrator for Plan O treated the distribution as an eligible rollover distribution to be directly rolled over. Accordingly, it is reasonable for the plan administrator for Plan M to conclude that the potential rollover contribution is an eligible rollover distribution from Plan O. Thus, for example, if the distribution had occurred during or after the year in which Employee A had attained age 70½, it would be reasonable for the plan administrator for Plan M to conclude that, in accordance with § 1.402(c)-2, Q&A-7, Plan O distributed the required minimum amount under § 401(a)(9) for the year, prior to making the direct rollover.

Based on the analysis of the prior paragraph, absent any evidence to the contrary, it is reasonable for the plan administrator for Plan M to conclude that the potential rollover contribution to Plan M of the distribution from Plan O is a valid rollover contribution.

In Situation 2, the trustee for IRA N issued a check payable to the trustee for Plan M for the benefit of Employee A, which indicates that the trustee for IRA N treated the distribution as a rollover contribution paid directly to Plan M. Because the check stub indicates that the distributing account is titled "IRA of Employee A," the plan administrator for Plan M can reasonably conclude that the source of the funds is a traditional, non-inherited IRA. In addition, Employee A has certified that the distribution included no after-tax amounts and that she will not attain age 70½ by the end of the year of the transfer. Therefore, it is reasonable for the plan administrator for Plan M to conclude that the distribution from IRA N is a distribution that can be rolled over.

Based on the analysis of the prior paragraph, absent any evidence to the contrary, it is reasonable for the plan administrator for Plan M to conclude that the potential rollover contribution to Plan M of the distribution from IRA N is a valid rollover contribution. If Employee A had attained age 70½ or older by the end of the year in which the check was issued, the plan administrator for Plan M could not reasonably conclude that the potential rollover contribution was a valid rollover contribution absent additional information indicating that § 408(a)(6) or 408(b)(3) had been satisfied with respect to IRA N in the year in which the check was issued.

In Situations 1 and 2, the results would be the same if there had been no check stub identifying the source of the funds, as long as the check itself identified the source of the funds as Plan O or IRA N, respectively. Similarly, the results would be the same if the rollover had been accomplished through a wire transfer or other electronic means, provided that the plan administrator or trustee for the sending plan or IRA had communicated to the plan administrator for Plan M the same information regarding the source of the funds.

HOLDINGS

In Situation 1, absent any evidence to the contrary, the plan administrator for Plan M may reasonably conclude that the potential rollover contribution by Employee A from Plan O to Plan M is a valid rollover contribution.

In Situation 2, absent any evidence to the contrary, the plan administrator for Plan M may reasonably conclude that the potential rollover contribution by Employee A from IRA N to Plan M is a valid rollover contribution.

In Situations 1 and 2, if it is later determined that the amount rolled over is an invalid rollover contribution, the amount rolled over plus any attributable earnings must be distributed to Employee A within a reasonable time after such determination.

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. Ms. Herrmann may be reached by e-mail at RetirementPlanQuestions@irs.gov.