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Employee Benefits Briefing

IRS Publishes Updated Notices for Retirement Plan Rollover Distributions

Last week, the Internal Revenue Service published updated model notices for retirement plan rollover distributions. The updated notices reflect various tax law changes made since the last model rollover notices were published in 2002 and are intended to provide plan participants the required rollover explanations in a simplified, more user-friendly format.

Background

Plan administrators of qualified plans, governmental Section 457(b) plans, 403(a) annuity plans and Section 403(b) plans are required under Internal Revenue Code Section 402(f) to provide a plan participant written notice if a plan distribution is eligible to be rolled over to another qualified plan or IRA.

The notice, commonly known as the Special Tax Notice or the Section 402(f) Notice, must explain a plan participant's right to elect a direct rollover from the plan, the mandatory income tax withholding for eligible rollover distributions that are not direct rollovers, the tax treatment of distributions that are not rolled over and the tax consequences after a distribution is rolled over.

The notice must be provided to plan participants no less than 30 days and no more than 180 days before the date the eligible rollover distribution is made.

Model Notices

To assist plan administrators in meeting the Section 402(f) notice requirements, the IRS published model notices in 2002. Since that time, a number of tax law changes have affected the information contained in the model notices. Roth contributions and nonspouse beneficiary rollovers, for example, are now permitted. The updated model notices reflect these tax changes and others.

Of note, the IRS has provided two notices: one for distributions from designated Roth accounts (*http://www.irs.gov/pub/irs-drop/n-09-68.pdf#page=18*), the other for all other distributions (*http://www.irs.gov/pub/irs-drop/n-09-68.pdf#page=10*). A designated Roth account is a separate account under a 401(k) or 403(b) plan that holds Roth contributions and the related gains and losses. If a plan participant is eligible to receive distributions from both a designated Roth account and an account that is not a designated Roth account (e.g., one that holds pretax elective deferrals or matching contributions), the plan administrator must provide *both* model notices to that participant.

The model notices may be modified to reflect plan provisions. If a plan does not, for example, provide for distributions of employer securities, that portion of the notice may be omitted. The IRS also permits a plan administrator to add information to the notices, provided the added information is not inconsistent with the model notices.

Use of the model notices is not required. Plan administrators who use the notices are, however, assured of compliance with the Section 402(f) requirements. The 2002 model notice, provided it has been updated to reflect subsequent tax law changes, may be used through December 31, 2009. Thereafter, the updated notices should be used. Plan administrators who rely on their plan trustees to distribute the Section 402(f) notice should contact them to ensure use of the updated notices no later than January 1, 2010.

If you have questions regarding the notices or would like your notices reviewed for compliance, please contact Jessica L. Winski (312-609-7678), Paul F. Russell (312-609-7740) or any other Vedder Price attorney with whom you work.

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