



January 30, 2008

W. Thomas Reeder
Benefits Tax Counsel
Treasury Department
1500 Pennsylvania Ave., NW
Room 3054
Washington, D.C. 20220

Re: Direct Rollovers from Retirement Plans to Roth IRAs

Dear Mr. Reeder:

I am writing on behalf of the American Benefits Council (the "Council") to comment on guidance that the Treasury Department and Internal Revenue Service (collectively, the "Service") are developing on direct rollovers from retirement plans to Roth IRAs. The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Pension Protection Act of 2006 (the "PPA") amended the Internal Revenue Code of 1986 (the "Code") to allow distributions from tax-qualified retirement plans, section 403(b) plans and governmental 457 plans to be rolled over into a Roth IRA. The Joint Tax Committee's Technical Explanation of the change indicates that rollovers from retirement plans to Roth IRAs are "subject to the present law rules that apply to rollovers from a traditional IRA to a Roth IRA." The change is effective for distributions made after December 31, 2007.

The Council understands that the Service is actively working on guidance that will address direct rollovers from plans to Roth IRAs. The Council looks forward to the guidance and appreciates that the Service is giving this issue attention, notwithstanding its significant workload. I am writing to highlight some of the issues that our members have identified. In this regard, the Council's members have already processed a significant number of direct rollovers from plans to Roth IRAs and, perhaps inevitably, a number of questions have arisen.

One of the basic questions is whether plans must offer direct rollovers to Roth IRAs. The question arises in large part because the Service concluded that plans were not required to offer nonspouse beneficiary rollovers to IRAs. The Council notes, however, that nonspouse beneficiary rollovers are described in a different statutory provision and that rollovers to Roth IRAs are simply rollovers described in Code section 401(a)(31). For this reason, we believe that offering direct rollovers to Roth IRAs is mandatory and it would be helpful if the guidance confirmed this analysis.

Another issue has to do with income tax withholding. A rollover from an IRA to a Roth IRA is generally subject to withholding at the 10 percent rate in effect for nonperiodic distributions under Code section 3405(b). However, a participant in a rollover conversion from an IRA to a Roth IRA may elect to not have any amount withheld. Thus, the default rule is 10 percent withholding. In contrast, it appears that the default rule in the context of a direct rollover from a plan to a Roth IRA is no withholding. This arises because Code section 3405(c) exempts eligible rollover distributions that are paid directly from a plan to an IRA from the withholding requirements of section 3405. However, the Joint Tax Committee's Technical Explanation of the PPA indicates that rollovers from retirement plans to Roth IRAs are "subject to the present law rules that apply to rollovers from a traditional IRA to a Roth IRA" and some have questioned whether this also means that the income tax withholding rules that apply to rollovers from an IRA to a Roth IRA also apply to rollovers from a plan to a Roth IRA. The Council believes the better reading of the statute is that the default rule for rollovers from a plan to a Roth IRA is no withholding and it would be helpful if the Service confirmed this reading.

Section 3405 does not expressly contemplate voluntary withholding in the context of an eligible rollover distribution from a plan to a Roth IRA. A number of the Council's members, however, have indicated that they would like to offer (and are currently offering) participants the opportunity to elect voluntary withholding. This voluntary withholding may be offered at the 10 percent rate in effect for nonperiodic distributions or may be offered at any rate specified by the participant. Under this approach, a participant is treated as receiving a taxable distribution of an amount equal to the withholding and rolling over the remainder of the distribution. The Council believes that "no withholding" should be the default rule but that the follow up guidance should permit payors and plan administrators to offer voluntary withholding. This would be beneficial from a tax policy perspective as well as from a tax planning perspective by allowing participants to "pay" their taxes contemporaneously with the event giving rise to the income.

Regardless of the conclusion the Service reaches on these issues, it is essential that guidance provide that plans and plan administrators will be treated as complying with a reasonable, good-faith interpretation of the statute regardless of whether they utilized the withholding rules that apply to IRA to Roth IRA rollovers, the withholding rules that apply to eligible rollover distributions, or permitted voluntary withholding at

any rate selected by the participant. All of these are reasonable approaches to the challenges of interpreting a statute that is silent on withholding.

A natural corollary to income tax withholding is information reporting. We realize that the Service has yet to develop information reporting forms for the 2008 tax year. However, as a general comment, it would be helpful from a systems perspective if the information reporting of rollovers from plans to Roth IRAs conformed generally to the information reporting applicable to conversions of traditional IRAs to Roth IRAs.

There are also a number of other issues that should be clarified. First, it would be helpful if the guidance confirmed that the plan administrator or other party responsible for a plan distribution does not have any duty to independently confirm that a participant is eligible for a rollover to a Roth IRA under the income limits that apply to Roth conversions generally. In this regard, the plan administrator should be able to rely on the participant's instruction to make a direct rollover to a Roth IRA. Second, it would be helpful if the guidance confirmed that amounts attributable to the required minimum distribution for a year are not eligible for the direct rollover. This is appropriate under general principles that amounts attributable to required minimum distributions are not eligible rollover distributions and under the regulations that address conversions of IRAs to Roth IRAs. Third, it would also be beneficial if the guidance confirmed that partial rollovers to Roth IRAs are permitted. That is, the entire amount of the distribution need not be paid to the Roth IRA.

A final point is whether a participant may do an indirect rollover to a Roth IRA. In this regard, the Joint Tax Committee's description of the provision as well as the header of the provision in the PPA refers only to direct rollovers. However, it is not entirely clear that the statutory language limits rollovers from plans to Roth IRAs to direct rollovers and it would be helpful in terms of participant communications if this issue were addressed in the follow up guidance.

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We greatly appreciate your consideration. If you have any questions, please don't hesitate to call the undersigned at (202) 289-6700.

Respectfully submitted,



Jan Jacobson
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American Benefits Council