



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D C. 20224

April 20, 2017

Control Number: TE/GE-04-0417-0016
Expiration Date: April 20, 2019
Affected IRM: IRM 4.71.1.4

MEMORANDUM FOR EMPLOYEE PLANS (EP) EXAMINATIONS EMPLOYEES

FROM: Thomas J. Petit /s/ *Thomas J. Petit*
Acting Director, EP Examinations

SUBJECT: Computation of Maximum Loan Amount under IRC § 72(p)(2)(A)

This memorandum directs EP Examinations staff to determine, as set forth below, the amount available for a loan where the participant has received multiple loans during the past year from a qualified plan, under § 72(p)(2) of the Internal Revenue Code (IRC).

This is not a pronouncement of law and is not subject to use, citation, or reliance as such. Nothing herein shall affect the operation of any other provision of the IRC, Treasury Regulations, or guidance thereunder.

Background

In general, IRC § 72(p)(1) provides that a loan from a plan is a distribution to the participant. IRC § 72(p)(2)(A) excepts a loan that does not exceed the lesser of:

- (i) \$50,000, reduced by any excess of
 - (I) the highest outstanding balance of loans during the 1-year period ending on the day before the date on which such loan was made, over (II) the outstanding balance of loans on the date on which such loan was made; or
- (ii) the greater of
 - (I) half of the present value of the vested accrued benefit, or
 - (II) \$10,000.

Under IRC § 72(p)(2)(A)(i), if the initial loan is less than \$50,000, the participant generally may borrow another loan within a year if the aggregate amount does not exceed \$50,000. The \$50,000 is reduced by the highest outstanding balance of loans during the 1-year period ending the day before the second loan, in turn reduced by the outstanding balance on the date of the second loan.

The reason for adjusting the maximum by the repayment amount was to "prevent an employee from effectively maintaining a permanent outstanding \$50,000 loan balance". H.R. Rept. 99-426 at 735 (1985). The discussion above assumes that to meet other IRC § 72(p)(2) requirements, the participant has a vested accrued benefit of more than \$100,000, and the loan is repayable in 5 years and requires substantially level amortization.

For example, a participant borrowed \$30,000 in February which was fully repaid in April, and \$20,000 in May which was fully repaid in July, before applying for a third loan in December. The plan may determine that no further loan would be available, since $\$30,000 + \$20,000 = \$50,000$. Alternatively, the plan may identify “the highest outstanding balance” as \$30,000, and permit the third loan in the amount of \$20,000. At this time, the law does not clearly preclude either computation of the highest outstanding loan balance in the above example.

Administrative Guidelines

If during an examination you determine that a qualified plan made two or more loans to the same participant during a 1-year period, take the following action: Determine if the plan has computed “the highest outstanding balance” in one of the two ways described in the above example. If it has, the requirement under section IRC § 72(p)(2)(A) is met and no further inquiry need be done.

Effect on Other Documents

This directive will be incorporated into IRM 4.71.1.4 by April 20, 2019, unless superseded by other guidance.

Effective Date

This memo applies to exams open on and after the date of issuance.

Point of Contact

For questions regarding this memo, contact Seth Tievsky, Senior Technical Advisor to the Director, EP Rulings & Agreements, at 202-317-8674. .

Distribution

www.irs.gov