

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Procedures for amending Individual Retirement Arrangements (IRAs), Simplified Employee Pensions, and SIMPLE IRA plans. (Also, Part I, §§ 408, 408A.)

Rev. Proc. 2002-10

SECTION 1. PURPOSE

This revenue procedure provides (1) guidance to drafters of IRAs, SEPs and SIMPLE IRA plans; (2) guidance to users of Internal Revenue Service model IRAs and plans; and (3) transitional relief for users of IRAs and plans that have not been approved by the Service.

SECTION 2. BACKGROUND AND GENERAL INFORMATION

.01 The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Pub. L. 107-16, made several changes to the Internal Revenue Code, affecting IRAs (traditional, Roth and SIMPLE IRAs), SEPs (including salary reduction SEPs, "SARSEPs") and SIMPLE IRA plans, that are effective beginning January 1, 2002.

.02 On January 17, 2001, proposed regulations concerning required minimum distributions from retirement plans were published in the Federal Register. These proposed regulations can be used to figure required minimum distributions from IRAs beginning with the 2001 distribution calendar year. Final regulations are expected to be issued in the near future.

.03 Rev. Proc. 87-50, 1987-2 C.B. 647, provides the procedures for a sponsoring organization or a mass submitter (a "prototype sponsor") to apply to the Service for an opinion letter on whether a prototype traditional IRA or a prototype SEP meets the requirements of § 408(a) or (b), or § 408(k), respectively. Rev. Proc. 87-50 also contains procedures for employers and employee associations to apply for a ruling on a § 408(c) IRA and for employers to apply for a ruling on whether a SEP, in combination with a terminated defined benefit plan, satisfies the requirements of § 415.

.04 Rev. Proc. 91-44, 1991-2 C.B. 733, modified Rev. Proc. 87-50 to permit prototype sponsors to apply to the service for an opinion letter on whether a prototype SARSEP meets the requirements of § 408(k)(6). The Small Business Job Protection Act of 1996 (Pub. L. 104-188) prohibited the establishment of SARSEPs after December 31, 1996.

.05 Rev. Proc. 97-29, 1997-1 C.B. 698, modified Rev. Proc. 87-50 to permit prototype sponsors to apply to the Service for an opinion letter on whether a prototype

SIMPLE IRA or a SIMPLE IRA plan meets the requirements of § 408(p).

.06 Rev. Proc. 98-59, 1998-2 C.B. 727, modified Rev. Proc. 87-50 to permit prototype sponsors to apply to the Service for an opinion letter on whether a prototype Roth IRA meets the requirements of § 408A.

.07 In Announcement 2001-96, 2001-41 I.R.B. 317 (October 9, 2001), the Service announced that opinion letters would not be issued covering EGTRRA changes to SEPs and SIMPLE IRA plans until further notice.

.08 Model forms are available for taxpayers who want to use a pre-approved document to establish an IRA or a SEP or SIMPLE IRA plan without using a prototype document. The model forms referenced in the preceding sentence are: Form 5305, Individual Retirement Trust Account; Form 5305-A, Individual Retirement Custodial Account; Form 5305-R, Roth Individual Retirement Trust Account; Form 5305-RA, Roth Individual Retirement Custodial Account; Form 5305-RB, Roth Individual Retirement Annuity Endorsement; Form 5305-S, SIMPLE Individual Retirement Trust Account; Form 5305-SA, SIMPLE Individual Retirement Custodial Account; Form 5304-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) – (Not Subject to the Designated Financial Institution Rules); Form 5305-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) – (For Use With a Designated Financial Institution); Form 5305-SEP, Simplified Employee Pension; and Form 5305A-SEP, Salary Reduction and Other Elective Simplified Employee Pension.

SECTION 3. OPINION LETTERS FOR IRAS AND SEP AND SIMPLE IRA PLANS

.01 Mandatory submission. Beginning April 1, 2002, prototype sponsors can apply for opinion letters on prototype documents that incorporate EGTRRA changes and the final required minimum distribution rules. All prototype sponsors with currently approved prototype IRAs, SEPs and SIMPLE IRA plans must amend these documents and submit an application for opinion letters on the amended documents no later than December 31, 2002, in order to remain a prototype sponsor of such documents. Drafters of § 408(c) IRAs must also amend such § 408(c) IRA documents and submit an application for opinion letters on the amended documents no later than October 1, 2002. The documents must be submitted using the appropriate application form and following the instructions on that form. Form 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Arrangement (IRA), is used for prototype IRA submissions, and Form 5306-A, Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employees (SIMPLE IRA plan), is used for prototype SEP and SIMPLE IRA plan submissions.

.02 Sample language. A Listing of Required Modifications, or LRMs, that the Service finds acceptable for prototype IRAs, SEPs and SIMPLE IRA plans will be available shortly on the Service's Web Site at **www.irs.gov**. Click on "Tax Info For

Business," then "Employee Plans Corner," then "Listing of Required Modifications (LRMs)." In order to receive a favorable opinion letter, prototype documents must include language that addresses every point in the LRMs, unless clearly inapplicable. Identical language is not necessary, but LRM concepts may not be abbreviated by using references to Code sections or such phrases as "in accordance with the law."

.03 Annuities. In the case of a prototype sponsor that is an issuer of individual retirement annuities described in § 408(b) and that must apply to one or more state insurance departments for approval of amended IRA documents, the Service will grant expedited review of Service-approved EGTRRA prototype IRA documents amended for changes required by a state insurance department, provided: (1) the Service-approved EGTRRA document is submitted to the state insurance department within 90 days of the date the Service issues a favorable EGTRRA opinion letter on the document and; (2) the prototype sponsor resubmits the document, as amended to comply with changes required by the state insurance department, to the Service within 90 days after it is approved by such state insurance department.

SECTION 4. ADOPTION OF REVISED IRAS, SEPS AND SIMPLE IRA PLANS

.01 Model IRAs. The Service expects to issue revised model IRAs in early 2002 containing EGTRRA changes and required minimum distribution rules that comply with the final regulations. Existing model IRAs may not be used to establish new IRAs after June 1, 2002. An individual using an existing model IRA who wants to take advantage of the 2002 EGTRRA changes to IRAs in 2002 must adopt a revised model IRA (or an appropriate amended prototype IRA) by the end of 2002.

.02 Prototype IRAs. An individual using a currently approved prototype IRA must adopt either (1) the prototype sponsor's amended document within 180 days after the date the Service issues a favorable EGTRRA opinion letter on the amended document or (2) an appropriate model IRA by the end of 2002.

.03 Section 408(c) IRAs. An employer or employee association using a currently approved § 408(c) IRA must adopt an amended § 408(c) IRA within 30 days after the date the Service issues a favorable EGTRRA opinion letter on the amended document.

.04 Disclosure statements. A financial institution that serves as a trustee, issuer or custodian for a model or prototype IRA must change the corresponding disclosure statement, required pursuant to § 408(i), to reflect the contents of the revised IRA. The financial institution must distribute the amended disclosure statement to each individual using the revised IRA.

.05 Model SEPs and SIMPLE IRA plans. The Service expects to issue revised model SEP and SIMPLE IRA forms, also in early 2002, containing EGTRRA changes. Existing model SEPs and SIMPLE IRA plans may not be used to establish new SEPs or

SIMPLE IRA plans after June 1, 2002. An employer using an existing model SEP who wants to take advantage of the EGTRRA changes to such plans for the first plan year beginning after December 31, 2001, must adopt a revised model plan (or an appropriate amended prototype plan) by the end of such first plan year. An employer using an existing model SIMPLE IRA plan, must adopt a revised model plan (or an appropriate amended prototype plan) by the end of 2002. However, notwithstanding the preceding two sentences or otherwise applicable notice requirements, participating employees must be notified of the increased EGTRRA contribution limits by October 1, 2002.

.06 Prototype SEPs and SIMPLE IRA plans. An employer using a currently approved prototype SEP who wants to take advantage of the EGTRRA changes to such plans for the first plan year beginning after December 31, 2001, must adopt the prototype sponsor's amended document within 180 days after the date the Service issues a favorable opinion letter on the amended document. An employer using a currently approved prototype SIMPLE IRA plan must adopt the prototype sponsor's amended document within 180 days after the date the Service issues a favorable opinion letter on the amended document. However, notwithstanding the preceding two sentences or otherwise applicable notice requirements, participating employees must be notified of the increased EGTRRA contribution limits by October 1, 2002.

.07 SEPs with § 415 rulings. An employer using a SEP that has a favorable ruling because participants also participated in the employer's terminated defined benefit plan must adopt an amended SEP in accordance with section 4.05 above. Because the aggregation rules under § 415(e) have been repealed, the Service will no longer issue rulings on whether a SEP, in combination with a terminated defined benefit plan, satisfies the requirements of § 415.

SECTION 5. TRANSITIONAL RELIEF FOR PROTOTYPE ADOPTERS

.01 IRAs. An individual and financial institution who establish a trust, custodial account or annuity contract as an IRA after 2001 using a document that has not received an EGTRRA opinion letter are deemed to have established an IRA using an EGTRRA-approved document provided the conditions in (1) through (4) below are satisfied:

(1) The individual and financial institution used a document provided by a prototype sponsor to establish the "IRA."

(2) No later than December 31, 2002, the prototype sponsor applies to the Service for an opinion letter on the document described in section 5.01(1).

(3) The individual and financial institution adopt the approved document within 180 days after the date the Service issues a favorable opinion letter on the document to the prototype sponsor.

(4) The individual and financial institution comply in operation with applicable statutory requirements for the period beginning on the date the "IRA" was established under the original document through the date the Service-approved document is adopted.

.02 SEPs and SIMPLE IRA plans. An employer who establishes a plan as a SEP or SIMPLE IRA plan after 2001 using a document that has not received an EGTRRA opinion letter is deemed to have established such a plan using an EGTRRA-approved document provided the conditions in (1) through (4) below are satisfied:

(1) The employer used a document provided by a prototype sponsor to establish the "SEP" or "SIMPLE IRA plan."

(2) No later than December 31, 2002, the prototype sponsor applies to the Service for an opinion letter on the document described in section 5.02(1).

(3) Within 180 days after the Service issues a favorable opinion letter on the document to the prototype sponsor, the employer adopts the approved document.

(4) The employer complies in operation with applicable statutory requirements for the period beginning on the date the "SEP" or "SIMPLE IRA plan" was established under the original document through the date the Service-approved document is adopted.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Section 4.01 of Rev. Proc. 87-50 is modified by section 4.07 of this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective on January 28, 2002.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. section 3507) under control number 1545-1769.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 4.04, 4.05 and 4.06. This information is required to inform IRA owners and plan participants of the new rules applicable to their retirement savings. The likely respondents are (1) businesses or other for-profit institutions and (2) not-for-profit institutions.

The estimated total annual reporting burden is 7,371,000 hours.

The estimated annual burden per respondent varies from 0.1 hours to 1,000 hours, depending on individual circumstances, with an estimated average of 19.5 hours. The estimated number of respondents is 378,000.

The estimated annual frequency of responses is one.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

DRAFTING INFORMATION

The principal author of this revenue procedure is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday.