

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Guidance on Pre-Approved Individual Retirement Arrangements (IRAs).

(Also, Part I, §§ 408, 408A.)

Rev. Proc. 2010-48

SECTION 1. PURPOSE

This revenue procedure provides guidance to drafters and users of pre-approved IRAs. Section 3 of this revenue procedure provides guidance to drafters and users of prototype IRAs, including rules for when documents must be submitted to the Internal Revenue Service and new user fees for individual retirement annuities. Section 4 provides guidance to users of the Service's model IRAs and describes the availability of new model individual retirement annuities.

SECTION 2. BACKGROUND AND GENERAL INFORMATION

.01 Rev. Proc. 87-50, 1987-2 C.B. 647, as modified by Rev. Proc. 97-29, 1997-1 C.B. 698, and Rev. Proc. 98-59, 1998-2 C.B. 727, 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, SIMPLE or Roth IRA meets the requirements of Internal Revenue Code § 408(a) or (b), § 408(p) or § 408A, respectively. Rev. Proc. 87-50 also contains procedures for employers and employee associations to apply for a ruling on a § 408(c) IRA.

.02 Rev. Proc. 2002-10, 2002-1 C.B. 401, provided guidance on updating IRAs for new regulations on required minimum distributions and for changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Pub. L. 107-16.

.03 Ann. 2007-55, 2007-1 C.B. 1384, provided guidance to sponsors of prototype Roth IRAs who wished to amend their documents to accept rollovers from designated Roth accounts described in § 402A.

.04 Notice 2009-82, 2009-41 I.R.B. 491, provides that IRAs do not have to be amended for new § 401(a)(9)(H) pending the issuance of further guidance.

.05 Model forms are available for taxpayers who want to use a pre-approved document to establish an IRA without using a prototype document. The model IRA forms 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; and Form 5305-SA, SIMPLE Individual Retirement Custodial Account. Also, two new model forms will soon be available: Form 5305-B, Individual Retirement Annuity Endorsement; and Form 5305-SB, SIMPLE Individual Retirement Annuity Endorsement (see Section 4.02 below).

.06 Statutory changes since 2002. The following statutory changes relating to the qualification of IRAs became effective after mandatory amendments were announced in Rev. Proc. 2002-10 and Ann. 2007-55:

(1) Section 201 of the Gulf Opportunity Zone Act of 2005 (“GOZA”), Pub. L. 109-135, provided that certain distributions from retirement plans made on account of Hurricane Katrina, Rita or Wilma may be repaid to an eligible retirement plan (as defined in Code § 402(c)(8)(B)).

(2) Section 512 of the Tax Increase Prevention and Reconciliation Act of 2005 (“TIPRA”), Pub. L. 109-222, eliminated the \$100,000 modified adjusted gross income limit and the joint filing requirement for individuals wanting to make qualified rollover contributions (other than from a designated Roth account or from a Roth IRA) to Roth IRAs, effective for distributions after 2009.

(3) Section 2 of the Heroes Earned Retirement Opportunities Act (“HERO Act”), Pub. L. 109-227, provided that compensation earned by members of the armed forces for service in a combat zone is taken into account for purposes of making IRA contributions, effective for taxable years beginning after 2003.

(4) Section 824 of the Pension Protection Act of 2006 (“PPA”), Pub. L. 109-280, as amended by WRERA (see Section 2.06(15) of this revenue procedure), provided that Roth IRAs can accept rollovers from any eligible retirement plan (as defined in Code § 402(c)(8)(B)), effective for distributions after 2007.

(5) Section 827 of PPA, as amended by WRERA (see item (15) below), provided that qualified reservist distributions (as defined in Code § 72(t)(2)(G)) may be repaid to an IRA, effective for individuals called to active duty after September 11, 2001.

(6) Section 829 of PPA, as amended by WRERA (see item (15) below), provided that a nonspouse beneficiary of a deceased participant’s accrued benefit in an eligible retirement plan, other than an IRA, can roll over any portion of the benefit in a direct trustee-to-trustee transfer to an IRA established to receive such rollover, effective for distributions made after 2006.

(7) Section 831 of PPA provided that certain individuals who were participants in a § 401(k) plan maintained by certain indicted employers could make special catch-up contributions equal to three times the otherwise applicable IRA contribution limit, effective for taxable years beginning after 2006 and before 2010.

(8) Section 833 of PPA provided that the modified adjusted gross income limits for regular contributions to Roth IRAs are adjusted for inflation, effective for taxable years beginning after 2006.

(9) Section 105 of the Heroes Earnings Assistance and Relief Act of 2008 (“HEART Act”), Pub. L. 110-245, provides that compensation for purposes of making IRA contributions includes differential wage payments (as defined in Code § 3401(h)(2)), effective for years beginning after 2008.

(10) Section 107 of the HEART Act extended the application of the rules on qualified reservist distributions (see item (5) above).

(11) Section 109 of the HEART Act provided that certain military death gratuities are treated as qualified rollover contributions within the meaning of Code § 408A(e) and thus can be contributed to Roth IRAs, effective for deaths occurring after October 6, 2001.

(12) Section 15345 of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, provided that certain distributions from retirement plans made on account of the Kansas May 4, 2007, severe storms and tornados may be repaid to an eligible retirement plan (as defined in Code § 402(c)(8)(B)).

(13) Section 504 of Division C of the Emergency Economic Stabilization Act of 2008 (“EESA”), Pub. L. 110-343, provides that certain amounts received in connection with the Exxon Valdez litigation may be contributed to an eligible retirement plan (as defined in Code § 402(c)(8)(B)).

(14) Section 702 of Division C of EESA provided that certain distributions from retirement plans made on account of severe storms, tornados and flooding that occurred in certain parts of the Midwest during May and June of 2008 may be repaid to an eligible retirement plan (as defined in Code § 402(c)(8)(B)).

(15) Section 108(d), (e) and (f) of the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”), Pub. L. 110-458, made technical corrections to PPA §§ 824, 827 and 829, respectively. Section 2.06(4), (5) and (6) of this revenue procedure reflects these PPA sections as amended by WRERA.

(16) Section 125 of WRERA provided that certain bankruptcy payments made in settlement of claims against airline carriers are treated as qualified rollover contributions within the meaning of Code § 408A(e) and thus can be contributed to Roth IRAs, effective for contributions made after December 23, 2008, with respect to payments made any time.

(17) Section 201 of WRERA provided that required minimum distributions from IRAs are not required for 2009.

.07 Rev. Proc. 2010-8, 2010-1 I.R.B. 234, lists the user fees for opinion letters on prototype IRAs.

SECTION 3. OPINION LETTERS FOR IRAS

.01 Amendment not required. A prototype IRA may, but need not, be amended to reflect a statutory change listed in Section 2.06 of this revenue procedure in order for a trustee, custodian or issuer (hereinafter "trustee") to take advantage of the change. Thus, a trustee may accept the additional IRA contributions listed in Section 2.06(1) through (16) of this revenue procedure and suspend 2009 required minimum distributions pursuant to Section 2.06(17) of this revenue procedure without specific authorizing language in the prototype IRA. Similarly, a § 408(c) IRA need not be amended.

.02 Permissive amendment. Prototype IRAs may be amended, solely to incorporate the statutory changes listed in Section 2.06 of this revenue procedure, without affecting reliance on a favorable opinion letter. Similarly, a § 408(c) IRA may be so amended without affecting reliance on a favorable ruling. Sample language for these changes is available on the Service's Web Site (see Section 3.04 of this revenue procedure).

.03 Application for new opinion letters. A prototype sponsor may apply to the Service any time for an IRA opinion letter, including an opinion letter for an amendment solely to incorporate the statutory changes listed in Section 2.06 of this revenue procedure. The IRA document 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.

.04 Sample language. A Listing of Required Modifications, or LRMs, that the Service finds acceptable for prototype IRAs is available on the Service's Web Site at **www.irs.gov**. (Search for "LRMs".) In order to receive a favorable opinion letter, prototype documents must include language that addresses every issue addressed in the LRMs, unless clearly inapplicable. Identical language is not necessary, but issues addressed in an LRM may not be abbreviated by using references to Code sections or such phrases as "in accordance with the law."

.05 Revised procedures and user fees for annuities. Beginning with applications submitted after December 13, 2010, prototype sponsors of individual retirement annuities described in § 408(b) that use one IRA endorsement with one or more annuity contracts may submit only the IRA endorsement (and not the contracts) to the Service for approval. Sponsors that take advantage of this new procedure will be issued an opinion letter referencing the IRA endorsement, thereby reducing the number of opinion letters issued and, correspondingly, the applicable user fees. The Service recently

issued a revised Form 5306, reflecting the new procedures. The IRA endorsement must include all IRA qualification rules and must provide that the terms of the IRA endorsement supersede any conflicting terms in the annuity contracts to which the IRA endorsement applies. Sponsors that use different IRA endorsements for each contract, that use no endorsements or that simply want an opinion letter for each contract may submit applications to the Service, including with such applications the document or documents that constitute the IRA.

.06 Dual-purpose IRAs. Rev. Proc. 98-59 required applicants for opinion letters on prototype documents designed to be used as either a traditional IRA or a Roth IRA to write “Dual-purpose IRA” on Form 5306. Form 5306 has been revised to include a checkbox to identify a dual-purpose IRA application, so writing “Dual-purpose IRA” on the form will no longer be required.

SECTION 4. MODEL IRAS

.01 Amendment not required. Model IRAs need not be amended in order for trustees to operate in accordance with the statutory provisions listed in Section 2.06 above. The Service expects to issue revised model IRAs shortly, and although use of the new models is not required, the Service recommends adoption of the latest model IRAs.

.02 New model IRAs. The Service will issue two model IRAs for use by issuers and annuitants to establish a traditional individual retirement annuity or a SIMPLE individual retirement annuity. The forms – Form 5305-B, Individual Retirement Annuity Endorsement; and Form 5305-SB, SIMPLE Individual Retirement Annuity Endorsement – are expected to be available shortly.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Procs. 87-50 and 98-59 are modified.

DRAFTING INFORMATION

The principal author of this revenue procedure is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this revenue procedure may be sent via e-mail to RetirementPlanQuestions@irs.gov.