

Employee Benefits Advisory

October 26, 2010

In-Plan Roth Conversions Now Permitted

On September 27, 2010, President Obama signed into law the Small Business Jobs and Credit Act of 2010 (the "Act"). The Act permits participants in 401(k) plans, 403(b) plans, and starting in 2011, 457(b) plans, to convert their account balances to Roth accounts within such plans.

Prior to the Act, non-Roth accounts in a qualified retirement plan generally could only be converted into Roth accounts if distributions from the plan were rolled over into a Roth IRA. Under the Act, if your 401(k) plan, 403(b) plan, or starting in 2011, governmental 457(b) plan, provides separate, designated Roth accounts, you can allow a Roth conversion within your plan. This in-plan Roth conversion would be available to any participant who is entitled to receive an "eligible rollover distribution" from a non-Roth account, within your plan, in lieu of receiving the distribution or rolling it over to another plan or IRA. There is no income limit for eligible participants. This in-plan conversion feature is permitted, but not required, by the Act.

The converted amounts will be included in the participant's gross income in the same manner as if the distribution were rolled over into a Roth IRA, but generally will not be subject to a 10% early distribution tax unless the five-year holding period after rollover is not satisfied. For 2010 in-plan Roth conversions only, participants have the option of electing to divide the recognized income equally between 2011 and 2012. This option is not available for in-plan Roth conversions made after 2010. The IRS will likely issue additional guidance on the specific reporting and withholding requirements.

The Act does not provide any guidance on the timing of the necessary plan amendments. However, the IRS is expected to provide employers with a remedial amendment period so that employers may offer this option now and amend their plans later to reflect this feature. In the meantime, employers should treat the in-plan Roth conversion as a discretionary plan feature and adopt good faith amendments by the end of 2010.

You should consider whether the features discussed above should be added to your qualified

CONTACTS

If you have questions or need assistance complying with these requirements, please contact any of the McKenna Long & Aldridge LLP attorneys or public policy advisors with whom you regularly work. You may also contact:

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retirement plans. If you wish to add in-plan Roth conversions to your plan(s) for 2010, quick action will be necessary.

With a team of attorneys who are highly experienced in the employee benefits field, MLA can provide answers to questions and assistance in adding these features to your retirement plan.

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