

In-Plan Roth Rollovers: Answers Issued By IRS

12/6/2010

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The IRS has just issued guidance regarding in-plan Roth rollovers (also known as Roth conversions), filling in several gaps that were left open when the Small Business Jobs Act was signed into law in September.

The specifics on the Small Business Jobs Act, which allows employees to make direct rollovers within their employer's 401(k) or 403(b) plan to a Roth account within that same plan, can be found [here](#).

Here is a synopsis of the latest guidance from the IRS:

- **Withholding.** The 20% withholding normally required for eligible rollover distribution amounts will not apply. Participants, who will be responsible for the additional income tax, may need to voluntarily increase their income tax withholding or make estimated tax payments to avoid an underpayment penalty.
- **Tax Notice.** The plan must deliver the special tax notice that is provided to participants upon receiving any eligible rollover distribution. In that notice, the plan must include a description of the in-plan Roth rollover option. The IRS provided model language to include in the notice.
- **Beneficiaries and Alternate Payees.** Only a surviving spouse beneficiary or alternate payee who is a spouse can elect an in-plan Roth rollover. Since generally non-spouse beneficiaries cannot make rollovers to tax-qualified plans, they cannot make in-plan Roth rollovers.
- **Other Distribution Requirements Do not Apply.** In-plan Roth direct rollovers are not treated as distributions for the following purposes.
 - Plan loans transferred without changing the repayment schedule are not treated as new loans.
 - Spouse consent is not required.
 - Cash out determinations must still take into account the amount rolled over to the Roth account in determining the \$5,000 maximum, and the notice normally required of the participant's right to defer distribution need not be made.
 - Optional forms of benefit previously available on the amount rolled over to the Roth account must continue to be available on that amount after the roll over.
- **Unwinding.** Unlike rollovers to Roth IRAs, in-plan Roth rollovers cannot be recharacterized after the participant elects an in-plan Roth rollover.

- **Plan Amendments.** Plan sponsors can implement an in-plan Roth rollover option for 2010 without having to amend the plan until December 31, 2011. This is important so that participants who want to take advantage in 2010 of the special tax treatment for 2010 Roth rollovers, which allows the income to be taxed 50% in 2011 and 50% in 2012, rather than in 2010. The ability to retroactively amend includes any amendment needed to make Roth elective deferrals available generally, as well as to permit in-plan Roth rollovers or to allow in-service distributions for in-plan Roth rollovers.

Although the amendment can be delayed, if the plan does not currently have a Roth contribution program, the Roth program must be "in place" before participants can make in-plan Roth rollovers. To be in place, the program must offer participants an opportunity to elect to have designated Roth contributions made to the plan.

- **Reporting.** The rolled-over amount must be reported on IRS Form 1099-R. For conversions in 2010, the amount will be reported on a 2010 1099-R, even if the participant spreads the taxation over 2011 and 2012. When the Roth account is finally distributed from the plan to the participant, a separate Form 1099-R must be used to report the distribution, using the same rules as any other Roth account distribution, although the amount of the distribution allocable to the Roth rollover must also be reported.

Employers who want to offer this option to employees in 2010, in order to take advantage of the two year tax-deferral for 2010 conversions, will have to act quickly. Although amendments can be delayed, administrative procedures and communications to employees must be implemented immediately.

Please contact Mary Jo Larson (mlarson@wnj.com or 248.784.5183) or any other member of the Employee Benefits Group at Warner Norcross & Judd if you have questions about Roth conversions or any other employee benefits matter.