Compliance Newsletter

Monthly Update

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Waiver of 60-Day Rollover Requirement

The Internal Revenue Service (IRS) allows distributions to be excluded from income if they are rolled over to an eligible retirement plan or Individual Retirement Account (IRA) within 60 days. Revenue Procedure 2016-47 offers additional guidance, as well as a self-certification process that details how a taxpayer could accomplish a rollover that does not meet the 60-day requirement under certain circumstances.

Conditions for Written Self-Certification

Before a taxpayer may self-certify that the 60-day waiver has been met, the following conditions must be satisfied:

- No prior IRS denial
- Rollover must be made as soon as practicable. This requirement is deemed to be satisfied if made within 30 days after one of the reasons below no longer prevents the taxpayer from making the rollover.
- 60-day deadline missed due to one or more of these eleven approved reasons:
    - Receiving or distributing financial institution error
    - Misplaced and never cashed check
    - Taxpayer mistakenly believed money was already invested in eligible retirement plan
    - Taxpayer's principal residence was severely damaged
    - Taxpayer's family member died
    - Taxpayer or family member was seriously ill
    - Taxpayer was incarcerated
    - Foreign country imposed restrictions
    - Postal error
    - Distribution due to a levy under §6331 and the proceeds of levy have been returned to the taxpayer
    - Party making the distribution delayed providing required information despite the taxpayer's reasonable efforts to obtain the information

IRA Requirement

Currently, IRA trustees report rollover contributions received for that year on a Form 5498, *IRA Contribution Information*. The IRS intends to update Form 5498 instructions to require that IRA trustees also report rollovers that are accepted after the 60-day deadline. More guidance is expected once instructions are released.

Next Steps

The Revenue Procedure includes a model self-certification for taxpayers to use. Effective August 24, 2016, the plan administrator or IRA trustee may rely on the taxpayer's self-certification in determining whether the 60-day waiver has been satisfied until or unless the IRS states otherwise as a result of an audit; or, the IRA trustee or plan administrator has actual knowledge to the contrary.

Saving Arrangements Established by States for Non-Governmental Employees

On August 25, 2016, the Department of Labor (DOL) issued final rules on savings arrangements established by individual states for private sector workers. The regulation provides a safe harbor for "certain state savings programs," so when the conditions are met, the program is exempt from the Employee Retirement Income Security Act (ERISA) and its restrictions.

Background

State-based retirement initiatives have gained momentum in state legislatures; especially as retirement readiness concerns grow. The final regulation references five states that have passed laws that lead towards the establishment of payroll deduction savings programs for private sector employees. At the direction of President Obama, proposed regulations on savings arrangements established by a State for non-governmental employees were published on November 18, 2015 to address how states may be able to navigate complicated rules under ERISA regarding coverage and preemption. The regulations released on August 25th finalize those proposed rules from last November.

Summary of Final Regulation

The regulations establish a safe harbor from ERISA for "certain state savings programs." These individual retirement plans, which satisfy the necessary provisions, would not be considered "employee pension benefit plans" or "pension plans" and thus would not be subject to ERISA.

The necessary provisions to meet the safe harbor include the following:

- Program is established pursuant to State law
- Program is implemented and administered by the State
- State assumes responsibility for security of payroll deductions & employee savings
- State adopts measures to ensure employees are notified of rights and creates a mechanism for enforcement of those rights

- Participation is voluntary for employees – note that automatic enrollment is considered voluntary if it is mandated by State law

- All rights of the employee, former employee or beneficiary are enforceable by that individual or an authorized representative of such person or by the State

- Employer involvement is limited to:
    - Collecting and remitting employee contributions
    - Providing notice to the employees and maintaining records
    - Providing information to the State necessary to facilitate program operation
    - Distributing program information to employees from the State

- Employer must not contribute funds to the program and not provide participation incentives to employees

- Employer's participation in the program is required by State law

- Employer has no discretionary authority, control or responsibility

- Employer receives no consideration from the State in excess of a reasonable approximation of employer costs

These programs may be directed towards employers who do not offer a workplace retirement savings arrangement. In addition, the safe harbor does not prohibit the use of private sector service providers to operate and administer the program, but the State retains full responsibility, although not "strictly liable" for all employer's recordkeeping failures.

Also, State laws can limit withdrawals to promote retirement savings and long-term investments. The Department of Labor has also stated that they are unsure of the magnitude of the benefit of any state that avails itself of the safe harbor, and cautions that any benefit could be affected by stakeholders' propensity to challenge the legal status and any resultant decisions of the court.

Proposed Rule for Cities & Counties

Based on public comment, a proposed rule was developed for cities and counties to offer their own programs. Such arrangement could potentially apply to private sector workers in states that do not have their own programs. Cities and counties could only offer a program if one is not offered in the State. As proposed, a city or county could create a program if state law allows it and if the population is equal to or greater than the population of the least populous state. Per 2013 Census, the least populated state is Wyoming with 582,658 residents.

Effective Date

The final regulation is effective October 31, 2016. The proposed rules are expected to be effective September 30, 2016; after a 30-day comment period.

Relief for Victims of Louisiana Storms

On August 30, 2016, the Internal Revenue Service (IRS) released Announcement 2016-30 providing relief to taxpayers who have been adversely affected by the recent storms and flooding in Louisiana that began August 11, 2016 ("Louisiana Storms"). The relief is established to temporarily make it easier for impacted individuals to access plan loans and hardship withdrawals from retirement plans that can permit such loan and hardship provisions.

Background

Typically, a plan must contain language authorizing a loan or hardship withdrawal. Any withdrawal/distribution taken will be included in gross income (except already-taxed amounts) and is generally subject to the ten percent additional income tax. Verification procedures also exist and must be followed before a loan or hardship withdrawal can be taken. This usually includes specifications which a participant must meet in order to take a hardship withdrawal (i.e. foreclosure of primary residence). It also includes procedures to confirm the specifications have been met.

Relief

Announcement 2016-30 allows "qualified employer plans" to allow loans or hardship withdrawals to an employee whose principal residence and/or place of employment on August 11, 2016 was located in one of the parishes identified as part of a covered disaster area because of the devastation caused by the Louisiana Storms. It also allows an employee to pursue a loan or hardship withdrawal if he/she has a "lineal" family member (child, sibling, parent, grandparent), dependent, or spouse that had a principal residence or place of employment in one of the covered parishes on that date.

A "qualified employer plan" includes participants in 401(k) plans and 403(b) plans. It also includes state and local government employees with 457(b) deferred-compensation plans ('unforeseeable emergency' withdrawal rules apply for such plans).

This relief means that a retirement plan can allow a Louisiana flood victim to take a hardship withdrawal or borrow up to the specified statutory limits from the victim's retirement plan as a loan. It also means that a person who lives outside the disaster area can take a retirement plan loan or hardship withdrawal and use it to assist a family member or other dependent that lived or worked in the disaster area.

Relief also allows for relaxed procedural and administrative rules compared to those that would normally apply to retirement plan loans and hardship withdrawals. Plan administrators may ignore the standard "deemed hardship" reasons (i.e. college tuition, foreclosure) that normally apply to hardship withdrawals, and instead, allow the hardship withdrawal for other financial needs (i.e. food, housing,). Also, plan sponsors may rely upon representations from the employee as to the need for and amount of a hardship withdrawal, unless actual knowledge to the contrary is known.

If the plan does not already offer hardship withdrawals and loans, it may offer them pursuant to this relief before the plan document is formally amended; as long as the plan is amended no later than the end of the first plan year beginning after December 31, 2016.

Additional highlights of the Announcement include:

- The standard 'deemed hardship' six-month elective deferral suspension under 401(k) and 403(b) plans will not apply.
- Standard tax rules are still applicable; including the additional ten percent income tax.
- Spousal consent exceptions exist. Self-certification of spousal death is allowed for plans which require spousal consent for loans or withdrawals. Reasonable attempts to assemble any forgone documentation should be made when practicable. Death certificates should be provided when eventually made available/obtained.
- IRA (Individual Retirement Account) participants cannot utilize a loan provision, but may be eligible to receive distributions under the relieved procedures.
- The temporary relief expires January 17, 2017.

Parishes Covered

The parishes included in the covered disaster area for the Louisiana Storms include East Baton Rouge, Livingston, St. Helena and Tangipahoa. A complete list of parishes has been identified in an IRS News Release that can be accessed at: https://www.irs.gov/uac/tax-relief-for-victims-of-severe-storms-flooding-in-louisiana.

Additional Deadline Relief

Apart from Announcement 2016-30, Pension Benefit Guaranty Corporation (PBGC) and the IRS issued additional disaster relief announcements that are intended to waive certain penalties and extend certain deadlines for impacted persons in the designated areas.

PBGC relief covers 'designated persons' which is defined as any person responsible for meeting a PBGC deadline. The IRS extends relief to affected taxpayers that include individuals who live and whose principal business is located in the covered disaster area. Taxpayers not in the covered disaster area, but whose records necessary to meet a deadline are in that area are also entitled to relief.

IRS relief includes the Form 5500 filing deadline. PBGC relief is intended to cover some penalties (not the interest charges, if any) for the following:

- PBGC premium payment deadlines for single employer and multiemployer plans
- Single Employer Plan Termination Forms 500 and 501 and distribution of plan assets
- Reportable event notices

This represents only a partial list and other relief may be available. Relief is generally extended through January 17, 2017.

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