IRS Describes Situations Where Plan Administrator May Reasonably Find a Valid Rollover

Rev Rul 2014-9, 2014-17 IRB

In a Revenue Ruling, IRS has provided two fact patterns under which, in the absence of evidence to the contrary, the plan

administrator of a receiving plan will be deemed to have reasonably concluded that an amount received was a valid rollover contribution. Thus, for purposes of the receiving plan's qualification status, the rollover contribution, even if invalid, could be treated as valid.

Background

A trustee of a plan may effect a direct (trustee-to-trustee) rollover by providing a distributee with a check made payable to the trustee of another eligible retirement plan for the benefit of the distributee and instructing the distributee to deliver the check to the eligible retirement plan. (Reg. § 1.401(a)(31)-1, Q&A-4)

If a plan accepts an invalid rollover contribution, the contribution will be treated, for purposes of applying the qualification requirements under Code Sec. 401(a) (for qualified pension, profit-sharing, and stock bonus plans) and Code Sec. 403(a) (for qualified annuity plans) to the receiving plan, as if it were a valid rollover contribution if:

1. When accepting the amount from the employee as a rollover contribution, the plan administrator for the receiving plan reasonably concludes that the contribution is a valid rollover contribution; and
2. If the plan administrator for the receiving plan later determines that the contribution was an invalid rollover contribution, the plan administrator distributes the

> amount of the invalid rollover contribution, plus any earnings attributable to such, to the employee within a reasonable time after the determination. (Reg. § 1.401(a)(31)-1, Q&A-14)

Reg. § 1.401(a)(31)-1, Q&A-14, provides a number of examples illustrating situations in which the administrator for a receiving plan may reasonably conclude that a distributing plan is a qualified plan and that a potential rollover contribution is a valid rollover contribution. The regulation notes that a distributing plan is not required to have a determination letter in order for the plan administrator for the receiving plan to reasonably conclude that a potential rollover contribution is a valid rollover contribution.

IRS notes that the Code has been amended a number of times since Reg. § 1.401(a)(31)-1, Q&A-14 was first published. For example, the Code has been amended to provide that a rollover of a hardship distribution isn't allowed, and that a rollover of an eligible rollover distribution from a Code Sec. 403(a) plan, a Code Sec. 403(b) plan, or an eligible governmental Code Sec. 457(b) plan to an eligible retirement plan is allowed. In addition, the requirement that a rollover of a distribution from an IRA to a qualified plan may only be made if the IRA is a "conduit IRA" (an IRA to which the only contributions consist of rollover contributions from one or more qualified plans) has been eliminated. However, the regulations under Code Sec. 401(a)(31) and Code Sec. 402(c) haven't been updated to reflect these changes.

Facts: IRS provided two situations involving rollovers.

Situation 1

Qualified profit-sharing Plan M allows eligible Employer X employees to make a rollover contribution to it. Plan M

doesn’t accept rollover contributions of after-tax amounts or amounts attributable to designated Roth contributions. Employee A, who is eligible to make rollover contributions to Plan M, has a vested account balance in Plan O (a retirement plan maintained by Employee A’s prior employer) and is eligible for a distribution under the terms of Plan O.

In 2014, Employee A requests a distribution of her vested account balance in Plan O and elects that it be paid to Plan M in the form of a direct rollover. The Plan O trustee distributes Employee A’s vested account balance in a direct rollover to Plan M by issuing a check payable to the Plan M trustee for the benefit of Employee A, and provides the check to Employee A. Employee A provides the Plan M administrator with the name of Employee A’s prior employer and delivers the check, with an attached check stub that identifies Plan O as the source of the funds, to the plan administrator. Employee A also certifies that the distribution from Plan O doesn’t include after-tax contributions or amounts attributable to designated Roth contributions.

The Plan M administrator accesses the EFAST2 database maintained by the Department of Labor at **efast.dol.gov** and searches for the most recently filed Form 5500 for Plan O. The latest Form 5500 for Plan O that the plan administrator for Plan M locates in the database is the Form 5500 filed for the plan year beginning Jan. 1, 2012 and ending Dec. 31, 2012. On that filing, line 8a does not include code 3C (code 3C indicates a plan not intended to be qualified under Code Sec. 401, Code Sec. 403, or Code Sec. 408).

Situation 1 analysis

IRS determined that it was reasonable for the Plan M administrator to conclude that Plan O was intended to be a qualified plan. The Plan O administrator did not enter code 3C on line 8a of the Form 5500 filed for Plan O. By completing the form this way, he made a representation that Plan O was

intended to be a plan qualified under Code Sec. 401, Code Sec. 403, or Code Sec. 408.

The trustee for Plan O issued a check payable to the trustee for Plan M for the benefit of Employee A, which indicated that the Plan O administrator treated the distribution as an eligible rollover distribution to be directly rolled over. Thus, for example, if the distribution had occurred during or after the year in which Employee A had attained age 70 1/2, it would be reasonable for the Plan M administrator to conclude that, in accordance with Reg. § 1.402(c)-2, Q&A-7, Plan O distributed the required minimum amount under Code Sec. 401(a)(9) for the year, prior to making the direct rollover.

Situation 2

The facts are the same as in Situation 1, except as follows. Employee A has an account balance in IRA N, which is titled "IRA of Employee A." IRA N is a traditional IRA (rather than a Roth IRA or a SIMPLE IRA) and isn't an inherited IRA. Employee A requests a distribution of her account balance in the form of a direct payment from IRA N to Plan M. The trustee for IRA N issues a check payable to the trustee for Plan M for the benefit of Employee A and provides the check to Employee A. Employee A delivers the check, including a check stub that identifies "IRA of Employee A" as the source of the funds, to the plan administrator for Plan M. Employee A certifies that her distribution from IRA N includes no after-tax amounts. Employee A also certifies that she will not have attained age 70 1/2 by the end of the year in which the check is issued.

Situation 2 analysis

IRS reasoned that in Situation 2, the trustee for IRA N issued a check payable to the trustee for Plan M for the benefit of Employee A, which indicates that the trustee for IRA N treated the distribution as a rollover contribution paid directly to Plan M. Because the check stub indicated that the distributing

account was titled “IRA of Employee A,” the Plan M administrator could reasonably conclude that the source of the funds was a traditional, non-inherited IRA. In addition, Employee A had certified that the distribution included no after-tax amounts and that she would not attain age 70 1/2 by the end of the year of the transfer. Accordingly, it was reasonable for the Plan M administrator to conclude that the distribution from IRA N was a distribution that could be rolled over.

If Employee A had attained age 70 1/2 or older by the end of the year in which the check was issued, the Plan M administrator could not reasonably conclude that the potential rollover contribution was a valid rollover contribution absent additional information indicating that Code Sec. 408(a)(6) or Code Sec. 408(b)(3) had been satisfied with respect to IRA N in the year in which the check was issued.

IRS guidance

In Rev Rul 2014-9, IRS concluded that in Situation 1, absent any evidence to the contrary, the Plan M administrator could reasonably conclude that the potential rollover contribution by Employee A from Plan O to Plan M was a valid rollover contribution. Similarly, in Situation 2, absent any evidence to the contrary, the Plan M administrator could reasonably conclude that the potential rollover contribution by Employee A from IRA N to Plan M was a valid rollover contribution. If it was later determined in either case that the amount rolled over was an invalid rollover contribution, the amount rolled over, plus any attributable earnings, must be distributed to Employee A within a reasonable time after such determination.

Variations

IRS also indicated that, in Situations 1 and 2, the results would be the same if there had been no check stub identifying

the source of the funds, as long as the check itself identified the source of the funds as Plan O or IRA N, respectively. Similarly, the results would be the same if the rollover had been accomplished through a wire transfer or other electronic means, if the plan administrator or trustee for the sending plan or IRA had communicated to the Plan M administrator the same information regarding the source of the funds.

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