Bipartisan Budget Act of 2018 Impact on Benefit Plans



The "Bipartisan Budget Act of 2018"—P.L. 115-123 (the "Budget Act") was passed by Congress and signed into law by the President on February 9, 2018. The

two year budget provides for a continuing resolution to fund the federal government through March 23, as well as a host of tax law changes. The Act retroactively extends through 2017 several so-called "extender" provisions, provides tax relief to victims of natural disasters, and includes a number of miscellaneous tax-related provisions. Provisions which impact benefit plans include:

Changes to Rules Governing Hardship Distributions Will Remove 6-month Prohibition on Contributions and Requirement to First Take a Loan for Plan Years Beginning after December 31, 2018

401(k) plans may provide that an employee can receive a distribution of elective contributions from the plan on account of hardship. In general, a retirement plan can make a hardship distribution only: if the plan permits such distributions; because of an immediate and heavy financial need of the employee; and in an amount necessary to meet the financial need. Under Reg. § 1.401(k)-1(d)(3)(iv)(E), an employee who receives a hardship distribution cannot make elective contributions or employee contribution to the plan and all other plans maintained by the employer for at least six months after receipt of the hardship distribution.

The Budget Act directs IRS to modify Reg. § 1.401(k)-1(d)(3)(iv)(E), within one year from Feb. 9, 2018, **to delete the 6-month prohibition on contributions** and to make "any other modifications necessary to carry out the purposes of" Code Sec. 401(k)(2)(B)(i)(IV). The **revised regulations are to apply to plan years beginning after Dec. 31, 2018**.

The Budget Act also adds Code Sec. 401(k)(14), providing special rules relating to hardship withdrawals. Under the provision, for purposes of Code Sec. 401(k)(2)(B)(i)(IV), the

following amounts may be distributed upon hardship of the employee:

1. Contributions to a profit-sharing or stock bonus plan to which Code Sec. 402(e)(3) applies;
2. Qualified nonelective contributions (as defined in Code Sec. 401(m)(4)(C));
3. Qualified matching contributions described in paragraph Code Sec. 401(k)(3)(D)(ii)(I); and
4. Earnings on any contributions described in (i), (ii), or (iii).

Further, under Code Sec. 401(k)(14)(B), a **distribution won't be treated as failing to be made upon the hardship of an employee solely because the employee doesn't take any available loan under the plan**. These amendments apply to plan years beginning after Dec. 31, 2018.

Relief from Early Withdrawal Tax for California Wildfire Distribution

A distribution from a qualified retirement plan, a tax-sheltered annuity plan, an eligible deferred compensation plan of a State or local government employer, or an individual retirement arrangement (IRA) generally is included in income for the year distributed. In addition, unless an exception applies, a distribution received before age 59½ is subject to a 10% additional tax under Code Sec. 72(t) (the "early withdrawal tax") on the amount includible in income. In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The 60-day requirement can be waived by IRS in certain situations.

The **Budget Act provides an exception to the retirement plan 10% early withdrawal tax for up to $100,000 of qualified wildfire distributions**. These distributions are defined as any distribution from an eligible retirement plan **made on or after**

Oct. 8, 2017, and before Jan. 1, 2019, to an individual whose principal place of abode during any portion of the period from Oct. 8, 2017, to Dec. 31, 2017, is located in the California wildfire disaster area and who has sustained an economic loss by reason of the wildfires to which the declaration of such area relates. The "California wildfire disaster area" means an area with respect to which, between Jan. 1, 2017 through Jan. 18, 2018, a major disaster has been declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of wildfires in California.

The amount of a qualified wildfire distribution can be repaid (recontributed) to an eligible retirement plan within three years. A taxpayer will be treated as having transferred the amount to the eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution—i.e., eliminating the tax consequence of an income distribution.

Unless a taxpayer elects otherwise, any amount attributable to a qualified wildfire distribution required to be included in gross income for such tax year will be included in income ratably over three years.

Eased Rules for Retirement Plan Loans for Qualified Individuals in California Wildfire Disaster Area

With respect to retirement plan loans to a "qualified individual" (see below) made during the period beginning on Feb. 9, 2018 (the date of the enactment) and ending on Dec. 31, 2018, the Budget Act:

- Increases the maximum amount that a participant or beneficiary can borrow from a qualified employer plan under Code Sec. 72(p)(2)(A), from $50,000 to $100,000;
- Removes the "one half of present value" of nonforfeitable accrued benefit plan loan limitation; and
- Allows for a longer repayment term in the case of a qualified individual with an outstanding loan on or after Oct. 8, 2017.

A “qualified individual” means any individual whose principal place of abode during any portion of the period from Oct. 8, 2017, to Dec. 31, 2017, is located in the California wildfire disaster area and who has sustained an economic loss by reason of wildfires to which the declaration of such area relates.

Relief on Improper Levy

The Budget Act adds a new subsection, Code Sec. 6343(f), that provides new rules that hold an individual harmless in the event that there is an improper levy (defined as one that was wrongful or determined to be premature or otherwise not in accordance with administrative procedures) on an individual’s account or benefit under an eligible retirement plan (under Code Sec. 402(c)(8)(B)), and the amount is later returned by the individual from IRS.

Under the Budget Act, the individual is allowed, within a specified timeframe, to contribute the amount returned and any interest thereon into the eligible retirement plan, if permissible under the terms of the plan (or to a different plan to which a rollover contribution of a distribution from such eligible retirement plan is permitted), and such contribution will be treated as a rollover made for the tax year in which the distribution on account of the levy occurred. (Code Sec. 6343(f)(1)) The contribution is allowed without regard to the normally applicable limits on IRA contributions and rollovers. The Budget Act also provides for a refund of any income tax imposed on the distribution as a result of the wrongful levy. (Code Sec. 6343(f)(3)) These provisions are effective for amounts paid under Code Sec. 6343(b), Code Sec. 6343(c), and Code Sec. 6343(d)(2)(A) in tax years beginning after Dec. 31, 2017.

Plan sponsors should consult their advisors and/or ERISA counsel for specific questions as to how these regulations will impact their plan.

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