

EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION ALERT

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IRS Clarifies In-Plan Roth Conversions

In 2012 the American Taxpayer Relief Act (“ATRA”) liberalized the conditions under which a tax-qualified Internal Revenue Code (“Code”) Section 401(k), 403(b), or governmental 457(b) plan could allow a participant to execute a rollover of retirement plan assets to an after-tax Roth contributions account within the same plan.¹ Before ATRA, only amounts determined to be eligible for distribution under the plan and applicable tax law, and which satisfied the definition of “eligible rollover distribution” under the tax law, could be converted to an in-plan Roth account.

As a result of ATRA, a participant’s vested contributions under a Code Section 401(k), 403(b) or 457(b) (governmental) plan may now be converted to an in-plan, after-tax Roth contributions account regardless of whether the applicable amount may be distributed under either the tax laws or the plan. Consequently, a Code Section 401(k), 403(b), or 457(b) plan may now allow a participant (or beneficiary with an interest in such plan) to convert pre-tax elective deferrals, vested employer matching contributions, profit sharing contributions, employer nonelective contributions or participant rollover contributions (and the earnings on them), to an in-plan, after-tax Roth contributions account.

The IRS recently published guidance relating to in-plan Roth conversions. The IRS has confirmed that, with respect to a Code Section 401(k), 403(b) or 457(b) plan:

- Both “distributable” and “nondistributable” amounts may be included in an in-plan Roth conversion;
- A notice which informs a participant of his or her rights concerning eligible rollover distributions must be issued with respect to an in-plan Roth conversion of distributable amounts;
- Any amount that is considered nondistributable and that is converted to an in-plan, after-tax Roth contributions account must remain in the plan until it becomes eligible for distribution. For example, if a plan provides for in-service distributions only upon attainment of age 59½ and a participant elects an in-plan Roth conversion prior to attaining age 59½, the amount converted into after-tax Roth contributions may not be distributed prior to termination of employment unless the participant has attained age 59½;
- Federal income tax withholding does not apply with respect to nondistributable amounts that are being converted into after-tax Roth amounts, although such conversions must be reported on the current year 1099-R form;

¹ A copy of our prior Client Alert on this issue, entitled “Fiscal Cliff Act Expands In-Plan Roth Conversions,” can be found [here](#).

- In-plan Roth conversions must be available to participants on a nondiscriminatory basis; and
- In-plan Roth conversions of nondistributable amounts may only be accomplished via a direct rollover. By contrast, in-plan Roth conversions of distributable amounts may be accomplished through either a direct or indirect rollover (i.e., one that must be made within 60 days of the distribution).

The addition of an in-plan Roth conversion feature may be implemented only through a discretionary plan amendment that is adopted by the last day of the plan year during which such in-plan Roth conversion feature is effective. Moreover, with respect to plan sponsors that added in-plan Roth conversions for the 2013 plan year, an amendment permitting such conversions may be adopted through December 31, 2014. For safe harbor Code Section 401(k) plans, an in-plan Roth conversion feature may be added pursuant to a “mid-year” change during 2014. Special rules exist regarding the amendment period applicable to the implementation of an in-plan Roth conversion feature in a Code Section 403(b) plan.

If you have any questions concerning the in-plan Roth conversion rules or would like to implement an in-plan Roth conversion feature, please contact us.

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This edition of the Employee Benefits & Executive Compensation Alert highlights recent guidance published by the IRS regarding in-plan Roth rollovers. The Alert was written by Devin M. Karas, a member of the Employee Benefits & Pension Practice Area at Reid and Riege, P.C. The Practice Area works closely with clients to design and draft tax-qualified and nonqualified retirement plans. For information or additional copies of this Alert, or to be placed on our mailing list, please contact Devin (tel. 860-240-1063) (e-mail dkaras@rrlawpc.com) or another member of the Practice Area, John J. Jacobson, Chair (tel. 860-240-1006) (e-mail jjacobson@rrlawpc.com), John V. Galiette (tel. 860-240-1009) (e-mail jgaliette@rrlawpc.com), Ronald J. Koniuta (tel. 860-240-1034) (e-mail rkoniuta@rrlawpc.com), or Erik M. Sharp (tel. 860-240-1074) (e-mail esharp@rrlawpc.com), or the Reid and Riege attorney with whom you regularly work.

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