

Publications

Allocating “Basis” in Partial and Split Rollovers – Can We Still Rely on Code Section 402(c)(2)?

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Many plans and third party administrators (TPAs) thought “yes” as well-settled law following the Economic Growth Tax Relief Reconciliation Act (EGTRRA), but the Internal Revenue Service seems to disagree.

EGTRRA expanded the rollover provisions to permit the rollover of after-tax amounts (directly and indirectly), and expressly provided in the flush language of Code section 402(c)(2) that the amount transferred shall be treated as consisting first of “the portion of such distribution that is includible in gross income.” The legislative history similarly stated that “if a distribution includes both pretax and after-tax amounts, the portion of the distribution that is rolled over is treated as consisting first of pretax amounts.” Accordingly, plan sponsors and TPAs have historically permitted a participant to directly or indirectly roll over the entire pre-tax amount first. An updated model 402(f) (rollover notice) was issued in late 2009 (Notice 2009-68) that challenged this approach and the latest EP Newsletter (focusing on Roth conversions) appears to follow the same approach. Please see the attached memo for further information.

If you have any questions to be covered by an upcoming IRS Reporting Corner newsletter or wish to stay connected with various reporting and withholding updates related to employee benefits, [click here](#).

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