Publications

IRS' Version of Missing Participant Guidance

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The IRS issued two new pieces of guidance that work together to address missing participants in a qualified plan. Specifically, the IRS issued Rev. Rul. 2020-24 and Rev. Proc. 2020-46 to add to their existing portfolio on missing participant guidance. This guidance focuses the treatment of escheatment to the state unclaimed property funds with respect to:

- Reporting and withholding requirements and
- Indirect rollover relief.

This follows in the line of existing missing participant guidance, which includes required minimum distribution relief under Code Sec. 401(a)(9), reporting and withholding on uncashed checks under Rev. Rul. 2019-19, Internal Revenue Manual guidance, and reporting and withholding of escheatment payments from IRAs under Rev. Rul. 2018-17.

This new guidance follows section 411(a) of the Internal Revenue Code and regulations on forfeitures. Generally, a participant's vested accrued benefit must be nonforfeitable. However, there are two key exceptions under Reg. §1.411(a)- 4(b)(6) for missing participants and beneficiaries. Under the first exception, it is permissible to forfeit the vested accrued benefit due to an inability to find the participant or beneficiary to whom payment is due, provided that the plan provides for reinstatement of the benefit if a claim is made by the participant or beneficiary for the forfeited benefit. Under the second exception, which is addressed here, a benefit which is lost by reason of escheat under applicable state law is not treated as a forfeiture.

Notably, the Department of Labor has been very active in plan examinations to ensure that missing participants are located and their benefits paid out, and often escheatment is not the solution. Moreover, Employee Retirement Income Security Act of 1974 (ERISA)-covered plan benefits are generally thought to be beyond the reach of state unclaimed property laws by reason of ERISA preemption under ERISA section 514. The IRS guidance is quick to point out that it does not address whether the payment to the state unclaimed property fund otherwise complies with applicable law. For example, it expressly states that it does not address compliance with any search requirements applicable under state law and does not address matters arising under Title I of the ERISA for which the Department of Labor has subject matter jurisdiction. Therefore, this guidance should not be viewed as a push to escheatment but rather limited to the tax implications if amounts are escheated and later recovered.

In the *TAXES – The Tax Magazine* article, "IRS' Version of Missing Participant Guidance," Groom principals Elizabeth Dold and David Levine explain how recent IRS guidance on missing participants in qualified plans affects plan sponsors, and what measures should be taken to ensure plan sponsor and recordkeeper compliance.

IRS-Version-of-Missing-Participant-Guidance