

IRALERT

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TO: IRA Group Distribution

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RE: IRS Announcement 2007-55

Attached below in its entirety is new IRS Announcement 2007-55, which requires prototype Roth IRAs to be amended no later than December 31, 2007 to accept rollovers of Roth plan account distributions. The IRS has also updated the Roth IRA LRMs (which can be found at the IRS website at <http://www.irs.gov/retirement/article/0,,id=97182,00.html>). So far, none of the other IRA LRMs have been updated. The Roth forms (5305-R, RA and RB) already refer to rollovers and thus will not be further amended on this point. In addition to the acceptance of rollovers from Roth plans, the new LRM language also addresses qualified reservist distributions and ESOP-related bankruptcy contributions, and modifies the cost-of-living adjustment language.

In a particular positive note, amenders will not have to file again with the Service using Form 5306 on account of these changes. Those making these Roth amendments can continue to rely on their current opinion letters.

The Announcement does not directly address issues arising out of having changes to Roth IRA annuities approved by insurance regulators. However, the announcement does cross-reference "procedures acceptable under Rev. Proc. 2002-10", which, at section 3.03, provides:

"In the case of a prototype sponsor that is an issuer of individual retirement annuities described in § 408(b) and that must apply to one or more state insurance departments for approval of amended IRA documents, the Service will grant expedited review of Service-approved EGTRRA prototype IRA documents amended for changes required by a state insurance department, provided: (1) the Service-approved EGTRRA document is submitted to the state insurance department within 90 days of the date the Service issues a favorable EGTRRA opinion letter on the document and; (2) the prototype sponsor resubmits the document, as amended to comply with changes required by the state insurance department, to the Service within 90 days after it is approved by such state insurance department."

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We will seek further clarification of the end-of-year amendment deadline to annuities. Please let us know if you have particular concerns.

Announcement 2007-55; 2007-23 IRB 1384, Jun. 4, 2007

Rollovers to Prototype Roth IRAs

This announcement provides that sponsors of prototype Roth IRAs who wish to accept rollover contributions from designated Roth accounts described in § 402A of the Internal Revenue Code must amend their prototype Roth IRA documents to reflect that the Roth IRA permits these rollover contributions.

Internal Revenue Code § 402A, added by section 617 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Pub. L. 107-16, authorizes employers to offer, beginning in 2006, a qualified Roth contribution program as part of a § 401(k) plan or a § 403(b) plan. An eligible rollover distribution from a designated Roth account established under the program can be rolled over only to another designated Roth account or to a Roth IRA. Rev. Proc. 2002-10, 2002-1 C.B. 401, provided guidance on amending IRAs and IRA-based plans to reflect changes to the Code made by EGTRRA, but the guidance did not address qualified Roth contribution programs. Consequently, currently approved prototype Roth IRAs generally do not contain language permitting the acceptance of rollovers from designated Roth accounts.

Sponsors of prototype Roth IRAs may now wish to amend their documents to provide for the acceptance of rollovers from designated Roth accounts. In order for a Roth IRA that is intended to be a prototype Roth IRA to accept an eligible rollover contribution from a designated Roth account prior to an amendment permitting such rollovers, the prototype Roth IRA document must be amended and adopted no later than December 31, 2007, in accordance with procedures acceptable under Rev. Proc. 2002-10. Thus, if a prototype Roth IRA accepts a rollover from a designated Roth account prior to the date of amendment, the mere acceptance of such rollover contribution will not affect the Roth IRA's prototype status provided the adoption of the amendment is timely. No application to the Service is required for continued reliance on an Opinion Letter. The model Roth IRAs (Forms 5305-R, 5305-RA and 5305-RB) already contain language permitting the acceptance of rollovers from designated Roth accounts, thus, users of such forms do not need to amend their IRA document to permit such rollovers.

The Roth IRA Listing of Required Modifications ("LRMs"), including acceptable designated Roth account rollover language, is available on the Service's Web Site at www.irs.gov. (Search for "LRMs".) These LRMs have also been updated to reflect other recent law changes, such as section 833(c) of the Pension Protection Act of 2006, P.L. 109-280, relating to inflation adjustments to the modified adjusted gross income limits that are used to determine the amount of Roth IRA contributions.

Please feel free to direct questions to any of the Groom principals listed above or to IRA@groom.com.

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