



NAGDCA NOTES

IRS Releases Proposed Regulations for Deemed IRAs

The IRS published proposed regulations pertaining to Deemed IRAs on May 20, 2003. Section 408(q) of the Internal Revenue Code states that if a qualified employer plan allows employees to make voluntary contributions to a separate account or annuity under the plan, and this separate account or annuity meets the applicable requirements of Section 408 or Section 408A, then the account or annuity shall be treated as an individual retirement plan ("deemed IRA") rather than as a qualified employer plan. Key features of the proposed regulations include:

- Contributions to the deemed IRA are to be kept separate from contributions to the qualified employer plan. The qualified employer plan and the deemed IRA are to be treated as separate entities, and each entity is subject to the rules of Code sections 408 and 408(A) regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration applicable to that specific entity.
- A separate trust does not have to be created for each account that qualifies as a
 deemed IRA; rather, deemed IRAs may be held in a single trust as long as that trust
 is separate from the trust that holds the qualified plan assets. When a single trust is
 created for the deemed IRAs, there must be separate accounting for all the deemed
 IRAs and each of the deemed IRAs must satisfy all requirements of Section 408(a).
- There are three exceptions to treating the entities separately:
 - For plan years beginning after January 1, 2004, the plan document must include the deemed IRA provisions and a deemed IRA must be in effect at the time deemed IRA contributions are accepted.
 - The Section 408(a)(5) requirements regarding commingling of assets do not apply
 to deemed IRAs. Deemed IRA assets may be commingled with qualified employer plan assets for investment purposes. However, separate accounts must be
 maintained and gains and losses must be allocated to these separate accounts.
 - If any of the deemed IRAs maintained by a qualified employer plan fails to satisfy the applicable requirements of Section 408 or 408A, in form or operation, this will cause the qualified plan as a whole to fail to satisfy the plan's qualification requirements.
- The availability of a deemed IRA is not a benefit, right, or feature of the qualified employer plan, and therefore not subject to the nondiscrimination requirements of Section 1.401(a)(4)-1(b)(3).
- A deemed IRA may either be a traditional IRA or a Roth IRA. Employees are responsible for determining and reporting the tax consequences of voluntary contributions made to the deemed IRA.
- The trustee or custodian of an individual retirement account, including deemed IRAs, must be a bank, as required by Section 408(a)(2), or if the trustee is not a bank, the trustee must be an entity approved by the IRS to serve as a nonbank trustee or nonbank custodian pursuant to Section 1.408-2(e) of the regulations.on current market standards at the time of the loan. The repayment rules in the regulations require that loan repayments must be made at least quarterly, through level, amortized payments.

For more information, see the full text of the proposed regulations at http://www.irs.gov/pub/irs-regs/ 15730202.pdf or contact NAGDCA Senior Project Coordinator Gina Vessels at gvessels@amrinc.net.

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