



NAGDCA NOTES

IRS Releases Final Regulations for Deemed IRAs - August 2004

The IRS issued final regulations pertaining to Deemed IRAs effective July 22, 2004. 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 final regulations include:

- A separate trust is not required for deemed IRAs as long as separate accounting is maintained for each deemed IRA.
- Roth IRAs and deemed traditional IRAs can be held in a single trust, as long as the trustee maintains separate accounts for each type of IRA held by a participant.
- If qualified plan assets and the deemed IRA are held in separate trusts (permitted in the final regulations), then disqualification by either the plan or the deemed IRA will not cause automatic disqualification of the other. However, IF the qualified plan assets and the Deemed IRA are held in a single trust, disqualification by either portion (the plan or the Deemed IRA) will lead to automatic disqualification of the other portion.
- Under the final regulations, an "employee" who is eligible to participate in a deemed IRA is defined to include any individual under the rules applicable to the qualified employer plan under which the deemed IRA is established. This generally includes self-employed individuals (see the definition for exceptions). However, although independent contractors are eligible to participate in governmental section 457 plans, they do not meet this definition of "employees," and cannot participate in a deemed IRA maintained in such a plan.
- 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 proposed deemed IRA regulations released in May 2003 required that a 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. Governmental entities were very concerned about the additional administrative costs of having to meet this requirement. The final deemed IRA regulations include temporary regulations that allow governmental units to serve as deemed IRA trustees if they can demonstrate to the IRS they will administer the deemed IRA consistent with Code Section 408(a).

For more information, see the full text of the final regulations at <http://www.irs.gov/pub/irs-regs/td91421.doc> or contact NAGDCA Senior Project Coordinator Gina Vessels at gvessels@amrinc.net.

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