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August 14, 2003

Certified Mail/Return Receipt Requested

E-Mail Delivery
www.irs.gov/regs

CC:PA:RU (REG--157302-02)
Room 5226
Internal Revenue Service
POB 7604, Ben Franklin Station
Washington, DC 20044

Re: Proposed Regulations Regarding Deemed IRAs

Ladies and Gentlemen:

I am writing on behalf of Great-West Retirement Services,(sm) a division of Great-West Life & Annuity Insurance Company (Great-West), with regard to proposed regulations under Internal Revenue Code (Code) §408(q), which were published in the Federal Register on May 20, 2003 dealing with deemed IRAs. Great-West ranks as one of the oldest and largest providers of retirement services to the public sector, servicing more than 11,900 defined contribution clients and more than 2.5 million plan participants in qualified plans, §403(b) arrangements and eligible §457(b) plans.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) amended provisions of the Code to permit certain retirement plans to offer IRA programs within and as a part of a qualifying retirement plan. The Job Creation and Worker Assistance Act of 2002 (JCWAA) clarified that Code §457 plans maintained by state and local governments are qualified to offer deemed IRAs. These deemed IRAs are governed by new Code §408(q), which permits a qualified employer plan to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan which will be treated for purposes of the Code as an individual retirement plan. Deemed IRA accounts, even though part of a qualifying retirement plan, remain subject to the rules of Code §§408 and 408A.

Great-West commends the Treasury Department and the Internal Revenue Service (IRS) for the regulations proposed under Code §408(q). Your efforts are much appreciated.

There are, however, three provisions which, if modified, would simplify administration, consonant with the statutory provisions of §408(q), and would benefit participants, plan sponsors and service providers alike. Specifically, this letter respectfully requests modification or clarification of the following provisions regarding deemed IRAs:

- Requirement that trustee or custodian of a deemed IRA be a bank, or an IRS approved entity;
- Requirement that deemed IRA assets be held in a separate trust or annuity contract; and
- Plan disqualification should any deemed IRA violate the provisions of §408 or §408A.

COMMENTS ON PROPOSED REGULATIONS

Requirement that trustee or custodian of a deemed IRA be a bank, or an IRS approved entity.

Prop. Reg. §1.408(q)-1(f)(1) requires the trustee or custodian of an individual retirement account to be a bank, as required by Code §408(a)(2), or, if the trustee is not a bank, as defined in §408(n), the trustee must be an entity that receives approval from the IRS to serve as a nonbank trustee or nonbank custodian pursuant to Reg. §1.408-2(e). Reg. §1.408(n) was promulgated in 1980, long before deemed IRAs were permitted, and thus employers seeking to offer a deemed IRA have not had an opportunity to comment. Additionally, the nonbank trustee regulations have not been amended to reflect tax law changes from 1981 to the present.

The nonbank trustee rules are particularly disadvantageous to sponsors of governmental plans wanting to offer deemed IRA programs by operation of Code §408(q)(3)(A). Servicing fourteen of the fifty states and the Government of Guam, Great-West is the number one provider of defined contribution services to state government plans. In addition, we are the second largest provider in the government market overall, with more than one million participants in governmental plans. On behalf of our government clients, we respectfully request that consideration be given to exempting state and local governments who self-trustee their qualifying retirement plans from the regulatory approval process for nonbank trustees under Reg. §1.408-2(e). Code §408(q) specifically states that deemed IRAs are to be established under the plan, and we request that the plan trustee be allowed to serve as trustee for both the retirement plan assets and the deemed IRA assets under the plan.

If complete exemption from the nonbank trustee approval process is not granted, we request consideration of a number of modifications to Reg. §1.408-2(e) to allow state and local government employers to serve as trustee for deemed IRAs under a qualifying retirement plan:

(1) eliminate ownership requirements as evidence of business continuity, §1.408-2(e)(2)(i);

(2) modify §1.408-2(e)(2)(iii) and §1.408-2(e)(3) to permit recordkeeping and administration by third party contractors;

(3) modify the net worth and liquidity requirements as evidence of financial responsibility in §1.408-2(e)(2)(v) to accommodate state and local governments;

(4) modify §1.408-2(e)(4) to permit third party custodial services;

(5) modify the fiduciary conduct rules in §1.408-2(e)(5) to permit third party investment managers and investment consultants;

(6) eliminate the separate trust division requirement in §1.408-2(e)(5)(i)(D) with respect to governmental plans adopting deemed IRAs;

(7) eliminate the net worth requirements of §1.408-2(e)(5)(ii);

(8) modify the custody of investments provisions of §1.408-2(e)(5)(v) consistent with exemption from commingling restrictions for deemed IRAs; and

(9) eliminate or modify the administrative requirements of §1.408-2(e)(5)(vi)(A)-(F) to allow deemed IRA accounts to be sub-trusteed within, but separate from, the qualified retirement trust or annuity of the adopting plan.

These modifications would permit state and local government employers, many of which must by statute self-trustee their qualifying retirement plans, to adopt and self-trustee deemed IRAs. These modifications would further the intended purpose of EGTRRA and JCWAA, which allow such accounts to be established within a governmental plan. Any other result will add unnecessary costs and administrative burdens on employers, participants and administrators alike.

Requirement that deemed IRA assets be held in a separate trust or annuity contract.

Prop. Reg. §1.408(q)-1(f)(2) provides for the deemed IRA assets to be held in a trust or annuity separate from the qualified plan trust or annuity. The statute, however, appears to permit deemed IRAs to be held in a separate account within the same trust or annuity used to hold plan assets. Requiring separate trusts and annuity contracts for the deemed IRA assets does not seem consistent with the intent of EGTRRA. In fact, Code §408(q) and its legislative history indicate that deemed IRAs are separate from the adopting employer's plan only to the extent necessary to satisfy the IRA requirements of §408.

If in fact the deemed IRA assets are required to be held in a separate trust or annuity, then §408(q) would be unnecessary. Code §408(c) already permits employer-sponsored IRAs, which are separate and distinct entities. The intent of Code §408(q), on the other hand, was to permit employers to establish deemed IRAs under a retirement plan, and to commingle the deemed IRA assets with the retirement plan assets for investment purposes. Under the statute, the deemed IRA account within the adopting plan is "treated" as an IRA. It is "deemed" to be an IRA within the plan, not a separate, distinct entity. There is no specific statutory basis for the separate trust requirement imposed by Prop. Reg. §1.408(q)-1(f)(2). The statute uses the word "account" with respect to deemed IRAs, not "trust" or "annuity."

In our view, except for the special tax attributes of IRAs under §408, deemed IRAs should be considered a integral part of the adopting plan. A model for separate accounting, rather than a separate trust, to preserve the tax attributes of the deemed IRA assets is found in §1.457-10(e)(2) of the final regulations governing governmental deferred compensation plan published in the Federal Register on July 11, 2003. Under these final regulations, the governmental plan accepting IRA rollovers must provide that it will separately account for all such amounts so that the premature distribution penalty tax rules under §72(t) are preserved.

Imposition of a separate trust requirement would be costly and cumbersome and provide no additional protection to employees. Separate trusts are not required by the statute and are inconsistent with the statute and Congressional intent. We therefore respectfully request that the separate trust requirement for deemed IRA accounts under Prop. Reg. §1.408(q)-1(f)(2) be eliminated.

Plan disqualification should any deemed IRA violate the provisions of §408 or §408A.

Prop. Reg. §1.408(q)-1(g) provides that if any of the deemed IRAs fail to satisfy the applicable requirements of §§408 and 408A, §408(q) does not apply and the plan will fail to satisfy the plan's qualification requirements. We see no tax policy reason to disqualify the entire retirement plan due to a failure of a single deemed IRA account. Disqualification of the plan is a very draconian penalty that will drastically reduce the number of employers willing to make deemed IRAs available to plan participants.

If employers must retain a bank trustee and maintain separate trusts or annuities for deemed IRA assets, most will choose to establish an employer-sponsored IRA pursuant to Code §408(c) rather than risk plan disqualification by establishing a deemed IRA under Code §408(q). The risk of plan disqualification outweighs any benefit derived from calling the IRA accounts "deemed IRAs" rather than "employer-sponsored IRAs."

We respectfully request amendment of the proposed regulations to provide that the failure of any deemed IRA to satisfy the applicable requirements of Code §§408 and 408A be corrected as provided under those sections of the Code without impacting the qualified status of the adopting plan.

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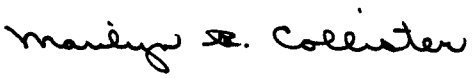
Great-West appreciates the opportunity to comment on these important matters. If you have questions or need additional information, please contact Marilyn R. Collister, Great-West's National Director of Defined Contribution Programs, at (303) 737-3819 or at marilyn.collister@gwl.com.

Sincerely,



Marilyn R. Collister
National Director, Defined Contribution Programs