

collection of information is required to obtain a benefit. Specifically, this information is required for a taxpayer who wants to include individual retirement plans as part of its qualified employer plan.

Estimated total annual reporting and/or recordkeeping burden: 40,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 50 hours.

Estimated number of respondents and/or recordkeepers: 800.

The estimated frequency of responses is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 408(q) of the Internal Revenue Code (Code) relating to the addition of separate accounts and annuities to qualified employer plans. Section 408(q) was added to the Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107-16 (115 Stat. 117) and amended by section 411 of the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107-147 (116 Stat. 21).

Explanation of Provisions

Section 408(q) provides that, if a qualified employer plan allows employees to make voluntary employee contributions to a separate account or annuity established under the plan and under the terms of the qualified employer plan such account or annuity meets the applicable requirements of section 408 or section 408A for an individual retirement account or annuity, then such account or annuity shall be treated for purposes of the Code in the same manner as an individual retirement plan rather than as a qualified employer plan. It further provides that contributions to such a "deemed IRA" shall be treated as contributions to the deemed IRA rather than to the qualified employer plan. Section 408(q) also expressly provides that the prohibition of commingling IRA

assets with other property except in a common trust fund or common investment fund shall not apply to deemed IRAs. These proposed regulations define *qualified employer plan* and *voluntary employee contribution* as they are defined in section 408(q) of the Code.

Rules regarding deemed IRAs are also provided in section 4(c) of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829) (ERISA), 29 U.S.C. 1003(c), as amended by Public Law 107-147 (116 Stat. 21). Section 4(c) provides that if a pension plan allows an employee to make voluntary employee contributions to a deemed IRA under section 408(q) of the Code, then the deemed IRA shall not be treated as part of such plan (or as a separate pension plan) for purposes of any provision of title I of ERISA other than section 403(c), 404, or 405 (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities). Section 4(c), as amended by JCWAA, further provides that the enforcement and administration rules of part 5 of subtitle B of title I of ERISA apply to deemed IRAs and that the applicable ERISA provisions shall apply to deemed IRAs in a manner similar to their application to a simplified employee pension (SEP) under Code section 408(k). Because title I of ERISA is within the jurisdiction of the Department of Labor, these regulations do not address the application of title I to deemed IRAs. Also, these regulations do not address the application of Code section 4975 to deemed IRAs. Section 102 of Reorganization Plan No. 4 of 1978 provides that the authority to interpret section 4975 has been transferred to the Department of Labor.

In general, these proposed regulations provide that a qualified employer plan and a deemed IRA are to be treated as separate entities under the Code and that each entity is subject to the rules generally applicable to that entity for purposes of the Code. Thus, a qualified employer plan (excluding the deemed IRA portion of the plan), whether it is a plan under section 401(a) (including defined benefit plans), 403(a), or 403(b), or a governmental plan under section 457(b), is subject to the rules applicable to that type of plan rather than to the rules applicable to IRAs under section 408 or 408A. Similarly, the deemed IRA portion of the qualified employer plan is generally subject to the rules applicable to traditional and Roth IRAs under sections 408 and 408A, respectively, and not to the rules applicable to plans under section 401(a), 403(a), 403(b), or 457.

Accordingly, these proposed regulations provide that issues regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if any) applicable to each entity. In addition, these regulations specifically address several issues regarding the separate applicability of plan and IRA rules. For example, these proposed regulations provide that the availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under § 1.401(a)(4)-4. Thus, the availability of a deemed IRA is not subject to § 1.401(a)(4)-1(b)(3) which requires that benefits, rights, and features be available in a plan in a nondiscriminatory manner.

Similarly, these proposed regulations provide that the rules applicable to deemed IRAs with respect to the trusteeship of the IRA and deductibility of IRA contributions are the rules applicable to traditional IRAs and Roth IRAs under the Code. Thus, for example, taxpayers with compensation in excess of the limits imposed by sections 219 and 408A may either not be able to make contributions to deemed IRAs or the deductibility of such contributions may be limited. For deemed IRAs that are traditional IRAs, as with other traditional IRAs, the employee must make a determination as to whether a particular contribution is deductible and make the proper entries on his or her tax return. Pursuant to section 219(f)(3), a contribution made on account of the preceding taxable year will be treated as made on the last day of such taxable year if the contribution is actually made to the IRA not later than the time prescribed by law for filing the return for such taxable year (not including extensions). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs. Thus, amounts withheld from an employee's compensation and contributed to a deemed IRA, and which are treated as made on the last day of the preceding taxable year pursuant to section 219(f)(3), shall be includible in income in the year in which they are withheld rather than in the preceding taxable year.

The proposed regulations also provide that the minimum distribution rules of section 401(a)(9) of the Code must be met separately with respect to the qualified employer plan and the deemed IRA. The determination of whether a qualified employer plan satisfies the