LLB&L Client Alert

December 10, 2009

Authors

Laurence A. Hansen
312-443-0456
lhansen@lockelord.com

Linda J. Simon
312-443-0672
lsimon@lockelord.com

New Lump Sum Distribution Notices Required for 2010

Since the addition of section 402(f) to the Internal Revenue Code (the "Code") in 1992, plan administrators of qualified retirement plans, *e.g.*, 401(k) plans, profit sharing plans, ESOPs and pension plans, have been required to provide a special notice to participants receiving a distribution from the plan that is eligible to be rolled over to an IRA or another qualified plan. This so-called "402(f) notice" must be distributed 30 to 180 days in advance of the distribution. A participant can waive the 30-day minimum, but not the 180-day maximum.

The 402(f) notice must explain the rollover rules, tax consequences of lump-sum distributions, direct rollover options (including automatic rollover), mandatory 20 percent withholding rules, and tax consequences and distribution restrictions applicable to rollovers to different types of plans.

With the recent issuance of IRS Notice 2009-68, the IRS published two updated safe harbor notices that will satisfy Code section 402(f). These long-awaited notices replace the prior safe harbor notice issued by the IRS in 2003. One notice is for distributions from designated Roth accounts. The other is for distributions from accounts other than designated Roth accounts. Both notices should be provided to a participant eligible to receive distributions from both Roth and non-Roth accounts. While plan administrators are not required to use the new safe harbor notices, most will do as the safe harbor notices automatically meet the requirements of Code section 402(f). The old safe harbor notice from 2003 will no longer satisfy the requirements of Code section 402(f) after December 31, 2009. The new notices will satisfy the requirements after that date.

Linked below are Word versions of the two new safe harbor notices contained in IRS Notice 2009-68 that you can download and modify for your use:

Safe Harbor Notice – Roth Account

Safe Harbor Notice – Non-Roth Account

You may wish to modify the notices linked above by deleting sections that do not apply to your plan:

If the Plan:	You Can Delete Section Entitled:
Does not provide for employee after-tax contributions	"If your payment includes after-tax contributions"
Does not hold employer stock as an investment	"If your payment includes employer stock that you do not roll over"
Is not a government plan	"If your payment is from a governmental section 457(b) plan" and "If you are an eligible retired public safety officer …"

If you have any questions regarding these new notices or complying with the Code section 402(f), please contact the Locke Lord employee benefit attorney you regularly work with, or either of the authors.

About the Authors

Laurence A. Hansen is a partner at LLB&L. He has more than 25 years of experience in the area of taxation, with emphasis on employee benefits and executive compensation. He has represented national clients in many complex corporate and employee benefits transactions, including plan mergers and terminations.

Linda J. Simon is an associate at LLB&L. She practices in the tax and employee benefits areas, focusing on qualified pension, profit sharing and 401(K) plans and executive deferred compensation.

www.lockelord.com