

## Employee Plans News

**Issue 2014-5, March 27, 2014**

[IRA one-rollover-per-year rule](#) - Beginning as early as January 1, 2015, you can only make one rollover during any 1-year period from all your IRAs (Announcement 2014-15)

[New two-year period to adopt pre-approved defined contribution plans](#) – most opinion and advisory letters to be issued on March 31, 2014; employers must adopt new plans by April 30, 2016 (Announcement 2014-xx)

[403\(b\) pre-approved plans](#) - deadline for submitting 403(b) pre-approved plans extended to April 30, 2015, and eligibility criteria changed to allow more plan sponsors and employers to participate in the program (Revenue Procedure 2014-28)

[Errors on power of attorney and representative forms](#) - common errors on Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization, submitted with determination letter applications

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### IRA One-Rollover-Per-Year Rule

Beginning as early as January 1, 2015, you can make only one rollover from a traditional IRA to another (or the same) traditional IRA in any 12-month period, regardless of the number of IRAs you own ([Announcement 2014-15](#)). A similar limitation will apply to rollovers between Roth IRAs. You can, however, continue to make as many trustee-to-trustee transfers between IRAs as you want. Amounts transferred between traditional IRAs, either by rollover or trustee-to-trustee transfer, are excluded from your gross income.

#### Current law

You don't have to include in your gross income any amount distributed to you from a traditional IRA if you deposit the amount into another (or the same) traditional IRA within 60 days (Internal Revenue Code Section 408(d)(3)). Under Internal Revenue Code Section [408\(d\)\(3\)\(B\)](#), only one IRA-to-IRA rollover can be made in any 12-month period. Proposed Treasury Regulation Section 1.408-4(b)(4)(ii), published in 1981, and IRS [Publication 590](#), *Individual Retirement Arrangements (IRAs)* interpret this limitation as applying on an IRA-by-IRA basis, meaning a rollover from one IRA to another would not affect a rollover involving other IRAs of the same individual.

#### U.S. Tax Court decision

The Tax Court recently held that you can't make a non-taxable rollover from one IRA to another if you have already made a rollover from **any** of your IRAs in the preceding 1-year period ([Bobrow v. Commissioner](#), T.C. Memo. 2014-21). Following the holding in this decision means:

- you must include in gross income any previously untaxed amounts distributed from an IRA if you made an IRA-to-IRA rollover in the preceding 12 months, and
- you may be subject to the 10% early withdrawal tax on the amount you include in gross income.

Additionally, if you pay these amounts into another (or the same) IRA, they may be:

- [excess contributions](#), and
- taxed at 6% per year as long as they remain in the IRA.

### **Prospective application**

The IRS intends to follow the Tax Court's interpretation of Internal Revenue Code Section [408\(d\)\(3\)\(B\)](#). However, to give IRA owners and trustees time to adjust, the IRS will delay implementation until January 1, 2015, at the earliest. Proposed Treasury Regulation Section 1.408-4(b)(4)(ii) will be withdrawn and Publication 590 will be revised to reflect the new interpretation.

### **Only rollovers will be affected**

This change won't affect your ability to transfer funds from one IRA trustee directly to another, because this type of transfer isn't a rollover (Revenue Ruling 78-406, 1978-2 C.B. 157). The one-rollover-per-year rule of Internal Revenue Code Section 408(d)(3)(B) applies only to rollovers.

### **Additional resources**

- [Individual Retirement Arrangements \(IRAs\)](#)
- [Rollover of Retirement Plan and IRA Distributions](#)

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### **New Two-Year Period to Adopt Restated Pre-approved DC Plans**

The IRS expects to issue most opinion and advisory letters for the latest round of pre-approved defined contribution plans on March 31, 2014. Employers using pre-approved defined contribution plan documents must adopt plan documents restated for the 2010 Cumulative List by April 30, 2016 ([Announcement 2014-16](#)).

### **Determination letters for pre-approved defined contribution plans**

Starting May 1, 2014, and ending April 30, 2016, employers can submit applications for individual determination letters for pre-approved defined contribution plans.

An employer who adopts a master & prototype plan (standardized or non-standardized) may not apply for its own determination letter on Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*

([instructions](#)) – instead, the employer should rely on the letter issued to the plan sponsor.

However, an adopting employer who made limited modifications to its volume submitter plan may apply for a determination letter on [Form 5307](#). If the modifications are extensive, causing the plan to be treated as an individually designed plan, the employer must instead file [Form 5300](#), *Application for Determination for Employee Benefit Plan*.

See [Revenue Procedure 2014-6, sections 8 and 9](#) for more information on determination letter applications for pre-approved plans.

#### **Additional resources**

- FAQs: [Changes Relating to Form 5307 and Demos](#)
  - [Adopting Employers](#)
  - [Determination, Opinion and Advisory Letters](#)
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### **Changes to the 403(b) Pre-Approved Plan Program**

[Revenue Procedure 2014-28](#) extends the deadline for submitting 403(b) pre-approved plans under [Revenue Procedure 2013-22](#) from April 30, 2014, to April 30, 2015.

In response to comments from plan sponsors and practitioners, Revenue Procedure 2014-28 also modifies the eligibility criteria under Revenue Procedure 2013-22 to allow more plan sponsors and employers to participate in the 403(b) pre-approved plan program.

The IRS established the 403(b) pre-approved plan program in Revenue Procedure 2013-22. Under the program, pre-approved sponsors of 403(b) plans may apply to the IRS for approval of a 403(b) prototype plan or a 403(b) volume submitter plan. Once approved, plan sponsors make the plan available to employers for adoption.

Revenue Procedure 2014-28 makes the following changes to Revenue Procedure 2013-22:

- Reduces the required number of employers expected to adopt a plan sponsor's pre-approved plan from 30 to 15.
- Reduces the required number of plan sponsors required to use a mass submitter's plan as their pre-approved plan on a word-for-word identical basis from 30 to 15.
- Changes the definition of a "minor modifier" by allowing a plan sponsor to make minor modifications to a mass submitter's volume submitter plan as well as its prototype plan.

#### **Additional resources**

- [403\(b\) pre-approved plans](#)
- [Determination, Opinion and Advisory Letters](#) home page

## Errors Found on Power of Attorney and Representative Forms in Determination Cases

IRS determination specialists have identified errors in completing [Form 2848](#), *Power of Attorney and Declaration of Representative*, and [Form 8821](#), *Tax Information Authorization*, submitted with determination letter applications:

- For their representative to receive any information requests or a copy of the determination letter, the taxpayer must check the box under the representative's address on the Form 2848, or box 5a of the Form 8821. If not checked, the determination specialist can only speak with the taxpayer and can't contact the representative by letter to explain any amendments or forms needed to complete the application review process.
- Form 8821 authorizes any third party, including an unenrolled return preparer or a registered tax return preparer, to inspect and receive tax information in any IRS office. It doesn't grant the ability to represent taxpayers, speak for them or to submit proposed amendments.
- An unenrolled return preparer may not be listed on a Form 2848 for use with the Employee Plans Determination program.
- The title of the person signing Form 2848 for the taxpayer must be listed, and this person must have the authority to bind the taxpayer.
- If the taxpayer signs the form first, the representative must sign the form within 45 days (60 days if the taxpayer is outside of the U.S.A),
- The taxpayer identification number, plan number, and the taxpayer's name and address must be included for the forms to be valid.
- If the taxpayer or representative's contact information changes during the pending determination letter application, please send an updated Form 2848, including a cover letter with explanation and the application document locator number, if available to:

Internal Revenue Service  
P.O. Box 12192  
Covington, KY 41012-0192