

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113694-98]

RIN 1545-AW59

Increase In Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing guidance relating to the increase from \$3,500 to \$5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. In addition, these proposed regulations propose the elimination, for all distributions, of the “lookback rule” pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions. These proposed regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The text of those temporary regulations also serves as a portion of the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 22, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-113694-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-113694-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs/ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael J. Karlan, (202) 622-6030 (not a toll-free call); concerning submissions, Michael Slaughter, (202) 622-7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to the increase from \$3,500 to \$5,000 of the "cash-out limit" described in sections 411(a)(7), 411(a)(11), and 417(e)(1) of the Internal Revenue Code, as amended by section 1071 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788 (1997).

The text of the temporary regulations also serves as a portion of the text of the proposed regulations. The preamble to the temporary regulations explains the

temporary regulations.

As also discussed in the preamble to the temporary regulations, §1.411(a)-11(c)(3), interpreting the law prior to the enactment of TRA '97, provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than \$3,500. If the present value does not exceed \$3,500, the consent requirements are deemed satisfied, and the plan may distribute that portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds \$3,500, then the present value at any subsequent time shall be deemed to exceed \$3,500; this is commonly referred to as the "lookback rule." Section 1.417(e)-1(b)(2)(i) includes a parallel lookback rule.

The temporary regulations remove the lookback rule under section 411(a)(11) for most distributions, but preserve the rule for distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable.

These proposed regulations remove the lookback rule under §§1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(i). In accordance with section 417(e)(1), these proposed regulations also provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued

benefit is being distributed, this provision applies only to that portion (and not to the portion with respect to which no distributions are being made).

Under this removal of the lookback rule, the present value of a participant's nonforfeitable accrued benefit could be distributed without consent if the present value does not exceed \$5,000, even if the present value of the participant's nonforfeitable accrued benefit exceeded \$5,000 at the time of a previous distribution. Thus, if the present value of a participant's nonforfeitable accrued benefit previously had been \$6,000, but is presently \$4,000, these proposed regulations would permit the plan to be amended to permit the present value of that participant's nonforfeitable accrued benefit to be distributed without consent (provided that the distribution would not fail to satisfy section 417(e)(1)). The complete removal of the lookback rule described in these proposed regulations would become effective 90 days after the publication of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration

for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Michael J. Karlan, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§1.411(a)-7 also issued under 26 U.S.C. 411(a)(7)(B)(i). * * *

Par. 2. Section 1.411(a)-7 is amended by revising paragraphs (d)(4)(i) and (d)(4)(vi) to read as follows:

§1.411(a)-7 Definitions and special rules.

* * * * *

(d) Rules relating to certain distributions and cash-outs of accrued benefits. * * *

(4) Certain cash-outs of accrued benefits. (i) and (vi) [The text of proposed paragraphs (d)(4)(i) and (vi) is the same as the text of §1.411(a)-7T(d)(4)(i) and (vi) published elsewhere in this issue of the **Federal Register**.]

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Par. 3. Section 1.411(a)-11 is amended by revising paragraph (c)(3) to read as follows:

§1.411(a)-11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(3) Cash-out limit. (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in

effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see §1.417(e)-1(d).

(ii) [The text of proposed paragraph (c)(3)(ii) is the same as the text of §1.411(a)-11T(c)(3)(ii) published elsewhere in this issue of the **Federal Register**.]

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Par. 4. Section 1.417(e)-1 is amended by revising the last sentence of paragraph (b)(2)(i) to read as follows:

§1.417(e)-1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(2) * * * (i) * * * After the annuity starting date, consent is required for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a

qualified preretirement survivor annuity regardless of the amount of such present value.

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/s/ David A. Mader

Acting Deputy Commissioner of Internal Revenue