

Rev. Proc. 98-59

SECTION 1. PURPOSE

This revenue procedure (1) provides guidance on obtaining opinion letters to drafters of Roth IRAs and (2) provides transitional relief for users of Roth IRAs that have not been approved by the Internal Revenue Service.

SECTION 2. BACKGROUND AND GENERAL INFORMATION

.01 Internal Revenue Code § 408A, added by § 302 of the Taxpayer Relief Act of 1997, Pub. L. 105-34, permits the establishment of a new type of individual retirement arrangement, a Roth IRA, that taxpayers can use, beginning in 1998, to save money for their retirement or their beneficiaries. Except as otherwise provided in § 408A and the regulations thereunder, a Roth IRA is treated the same as a traditional IRA.

.02 Subsections (a) and (b) of § 408 set forth general requirements for individual retirement accounts and individual retirement annuities, respectively.

.03 Section 408(c) provides that a trust established by an employer or an association of employees for the benefit of employees or members, respectively, is treated as an IRA if there is a separate accounting for each employee or member and the trust otherwise satisfies the requirements of § 408(a) (a "section 408(c) IRA").

.04 In 1997, the Service issued two model forms, Form 5305-R and Form 5305-RA that may be used to establish a Roth IRA as a trust account or a custodial account, respectively. In 1998, the Service issued Form 5305-RB, a model endorsement that can be used to establish a Roth individual retirement annuity. Model forms issued by the Service contain pre-approved language that, if followed, will satisfy the applicable statutory requirements. Model forms should not be submitted to the Service, even if additional provisions are added to Article IX of the forms, provided that the additional provisions comply with the instructions for Ar-

title IX. (But see section 3.05 of this revenue procedure regarding automatic approval of Roth IRA documents that contain language identical to a model form.)

.05 Announcement 97-122, 1997-50 I.R.B. 63 (December 15, 1997), which was issued at the same time as Forms 5305-R and 5305-RA, announced the issuance of these forms and provided interim guidance on Roth IRAs.

.06 On September 3, 1998, proposed Income Tax Regulations under § 408A were published in the Federal Register (63 F.R. 46937).

.07 Notice 98-49, 1998-38 I.R.B. 5 (September 21, 1998), provides guidance on Service-approved Roth IRA documents and IRA reporting requirements.

.08 Notice 98-50, 1998-44 I.R.B. 10 (November 2, 1998), provides guidance on reconverting amounts from a traditional IRA to a Roth IRA.

.09 Rev. Proc. 87-50, 1987-2 C.B. 647, provides the procedures for a sponsoring organization or a mass submitter (a "prototype sponsor") to apply to the Service for an opinion letter on whether a prototype traditional IRA meets the requirements of § 408(a) or (b). Rev. Proc. 87-50 also contains procedures for employers and employee associations to apply for a ruling on a section 408(c) IRA.

.10 Rev. Proc. 98-8, 1998-1 I.R.B. 225 (January 5, 1998), provides guidance to taxpayers for complying with the user-fee program as it pertains to matters under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations).

SECTION 3. OPINION LETTERS FOR ROTH IRAS

.01 *Prototype program.* A prototype sponsor may apply to the Service for an opinion letter for a Roth IRA submitted pursuant to this section 3. The same procedures and user fees apply to a submission for an opinion letter for a Roth IRA as those that apply for a traditional IRA, with the exceptions described in sections 3.02 and 3.03 below. (See Rev. Procs. 87-50 and 98-8.)

.02 *Procedural requirements.* An application for approval of a prototype Roth

IRA must be submitted using Form 5306, Application for Approval of a Prototype Individual Retirement Arrangement, with the words "Roth IRA" written in the upper margin of the form. The application must be accompanied by a user fee in the same amount as set by Rev. Proc. 98-8 for a traditional IRA.

.03 *Dual-purpose prototype documents.* A prototype document can only be used as one type of IRA (traditional, SIMPLE, or Roth). However, a prototype document may be designed for use as either a traditional IRA or a Roth IRA provided the conditions in (1) and (2) below are satisfied:

(1) The document is designed so that, upon execution, the owner must explicitly and unambiguously indicate whether the IRA is to be a Roth IRA or a traditional IRA, and it is clear that designation as one type precludes its use as the other type.

(2) Contributions to a Roth IRA are maintained in a separate trust, custodial account or annuity from contributions to a traditional IRA.

Application for approval of such a dual-purpose prototype document must be submitted using Form 5306, with the words "Dual-purpose IRA" written in the upper margin of the form. Except in the case of a sponsoring organization's word-for-word identical adoption of a mass submitter's prototype dual-purpose IRA, the application must be accompanied by a user fee in the amount of 200 percent of the applicable fee set by Rev. Proc. 98-8 for a prototype IRA.

.04 *Section 408(c) IRA program.* An employer or employee association may apply to the Service for an opinion letter for a section 408(c) IRA that is a Roth IRA using the same procedures in sections 3.01 and 3.02 above that apply for a prototype Roth IRA.

.05 *Model form language.* The Service will not issue an opinion letter on a document which terms are word-for-word identical to the operative provisions of one of the model forms described in section 2.04 of this revenue procedure (other than any provisions which may be added as Article IX to the form). Such a document is deemed to meet the statutory requirements for a Roth IRA. However, the

document should indicate which model form it is identical to and the revision date of the form.

.06 *Sample language.* Sample language (also known as Listing of Required Modifications, or LRMs) that the Service finds acceptable for Roth IRAs may be obtained by writing to the Service at: Internal Revenue Service, 1111 Constitution Avenue NW, Attention OP:E:EP, Room 6550, Washington, D.C. 20224. “LRM Request” should be clearly printed on the envelope. Alternatively, a request for an LRM may be faxed to Nancy Arrington at (202) 622-6199.

SECTION 4. TRANSITIONAL RELIEF

.01 *Prototype IRAs.* An individual who establishes a trust, custodial account or annuity contract as a Roth IRA after December 31, 1997, and before the applicable date in section 4.01(3) below using a document that has not been approved by the Service for use as a Roth IRA is deemed to have used a document that has been approved by the Service for this use provided the conditions in sections 4.01(1) through 4.01(4) below are satisfied:

(1) The individual used a document provided by a prototype sponsor and the document, or associated written material, clearly designated the trust, custodial account or annuity as a Roth IRA at the time of establishment.

(2) On or before June 30, 1999, the prototype sponsor applies to the Service for an opinion letter on the document described in section 4.01(1) above using the procedures described in section 3 of this revenue procedure.

(3) The individual adopts the ap-

proved document within 120 days after the later of: (a) the date the Service issues a favorable opinion letter on the document to the prototype sponsor and (b) if the prototype sponsor seeks approval of the document from one or more state insurance departments not later than 90 days after the Service issues a favorable opinion letter on the document, the date the document is approved by all such state insurance departments. If, as a result of amendments to the document required by a state insurance department, the prototype sponsor applies to the Service for an opinion letter on the amended document within 90 days after it is approved by such state insurance department, the date in (a) in the preceding sentence is the date the Service issues a favorable opinion letter on the amended document.

(4) For the period beginning with the establishment of the Roth IRA and ending on the date the Service-approved document is adopted, the individual and the trustee, custodian or issuer comply in operation with § 408A.

.02 *Section 408(c) IRAs.* An employer or employee association that establishes a trust or custodial account under § 408(c) for use as a Roth IRA after December 31, 1997, and before June 30, 1999, using a document that has not been approved by the Service for use as a Roth IRA is deemed to have used a document that has been approved by the Service for this use provided the conditions in sections 4.02(1) through 4.02(4) below are satisfied.

(1) The employer or employee association used a document that clearly designated the trust or custodial account as a Roth IRA at the time of establishment.

(2) On or before June 30, 1999, the

employer or employee association applies to the Service for an opinion letter on the document described in section 4.02(1) above using the procedures described in section 3 of this revenue procedure.

(3) The employer or employee association adopts the approved document within 30 days after the date the Service issues a favorable opinion letter on the document to the employer or employee association.

(4) For the period beginning with the establishment of the Roth IRA and ending on the date the Service-approved document is adopted, the employer or employee association, the employee for whose benefit the Roth IRA is established, and the trustee or custodian comply in operation with § 408A.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Section 6.06 of Rev. Proc. 98-8 is modified by sections 3.02 and 3.03 of this revenue procedure, and section 6.02 of Rev. Proc. 87-50 is modified by section 3 of this revenue procedure.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective on November 30, 1998.

DRAFTING INFORMATION

The principal author of this revenue procedure is Roger Kuehnle of the Employee Plans Division. For further information regarding this revenue procedure, please contact the Employee Plans Division’s taxpayer assistance telephone service at (202) 622-6074/75 (not toll-free numbers) between 1:30 and 3:30 p.m., Eastern Time, Monday through Thursday.