



WRNewswire

An AALU Washington Report

Friday, 13 January 2017

WRN# 17.01.13

The AALU *WRNewswire* and *WRMarketplace* are published by the Association for Advanced Life Underwriting® and Greenberg Traurig as part of the *Essential Wisdom Series*, the trusted source of actionable technical and marketplace knowledge for AALU members—the nation's most advanced life insurance professionals.

TOPIC: IRS Information Letters Address Retirement Plan/IRA Administration Matters.

In a series of Information Letters, the IRS addressed matters concerning administration of retirement plans and IRAs. In INFO 2016-0072, the IRS explained that the date for payment of required minimum distributions from retirement plans in any calendar year after an employee reaches age 70-1/2 is within the discretion of the plan administrator or may be specified in the retirement plan document. (See INFO 2016-0072). In INFO 2016-0073, the IRS described that distribution of excess 401(k) contributions to highly compensated employees can be required in connection with annual nondiscrimination testing performed to satisfy IRC Section 401(k)(3)(A). (See INFO 2016-0073). In INFO 2016-0080, the IRS stated that legislative action would be necessary for individuals with no compensation (*i.e.*, wages, commissions, professional fees, tips and other amounts received for personal services, taxable alimony and separate maintenance payments, self-employment income and differential wage payments) to be able to contribute to a traditional or Roth IRA (See INFO 2016-0080).

[View INFO 16-0072](#)

[View INFO 16-0073](#)

[View INFO 16-0080](#)

DISCLAIMER

This information is intended solely for information and education and is not intended for use as legal or tax advice. Reference herein to any specific tax or other planning strategy, process, product or service does not constitute promotion, endorsement or recommendation by AALU. Persons should consult with their own legal or tax advisors for specific legal or tax advice.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

September 22, 2016

Number: **2016-0072**
Release Date: 12/30/2016

CONEX-126231-16

UIL: 401.06-00

The Honorable John Cornyn
United States Senate
Providence Towers
5001 Spring Valley Road, Suite 1125E
Dallas, Texas 75244

Attention:

Dear Senator Cornyn:

I am responding to your inquiry dated August 15, 2016, on behalf of your constituent, _____, regarding required minimum distributions (RMDs) under an employer's qualified retirement plan. Specifically, she asked whether an employer may require its employees to receive an RMD on a date the employer specifies or whether the employer must permit the individual to provide the date upon which the individual wants to receive the payment.

Internal Revenue Code section 401(a)(9) provides that an employee must start receiving RMDs from his or her retirement plan generally by April 1 following the calendar year in which an employee turns age 70½ (or, if the plan provides for it, the calendar year in which the employee retires, if later). (Treasury Regulation section 1.401(a)(9)-2, Q&A-2.) Under section 401(a)(9), RMDs after the calendar year in which the employee turns age 70½ or retires must be made on or before the end of the calendar year. (Treasury Regulation section 1.401(a)(9)-5, Q&A-1(c); IRS Publication 575, *Pension and Annuity Income*, page 36.)

Please note the tax rules do not specify a date during the calendar year when the payment must be made, nor do they specify which party determines the date on which payment will be made. The retirement plan document may specify such terms or, if it does not, the procedures for payment of a requested RMD generally would be within the discretion of the plan administrator.

This letter includes general principles of the law. It is intended for informational purposes only and is not a ruling. See Rev. Proc. 2016-1, section 2.04, 2016-1 IRB 8 (Jan. 4, 2016).

I hope this information is helpful. If you have questions, please contact
at our office at _____ or me at _____ .

Sincerely,

Victoria A. Judson
Associate Chief Counsel
(Chief Counsel, Tax Exempt and Government
Entities)

cc:



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

September 22, 2016

Number: **2016-0073**
Release Date: 12/30/2016

CC:TEGE:EB:QP4:
CONEX-126527-16

UIL: 401.29-00, 401.29-01

Dear _____ :

I am responding to a letter you sent to Senator Ron Wyden on August 10, 2016, about a check your husband received from his 401(k) plan. Senator Wyden asked that we respond directly to you on the subject.

You explained a letter accompanying the check provided information about IRS requirements for testing plans annually to ensure all participants benefit on a non-discriminatory basis. You also explained your husband's 401(k) plan returned a portion of his contributions to him in order to pass this year's test. You asked why your husband received this check.

I am sorry for the confusion and frustration you experienced because of this matter. The non-discrimination rule you referred to is in section 401(k)(3)(A) of the Internal Revenue Code (Code). The section sets a limit on how much more highly compensated employees can defer versus non-highly compensated employees. Section 414(q)(1) of the Code describes a "highly compensated employee" as an employee who is a 5-percent owner of the employer maintaining the plan or an employee who earns more than a certain amount in compensation from the employer (the amount was \$120,000 for 2015).

Under section 401(k)(8) of the Code, if highly compensated employees exceed the limits in section 401(k)(3)(A) for a year, the plan must distribute the excess contributions before the end of the next year in order to keep its tax-qualified status.

Most likely, the check your husband received was a distribution of excess contributions under section 401(k)(8).

I hope this information is helpful. If you have questions, please call
at .

Sincerely,

Victoria A. Judson
Associate Chief Counsel
Tax Exempt and Government Entities

cc: The Honorable Ron Wyden



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

October 19, 2016

CC:TEGE:EB:QP4:

Number: **2016-0080**
Release Date: 12/30/2016

CONEX-129782-16

UIL: 408.00-00, 408A.00-00

The Honorable Vicky Hartzler
Member, U.S. House of Representatives
2415 Carter Lane, Suite 4
Columbia, MO 65201

Attention:

Dear Representative Hartzler:

I apologize for the delay in responding to your inquiry dated May 11, 2016, on behalf of your constituent, . asked why individuals must have compensation in order to contribute to a traditional or Roth individual retirement arrangement (IRA).

An individual with compensation for a year can contribute to a traditional IRA, as described in section 408 of the Internal Revenue Code, or a Roth IRA, as described in section 408A of the Code. Allowing individuals with no compensation to contribute to a traditional or Roth IRA would require legislative action.

Compensation, defined in section 219(f)(1) of the Code, includes:

- Wages
- Commissions
- Professional fees
- Tips and other amounts received for personal services
- Taxable alimony and separate maintenance payments received under a decree of divorce or separate maintenance

Compensation also includes earned income for self-employed individuals, as defined in section 401(c)(2), and differential wage payments, as defined in section 3401(h)(2).

I am sorry my response is not favorable, but I hope this information is helpful. If you have questions, please contact _____ or me at _____.

Sincerely,

Neil Sandhu
Senior Technician Reviewer
Qualified Plans Branch 1
(Employee Benefits)
(Tax Exempt and Government Entities)