Required Minimum Distributions for Defined Benefit Plans and Annuity Contracts

Notice 2003–2

PURPOSE

The Internal Revenue Service and Treasury Department intend to issue regulations that will provide further guidance on the minimum distribution requirements of § 401(a)(9) of the Internal Revenue Code for defined benefit plans and annuity contracts. In particular, it is anticipated that the regulations will contain a transition rule permitting plans to satisfy certain requirements set forth in proposed regulations under § 401(a)(9) issued prior to 2002 in lieu of complying with the requirements in A–1 of § 1.401(a)(9)–6T of the Temporary Income Tax Regulations. Further, it is anticipated that the regulations will contain a transition rule permitting the entire interest under an annuity contract to be determined without taking into account the value of certain benefits that would be required to be taken into account under A–12 of § 1.401(a)(9)–6T. Finally, it is anticipated that the regulations will provide that governmental plans must comply with the regulations as of a special effective date described below and will provide transitional relief for the period before the special effective date. The Service and Treasury invite comments on these issues before regulations are issued.

BACKGROUND

Section 401(a)(9) provides rules for required minimum distributions from retirement plans qualified under §§ 401(a) and 403(a). These rules are incorporated by reference in § 408(a)(6) and (b)(3) for distributions from individual retirement arrangements (“IRAs”) (including Roth IRAs with respect to distributions paid following the death of the Roth IRA owner), § 403(b)(10) for distributions from § 403(b) annuity contracts, and § 457(d) for distributions from eligible deferred compensation plans.

Final and temporary regulations relating to required minimum distributions under Code § 401(a)(9) (§§ 1.401(a)(9)–1 through 1.401(a)(9)–5, § 1.401(a)(9)–6T, and §§ 1.401(a)(9)–7 through 1.401(a)(9)–9) were issued on April 17, 2002 (T.D. 8987, 2002–19 I.R.B. 852 [67 FR 18987]). A–2 of § 1.401(a)(9)–1 provides that the final and temporary regulations (including § 1.401(a)(9)–6T) apply for determining required minimum distributions for calendar years beginning on or after January 1, 2003. The preamble to those regulations provides that, for determining required minimum distributions for calendar year 2002, taxpayers may rely on the final and temporary regulations, the 2001 proposed regulations, or the 1987 proposed regulations. (The 1987 proposed regulations were published in the **Federal Register** on July 27, 1987 (EE–113–82, 1987–2 C.B. 881 [52 FR 28070]) and the 2001 proposed regulations were published in the **Federal Register** on January 17, 2001 (REG–130477-00; REG–130481-00, 2001–1 C.B. 865 [66 FR 3928]).) Notice 2002–27, 2002–18 I.R.B. 814, sets forth reporting requirements with respect to required minimum distributions from IRAs.

Section 1.401(a)(9)–6T was issued as a temporary and proposed regulation in order to allow taxpayers to comment on changes made to the rules applicable to defined benefit plans and annuity contracts. The Service received numerous comments relating to the new restrictions on variable annuity payments, and certain other increasing annuity payments, set forth in A–1 of § 1.401(a)(9)–6T. Commentators also requested additional guidance in applying the rule in A–12 of § 1.401(a)(9)–6T that requires the entire interest under an annuity contract to include the actuarial value of other benefits (such as minimum survivor benefits) provided under the contract and that the rule requiring the inclusion of these values (including inclusion in the required reporting to the IRA holder under Notice 2002–27) be delayed until the guidance is provided. Finally, commentators requested that special consideration be provided to governmental plans.

ANTICIPATED REGULATORY PROVISIONS

In order to allow further time for the Service and Treasury to fully consider the issues raised in comments with respect to the new restrictions on variable annuity payments, and certain other increasing annuity payments, set forth in A–1 of § 1.401(a)(9)–6T, and to prevent employers from being required to make changes to their plans until this additional consideration is completed, it is expected that future regulations will provide a transition rule for annuity payments. This transition rule is expected to apply at least through the end of the calendar year final regulations are published and is expected to provide that distributions paid under a defined benefit plan or annuity contract (including an annuity described in § 408(b) or § 403(b)) that satisfy the requirements of A–1 of § 1.401(a)(9)–6 of the 2001 proposed regulations or F–3 and F–3A of § 1.401(a)(9)–1 of the 1987 proposed regulations, will be deemed to satisfy the requirements of A–1 of § 1.401(a)(9)–6T.

In addition, to allow further time for the Service and Treasury to fully consider the issues raised in comments with respect to the rule in A–12 of § 1.401(a)(9)–6T that requires the entire interest under an annuity contract to include the actuarial value of other benefits (such as minimum survivor benefits) provided under the contract and to prevent employers from being required to make changes to their plans until this additional consideration is completed, it is expected that future regulations will provide a transition rule for the determination of the value of annuity contracts. This transition rule is expected to apply at least through the end of the calendar year final regulations are published and is expected to provide that, for purposes of A–12 of § 1.401(a)(9)–6T, the entire interest under an annuity contract (including an annuity described in § 408(b) or § 403(b)) is permitted to be determined as the dollar amount credited to the employee or beneficiary under the annuity contract without regard to the actuarial value of any other benefits (such as minimum survivor benefits) that will be provided under the contract.

Finally, in order to allow further time for the Service and Treasury to fully consider the issues raised in comments with respect to whether and to what extent special consideration should be provided to governmental plans, it is expected that future regulations will provide a special effective date for governmental plans for § 1.401(a)(9)–6T (or any regulation that supersedes or replaces § 1.401(a)(9)–6T). The special effective date is not expected to be earlier than the first calendar year beginning after the later of (1) the calendar year in which the final regulations are published or (2) 90 days after the opening of the first legislative session, beginning on or after the date the final regulations are published, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this paragraph, the governing body with authority to amend the plan is the legislature, board, commission, council, or other governing body with authority to amend the plan. In addition, it is expected that the future regulations will provide a transitional rule for the period before the special effective date that will permit a governmental plan to rely on a reasonable good faith interpretation of § 401(a)(9) as it applies to defined benefit plans and annuity contracts. Compliance with § 1.401(a)(9)–6T, the 2001 proposed regulations, or the 1987 proposed regulations, as they relate to defined benefit plans and annuity contracts, will be deemed to meet this reasonable good faith standard.

RELIANCE

The IRS and Treasury anticipate issuing the regulations described in this notice in 2003. In the meantime, taxpayers may rely on the transition rules described in this notice. Except as described above, taxpayers are required to comply with the final and temporary regulations (including § 1.401(a)(9)–6T) for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003.

For purposes of determining the amount of the required minimum distribution with respect to an IRA for purposes of reporting to the IRA owner under Notice 2002–27, trustees may rely on the transition rule described above for A–12 of § 1.401(a)(9)–6T. Thus, in the case of an annuity contract under an IRA from which annuity payments have not commenced on an irrevocable basis (except for acceleration), the IRA trustee may determine the entire interest under the annuity contract as the dollar amount credited to the employee or beneficiary under the annuity contract without regard to the actuarial value of any other benefits (such as minimum survivor benefits) that will be provided under the contract. The relief provided in this paragraph will continue to be available at least through the end of the calendar year in which final regulations regarding required minimum distributions under a defined benefit plan or annuity contract are issued. Otherwise, the reporting requirements set forth in Notice 2002–27 continue to apply.

COMMENTS REQUESTED

The Service and Treasury invite comments on the issues identified in this notice. Comments should be submitted by March 1, 2003, in writing, and should reference Notice 2003–2.

Comments may be submitted to CC:ITA:RU (Notice 2003–2), room 5226, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered between the hours of 8 a.m. and 4 p.m. CC:ITA:RU (Notice 2003–2), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, D.C. Alternatively, comments may be submitted via the Internet at *Notice.Comments@irscounsel.treas.gov*. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal authors of this notice are Roger Kuehnle of Employee Plans (Tax Exempt and Government Entities Division) and Cathy Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, please contact the Employee Plans taxpayer assistance telephone service (between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday) at 1–877–829–5500 (a toll-free number). Mr. Kuehnle may be reached at 202–283–9888 (not a toll-free number) Ms. Vohs may be reached at 202–622–6090 (not a toll-free number).