

IRS issues coronavirus-related plan distribution and loan guidance

The IRS has issued guidance on coronavirus-related distributions and plan loans, applying Act Sec. 2202 of the coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). The guidance adds three new categories to the list of individuals who qualify due to adverse financial consequences and supplies information on how plans may report coronavirus-related distributions and how individuals may report these distributions on their individual federal income tax returns. The IRS provides examples concerning the reporting of distributions and repayments. The guidance includes safe harbors for employee certification and the plan loan payment suspension period.

Background: coronavirus-distributions and plan loan relief

The CARES Act provides that qualified individuals may treat as coronavirus-related distributions up to \$100,000 in distributions made from their eligible retirement plans (including IRAs) between January 1 and December 30, 2020. A coronavirus-related distribution is not subject to the 10 percent additional tax that otherwise generally applies to distributions made before an individual reaches age 59½. In addition, a coronavirus-related distribution can be included in income in equal installments over a three-year period, and an individual has three years to repay a coronavirus-related distribution to a plan or IRA and undo the tax consequences of the distribution.

Also, the CARES Act provides that plans may implement certain relaxed rules for qualified individuals relating to plan loan amounts and repayment terms. In particular, plans may suspend loan repayments that are due from March 27 through December 31, 2020, and the dollar limit on loans made between March 27 and September 22, 2020, is raised from \$50,000 to \$100,000.

New categories of qualified individuals

One of the categories of individuals who qualify for coronavirus-related distributions is those who experience adverse financial consequences as a result of coronavirus. As laid out in the CARES act, these consequences may include: being quarantined; being furloughed or laid off or having work hours reduced due to the virus or disease; being unable to work because of a lack of child care due to the virus or disease; and closing or reducing hours of a business owned or operated by the individual due to such virus or disease.

The CARES Act authorizes the Treasury Department to add to this list of adverse financial consequences, which includes the following new additions:

- a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19;
- the individual's spouse or a member of the individual's household being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or

- self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or
- closing or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.

For purposes of applying these additional factors, a member of the individual's household is someone who shares the individual's principal residence.

Income inclusion for coronavirus-related distributions

There are two methods for a qualified individual to include the taxable portion of a coronavirus-related distribution in income. A qualified individual who receives a coronavirus-related distribution is permitted to include the taxable portion of the distribution in income ratably over a three-year period that begins in the year of the distribution. Alternatively, a qualified individual is permitted to elect out of the three-year ratable income inclusion and include the entire amount of the taxable portion of the distribution in income in the year of the distribution. This election cannot be made or changed after the timely filing of the individual's federal income tax return (including extensions) for the year of the distribution. All coronavirus-related distributions received in a taxable year must be treated consistently (either all distributions must be included in income over a three-year period or all distributions must be included in income in the current year).

Tax reporting on coronavirus-related distributions

An eligible retirement plan must report the payment of a coronavirus-related distribution to a qualified individual on Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.). This reporting is required even if the qualified individual recontributes the coronavirus-related distribution to the same eligible retirement plan in the same year. If a payor is treating the payment as a coronavirus-related distribution and no other appropriate code applies, the payor is permitted to use distribution code 2 (early distribution, exception applies) in box 7 of Form 1099-R. However, a payor also is permitted to use distribution code 1 (early distribution, no known exception) in box 7 of Form 1099-R.

Recontributions for taxpayers recognizing income in year of distribution

The new guidance goes into some detail about recontributions. Individuals have up to three years to recontribute qualified distributions. Recontributed dollars are not taxed, so earlier returns may have to be amended. The rules differ depending on whether the individual is recognizing income over three years or entirely in the year of distribution.

If a qualified individual elects to include all coronavirus-related distributions received in a year in gross income for that year and recontributes any portion of the coronavirus-related distributions to an eligible retirement plan at any time during the three-year recontribution period, then the amount of the recontribution will reduce the amount of the coronavirus-related distribution included in gross income for the year of the distribution. Qualified individuals will

report the amount of recontributions on Form 8915-E (Qualified 2020 Disaster Retirement Plan Distributions and Repayments) (which will be filed with an individual's federal income tax return, if applicable). Note that Form 8915-E is expected to be available before the end of 2020.

If a qualified individual includes a coronavirus-related distribution in gross income in the year of the distribution and recontributes the distribution to an eligible retirement plan after the timely filing of the individual's federal income tax return for the year of the distribution (that is, after the due date, including extensions), the individual will need to file an amended federal income tax return for the year of the distribution. The qualified individual will need to file a revised Form 8915-E (with his or her amended federal income tax return) to report the amount of the recontribution and should reduce his or her gross income by the amount of the recontribution, but not in an amount exceeding the amount of the coronavirus-related distribution.

Recontributions for taxpayers recognizing income over three years

If a qualified individual includes a coronavirus-related distribution ratably over a three-year period and the individual recontributes any portion to an eligible retirement plan at any date before the timely filing of the individual's federal income tax return (that is, by the due date, including extensions) for a tax year in the three-year period, the amount of the recontribution will reduce the ratable portion of the coronavirus-related distribution that is includible in gross income for that tax year.

Carryovers

If the taxpayer recontributes an amount for a tax year in the three-year period that exceeds the amount that is otherwise includible in gross income for that tax year, the excess amount of the recontribution may be carried forward to reduce the amount of the distribution includible in gross income in the next tax year in the three-year period. Alternatively, the qualified individual is permitted to carry back the excess amount of the recontribution to a prior taxable year or years in which the individual included income attributable to a coronavirus-related distribution. The individual will need to file an amended federal income tax return for the prior taxable year or years to report the amount of the recontribution on Form 8915-E and reduce his or her gross income by the excess amount of the recontribution.

Safe harbor for plan loans

The CARES Act provides that in the case of a qualified individual with a loan from a qualified employer plan outstanding on or after March 27, 2020, if the due date for any repayment with respect to the loan occurs during the period beginning on March 27, 2020 and ending on December 31, 2020, the due date will be delayed for one year. Under a safe harbor, a qualified employer plan will satisfy this requirement if a qualified individual's obligation to repay a plan loan is suspended under the plan for any period beginning not earlier than March 27, 2020 and ending not later than December 31, 2020. The loan repayments must resume after the end of the suspension period, and the term of the loan may be extended by up to one year from the date the loan was originally due to be repaid. If an employer, under its plan, chooses to permit a suspension period that is less than the maximum suspension period described above, the

employer is permitted to extend the suspension period subsequently, but not beyond December 31, 2020.

In addition, any subsequent repayments of the loan should be adjusted appropriately to reflect the delay and any interest accruing during the delay, and the period of delay must be disregarded in determining the five-year period and the term of the loan under Code Sec. 72(p)(2)(B) and (C). The effect of the CARES Act is to permit a delay in certain plan loan repayments without causing the loans to violate Code Sec. 72(p)(2)(B) and (C), but does not require a delay in plan loan repayments in order to satisfy Code Sec. 72(p)(2)(B) and (C). Thus, an employer is permitted to choose to allow this delay in loan repayments under its plan for qualified individuals, and, if it does, there will not be a deemed distribution to those individuals under Code Sec. 72(p) due to the delay.

Certifications

The administrator of an eligible retirement plan may rely on an individual's certification that the individual satisfies the conditions to be a qualified individual in determining whether a distribution is a coronavirus-related distribution, unless the administrator has actual knowledge to the contrary. The requirement that an administrator not have "actual knowledge" that is contrary to an individual's certification does not mean that the administrator has an obligation to inquire into whether an individual has satisfied the conditions required to be a qualified individual. Instead, this requirement is limited to situations in which the administrator already possesses sufficiently accurate information to determine the veracity of a certification. The IRS has provided an example of an acceptable certification.

The administrator of a qualified employer plan may rely on an individual's certification that the individual satisfies the conditions to be a qualified individual, and therefore qualifies for the special treatment for loans under section 2202(b) of the CARES Act, unless the administrator has actual knowledge to the contrary under the standard described above.

The IRS notes that an individual must actually be a qualified individual in order to obtain favorable tax treatment.

IRS Notice 2020-50, I.R.B. 2020-28, July 6, 2020.