

MEMO# 31626

February 21, 2019

GAO Report Recommends IRS and DOL Guidance Relating to Unclaimed Retirement Savings Transferred to States

[31626]

February 21, 2019 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: GAO Report Recommends IRS and DOL Guidance Relating to Unclaimed Retirement Savings Transferred to States

The US Government Accountability Office (GAO) published a report (the “Report”) on retirement savings entitled “Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States.”[\[1\]](#) The Report responds to a request from Senator Ron Wyden, Ranking Member, US Senate Committee on Finance, to examine issues related to the transfer of retirement savings to the states as unclaimed property.

Background

The Report reviews state activity relating to receipt of retirement savings into state unclaimed property funds (including how such assets are held after transfer and actions taken to find property owners); transfer agent and recordkeeper activity relating to transfer of retirement accounts to states (including tax reporting and withholding); and relevant Federal regulatory guidance on the treatment of unclaimed retirement savings accounts.

The Report finds that retirement savings are transferred to states under a variety of circumstances, including uncashed checks from active 401(k)-type plans (such as required minimum distribution payments), small account balances from terminating plans, and uncashed checks and account balances from IRAs. The Report also finds that states receiving these amounts and holders transferring amounts to the states have different procedures for handling the transfers. For example, some states liquidate securities immediately, while some do not; and some plan recordkeepers report such transfers as taxable distributions and apply withholding, while some do not.

In terms of existing regulatory guidance, the Report notes that the Department of Labor (DOL) has expressed its view that ERISA generally preempts state unclaimed property law as it relates to ERISA-covered retirement plans,[\[2\]](#) but has indicated that terminating

defined contribution plans may voluntarily transfer certain small account balances to states when the participant is non-responsive and other distribution options are unavailable.[3] The Report also notes that the IRS has issued guidance on tax reporting and withholding obligations with respect to traditional IRA assets transferred to state unclaimed property funds.[4]

Recommendations

Other than the aforementioned existing guidance, the Report finds that “IRS and DOL have not taken action on key issues that could have implications for the collection of federal tax revenue, as well as individuals’ retirement security.” The Report makes three key recommendations to the Federal regulatory agencies:

1. The IRS Commissioner should work with the Department of the Treasury to consider clarifying if transfers of unclaimed savings from employer-based plans (such as 401(k) plans) to states are distributions, what, if any, tax reporting and withholding requirements apply, and when they apply.
2. The IRS Commissioner should work with the Department of the Treasury to consider adding retirement savings transferred to states from terminating DC plans to the list of permitted reasons for rolling over savings after the 60-day rollover period,[5] in a form consistent with the rules adopted on the taxation of transfers of unclaimed retirement savings.
3. The Secretary of Labor should specify the circumstances, if any, under which uncashed distribution checks from active plans can be transferred to the states.

Agency Responses

In response to the recommendations, the IRS and Treasury indicated that they will work together to consider providing guidance on the two issues identified in the Report. The DOL responded that it is continuing to evaluate whether there are circumstances in which transfer of uncashed checks from ongoing plans to state unclaimed property funds advances the goal of reuniting missing participants with their retirement savings. According to the Report, “DOL officials said that they have not provided specific fiduciary guidance on when uncashed checks can be transferred from active plans to state unclaimed property funds, but are considering the appropriate prioritization of such guidance within the context of a broader range of missing participant issues being raised by various stakeholder groups, such as search requirements and updating plan records, among other things.”[6]

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endnotes

[1] The Report is available here: <https://www.gao.gov/assets/700/696525.pdf>.

[2] See DOL Adv. Op. 1994-41A, available here: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/1994-41a>.

[3] See 29 CFR §2550.404a-3; 29 CFR §2578.1; and Field Assistance Bulletin 2014-01. FAB 2014-01 (available here: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bullet>

[ins/2014-01](#)) does include confirmation from the IRS and Treasury that transferring an account to a state unclaimed property fund in connection with a plan termination will result in income taxation, mandatory withholding, and possible early distribution penalties. See ICI Memorandum No. 28318, dated Aug. 18, 2014, available here:

https://www.ici.org/my_ici/memorandum/memo28318.

[4] See Rev. Rul. 2018-17, as modified by Notice 2018-90. See ICI Memorandum No. 31494, dated Nov. 20, 2018, available here:

https://www.ici.org/my_ici/memorandum/memo31494.

[5] See Rev. Proc. 2016-47, providing a self-certification procedure for waiver of the 60-day deadline for rollovers, under certain pre-approved circumstances. See ICI Memorandum No. 30166, dated Aug. 25, 2016, available here:

https://www.ici.org/my_ici/memorandum/memo30166.

[6] See Report at page 34.