

**MEMO# 15535**

January 15, 2003

## **IRS REVENUE PROCEDURE ON DEEMED IRAS**

[15535] January 15, 2003 TO: PENSION MEMBERS No. 3-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 4-03 RE: IRS REVENUE PROCEDURE ON DEEMED IRAS Revenue Procedure 2003-131 (attached) provides guidance for employers that wish to amend their qualified plans to include deemed IRAs, as defined in section 408(q) of the Internal Revenue Code.<sup>2</sup> These deemed IRA rules, as enacted by the Economic Growth And Tax Relief Reconciliation Act of 2001 ("EGTRRA"), are effective for tax years beginning after December 31, 2002. Rev. Proc. 2003-13 begins with a review of three related IRS releases. Notice 2001-42, 2001-2 C.B. 70, establishes a remedial amendment period for EGTRRA, which ends no earlier than the end of the first plan year beginning on or after January 1, 2005, during which any needed retroactive EGTRRA plan amendment may be adopted. The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of a good faith EGTRRA plan amendment. Notice 2001-57, 2001-2 C.B. 279, provides sample plan amendments that satisfy, in form, the "good faith EGTRRA plan amendment" requirement set forth in Notice 2001-42. This notice does not contain a sample plan amendment for deemed IRAs; however, the notice does provide that the good faith plan amendment requirement does apply to deemed IRAs. Revenue Procedure 2002-10, 2002-4 I.R.B. 401, requires all prototype sponsors with currently approved IRAs, SEPs, and Simple IRA plans to amend these documents and submit applications for opinion letters on the amended documents by December 31, 2002. Rev. Proc. 2003-13 provides that to establish deemed IRAs, plan sponsors must have good faith plan amendments in their plan documents and must have deemed IRAs in effect for employees no later than the date that the deemed IRA contributions are accepted from such employees. However, for plan years beginning before January 1, 2004, but after December 31, 2002, plan sponsors are not required to have good faith provisions in place before the end of their plan year; but they must otherwise comply with the rules in Notice 2001-57. To satisfy 1 2003-4 I.R.B. 1. 2 All section references are to the Internal Revenue Code of 1986, as amended. 2 the EGTRRA remedial amendment period requirements, the provisions must reflect a reasonable, good-faith interpretation of the statute. Rev. Proc. 2003-13 includes a sample plan amendment that meets the good-faith requirement, which the Institute requested in a comment letter to Treasury, dated November 21, 2002 (attached). The sample plan amendment may be adopted only by plans trustees by a person eligible to act as a trustee of an IRA under section 408(a)(2) and plans that designate an insurance company to issue annuity contracts under section 408(b). In addition to the sample plan amendment, a plan complying with section 408(q) must also contain language that satisfies section 408 or 408A, relating to traditional and Roth IRAs, respectively. Sample language satisfying these requirements is listed at [www.irs.gov/ep](http://www.irs.gov/ep). A plan will satisfy the "reasonable, good-faith interpretation of the statute" requirement with respect to required IRA language if the plan

addresses every applicable point in the IRA list provided at this website. Finally, the revenue procedure states that the Service plans to issue regulations under section 408(q) in the near future. Lisa Robinson Assistant Counsel Note: Not all recipients receive the attachments. To obtain copies of the attachments, please visit our members website (<http://members.ici.org>) and search for memo 15535, or call the ICI Library at (202) 326-8304 and request the attachments for memo 15535. Attachment no. 1 (in .pdf format)

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