

**MEMO# 15295**

November 15, 2002

## **DRAFT COMMENT LETTER ON DEEMED IRAS**

[15295] November 15, 2002 TO: PENSION COMMITTEE No. 45-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 74-02 RE: DRAFT COMMENT LETTER ON DEEMED IRAS Deemed IRA Provision The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") enacted new section 408(q) of the Internal Revenue Code (the "Code"), which permits a qualified employer plan to allow employees under the plan to make voluntary employee contributions to a new savings vehicle called a "deemed IRA." Under certain circumstances, these contributions may be treated, for purposes of the Code and ERISA, as individual retirement accounts or annuities and not as part of the qualified employer plan. If the deemed IRA meets the requirements applicable to either traditional IRAs or Roth IRAs, then the separate account or annuity will be deemed to be either a traditional IRA or a Roth IRA, as applicable, for all purposes of the Code. According to the legislative history, this means, for example, that the reporting requirements applicable to IRAs would apply to the deemed IRA. Consistent with this treatment, the deemed IRA and contributions to the deemed IRA will not be subject to Code rules pertaining to the qualified employer plan. Neither the deemed IRA nor contributions to the deemed IRA are taken into account for purposes of applying rules applicable to the qualified employer plan or contributions to such plan. The deemed IRA and contributions to the deemed IRA are subject to the exclusive benefit and fiduciary rules of ERISA to the extent that such rules are otherwise applicable to the qualified employer plan. However, deemed IRAs are not subject to the ERISA reporting and disclosure, participation, vesting, funding and enforcement provisions that are applicable to the qualified employer plan. Qualified employer plans that may establish deemed IRAs include 401(k) plans, 403(b) plans and 457 plans. Draft Comment Letter The attached draft letter expresses the Institute's strong support for new savings vehicles that provide additional opportunities for individuals to save for their retirement. The letter points out that it is important, if participants are to be encouraged to use this new savings vehicle, that those who elect to contribute to a deemed IRA have the same portability rights that they would have if they invested in a traditional or Roth IRA. The letter also points out that the deemed IRA will add a new level of complexity to a qualified employer plan, as well as additional cost and administrative burden. To encourage employers to assume this additional complexity, cost and administrative burden, the Institute urges Treasury to draft clear, simple guidance that treats the deemed IRA as a separate plan from the qualified employer plan. Treating the deemed IRA as a separate plan will provide employers with needed flexibility to (1) convert deemed IRA account balances and include them in a participant's qualified plan balance, (2) transfer deemed IRA balances to a traditional or Roth IRA that is not a part of the employer's qualified plan and (3) cash out small amounts in a deemed IRA in situations where such a distribution would otherwise be permitted from a qualified plan. Moreover, separate plan treatment should permit employers to satisfy

fiduciary requirements by ensuring that a qualification problem with the deemed IRA does not result in disqualification of the qualified employer plan, or vice versa. The comment letter suggests that guidance permit streamlined reporting to reduce administrative costs, e.g., reporting information about deemed IRAs on Form 5500. Finally, the comment letter suggests that guidance include a simple model amendment that cross-references section 408(q) and includes optional administrative amendments. Your input also is requested regarding whether to address the following issues not included in the draft: Recordkeeping requirements. What recordkeeping conventions would be the most reasonable to keep track of a deemed IRA within a qualified plan? Eligibility. How will eligibility to contribute to the deemed IRA be determined? Since the deemed IRA is part of the qualified plan, should ability to contribute to the deemed IRA be contingent on participation in the qualified plan? Can the employer set additional limits on deemed IRA participation, such as a minimum initial contribution or a requirement that only payroll deduction contributions will be accepted? Required Minimum Distributions ("RMDs"). Presumably, separate RMD rules will apply to the deemed IRA and the qualified plan. Must the plan administrator or other responsible party prepare an RMD calculation or offer to provide such a calculation with respect to the deemed IRA? Will different required beginning dates apply? Forms and Reporting. Should we make specific recommendations regarding how to report information regarding deemed IRAs, other than the comment letter's suggestion that deemed IRA information be reported on a revised Form 5500? Investments. Must a deemed IRA be restricted to the investments available under the qualified plan, or may a wider (or narrower) range of investment choices be offered? Beneficiary Designations. Will the participant's beneficiary designation apply to both the deemed IRA account and the qualified plan account? Must the plan permit separate beneficiary designations if the participant desires to do this? QDROs. Will QDROs apply to deemed IRAs? 3 Compliance Issues. Section 408(q) does not directly address compliance issues with respect to deemed IRAs. How will violations of the rules applicable to deemed IRAs be handled? How should deemed IRAs be handled if there is a plan termination? We would appreciate your comments on whether any of the issues listed above should be addressed in the comment letter. Proposed regulations with respect to deemed IRAs have not been published. However, the Treasury Department has stated that it may issue guidance early next year and is interested in receiving comments. Please provide any comments that you have to the attached draft comment letter to me no later than November 20, 2002 by phone (202-326-5835), fax (202-326-5841), or e-mail (lrobinson@ici.org). Lisa Robinson Assistant Counsel Attachment Attachment (in .pdf format)