

MEMO# 16918

December 24, 2003

IRS RULING PERMITS GARNISHMENT OF 401(K) PLAN TO COLLECT FINE

[16918] December 24, 2003 TO: PENSION MEMBERS No. 57-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 75-03 RE: IRS RULING PERMITS GARNISHMENT OF 401(K) PLAN TO COLLECT FINE The attached IRS private letter ruling (200342007) provides that the federal government may garnish amounts in an employee's 401(k) plan in order to collect a fine imposed following a criminal case without violating the anti-alienation rules under Code section 401(a)(13). The ruling involves an individual who participated in his employer's 401(k) plan and was convicted of federal drug-related offenses, for which he was imprisoned and assessed a fine. After the government sought to garnish the employee's 401(k) plan under the Federal Debt Collection Procedures Act of 1977 ("FDCPA"), the individual's employer requested a ruling from the IRS that the employer's compliance with the garnishment order would not violate Code section 401(a)(13) (this section prohibits the benefits under a plan from being assigned or alienated, with a violation of this rule disqualifying the plan). In the ruling, the IRS noted that a federal criminal procedure rule (18 USC 3613(c)) provides that a fine imposed as part of either (1) a criminal sentence or (2) an order of restitution, is a lien in favor of the federal government on all property of the person fined, and is to be treated as if the liability were a tax liability. The regulations under Code section 401(a)(13) provide that the anti-alienation rule does not apply to a federal tax levy. Citing two recent court decisions,¹ the IRS concluded that the fine is to be treated as if it were a federal tax liability and therefore the employer's execution of the garnishment order will not violate the anti-alienation rules under Code section 401(a)(13). Lisa Robinson Assistant Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 16918, or call the ICI Library at (202) 326-8304 and request the attachment for memo 16918. Attachment (in .pdf format) 1 U.S. v. Tyson, No. 02-X-73808 (E.D. Mich., April 9, 2003) and U.S. v. Clark, No. 02-X-74872 (E.D. Mich., June 11, 2003).