

**MEMO# 18609**

March 2, 2005

## **IRS ISSUES PROPOSED REGULATIONS CONCERNING DESIGNATED ROTH 401(K) CONTRIBUTIONS; CONFERENCE CALL SCHEDULED FOR MARCH 17, 2005**

[18609] March 2, 2005 TO: PENSION COMMITTEE No. 8-05 PENSION OPERATIONS ADVISORY COMMITTEE No. 7-05 RE: IRS ISSUES PROPOSED REGULATIONS CONCERNING DESIGNATED ROTH 401(k) CONTRIBUTIONS; CONFERENCE CALL SCHEDULED FOR MARCH 17, 2005

Section 402A of the Internal Revenue Code will permit plans to offer employees the option of making designated Roth contributions in lieu of elective deferrals, effective for tax years beginning after December 31, 2005. The Internal Revenue Service has issued proposed regulations that would amend section 1.401(k)-1(f) of the final regulations under section 401(k) of the Code to provide special rules for designated Roth contributions. 1 The term "designated Roth contribution" would be defined as an elective contribution that, to the extent permitted under the plan, is • Designated irrevocably by the employee at the time of the cash or deferred election as a designated Roth contribution; • Treated by the employer as includible in the employee's income at the time the employee would have received the amount in cash if the employee had not made the cash or deferred election;2 and • Maintained by the plan in a separate account. Under the separate accounting requirement, contributions and withdrawals would have to be credited and debited to a designated Roth contribution account maintained for the employee. In addition, the plan would be required to maintain a record of the employee's investment in the contract with respect to the designated Roth contribution account. The plan also would be required to separately allocate gains, losses, and other credits or charges to the designated Roth contribution and other accounts on a reasonable and consistent basis. Plans would not be permitted, however, to allocate forfeitures to the designated Roth contribution account. 1 The proposed regulations are available at <http://www.regulations.gov/fredpdfs/05-04020.pdf>. 2 The employer must treat the contributions as wages subject to applicable withholding requirements. 2 Designated Roth contributions would be treated as employer contributions for purposes of sections 401(a), 401(k), 402, 404, 409, 411, 412, 415, 416 and 417 of the Code and as elective deferrals for purposes of the actual deferral percentage (ADP) test.3 Furthermore, the designated Roth contribution account would be subject to the required minimum distribution rules of section 401(a)(9)(A) and (B) in the same manner as an account that contained pre-tax elective contributions. The preamble to the proposed regulations notes that they would not provide guidance concerning the taxation of the distribution of designated Roth contributions. In particular, the proposed regulations do not address the recovery of the employee's investment in the contract associated with designated Roth contributions. The Service requests comments on this issue, as well as

other issues requiring guidance. The regulations would apply to plan years beginning on or after January 1, 2006. Comments on the proposed regulations must be submitted by May 31, 2005. Institute Conference Call The Institute has scheduled a conference call for Thursday, March 17 at 2:00 p.m. Eastern time to discuss the Institute's comments concerning the proposed regulations. If you would like to participate in this call, please complete the attached response form and fax it to Brenda Turner at (202) 326-5841 or e-mail it to bturner@ici.org by Wednesday, March 16. To participate in the call, please dial 888-455-9639 and enter passcode 67041. If you have any questions about the call, please contact the undersigned at (202) 371-5432 or kireland@ici.org. Kathy D. Ireland Senior Associate Counsel Attachment (in .pdf format) 3 A plan would be able to permit a highly compensated employee with both pre-tax elective and designated Roth contributions to elect whether any excess contributions were to be attributed to pre-tax elective contributions or designated Roth contributions.

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