

**MEMO# 17739**

July 1, 2004

## **IRS UPDATES REVENUE RULING TO ALLOW ELIGIBLE GOVERNMENTAL 457 PLANS, ROTH IRAS AND DEEMED IRAS TO PARTICIPATE IN GROUP TRUSTS**

[17739] July 1, 2004 TO: PENSION MEMBERS No. 37-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 46-04 RE: IRS UPDATES REVENUE RULING TO ALLOW ELIGIBLE GOVERNMENTAL 457 PLANS, ROTH IRAS AND DEEMED IRAS TO PARTICIPATE IN GROUP TRUSTS In Revenue Ruling 81-100, the Internal Revenue Service held that if certain requirements are satisfied, then a group trust is exempt from taxation under section 501(a) of the Internal Revenue Code with respect to funds equitably belonging to trusts described in section 401(a) and under section 408(e) with respect to funds equitably belonging to individual retirement accounts (IRAs) that satisfy the requirements of section 408. In addition, the tax status of the individual trusts investing in the group trust is not affected by the pooling of their funds in a group trust. The Internal Revenue has updated Revenue Ruling 81-100 to extend its provisions to eligible governmental plans under section 457(b), and to clarify the ability of Roth IRAs described in section 408A and deemed IRAs described in section 408(q) to participate in such group trusts. Under Revenue Ruling 2004-67,<sup>1</sup> qualified plans, eligible governmental plans, and IRAs (including Roth IRAs and deemed IRAs) may pool their assets in a group trust, provided that the following criteria are satisfied: • The group trust is adopted as a part of each adopting employer's plan or each adopting IRA; • The group trust instrument expressly limits participation to pension, profit-sharing, and stock bonus trusts or custodial accounts qualifying under section 401(a) that are exempt under section 501(a), IRAs that are exempt under section 408(e), and eligible governmental plan trusts or custodial accounts under section 457(b) that are exempt under section 457(g) (adopting entities); • The group trust instrument prohibits any part of its corpus or income that equitably belongs to any adopting entity from being used for or diverted to any purpose other than for the exclusive benefit of the employees (and the individual 1 Revenue Ruling 2004-67 is available at:

<http://www.irs.gov/pub/irs-drop/rr-04-67.pdf>. 2 for whom an IRA is maintained) and their beneficiaries who are entitled to benefits under such adopting entity; • The group trust instrument prohibits assignment by an adopting entity of any part of its equity or interest in the group trust; and • The group trust is created or organized in the United States and is maintained at all times as a domestic trust in the United States. Revenue Ruling 2004-67 also includes model amendments for group trusts that received favorable determination letters prior to July 12, 2004, and for trusts of eligible governmental plans under section 457(b) that received letter rulings prior to July 12, 2004. Kathy D. Ireland Senior Associate Counsel

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