September 21, 2018

IRS Updates Safe Harbor Tax Notices for Eligible Rollover Distribution Recipients

Section 402(f) of the Internal Revenue Code (the "Code") requires qualified plan sponsors to give written explanations of the tax implications to recipients of taking qualified retirement plan distributions eligible for rollover treatment. Often termed a "special tax notice," the Internal Revenue Service (IRS) just reissued in Notice 2018-74 updated model special tax notices that the IRS states provide a "safe harbor" for meeting the Notice requirements of Code section 402(f).

Changes in the law enacted as part of the Tax Cuts and Jobs Act of 2017 ("TCJA") made changes to the deadline for some participants to rollover account balances that were offset by qualified plan loan defaults. Please see our previous blog post for a description of the extended rollover periods for plan loan offsets. The changes in the law made the prior safe harbor special tax notices incomplete in their description of the rollover requirements and deadlines for rollovers of accounts subject to these offsets.

As described in this post, the IRS has previously issued safe harbor special tax notices, but advised plan administrators that "the safe-harbor explanation will not satisfy §402(f) to the extent that the safe-harbor explanation no longer accurately describes the relevant law." As a result, plan administrators are responsible for updating the safe harbor special tax notice in between IRS updates, the last of which was issued in 2014.

The IRS provided two updated special tax notices in Notice 2018-74, one for traditional eligible rollover distributions and another for eligible rollover distributions from designated Roth accounts. The updates include a description of the extended rollover period for qualified plan loan offsets enacted by TCJA, a description of IRS guidance provided in Rev. Proc. 2016-47 on self-certification of eligibility for a waiver of the deadline for completing a rollover, as well as other clarifying changes. The Notice also satisfies the parallel notice requirements in Code section 403(b)(8)(B) to recipients of eligible rollover distributions from 403(b) plans.