

Disposition of Account Balances for Missing Participants

December 7, 2001

Carol Gold, Director
TE/GE Employee Plans Division
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224-0001

Re: Disposition of Account Balances for Missing Participants

Dear Ms. Gold:

The American Society of Pension Actuaries (ASPPA) offers these comments regarding the disposition of account balances for missing participants in defined contribution plans. ASPPA is a national organization of more than 4,500 members who provide actuarial, consulting, administrative, legal and other services to qualified plans and tax-sheltered annuities.

ASPPA and its members believe that guidance from the Service concerning the proper disposition of account balances for missing participants, particularly in the context of terminating defined contribution plans, is urgently needed for the following reasons:

1. Due to the lack of clear guidance on this matter, many plan sponsors and their advisors utilize various procedures to resolve the account balances of missing participants including:

Forfeiting the entire account balance once it is determined that the individual cannot be located (in the case of a terminating plan there is no mechanism for reinstatement of the benefit);

Withholding 100% of the individual's account balance and remitting the withholding to the IRS; or

Creating an individual retirement account (IRA) and rolling the individual's account balance into the IRA without notifying the individual or obtaining the individual's consent.

2. Since the legislative proposal to give the Pension Benefit Guaranty Corporation jurisdiction to receive account balances of missing participants in defined contribution plans was not included as part of the Economic Growth And Tax Relief Reconciliation Act of 2001 (EGTRRA), it is now unclear if and when such a legislative solution will ever be adopted.

3. There will be additional questions regarding the handling of missing participants' accounts as we approach the effective date for implementation of EGTRRA Section 657(a), which will require account balances greater than \$1,000, but less than \$5,000, to be directly rolled over to an IRA.

Proposal To Clarify And Expand The Guidance Contained In Revenue Ruling 2000-36

After analyzing current practices and guidance with regard to the disposition of missing participants' account balances, ASPPA requests that the Service expand and clarify the guidance contained in Revenue Ruling 2000-36 to:

1. Specifically address the situation of missing participants (*i.e.*, participants who cannot be located after reasonable, good faith, and prudent attempts by the plan administrator).

2. Permit defined contribution plan sponsors to amend their plans and related distribution procedures to provide that the account balances of missing participants can be rolled over to an IRA without the notification of such participant, or such participant's consent, provided that:

- The sponsor and plan administrator made and documented reasonable and prudent, but unsuccessful, efforts to locate the participant;
- The selection of an IRA trustee, custodian or issuer, and IRA investment would constitute a fiduciary act (consistent with footnote 1 to Revenue Ruling 2000-36); and
- The plan administrator provides written notice to the Service and/or the PWBA identifying the affected participant, the participant's social security number, the location and account number of the rollover IRA, and the amount rolled over to the IRA (in this regard, it may make sense to modify Schedule SSA to Form 5500 to also serve this purpose).

Since the above points would serve to remove the missing participant's account balance from the plan, the Service would need to clarify that it is exercising its authority under Code Section 411(d)(6) to provide relief from the anti-cutback rule of that section.

The Service's guidance should also include a practical mechanism for dealing with small account balances of missing participants. For example, in keeping with similar guidance set forth in Revenue Procedure 2001-17, concerning the obligation of plan sponsors to make corrections under the Employee Plans Compliance Resolutions System (EPCRS), it seems only reasonable and practical to allow plan sponsors and plan administrators who made a reasonable and good faith effort to locate a missing participant to forfeit the account balance of a missing participant that is below a certain *de minimis* amount. Based on an informal survey of financial institutions that establish IRA rollover accounts, it appears that many will not open an IRA rollover account of less than \$500 or even \$1,000. However, since a few institutions will open an account with as little as \$100, we suggest that the Service establish a *de minimus* amount of either \$100 or \$200. We note that the plan sponsor and any successor to the plan sponsor would appear to have a legal obligation under Title I to pay such amounts from its general assets should the participant or the participant's beneficiaries ever make a claim for such benefit.

The purpose of requiring the plan administrator to provide written notification as indicated above, is to enable the IRS and/or the PWBA to establish a registry of such missing participants and the related rollover accounts should they deem such a registry desirable and feasible.

This proposal offers the following benefits:

1. It avoids the outright forfeiture of the participant's account (except in the case of *de minimus* amounts);
2. It segregates the participant's account balance and establishes a prudent tax-deferred vehicle in which the account balance can continue to grow and be maintained by an independent financial institution; and
3. It provides a mechanism and means for a participant, or a participant's, beneficiaries to potentially locate and make claim to the rollover account.

It is important for the Service to address this area and to provide guidance as soon as possible. If the Service would like to enter into a dialogue to discuss this proposal further, as well as various other options and alternatives, please let us know.

These comments were prepared principally by Jeffrey C. Chang, chair of the ASPPA IRS subcommittee, with the assistance of the Government Affairs Committee co-chairs, Administration Relations chair, DOL subcommittee, Reporting and Disclosure subcommittee, and Actuarial/PBGC subcommittee.

Please contact us if you have any comments or questions regarding our comments.

Sincerely,

Jeffrey C. Chang, APM, Chair
IRS Subcommittee

Bruce Ashton, APM, Esq., Co-Chair
Government Affairs Committee

Brian Graff, Esq.
Executive Director

R. Bradford Huss, APM, Esq. Co- Chair
Government Affairs Committee

Theresa Lensander, CPC, QPA, Chair
Administration Relations Committee
Valeri L. Stevens, APM, Chair
Reporting and Disclosure Subcommittee

Michael J. Canan, APM, Chair
DOL Subcommittee
Kurt F. Piper, MSPA, Chair
Actuarial/PBGC Subcommittee

cc: William F. Sweetnam, Treasury

Alan Lebowitz, PWBA-DOL

Stuart A. Sirkin, PBGC

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