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IRS clarifies uncashed check taxation, but still considering missing participants

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Authors

Marjorie Martin, FSPA, EA, MAAA

Joanne Jacobson, JD, LLM

New IRS guidance confirms how plan administrators should handle reporting and income tax withholding for distributions to participants who are not "missing" by affirming the principle that a taxpayer cannot change the timing of taxation merely by refusing to cash a check. IRS says they are still analyzing other situations such as those that involve missing individuals with plan benefits remaining to be paid.

Background

Prior to 1981, qualified plan distributions were taxable to participants when actually paid, distributed, or made available (that is, constructively received). Congress eliminated the "made available" language to reduce plan administrative burdens because of restrictions plans created to avoid constructive receipt. However, some confusion remains for plan administrators about when to report plan distributions in situations where participants fail to cash checks they've received. In the case of missing participants, there is an additional question about whether an actual distribution has been made where the check was not received because the plan's records do not contain a valid address.

IRS addresses taxation, reporting, and withholding

In Revenue Ruling 2019-19, IRS addresses when a distribution is taxable to a distributee and plan obligations for reporting and withholding for the distribution. Under the facts of the ruling, a distribution of $900 is required to be made from a plan to a participant in 2019. Such a distribution might be required, for example, because the plan calls for the automatic payment of all benefits with a value not in excess of $1,000.

The ruling concludes that the distribution is taxable to the participant for 2019 because it was actually distributed in 2019 and could have been cashed. IRS notes that it is irrelevant whether the individual keeps the check, sends it back, destroys it, or cashes it in a subsequent year.

> **Buck comment**: The fact that the distribution is included in a participant's taxes should propel the participant to cash the check or, at a minimum, think about it.

Consistent with this treatment, the ruling concludes that income tax withholding and Form 1099-R reporting is required for 2019. A plan participant's failure to cash a distribution check received from the plan does not alter the withholding or reporting obligation.

What about missing participants?

IRS notes in this ruling that they continue to analyze other issues involving uncashed checks from eligible retirement plans including situations involving missing individuals with benefits under those plans. Presumably, the tax treatment is less than clear where the plan does not have a current address for a participant and cannot successfully distribute a check to the individual. Note that PBGC requires payment of the participant's full benefit to them under their missing participant program rather than the amount net of income tax withholding. (Our January 2, 2018 *FYI* discusses the PBGC missing participant program.)

In closing

Plan administrators now have confirmation of their duties in situations where a participant is not missing but fails to cash a check. Stay tuned for more guidance about how to handle missing participants. IRS, DOL and PBGC are aware of the issues and have signaled that, together, they will provide coordinated advice for dealing with that problem.

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