

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9331]

RIN 1545-BG46

Deemed IRAs in Governmental Plans/Qualified Nonbank Trustee Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 408 of the Internal Revenue Code. The final regulations provide special rules for a governmental unit which seeks to qualify as a nonbank trustee of a deemed IRA that is part of its qualified employer plan. These final regulations affect only such governmental units.

DATES: Effective Date: June 18, 2007.

Applicability Date: For dates of applicability, see §1.408-2(e)(8)(iv).

FOR FURTHER INFORMATION CONTACT: Linda L. Conway, 202-622-6090, or Cathy A. Vohs, 202-622-6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains final amendments to the Income Tax Regulations (26 CFR Part 1) under section 408 of the Internal Revenue Code of 1986 (Code). On July 22, 2004, temporary and proposed regulations under section 408 were issued. A notice of proposed rulemaking (REG-101447-04) was published in the **Federal Register** (69 FR

43786). The text of the temporary regulations also served as the text of the proposed regulations. The text of temporary §1.408-2 (e)(8) was published in the same issue of the **Federal Register** (69 FR 43735). The RIN published in connection with that notice of proposed rulemaking was 1545-BD07. However, due to technical difficulties that RIN is no longer valid and the RIN number of these final regulations is 1545-BG46. No comments were received regarding the proposed regulations.

### **Explanation of Provisions and Summary of Comments**

These final regulations amend §1.408-2(e) of the regulations to provide that a governmental unit may serve as the trustee of any deemed IRA established by that governmental unit as part of its qualified employer plan if that governmental unit establishes to the satisfaction of the Commissioner that the manner in which it will administer the deemed IRA will be consistent with the requirements of section 408. These final regulations also provide special rules regarding the application of §1.408-2(e) to governmental units. These final regulations are adopted without substantive change from the proposed and temporary regulations. These final regulations are applicable for written applications made on or after June 18, 2007. The rules in this section also may be relied on for applications submitted on or after August 1, 2003 (or such earlier application as the Commissioner deems appropriate) and before June 18, 2007.

### **Special Analyses**

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not

required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Drafting Information**

The principal author of these regulations is Linda L. Conway of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.408-2 (e)(8) is revised to read as follows:

§1.408-2 Individual retirement accounts.

\* \* \* \* \*

(e) \* \* \*

(8) Special rules for governmental units--(i) In general. A governmental unit that seeks to qualify as a nonbank trustee of a deemed IRA that is part of its qualified employer plan must demonstrate to the satisfaction of the Commissioner that it is able to administer the trust in a manner that is consistent with the requirements of section 408. The demonstration must be made by written application to the Commissioner. Notwithstanding the requirement of paragraph (e)(1) of this section that a person must demonstrate by written application that the requirements of paragraphs (e)(2) through (e)(6) of this section will be met in order to qualify as a nonbank trustee, a governmental unit that maintains a plan qualified under section 401(a), 403(a), 403(b) or 457 need not demonstrate that all of these requirements will be met with respect to any individual retirement accounts maintained by that governmental unit pursuant to section 408(q). For example, a governmental unit need not demonstrate that it satisfies the net worth requirements of paragraph (e)(3)(ii) of this section if it demonstrates instead that it possesses taxing authority under applicable law. The Commissioner, in his discretion, may exempt a governmental unit from certain other requirements upon a showing that the governmental unit is able to administer the deemed IRAs in the best interest of the participants. Moreover, in determining whether a governmental unit satisfies the other requirements of paragraphs (e)(2) through (e)(6) of this section, the Commissioner may apply the requirements in a manner that is consistent with the applicant's status as a governmental unit.

(ii) Governmental unit. For purposes of this special rule, the term governmental

unit means a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state.

(iii) Additional rules. The Commissioner may in revenue rulings, notices, or other guidance of general applicability provide additional rules for governmental units seeking approval as nonbank trustees.

(iv) Effective/Applicability date. This section is applicable for written applications made on or after June 18, 2007. The rules in this section also may be relied on for applications submitted on or after August 1, 2003 (or such earlier application as the Commissioner deems appropriate) and before June 18, 2007.

**§1.408-2T [Removed]**

Par. 3 Section 1.408-2T is removed.

Kevin M. Brown  
Deputy Commissioner for Services and Enforcement.

Approved:

Eric Solomon  
Assistant Secretary of the Treasury (Tax Policy).