IRS Summarizes Deductibility of Post-Tax Year Employer Contributions to New 401(k) Plans

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IRS Issue Snapshot — Deductibility of employer contributions to a 401(k) plan made after the end of the tax year

Available at https://www.irs.gov/retirement-plans/issue-snapshot-deductibility-of-employer-contributions-to-a-401k-plan-made-after-the-end-of-the-tax-year

The IRS has updated an "Issue Snapshot" that summarizes the rules employers must follow to deduct post-tax year contributions to a new 401(k) plan. This updated Issue Snapshot chiefly discusses and provides examples of changes made by the SECURE Act and SECURE 2.0 Act. Here are highlights:

- *Plan Establishment.* A qualified plan must be established before contributions can be deducted. Under the SECURE Act, for taxable years beginning after December 31, 2019, an employer may establish a plan retroactively, provided it is adopted by the due date, including extensions, for filing the employer's tax return for the taxable year of adoption, and the employer elects to treat the plan as having been adopted as of the last day of that prior taxable year.
- *Single Member Plans.* In general, an employee's election to defer compensation under a 401(k) plan can only be made with respect to an amount that is not currently available to the employee on the election date. Under the SECURE 2.0 Act, effective with 2023 plan years, an individual who owns the entire interest in an unincorporated business, and who is the only employee of such trade or business, can adopt a new 401(k) plan after the end of the taxable year and, for the first year only, can elect to defer net earnings from self-employment in the prior year as late as the due date for the individual's tax return (without regard to any extensions).
- *Deductibility and Allocation of Employer Contributions.* An employer is generally permitted to deduct profit-sharing or matching contributions made after the close of the tax year but before the due date of the employer's tax return, including extensions. In addition, although employer contributions may be treated as credited to a participant's account for a particular limitation year if they are paid no later than 30 days after the extended tax return due date, they still will only be deductible for that year if paid by the extended due date. If contributions are paid within the 30-day additional limit, although they are treated as credited to employee accounts for the applicable limitation year, they would be deductible in the following plan year. For example, amounts paid within the 30-day window after the extended due date for filing the employer's 2022 tax return could be allocated to participants for 2022 but would be deductible for 2023 (not 2022).

EBIA Comment: Issue Snapshots are created for use by IRS employees and typically analyze tax issues; offer examples of how the law works in operation; and provide references to additional resources including Code sections and regulations, revenue rulings, and legislation. Issue Snapshots are not intended to be comprehensive discussions of all issues on a covered topic, and they do not limit the IRS's ability to use other approaches in examinations. Nevertheless, 401(k) plan sponsors, administrators, and advisors may find them to be a helpful resource. For more information on employer contributions and deductions, see EBIA's 401(k) Plans manual at Sections IX.C ("Profit-Sharing Contributions") and X.F ("Limitation on Deductibility of Contributions: Code § 404").

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