

April 2006
A Monthly Publication

Tom Enneking, Editor

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Retirement Plans May Now Allow Roth 401(k) Contributions

http://www.dinslaw.com/pubs/legal_alert.asp?ID=1469

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Effective January 1, 2006, a 401(k) plan may permit a participant to make a new kind of after-tax elective deferral contribution (a "Roth 401(k) contribution"). Unlike a pre-tax elective deferral, a distribution from a Roth 401(k) contribution account generally will be tax free if it is a "qualified distribution". In contrast to the Roth IRA, plan participants may make Roth 401(k) contributions without regard to their adjusted gross income.

Background

The provision allowing for Roth 401(k) contributions was created by the Economic Growth and Tax Recovery Reconciliation Act of 2001 ("EGTRRA"), which added Section 402A to the Internal Revenue Code of 1986 (the "Code"). Recently, the Internal Revenue Service ("IRS") issued a series of guidance on the Roth 401(k) contribution option. On January 3, 2006, the IRS issued final regulations providing guidance on the administration of Roth 401(k) contributions. On January 26, 2006, the

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Researching Business Information

Tom Enneking
Assistant Law Librarian

Business information comes in a variety of formats – book, periodical, electronic. There are thousands resources, public and proprietary, free and for fee, that benefit the researcher. Much of business information's usefulness stems from its currency, although historical information has its uses. Whether you are researching a company as an investor or as legal counsel, the information you find will be invaluable in your decision making. This article scratches but the surface of company research and examines some of the most common sources.

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401(k) Contributions, cont'd from page 1

IRS issued proposed regulations regarding the distributions attributable to Roth 401(k) contributions.

Final Regulations

The final regulations define a Roth 401(k) contribution as an elective contribution under a 401(k) Plan that: (i) is irrevocably designated by the participant as a Roth 401(k) contribution, (ii) is included in the participant's gross income and subject to the applicable withholding requirements; and (iii) is maintained in a separate plan account. Although a Roth 401(k) contribution is an after-tax contribution, it is subject to certain requirements applicable to pre-tax elective deferrals made under the 401(k) Plan. In particular, Roth 401(k) contributions:

- are nonforfeitable,
- are subject to the distribution restrictions applicable to pre-tax elective deferrals,
- are subject to the annual deferral limitations of Code Section 402(g),
- may be designated as catch-up contributions,
- are available for plan loans,
- are subject to the actual deferral percentage ("ADP") test, and
- are subject to the required minimum distribution rules.

As with pre-tax elective deferrals, the plan must allow a participant to change his or her deferral election at least once per year. Additionally, the final regulations also provide that a 401(k) Plan may apply the automatic deferral election provisions to the Roth 401(k) contributions.

Since the Roth 401(k) contributions are subject to the ADP test, a 401(k) plan may permit a highly compensated participant who is receiving a corrective distribution due to the plan's failure of the ADP test, and who made both pre-tax elective deferrals and designated Roth 401(k) contributions, the option to elect whether to receive the corrective distribution from the Roth 401(k) contribution account or the pre-tax elective deferral account.

The final regulations provide that the plan sponsor has until the end of the plan year in which it implements Roth 401(k) contributions to adopt a

plan amendment. Therefore, for calendar year plans that added the Roth 401(k) option in the 2006 plan year, the plan sponsor must adopt an amendment by December 31, 2006.

Proposed Regulations

On January 26, 2006, the IRS issued proposed regulations on the tax treatment of distributions from Roth 401(k) contribution accounts. Only "qualified distributions" from Roth 401(k) contribution accounts are eligible for tax free treatment upon distribution. A "qualified distribution" is one that occurs after the participant's five year period of participation and after the participant's death, disability or attainment of age 59 ½.

In general, the participant's five year period of participation begins on the January 1 of the year in which the participant first made Roth 401(k) contributions. The five year period of participation is plan specific. Therefore, if a participant makes Roth 401(k) contributions to more than one plan, the five year period of participation must be satisfied for each plan. However, if the participant elects to rollover the participant's Roth 401(k) contributions to another Roth 401(k) Plan, the five year period of participation for the receiving plan would begin on the first day of the year for which the participant made Roth 401(k) contributions to the receiving or transferring plan, whichever is earlier. Alternatively, if the participant makes a rollover contribution of the participant's Roth 401(k) contribution account to a Roth IRA, the five year participation period begins on January 1 of the first year in which the participant made a contribution to any Roth IRA.

Certain Roth 401(k) distributions are not "qualified distributions." These include, among other things, corrective distributions to correct the Code Section 402(g) failures, ADP test failures and deemed distributions as the result of a loan default.

In determining the maximum hardship distribution a 401(k) plan can make to a participant, the plan must include the total of the participant's pre-tax elective deferrals and the Roth 401(k) contributions in the determination, since Roth 401(k) contributions are subject to the same distribution restrictions as pre-tax elective deferrals.

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Business Information, cont'd from page 1

Annual Reports

Annual reports are a company's best known disclosure statement. They are the most heavily used source of information by investors, but they must be taken with a grain of salt, as they are basically public relations pieces.

Annual reports contain a wealth of information, including what the company is doing, how it views itself, how it presents itself to the public and its financial statements. All financial statements must be audited by an independent CPA, and the narrative portion must be consistent with the CPA's numbers.

Also included in annual reports is the Letter to the Shareholder, also known as the President's Letter. The letter reviews the past year and looks at the future. The Management Discussion offers the company's commentary on its financial statements.

Unfortunately, there is no centralized source for locating annual reports, but many companies post them on their web pages. For example, Ford Motor Company (<http://www.ford.com>) publishes an electronic copy of its annual report.

Directories

Directories provide a variety of information on numerous topics, such as on trade and professional associations and universities. In business research, some of the more useful are those that provide biographical information on company executives. The *Reference Book of Corporate Managements* (Dun's Marketing Service) is a four volume set that provides such information. Arranged by company name, it gives information on more than 12,000 major U.S. firms and on several hundred thousand individuals.

The *Reference Book of Corporate Managements* focuses primarily on retail, banks, and the financial service industry. It details the following: year of birth, military service and education, employment history and affiliations.

This source can be purchased from Dun for a fee, but you can access it at the Government and

Business Desk at the Main Branch of the Public Library or at the University of Cincinnati.

Corporate Statements

There are several different kinds of corporate statements, but they all concern finances. The Statement of Financial Position reveals the net worth of a company. This information is calculated using the formula: liabilities + equity = assets. Profit and Loss Statements show earning power by depicting the flow of money in and out of the company. The company's Credit Report is an analysis of financial status comprised of volunteered, but not audited information.

Dun & Bradstreet's *Business Information Reports* analyzes company credit histories, including payments made, outstanding debts, and bills past due. This information is taken from the public record – clerks of court offices and court filings.

Marketing Information

Researching marketing information is interesting in that it shows how much a company spends on advertising. The *Standard Directory of Advertisers* examines the advertising budgets of 25,000 large companies. Interestingly, these companies account for 95% of all consumer goods sold in the U.S. Organized by product grouping (beer, ale and soft drinks, for example), this title lists a company's advertising agency, its executives, and the total advertising budget. The budget is then broken down into print and media expenditures.

Rankings

Rankings determine performance. Rankings also allow you to evaluate a company against its competitors. In researching a company, you should also study its ranking for the past 5-10 years for trends, such as major ascents or descents. You will also learn its relative position, the overall market picture, and principal competitors.

Several sources that rank companies:

- *Fortune 500*
(<http://money.cnn.com/magazines/fortune/fortune500/>)
: ranks the top 500 large publicly owned companies by gross revenue;

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Cincinnati Law Library Association Members Only Access

Julie Koehne
Assistant Law Librarian

Internet and premium database access is a benefit of membership in the Law Library Association. To better serve our members, we have updated our computer login function in our computer room to use the same username and password that you use on our remote access services on the Law Library's web site.

Accessing the Computers

To log on to one of our computers, type **YOUR LAST NAME AND FIRST INITIAL** into the **Last Name and Initial** box and then type your Law Library Association borrower number in the **Borrower Number** box.

Not sure what your borrower number is? Pick up the black phone near the door to have a staff person give it to you, or ask any Law Library staff to help you.

When You Are Finished

You can get up and leave the computer without doing anything. After 15 minutes of inactivity, you will be logged out automatically. If you want to close your account as you leave, look in the bottom right hand corner of the screen and you will see a box with your last name on it. Choose **LOGOUT** to finish your session. All members have *unlimited* access to the computers.

Did You Know Our Members Receive:

- ❖ Free Lexis Access in the Library
- ❖ Free Internet Access in the Library
- ❖ Free Remote Access to HeinOnline, FastCase, Aspen/Loislaw Treatises, and CCH Newsletters
- ❖ Free Reference Assistance, in person, by phone, or via e-mail
- ❖ Extensive Ohio and Federal primary law collection in print and electronic formats
- ❖ Practice materials, including:
 - handbooks
 - rules
 - treatises
 - jury verdicts
- ❖ Borrowing privileges to nearly all materials in the Library's collection, including CLE materials.



Get Close: Video Conference with Experts, Clients

David Whelan, Law Librarian

The Law Library has installed a video conferencing unit in the Boardroom and can connect to both private and Ohio State sites. The equipment is capable of supporting large groups but is also perfect for one-on-one meetings. Save time and money by eliminating travel and use a video conference instead. Use of the Law Library's equipment is free for our members.

How Does it Work

The video conference technology uses the Internet to transmit video and audio simultaneously. Each participant in the conference must have compatible equipment, but it does not need to be made by the same manufacturer. The picture and sound quality is much better than a computer-to-computer connection but also depends on the speed of the Internet connection. The Law Library has a Polycom VSX 8400 system, which enables multiple locations to connect simultaneously. Most systems, including ours, enable you to see the remote speaker as well as your own location simultaneously. Microphones and speakers enhance the audio to make the conversation and interaction as normal as possible.

Uses: Criminal Defense

The Ohio Department of Rehabilitation and Corrections has video conferencing equipment in all but 2 facilities (Lake Erie and North Coast). Attorneys, after ensuring our equipment is available, can contact the warden's office at the facility in

which their client is incarcerated, and schedule the prisoner to be in the video conferencing room at a given time. The Law Library staff can then schedule the video conference with the DRC's technology staff and make sure the equipment is set up in the Boardroom.

Uses: Expert Witnesses

If you have ever needed to meet with an expert witness but scheduling conflicts interfered, video conferencing may provide a solution. The Law Library's equipment is compatible with many other systems, including those found in FedEx/Kinko's locations around the country. For example, you can go to <http://fedex.kinkos.com/locations/index.php> and locate Kinko's offices with videoconferencing equipment (there are 12 in Ohio and 6 in Kentucky).

Uses: Judicial CLE

The Law Library has completed testing required to become a remote CLE site for Ohio Supreme Court Judicial College seminars. Judges in Hamilton County and their staffs can participate in these conferences without leaving the Courthouse. The Ohio Supreme Court connects over 20 different sites together for each video conference seminar, with the speakers in Columbus interacting with participants all over the state.

Uses: You Name It!

Do you have another use you would like to try? Let us know and we will work with you to see what can be accomplished. We can make sure the equipment is available and test it with your remote location in advance of your meeting or other event.

Aspen/Loislaw Treatises, 24 Hours a Day

David Whelan, Law Librarian

Members of the Law Library Association will be able to access over 70 treatises in 16 different substantive practice areas beginning in April 2006. The collection of Aspen / Loislaw treatises include well-known volumes such as Ginsburg & Martin on Bankruptcy, Lawrence Taylor's Drunk Driving Defense practice manual and 50 state guides to covenants not to compete, property distribution in divorce, and commercial real estate leases, as well as Aspen's Tort Law Desk Reference.

Members can go to the Law Library's Web site and log in to our Members-only Intranet using last name and borrower number. If you received this newsletter in print, your borrower number is printed on your address label. You can also ask in the Law Library or call us at 946-5300 to get your borrower number. The login page for **all** remote access services is <http://www.hamilton-co.org/cinlawlib/intra/login.asp>. This service is available to all solos and lawyers and staff at firms with a firm membership. The service is restricted to 3 simultaneous users in any given content library.

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24 Hour Treatises, cont'd from page 6

Loislaw began as a case law-only service in Arkansas in the 1990s. After it added national case law coverage, it was purchased by Aspen Publishing, a well known legal treatise publisher. They were both absorbed by one of the big three of legal publishing, Wolters Kluwer, Thomson (West) and Reed Elsevier (LexisNexis) being the other two. There are no restrictions on printing.

Search All Databases	Aspen Bankruptcy Treatises	Clear All Databases
Public Law 109-8 of 2005 - Bankruptcy Reform Act		
<input type="checkbox"/> Forms & Checklists	<input type="checkbox"/> Advanced Chapter 11 Bankruptcy Practice	
<input checked="" type="checkbox"/> Ginsberg & Martin on Bankruptcy	<input type="checkbox"/> Ordín on Contesting Confirmation	
<input checked="" type="checkbox"/> Bankruptcy Litigation and Practice	<input type="checkbox"/> LoPucki & Mirick on Strategies for Creditors in Bankruptcy Proceedings	
<input checked="" type="checkbox"/> Bankruptcy Litigation Manual	<input type="checkbox"/> Tax Planning for Troubled Corporations	

Many of the treatise content libraries have forms or state-specific law summaries. For example, you could access to the CCH State-Specific Employment Law Library for summaries of applicable law, by state, or access the Elder Law or Real Estate libraries for forms and checklists.

Highlights from the Aspen / Loislaw treatises are listed below. If you have questions about accessing the Aspen / Loislaw treatises remotely, please contact me at dwhelan@cms.hamilton-co.org or 946-5263.

Aspen/CCH Bankruptcy Library

Ginsberg & Martin on Bankruptcy
Automatic Stay Litigation in Bankruptcy
Loislaw Bankruptcy Court Collection

Business Practice Law Library

Choosing the Right Business Entity
Purchase and Sale of a Business
Online Business Filings

Construction Law Library

Construction Law Handbook
Construction Disputes: Practice Guide with Forms
Fifty State Construction Lien and Bond Law

Corporate Library

Marsh's California Corporation Law

Drunk Driving Defense Library

By the renowned Lawrence Taylor

Elder Law Library

Representing the Elderly Client
Elder Law Forms Manual
Elder Law Answer Book

Employment Discrimination Library

Employment Discrimination Law & Practice
Civil Rights in the Workplace
Employment Law Library
Employment Relationships: Law & Practice
Employee Dismissal Law & Practice
Employment Law Answer Book

Estate Planning Library

Practical Guide to Estate Planning
Multistate Guide to Estate Planning
Estate and Gift Tax Handbook
Estate and Retirement Planning Answer Book

Evidence Library

Wigmore on Evidence
Scientific Evidence and Experts Handbook

Family Law Library

Drafting Prenuptial Agreements
Valuing Specific Assets in Divorce
Value of Pensions in Divorce
American Journal of Family Law

General Litigation Library

Discovery Practice
Deposition Handbook
Sample Voir Dire Questions
The Trial Lawyer
Expert Witness Update

Limited Liability Company Library

Drafting Limited Liability Company Operating Agreements
Federal and State Taxation of Limited Liability Companies
State Limited Liability Company & Partnership Laws

Personal Injury Library

Personal Injury: Forms and Procedures
Medical Records Review
Expert Witness Updates

Product Liability Law Library

Product Liability Desk Reference
Product Warnings, Defects and Hazards
Product Liability Case Digest

Real Estate Library

Commercial Real Estate Leases:
Preparation, Negotiation and Forms
State-by-State Guide to Commercial Leases
Law of Title Insurance
Law of Real Estate Brokers

401(k) Contributions, cont'd from page 3

The participant may elect to have the distribution come from the participant's pre-tax elective deferral account or the Roth IRA account.

The same reporting requirements applicable to other plans apply to Roth 401(k) plans. Therefore, in general a Roth 401(k) contribution made to the 401(k) plan must be reported on the participant's IRS Form W-2. Additionally, a distribution from the Roth 401(k) contribution account under the 401(k) Plan must be reported on IRS Form 1099-R.

The proposed regulations also require plan administrators to track the five year participation period for each participant and each participant's Roth 401(k) contributions. If a participant makes a direct rollover of his or her Roth 401(k) contribution account, the plan administrator of the transferring plan is required to provide the receiving plan with a statement representing either the first year of the taxable period and the portion of the rollover attributable to Roth 401(k) contributions, or that the distribution is a qualified distribution.

Conclusion

The final and proposed regulations are more detailed than this summary. If you are considering adopting the Roth 401(k) contribution option, please contact a member of the Dinsmore & Shohl Benefits and Compensation Group for more details.

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ADDRESS CORRECTION REQUESTED

Business Information, cont'd from page 4

- *Forbes 500 Annual Directory* (<http://www.forbes.com/2003/03/26/500sland.html> - current through 2003): ranks companies based on financial data; and
- *Inc. 500* (<http://www.inc.com/resources/inc500/2005/>): similar to *Fortune 500*, but for closely held companies.

Trademarks

Trademarks are an important part of a company's image – the roar of a lion instantly identifies Metro-Goldwyn-Mayer films. A trademark identifies an individual product, service, or company and distinguishes it from other companies.

Trademarks may go unregistered, but commercial use provides some protection. They may be registered with the U.S. Patent and Trademark Office (PTO) (<http://www.uspto.gov/>). This website allows you to search existing trademark applications and registration information from your computer. You can view the same text and image database of trademarks currently provided to examining attorneys at the PTO.

Conclusion

Timely and accurate business information is a valuable asset, but finding it can be difficult. Your task does not end when you find needed information – you must then act upon it. To be truly useful, you must understand, evaluate and integrate your information. Only then can you effectively use it.

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