



Small Business Jobs Act of 2010: New Roth Conversions For Retirement Plans

The Small Business Jobs Act of 2010 (the "Act"), signed into law on September 27, 2010, permits pre-tax accounts in certain cases to be converted to Roth (after-tax) accounts within a retirement plan. This applies to 401(k) and 403(b) plans now and, beginning in 2011, to 457(b) retirement plans. Employers must soon decide whether they want to amend their plans to allow for the conversion.

Employers who sponsor 401(k) and 403(b) plans may design their plans so that participants can elect to make Roth deferrals. Roth deferrals are after-tax contributions, but qualified distributions from Roth accounts are tax-free. Significantly, all of the earnings compounded on the Roth deferrals are not taxable. Because of the tax benefits, Roth accounts have gained wide popularity since their enactment.

Before the Act was passed, if a participant wanted to roll over his pre-tax deferrals into a Roth account, the only way to do so was to roll over his accounts into a Roth IRA. At that time, the rollover amount would become taxable income to the participant (with the understanding that the qualified distribution from the Roth IRA would be tax-free). A special rule allows rollovers occurring in 2010 to be taxed over two years (50% of the rollover included in income in 2011 and 50% of the rollover included in income in 2012) rather than the entire amount being taxable in 2010. However, participants may choose to include these amounts in income in 2010.

Sponsors of 401(k) and 403(b) plans (and, beginning in 2011, governmental 457(b) plans) can now amend their plans to allow intra-plan conversions of pre-tax elective deferrals into Roth elective deferrals. Participants in a plan that allows Roth contributions can transfer their pre-tax deferrals into their plan's Roth accounts *if* the pre-tax deferrals are otherwise eligible for distribution. These intra-plan conversions allow participants to keep their elective deferrals in their plans without having to roll over to Roth IRAs.

The requirement that pre-tax deferrals be otherwise eligible for distribution severely limits the participants who may choose to make an intra-plan conversion. Generally, younger participants tend to benefit most from Roth accounts (since they have the longest earnings period before the accounts are distributed); however, they are also the least likely individuals to have a distributable event that would allow an intra-plan conversion. Nevertheless, older participants who have reached age 59 ½ may, if the plan permits, want to take a distribution to convert their pre-tax account to a Roth account in their plan.

There are tax incentives to making an intra-plan conversion this year (by December 31, 2010). As mentioned above, pre-tax amounts that are converted in 2010 may be recognized as taxable income ratably in 2011 and 2012. A plan amendment will be necessary to add this intra-plan conversion feature. If an employer's plan does not already allow Roth deferrals, the plan can be amended to permit Roth deferrals and, at

October 29, 2010

AUTHOR



Jay P. Turner
205.521.8412
jturner@babco.com

RELATED ATTORNEYS

Martha L. Boyd
615.252.2357
mboyd@babco.com

J. S. Christie, Jr.
205.521.8387
jchristie@babco.com

Andrew Elbon
615.252.2378
aelbon@babco.com

B. David Joffe
615.252.2368
djoffe@babco.com

Gordon Earle Nichols
615.252.2387
gnichols@babco.com

John M. Scannapieco
615.252.2352
jscannapieco@babco.com

Jay P. Turner
205.521.8412
jturner@babco.com

continued on page 2

the same time, to allow intra-plan conversions.

Representatives from the Department of the Treasury have informally requested that plan sponsors wait until further guidance before amending their plans. Further guidance regarding plan amendment and administration issues is expected.

Governmental 457(b) Plans

The Act permits 457(b) plans sponsored by state or federal governments to allow Roth deferrals beginning

January 1, 2011. Governmental 457(b) plan sponsors will have to amend their plans to add this feature. Governmental 457(b) plans that include Roth deferrals may also be amended to allow intra-plan conversions of pre-tax deferrals into Roth accounts beginning January 1, 2011.

If you have any questions about the new guidance, please contact Jay Turner or one of the other attorneys on the Employee Benefits & Executive Compensation Team at Bradley Arant Boulton Cummings LLP.

U.S. NEWS & WORLD REPORT RANKING

Bradley Arant Boulton Cummings LLP has received the fourth highest number of top-tier rankings in the country in the inaugural U.S. News & World Report – Best Lawyers list of top U.S. law firms. As it has done for many years for hospitals and colleges, this year U.S. News, working with the attorney ranking company Best Lawyers in America, ranked U.S. law firms based on a number of criteria, including client satisfaction.



Bradley Arant Boulton Cummings LLP Office Locations:

ALABAMA

One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
205.521.8000

200 Clinton Avenue West, Suite 900
Huntsville, AL 35801
256.517.5100

The Alabama Center for Commerce
401 Adams Avenue, Suite 780
Montgomery, AL 36104
334.956.7700

MISSISSIPPI

188 E. Capitol Street, Suite 400
Jackson, MS 39201
601.948.8000

NORTH CAROLINA

100 North Tryon Street, Suite 2690
Charlotte, NC 28202
704.332.8842

TENNESSEE

1600 Division Street, Suite 700
Nashville, TN 37203
615.244.2582

WASHINGTON, DC

1133 Connecticut Avenue NW,
12th Floor
Washington, DC 20036
202.393.7150

To unsubscribe from this newsletter, email [Jerry Young jyoung@babbc.com](mailto:Jerry.Young@babbc.com)

This newsletter is a periodic publication of Bradley Arant Boulton Cummings LLP and should not be construed as legal advice or legal opinions on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult your own lawyer or other tax advisor concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our practice group.

The Alabama State Bar requires the following disclosure: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

©2010 Bradley Arant Boulton Cummings LLP

ALABAMA | DISTRICT OF COLUMBIA | MISSISSIPPI | NORTH CAROLINA | TENNESSEE

