



May 24, 2016

Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Request for Comments Regarding Recommendations for Items that Should be Included on the 2016-2017 Priority Guidance Plan

To Whom it May Concern:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to provide comments to the Department of Treasury and Internal Revenue Service (“IRS”) regarding items that should be included on the 2016-2017 Priority Guidance Plan. Outlined below are four areas SIFMA believes the Treasury and IRS should focus on in the upcoming guidance plan.

The Protecting Americans from Tax Hikes Act of 2015 (the “PATH Act”), signed into law on December 18, 2015 as part of the Consolidated Appropriations Act, expanded the types of contributions that can be made to SIMPLE IRAs. Specifically, the legislation included a provision allowing rollover contributions into a SIMPLE IRA once it has satisfied the two year waiting period. However, clarification is needed on whether SIMPLE IRAs can be part of non-reportable automated customer account transfers (“ACATs”) between traditional and SEP IRAs and SIMPLE IRA account types. Notably, IRS Notice 98-4 indirectly addresses this issue, indicating that after the two year waiting period, trustee-to-trustee transfers *from* a SIMPLE IRA to another type of IRA may be treated as a nontaxable transfer. However, without explicit guidance, many SIFMA members

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

have indicated they will not be able to treat the inverse situation similarly. SIFMA requests the IRS issue clarifying guidance to allow firms to treat contributions *to* a SIMPLE IRA from another type of IRA as a trustee-to-trustee transfer between the IRAs.

The “See-Through Trust” is another area where SIFMA believes IRS can help save time and money for all stakeholders by issuing formal guidance. These situations are source of concern for many SIFMA members and the clients they serve, specifically in situations where the underlying beneficiaries of the inherited trust (which has been named as the beneficiary) want to take the assets directly into a separate account for each beneficiary. IRS has previously issued a number of private letter rulings (“PLRs”) allowing for this exception.² SIFMA recommends the IRS issue standard guidance that firms can rely upon for those individuals who have not commenced the PLR process. We further request that such guidance clarify whether an estate can retitle an IRA to another beneficiary as part of the estate settlement. Without such guidance, an estate would have to be open for five years in order to take advantage of the full required minimum distribution (“RMD”) period. Similar issues may arise when a trust that is not a “see-through” trust wishes to transfer the IRA ownership to a sub-trust. Such transfers of estate and trust property are valid under State law and we believe should be permitted under federal tax law, even where such transfer does not have any effect on the RMD calculations. Formal guidance allowing separate trust beneficiaries to set up individual “see-through” trusts with their assets will benefit the IRS, taxpayers, and firms by not requiring separate PLRs for each of these situations.

A third area SIFMA requests the Treasury and IRS include in the 2016-2017 Priority Guidance Plan is with regard to the “constructive receipt” topic and situations where distributions are requested and sent, but the check is never cashed. It should be noted that this is not a situation where the check is returned for a bad address, but instead where the check is simply not negotiated. A common scenario has this situation occurring cross tax-year, which also raises the question of which year the distribution should be reported and what corrective measures should be taken if the check is issued in one tax year but becomes stale dated for the investor in the next tax

² PLR 200537044 (<https://www.irs.gov/pub/irs-wd/0537044.pdf>);
PLR 200235038 (<https://www.irs.gov/pub/irs-wd/0235038.pdf>);
PLR 201503024 (<https://www.irs.gov/pub/irs-wd/201503024.pdf>);
See also: PLRs: 201430022; 201241017; 201210047; 201038019; 200750019; 200538034; 200538033; 200538031; 200538030

year. SIFMA believes specific guidance from the IRS clarifying reporting for firms and taxpayers would be beneficial. We recommend this guidance follow the same logic of constructive receipt of income under § 1.451-2, which would clarify that distributions are considered received, and thus taxable, when they are made payable to the IRA owner without restriction.

SIFMA requests guidance regarding the reporting of IRA assets that have been escheated to state governments. Under current law it is unclear whether IRA assets escheated to state governments are to be considered a distribution, making the distribution reportable and furthermore, subject to withholding. SIFMA recommends the IRS clarify that such distributions are to be considered reportable; however, this raises additional questions regarding withholding. If withholding is required, certain states require state withholding when federal withholding occurs. IRS should clarify in what situations withholding should occur, and what should be done in situations where there is no cash in the account. Notably, IRS has issued a PLR regarding this issue, reinforcing the notion that it is appropriate that some firms are treating the escheatment of IRA assets as reportable distributions.³ Standard guidance in this area would be helpful, particularly for addressing the additional questions this situation raises.

We appreciate the Treasury and IRS's consideration of our recommendations for the 2016-2017 Priority Guidance Plan. If you have any questions or would like to speak further, please do not hesitate to contact me or Jillian Enoch at (202) 962-7300.

Sincerely,



Lisa J. Bleier
Managing Director & Associate General Counsel

³ PLR 201611028 – IRAs – Waiver of Rollover Requirement – Escheatment of IRA to State
<https://www.irs.gov/pub/irs-wd/201611028.pdf>