U.S. Chamber of Commerce

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Via Electronic Delivery

October 24, 2023

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2023-62)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Notice 2023-62

To Whom It May Concern:

This is the U.S. Chamber of Commerce's (Chamber) response to the request for comments from the Department of the Treasury/Internal Revenue Service (Treasury) in Notice 2023-62 regarding Section 603 of the SECURE 2.0 Act that requires catch-up contributions to be made on a Roth basis for certain individuals. The Chamber appreciates the request for comments and the transition relief provided in the Notice. The transition relief will help ensure plans sponsors and service providers can implement this change with the least amount of disruption to participants and plan sponsors.

Background

Section 603 of the SECURE 2.0 Act provides that catch-up contributions for eligible participants whose wages, as defined in Internal Revenue Code (Code) Section 3121(a), for the preceding calendar year from the employer sponsoring the plan exceed $145,000, must be made on a Roth basis. For all other eligible participants, the plan must allow additional elective deferrals to be designated Roth contributions.

In Notice 2023-62, Treasury announced a two-year administrative transition period for section 603. Treasury also listed a number of areas of future guidance in Section V of the Notice. The Chamber agrees with Treasury on its proposed direction for the future guidance listed in Section 5 of the Notice. Treasury also invited comments and suggestions on any other aspect of Section 603. Below are areas of potential guidance in the form of questions, to which the Chamber has provided its suggested answers.

Proposed Q & As on Roth Catch-up Contributions

Q1: The statute does not require plan sponsors to provide notice of the Section 603 requirements to participants. However, given the importance of these changes, should Treasury provide a model notice to include with other notices?

A1: Yes. Nothing in Code Section 414(v) or Section 603 of the SECURE 2.0 Act requires plan sponsors to provide notice of the changes made by Section 603. However, a model notice

would be welcome, and it should explain that this change is required by law, and a plan sponsor may not change the requirement that certain individuals must make catch-up contributions on a Roth basis.

Q2: May a plan sponsor default all participants into making catch-up contributions as Roth?

A2: Yes. Code Section 414(v)(7)(B) provides that catch-up contributions may not be made under the plan "unless the plan provides that any eligible participant may make the participant's additional elective deferrals as designated Roth contributions." There is nothing in the new paragraph (7) or Code Section 414(v) that otherwise would prohibit a plan from defaulting all voluntary catch-up contribution elections as Roth.

Q3: An individual with eligible compensation less than $145,000 may elect to make catch-up contributions either on a Roth or pre-tax basis. Is a plan sponsor allowed to limit the election frequencies for such individuals?

A3: Yes. A plan sponsor may, but is not required, to limit the frequency an individual may change the participant's elections between Roth and pre-tax contributions.

Q4: When an employee's pre-tax elective deferral contribution is required to be treated as a Roth catch-up contribution after it is in the plan, in which year should that contribution be included in the employee's taxable income, should it be excluded from wages for purposes of income tax withholding or other purposes, and how should that contribution be reported as income?

A4: There are certain circumstances in which an employee's pre-tax elective deferral contribution may be required to be treated as a Roth catch-up contribution after it has been deposited in a plan. For example, a catch-up contribution may arise as the result of an excess deferral contribution, an excess annual addition, or because it exceeds the plan's deferral percentage limit. Similarly, an individual's wages for the prior year may be determined to be above the $145,000 threshold after an individual has made a catch-up contribution on a pre-tax basis. Where a pre-tax elective deferral contribution is required to be treated as a Roth catch-up contribution after it has been deposited in a plan, the contribution (unadjusted for earnings) is includable as income in the year the contribution is determined to be treated as a Roth catch-up contribution, which may be different than the year in which the contribution was deposited in the plan. For example, if a pre-tax elective deferral contribution was made in 2023 but determined to be treated as a Roth catch-up contribution in 2024, the contribution will be includable as income in tax year 2024. The amount includable in income is excluded from wages for purposes of income tax withholding and other purposes and is subject to reporting on IRS Form 1099-R.

Q5: Is there a de minimis exception that exempts small dollar catch-up contributions from being recharacterized as Roth?

A5: Yes. Many catch-up contributions will be small and reporting large volumes of small dollar amounts will be inefficient and costly to produce and process for recordkeepers and the

IRS. It also likely will confuse participants. As such, any amounts of $250 or below would not need to be recharacterized as Roth.

Q6: Is an individual's compensation who works for a subsidiary that is not participating in the plan sponsored by the parent corporation, but who later transfers to the parent corporation included in determining whether the individual's compensation is above $145,000 for purposes of the parent corporation's plan?

A6: No. Code Section 414(v)(7)(A) refers to "wages (as defined in section 3121(a)) for the preceding calendar year from the employer sponsoring the plan." Code Section 3121(b) defines employment as "any service, of whatever nature, performed . . . by an employee for the person employing him . . .." Therefore, for purpose of Code Section 414(v)(7)(A), the compensation at issue would be paid by the subsidiary, not from the parent who is the sponsor of the plan. As such, it would not need to be included in determining whether the participant has met the threshold.

Q7: May a plan that covers a both participants who receive wages under Code Section 3121(a) from the employer sponsoring the plan and participants who do not receive wages under Codes Section 3121(a) from the employer sponsoring the plan require all participants who had over $145,000 in compensation (as provided under Code Section 3121(a) for those with such wages and for those without Code Section 3121(a) wages, a 415(c)-compliant definition of compensation) in the prior year make catch-up contributions as Roth contributions?

A7: Yes, a reasonable interpretation of SECURE 2.0 section 603 and Code section 414(v) would allow this approach.

Q8: Does Section 603 apply to an individual in a plan who does not receive Code Section 3121(a) wages from the plan sponsor, as defined under the Employee Retirement Income Security Act of 1974, as amended, Section 3(16)(B)(iii) and Code Section 432(j)(9)?

A8: No. Section 603 does not apply to an individual in a plan sponsored by an entity as defined under ERISA Section (3)(B)(iii) and Code Section 432(j)(9) because that individual does not receive Code Section 3121(a) wages from the plan sponsor.

Conclusion

We appreciate Treasury providing a two-year transition period to help plan sponsors implement Section 603 and Treasury's request for comment on other implementation issues. We look forward to working with you on this issue going forward.

Sincerely,

Chantel Sheaks

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