

Recent SECURE 2.0 Guidance Regarding Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions

February 6, 2024

PRACTICES Employee Benefits and Executive Compensation

As we previously reported [here](#) and [here](#), on December 20, 2023, the IRS issued Notice 2024-02 (the “**Notice**”) which provided guidance on several provisions of the SECURE 2.0 Act for retirement plans. This article is the second in a series of articles on recent SECURE 2.0 Act guidance and covers the optional treatment of employer matching or nonelective contributions as Roth contributions. In future articles, we plan to discuss guidance regarding the expansion of automatic enrollment features, safe harbor plan corrections, and plan emergency savings accounts.

Under the SECURE 2.0 Act, plan sponsors may now offer employees the option to elect to receive matching or nonelective contributions on a Roth basis (“**Roth Employer Contributions**”). This election is only available if the employee is fully vested in the employer contributions at the time the Roth Employer Contribution is allocated to the employee’s account. Plan sponsors may add this feature even if Roth elective deferrals are not offered under the plan.

The Notice also provides detailed tax reporting rules, which are summarized below:

- **Gross Income Inclusion:** Roth Employer Contributions are included in the participant’s gross income for the year such contributions are allocated to the participant’s account. This applies even if the Roth Employer Contribution is deemed to have been made on the last day of the prior taxable year of the employer.
- **Not Wages:** Notwithstanding the foregoing, the Notice indicates that Roth Employer Contributions are generally not subject to employment tax wage withholding (i.e., federal income tax withholding, Federal Insurance Contributions Act taxes (“**FICA**”), and Federal Unemployment Tax Act taxes). There is an exception for Roth Employer Contributions made to an eligible 457(b) governmental plan under which employees may be subject to FICA withholding.
- **Employer Tax Reporting:** An employer must report an Employer Roth Contribution as an in-plan Roth rollover on a Form 1099-R for the year in which such contributions are allocated to the participant’s account.
- **Not Safe Harbor Compensation:** Roth Employer Contributions are not included in the safe harbor definition of compensation under Section 415 of the Code.

The Notice is available [here](#). For further information regarding this provision and the SECURE 2.0 Act in general, please refer to our prior blog posts linked below.

- [Recent SECURE 2.0 Act Guidance Regarding Small Immediate Financial Incentives and Penalty-Free Withdrawals for Terminal Illness](#)
- [SECURE 2.0 Act Amendment Deadlines Extended](#)

- [IRS's Proposed Long-Term, Part-Time Employee Rule](#)
- [SECURE 2.0 Act Plan Sponsor Year-End Compliance: Permissive Plan Sponsor Design Changes and Plan Corrections](#)
- [SECURE 2.0 Act Plan Sponsor Year-End Compliance: Participant Contributions and Distributions](#)
- [IRS Issues Relief for Enforcement of Roth Catch-Up Contribution Requirement for Highly Paid Employees Under SECURE 2.0 Act](#)
- [IRS Transition Relief for Required Minimum Distributions Under SECURE 2.0 Act](#)
- [IRS Issues Interim Guidance on Expanded EPCRS](#)
- [SECURE 2.0 Act: Focus on Governmental 457\(b\) Plans](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Plan Design Changes](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans Distribution and Withdrawal Changes](#)
- [SECURE 2.0 Act: Focus on Pension Plans](#)
- [SECURE 2.0 Act: Permissive Plan Design Changes](#)
- [SECURE 2.0 Act Increases Age for Required Minimum Distributions](#)
- [SECURE 2.0 Act: Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 is Here! What's Next for Plan Sponsors?](#)
- [Major Retirement Legislation Passed by Congress: SECURE 2.0 Act](#)