



Current Federal Tax Developments

June 24, 2024

Kaplan Financial Education



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This Week We Look At:

Supreme Court rules, in a more divided than it may appear opinion, that the §965 transition tax is Constitutional, sustaining the result from the Ninth Circuit in the *Moore* case.

IRS gives interim guidance for special distribution relief in the SECURE Act 2.0 for certain distributions.

IRS indicates it will now be (slowly) processing ERC claims, vast majority show issues

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§965 Transition Tax Found to Be Constitutional



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- *Moore v. United States*, USSC Case No. 22-800, June 20, 2024
 - 7-2 opinion held that the tax was Constitutional
 - There were two concurring opinions issued
 - Justice Jackson's opinion makes it clear she does not believe there is a realization requirement
 - Justice Barret's opinion, joined by Justice Alito, indicates they believe there is a realization requirement and that the real problem in this case is the plaintiff's concession that Subpart F is constitutional

Moore v. United States (Supreme Court opinion):

https://www.supremecourt.gov/opinions/23pdf/22-800_jg6o.pdf



§965 Transition Tax Found to Be Constitutional



Image from Unsplash+/Getty Images

- *Moore v. United States*, USSC Case No. 22-800, June 20, 2024
 - 7-2 opinion held that the tax was Constitutional
 - The main opinion stated that no determination was made here on
 - Whether realization is or is not required under the 16th Amendment
 - Whether any other future tax that might be enacted passes Constitutional muster (indirect reference to the wealth tax)

Moore v. United States (Supreme Court opinion):

https://www.supremecourt.gov/opinions/23pdf/22-800_jg6o.pdf



§965 Transition Tax Found to Be Constitutional



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- *Moore v. United States*, USSC Case No. 22-800, June 20, 2024
 - Held that the income in question was realized, so even if realization is required it had occurred
 - Opinion does a detailed analysis of prior precedents that make it clear Congress can tax either an entity or its equity holders on income
 - Did not find anything unique about partnerships or S corporations that specially allows Congress to impose a tax on their equity holders – could do so for any entity

Moore v. United States (Supreme Court opinion):

https://www.supremecourt.gov/opinions/23pdf/22-800_jg6o.pdf



§965 Transition Tax Found to Be Constitutional



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- *Moore v. United States*, USSC Case No. 22-800, June 20, 2024
 - Held that the income in question was realized, so even if realization is required it had occurred
 - Noted that there was no real difference between the Subpart F tax plaintiffs conceded was Constitutional and the §965 transition tax
 - Justice Kavanaugh, writing for the majority, found that ruling otherwise would create a “fiscal calamity” (either very deep cuts in spending or much higher taxes imposed otherwise)

Moore v. United States (Supreme Court opinion):

https://www.supremecourt.gov/opinions/23pdf/22-800_jg6o.pdf

IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions



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- Notice 2024-55, June 20, 2024
 - SECURE 2.0 Act added two new exceptions from the 10% additional tax under IRC §72(t) for premature distributions from employer retirement plans and IRAs
 - Emergency Personal Expense Distribution
 - Domestic Abuse Victim Distributions

Notice 2024-55:

<https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-guidance-addresses-new-exceptions-early-withdrawal-penalty/7kd6w>



IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions



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- Notice 2024-55, June 20, 2024
 - Emergency Personal Expense Distribution
 - 7 Q&As covering such distributions for recipients of such distributions

Notice 2024-55:

<https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-guidance-addresses-new-exceptions-early-withdrawal-penalty/7kd6w>



IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-1: What is an emergency personal expense distribution?

A. A-1: An emergency personal expense distribution is a distribution made from an applicable eligible retirement plan to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. An emergency personal expense distribution is includible in gross income, but it is not subject to the 10 percent additional tax under section 72(t)(1).

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-2: How does an individual determine whether an expense is an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses?

A. A-2: Whether an individual has an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses is determined by the relevant facts and circumstances for each individual. Factors to be considered include, but are not limited to, whether the individual (or a family member of the individual) has expenses relating to —

- (a) medical care (including the cost of medicine or treatment that would be deductible under section 213(d), determined without regard to the limitations in section 213(a),
- (b) accident or loss of property due to casualty,
- (c) imminent foreclosure or eviction from a primary residence,

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

- (d) the need to pay for burial or funeral expenses,
- (e) auto repairs, or
- (f) any other necessary emergency personal expenses.

For purposes of determining whether an individual has an unforeseeable or immediate financial need, the administrator may rely on an employee's written certification that the employee is eligible for an emergency personal expense distribution. See Q&A A-9 of this notice.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-3: Which types of plans are eligible to permit an emergency personal expense distribution?

A. A-3: An emergency personal expense distribution may be made from an applicable eligible retirement plan, which means an eligible retirement plan described in section 402(c)(8)(B) other than a defined benefit plan. Therefore, generally, a section 401(a) qualified defined contribution plan (such as a section 401(k) plan), a section 403(a) annuity plan, a section 403(b) annuity contract, a governmental section 457(b) plan, or an IRA is eligible to permit an emergency personal expense distribution.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-4: How frequently can an individual treat a distribution from an applicable eligible retirement plan as an emergency personal expense distribution?

A. A-4: An individual is permitted to treat only one distribution per calendar year as an emergency personal expense distribution.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-5: Is there a dollar limitation on the amount that an individual may treat as an emergency personal expense distribution under section 72(t)(2)(I)(iii)?

A. A-5: The amount that may be treated as an emergency personal expense distribution by an individual in any calendar year shall not exceed the **lesser** of \$1,000 or an amount equal to the excess of —

- (a) the individual's total nonforfeitable accrued benefit under the plan (in the case of an IRA, the individual's total interest in the IRA), determined as of the date of each such distribution, over
- (b) \$1,000.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

For example, Plan C is a section 401(k) plan that permits emergency personal expense distributions, and Employee A is a participant in Plan C. On July 1, 2025, Employee A has a vested account balance of \$1,500 in Plan C. On July 1, 2025, Employee A requests an emergency personal expense distribution of \$500 from Plan C. Employee A has not previously received an emergency personal expense distribution. The excess of Employee A's nonforfeitable interest in Plan C over \$1,000 is \$1,500 - \$1,000, or \$500. Employee A is permitted to treat \$500 from Plan C as an emergency personal expense distribution (the lesser of \$1,000 or the amount equal to \$1,500 - \$1,000 (\$500)).

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-6: Once an individual treats a distribution as an emergency personal expense distribution, how soon can that individual take a subsequent emergency personal expense distribution?

A. A-6: Notwithstanding the limitation in Q&A A-4 of this notice, if an individual treats a distribution as an emergency personal expense distribution in any calendar year with respect to an applicable eligible retirement plan, no amount of any subsequent distribution can be treated as an emergency personal expense distribution during the immediately following 3 calendar years with respect to that plan unless —

- (a) the previous emergency personal expense distribution is fully repaid to the plan, or
- (b) the aggregate of the individual's elective deferrals and employee contributions to the plan (in the case of an IRA, the total amounts that the individual contributed to the IRA) after the previous emergency personal expense distribution is at least equal to the amount of the previous emergency personal expense distribution that has not been repaid.

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

For example, consider the same facts as Q&A A-5 of this notice (Employee A requests from Plan C an emergency personal expense distribution of \$500 on July 1, 2025). Employee A does not repay the emergency personal expense distribution but continues to make elective deferrals to Plan C. On August 1, 2027, Employee A has an account balance in the amount of \$5,000. With respect to the \$5,000 account balance, Employee A contributed \$3,500 in elective deferrals since the July 1, 2025, distribution. On August 1, 2027, Employee A requests an emergency personal expense distribution (which meets the requirements of Q&A A-1 of this notice) of \$1,000 from Plan C. This distribution meets the limitation requirements in Q&A A-4 (annual limitation), Q&A A-5 (dollar limitation), and Q&A A-6 (limitation on subsequent distributions) of this notice.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-7: May an individual repay an emergency personal expense distribution to an applicable eligible retirement plan?

A. A-7: An individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay any portion of an emergency personal expense distribution (up to the entire amount of the emergency personal expense distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as applicable.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions



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- Notice 2024-55, June 20, 2024
 - Emergency Personal Expense Distribution
 - 7 Q&As covering such distributions for recipients of such distributions
 - 8 Q&As covering such distributions from the perspective of the retirement plans

Notice 2024-55:

<https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-guidance-addr-esses-new-exceptions-early-withdrawal-penalty/7kd6w>



IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-8: Is an applicable eligible retirement plan required to permit emergency personal expense distributions under section 72(t)(2)(I)?

A. A-8: It is optional for an applicable eligible retirement plan to permit emergency personal expense distributions pursuant to section 72(t)(2)(I). Plan amendments adopted to permit emergency personal expense distributions are discretionary amendments for purposes of the plan amendment rules discussed in Section II.J. of Notice 2024-02, 2024-02 IRB 316. For information relating to the deadline for adopting plan amendments, see the plan amendment rules discussed in Section II.J. of Notice 2024-02.

If an applicable eligible retirement plan does not permit emergency personal expense distributions, the individual is permitted to treat an otherwise *permissible distribution* as an emergency personal expense distribution. See Q&A A-15 of this notice.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Footnote 5 to Q&A 8

For purposes of this notice, a “*permissible distribution*” means a distribution that meets the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A) and is permissible under the plan. Thus, for example, a participant in a plan that does not permit emergency personal expense distributions may meet the requirements for a hardship distribution if the plan permits hardship distributions. In addition, a participant who terminated service with an employer with an accrued benefit under a section 401(k) plan that does not permit emergency personal expense distributions may meet the distribution restrictions for severance from employment.

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-9: May an administrator rely on a written certification from an employee that the employee is eligible for an emergency personal expense distribution?

A. A-9: In determining whether an employee is eligible for an emergency personal expense distribution, an administrator of an applicable eligible retirement plan is permitted to rely on an employee's written certification that the employee is eligible for an emergency personal expense distribution.⁶ For this purpose, an administrator is a plan administrator as defined in section 414(g), or an IRA trustee, custodian, or issuer.

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-10: Do emergency personal expense distributions from an applicable eligible retirement plan meet the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A)?

A. A-10: Emergency personal expense distributions are treated as meeting the distribution restrictions for qualified cash or deferred arrangements under section 401(k)(2)(B)(i), custodial accounts under section 403(b)(7)(A)(i), annuity contracts under section 403(b)(11), and governmental deferred compensation plans under section 457(d)(1)(A). Thus, for example, an employer may expand the distribution options under its plan to allow an amount attributable to elective, qualified nonelective, qualified matching, or safe harbor contributions under a section 401(k) plan to be distributed as an emergency personal expense distribution.

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-11: Is an emergency personal expense distribution treated by an applicable eligible retirement plan as an eligible rollover distribution for purposes of the direct rollover rules, section 402(f) notice requirements, and the mandatory withholding rules?

A. A-11: An emergency personal expense distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), and the mandatory withholding rules under section 3405. Thus, the plan is not required to offer an individual a direct rollover with respect to an emergency personal expense distribution. In addition, the administrator is not required to provide a section 402(f) notice. Finally, the administrator or payor of the emergency personal expense distribution is not required to withhold an amount equal to 20 percent of the distribution, as generally is required in section 3405(c)(1). However, an emergency personal expense distribution is subject to the withholding requirements of section 3405(b) and §35.3405-1T of the withholding tax regulations.

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-12: If an applicable eligible retirement plan permits emergency personal expense distributions, is the plan required to accept a repayment of that distribution to the plan?

A. A-12: An applicable eligible retirement plan must accept the repayment of an emergency personal expense distribution from an individual if the following apply:

- (a) the plan permits emergency personal expense distributions;
- (b) the individual received an emergency personal expense distribution from that plan; and
- (c) the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to repay the emergency personal expense distribution to the plan.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-13: Is a repayment of an emergency personal expense distribution from an applicable eligible retirement plan other than an IRA treated as the direct transfer of an eligible rollover distribution as defined in section 402(c)(4)?

A. A-13: In the case of a repayment of an emergency personal expense distribution from an applicable eligible retirement plan other than an IRA, an individual is treated as having received the distribution as an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-14: Is a repayment of an emergency personal expense distribution from an IRA treated as the direct transfer of a distribution described in section 408(d)(3)?

A. A-14: In the case of a repayment of an emergency personal expense distribution from an IRA, an individual is treated as having received the distribution as a distribution described in section 408(d)(3) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. A-15: If an applicable eligible retirement plan does not permit emergency personal expense distributions, may an individual treat an otherwise permissible distribution as an emergency personal expense distribution?

A. A-15: If an applicable eligible retirement plan does not permit emergency personal expense distributions and an individual receives an otherwise permissible distribution that meets the requirements of an emergency personal expense distribution (as defined in Q&A A-1 of this notice), the individual may treat the distribution on the individual's federal income tax return as an emergency personal expense distribution to the extent the distribution meets the various limitations on an emergency personal expense distribution (see Q&As A-4 through A-6 of this notice). As part of the individual's tax return, the individual will claim on Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, that the distribution is an emergency personal expense distribution, in accordance with the form's instructions. The distribution, while includible in gross income, is not subject to the 10 percent additional tax under section 72(t)(1) pursuant to section 72(t)(2)(I). If the individual decides to repay the amount to an eligible retirement plan, the individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay the amount to an IRA.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions



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- Notice 2024-55, June 20, 2024
 - Domestic Abuse Victim Distributions
 - 6 questions about the distributions in general

Notice 2024-55:

<https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-guidance-addresses-new-exceptions-early-withdrawal-penalty/7kd6w>



IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-1: What is a domestic abuse victim distribution?

A. B-1: A domestic abuse victim distribution is a distribution from an applicable eligible retirement plan to a domestic abuse victim made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner. A domestic abuse victim distribution is includible in gross income but is not subject to the 10 percent additional tax under section 72(t)(1).

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-2: How is domestic abuse defined for the purposes of a domestic abuse victim distribution?

A. B-2: The term “domestic abuse” means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household.

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-3: Which types of plans are eligible to permit a domestic abuse victim distribution?

A. B-3: A domestic abuse victim distribution may be made from an applicable eligible retirement plan, which is defined in section 72(t)(2)(K)(vi)(I) as an eligible retirement plan described in section 402(c)(8)(B), other than a defined benefit plan or a plan to which the spousal consent requirements of sections 401(a)(11) and 417 apply. In general, the spousal consent requirements of sections 401(a)(11) and 417 apply to certain qualified retirement plans, including defined benefit plans, money purchase pension plans, and defined contribution plans that (1) do not provide 100 percent death benefits for surviving spouses, (2) provide benefits in the form of a life annuity, or (3) are direct or indirect transferees of a defined benefit or money purchase pension plan. See section 401(a)(11)(B) and § 1.401(a)-20, Q&A-3.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-4: Is there a dollar limitation on the amount that an individual may treat as a domestic abuse victim distribution under section 72(t)(2)(K)?

A. B-4: The aggregate amount that an individual may treat as a domestic abuse victim distribution cannot exceed the lesser of —

- (a) \$10,000 (indexed for inflation), or
- (b) 50 percent of the present value of the nonforfeitable accrued benefit (vested accrued benefit) of the employee under the plan.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

For example, Plan E is a section 403(b) plan that permits domestic abuse victim distributions, and Taxpayer D is a participant in Plan E. On August 15, 2024, Taxpayer D is eligible to receive a domestic abuse victim distribution from Plan E because Taxpayer D was a victim of domestic abuse on January 15, 2024. August 15, 2024, is less than one year after the January 15, 2024, incident. On August 15, 2024, Taxpayer D has a \$15,000 vested account balance in Plan E (\$7,500 is 50 percent of Taxpayer D's vested account balance). Taxpayer D requests a \$7,500 domestic abuse victim distribution from Plan E. Taxpayer D is permitted to take a domestic abuse victim distribution of \$7,500 from Plan E (the lesser of \$7,500 (50 percent of Taxpayer D's vested account balance) and \$10,000).

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-5: How are the cost-of-living adjustments made to the dollar limit for domestic abuse victim distributions?

A. B-5: For taxable years beginning in a calendar year after 2024, the \$10,000 amount will be increased annually by an amount equal to —

- (a) The \$10,000 dollar limitation, multiplied by
- (b) The cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting calendar year 2023, for calendar year 2016 in section 1(f)(3)(A)(ii).

If any amount after adjustment under section 72(t)(2)(K)(vii) is not a multiple of \$100, the amount will be rounded to the nearest multiple of \$100. The adjusted amounts will be provided in future guidance issued in the Internal Revenue Bulletin.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-6: May an individual repay a domestic abuse victim distribution to an applicable eligible retirement plan?

A. B-6: An individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay any portion of a domestic abuse victim distribution (up to the entire amount of the domestic abuse victim distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as applicable.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions



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- Notice 2024-55, June 20, 2024
 - Domestic Abuse Victim Distributions
 - 6 questions about the distributions in general
 - 8 questions related to retirement plans and these distributions

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-7: Is an applicable eligible retirement plan required to permit domestic abuse victim distributions under section 72(t)(2)(K)?

A. B-7: It is optional for an applicable eligible retirement plan to permit domestic abuse victim distributions pursuant to section 72(t)(2)(K). Plan amendments adopted to permit domestic abuse victim distributions are discretionary amendments for purposes of the plan amendment rules discussed in Section II.J. of Notice 2024-02. For information relating to the deadline for adopting plan amendments, see Section II.J of Notice 2024-02.

If an applicable eligible retirement plan does not permit domestic abuse victim distributions, the individual is permitted to treat an otherwise permissible distribution as a domestic abuse victim distribution. See Q&A B-14 of this notice.

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-8: Do domestic abuse victim distributions from an applicable eligible retirement plan meet the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A)?

A. B-8: If the employee or participant certifies that the employee or participant is eligible to receive a domestic abuse victim distribution, then the distribution is treated as meeting the distribution restrictions for qualified cash or deferred arrangements under section 401(k)(2)(B)(i), custodial accounts under section 403(b)(7)(A)(i), annuity contracts under section 403(b)(11), and governmental deferred compensation plans under section 457(d)(1)(A). Thus, for example, an employer may expand the distribution options under its plan to allow an amount attributable to elective, qualified nonelective, qualified matching, or safe harbor contributions under a section 401(k) plan to be distributed as a domestic abuse victim distribution.

Notice 2024-55:

<https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-guidance-addresses-new-exceptions-early-withdrawal-penalty/7kd6w>



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Q. B-9: What are the certification requirements for a domestic abuse victim distribution?

A. B-9: Pursuant to section 72(t)(2)(K)(vi)(III), any distribution that an employee or participant certifies as a domestic abuse victim distribution will be treated as meeting the distribution restriction requirements under the Code for the applicable eligible retirement plan. To meet the certification requirements of section 72(t)(2)(K)(vi)(III), the employee or participant could check the box on the distribution request form to certify that (1) the employee or participant is eligible for a domestic abuse victim distribution and (2) the distribution is made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse. The certification must be provided in writing and the employee or participant may use the electronic delivery rules in §1.401(a)-21(d) to provide the certification.

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Q. B-10: Is a domestic abuse victim distribution treated by an applicable eligible retirement plan as an eligible rollover distribution for purposes of the direct rollover rules, section 402(f) notice requirements, and the mandatory withholding rules?

A. B-10: A domestic abuse victim distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), and the mandatory withholding rules under section 3405. Thus, the plan is not required to offer an individual a direct rollover with respect to a domestic abuse victim distribution. In addition, the administrator is not required to provide a section 402(f) notice. Finally, the administrator or payor of the domestic abuse victim distribution is not required to withhold an amount equal to 20 percent of the distribution, as generally is required in section 3405(c)(1). However, a domestic abuse victim distribution is subject to the withholding requirements of section 3405(b) and §35.3405-1T.

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Q. B-11: If an applicable eligible retirement plan permits domestic abuse victim distributions, is the plan required to accept a repayment of that distribution to the plan?

A. B-11: An applicable eligible retirement plan must accept the repayment of a domestic abuse victim distribution from an individual if the following apply:

- (a) the plan permits domestic abuse victim distributions;
- (b) the individual received a domestic abuse victim distribution from that plan; and
- (c) the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to repay the domestic abuse victim distribution to the plan.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-12: Is a repayment of a domestic abuse victim distribution from an applicable eligible retirement plan other than an IRA treated as the direct transfer of an eligible rollover distribution as defined in section 402(c)(4)?

A. B-12: In the case of a repayment of a domestic abuse victim distribution from an applicable eligible retirement plan other than an IRA, an individual is treated as having received the distribution as an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-13: Is a repayment of a domestic abuse victim distribution from an IRA treated as the direct transfer of a distribution described in section 408(d)(3)?

A. B-13: In the case of a repayment of a domestic abuse victim distribution from an IRA, an individual is treated as having received the distribution as a distribution described in section 408(d)(3) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Notice 2024-55:

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IRS Issues Guidance on SECURE 2.0 Act Emergency Personal Expense and Domestic Abuse Victim Distributions

Q. B-14: If an applicable eligible retirement plan does not permit domestic abuse victim distributions, may an individual treat an otherwise permissible distribution as a domestic abuse victim distribution?

A. B-14: If an applicable eligible retirement plan does not permit domestic abuse victim distributions and an individual receives an otherwise permissible distribution that meets the requirements of a domestic abuse victim distribution (as defined in Q&A B-1 of this notice), the individual may treat the distribution as a domestic abuse victim distribution on the individual's federal income tax return to the extent the distribution meets the limitation on a domestic abuse victim distribution (see Q&A B-4 of this notice). As part of the individual's tax return, the individual will claim on Form 5329 that the distribution is a domestic abuse victim distribution, in accordance with the form's instructions. The distribution, while includible in gross income, is not subject to the 10 percent additional tax under section 72(t)(1) pursuant to section 72(t)(2)(K). If the individual decides to repay the amount to an eligible retirement plan, the individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay the amount to an IRA.

Notice 2024-55:

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IRS Will Begin Processing Some ERC Claims



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- “IRS enters next stage of Employee Retention Credit work; review indicates vast majority show risk of being improper,” IR-2024-169, June 20, 2024
 - IRS has been under pressure to start processing ERC claims by the Taxpayer Advocate and others
 - Issued news release outlining the results of its review and a limited roadmap for processing of returns

IR-2024-169:

<https://www.irs.gov/newsroom/irs-enters-next-stage-of-employee-retention-credit-work-review-indicates-vast-majority-show-risk-of-being-improper>



IRS Will Begin Processing Some ERC Claims



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- “IRS enters next stage of Employee Retention Credit work; review indicates vast majority show risk of being improper,” IR-2024-169, June 20, 2024
 - Review found:
 - Between 10% and 20% of claims fall into what the agency has determined to be the highest-risk group, which show clear signs of being erroneous claims for the pandemic-era credit.
 - Will be denying tens of thousands of these claims in the coming weeks

IR-2024-169:

<https://www.irs.gov/newsroom/irs-enters-next-stage-of-employee-retention-credit-work-review-indicates-vast-majority-show-risk-of-being-improper>



IRS Will Begin Processing Some ERC Claims



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- “IRS enters next stage of Employee Retention Credit work; review indicates vast majority show risk of being improper,” IR-2024-169, June 20, 2024
 - Review found:
 - Estimates between 60% and 70% of the claims show an unacceptable level of risk.
 - Conducting additional analysis to to gather more information with a goal of improving the agency’s compliance review, speeding resolution of valid claims while protecting against improper payments.

IR-2024-169:

<https://www.irs.gov/newsroom/irs-enters-next-stage-of-employee-retention-credit-work-review-indicates-vast-majority-show-risk-of-being-improper>



IRS Will Begin Processing Some ERC Claims



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- “IRS enters next stage of Employee Retention Credit work; review indicates vast majority show risk of being improper,” IR-2024-169, June 20, 2024
 - Review found:
 - Between 10% and 20% of the ERC claims show a low risk.
 - For those with no eligibility warning signs that were received prior to the last fall’s moratorium, the IRS will begin judiciously processing more of these claims.

IR-2024-169:

<https://www.irs.gov/newsroom/irs-enters-next-stage-of-employee-retention-credit-work-review-indicates-vast-majority-show-risk-of-being-improper>



IRS Will Begin Processing Some ERC Claims



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- “IRS enters next stage of Employee Retention Credit work; review indicates vast majority show risk of being improper,” IR-2024-169, June 20, 2024
 - Oldest claims will be processed first
 - No claims filed after the moratorium date will be processed at this time
 - Remember that if a claim has been with the IRS for 6 months there is the option to take it directly to District Court or the Court of US Claims (though that most often won't be cost effective)

IR-2024-169:

<https://www.irs.gov/newsroom/irs-enters-next-stage-of-employee-retention-credit-work-review-indicates-vast-majority-show-risk-of-being-improper>

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