



To Our Clients and Friends

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## Roth Conversions Within 401(k) Plans

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Under the recently enacted Small Business Jobs Act of 2010 (the "Act"), employers may amend their 401(k) plans this year or in the future to permit qualifying participants (or their surviving spouses) to convert some or all of their tax-deferred plan accumulations into tax-favored Roth accounts that are part of their 401(k) plans, without the need for a rollover to an IRA.

Under the Act, a 401(k) plan that offers its participants the opportunity to make Roth contributions can now allow participants who qualify for the receipt of eligible rollover distributions, such as those age 59½, disabled or surviving spouses, to transfer such distributions into a Roth account that is part of the plan, instead of having to rollover the distribution into a Roth IRA. To accomplish such conversions, plans that do not already permit age 59½ participants to elect in-service distributions would have to be so amended.

Depending upon the demographics of the plan's participants, there may be some urgency in adopting plan amendments permitting in-plan conversions from non-Roth accounts to Roth accounts. Note that beginning this past January 1<sup>st</sup>, any individual regardless of his or her income level could convert an eligible rollover distribution from a 401(k) plan by directing the rollover of the distribution into a Roth IRA. The individual is taxed on the amount converted. Notably, for 2010 Roth conversions, including the new in-plan Roth conversions, unless the participant elects to recognize the entire conversion amount as income in 2010, half of the conversion amount will be recognized as income in each of the years 2011 and 2012. This is a one-time opportunity for individuals to defer the income recognition required by a Roth conversion and does not apply after 2010.

Operationally, in order to take advantage of the 2010 Roth conversion rules, aside from the adoption of necessary plan amendments, plan systems will have to be modified before year end so that transfers occur timely. Plan sponsors need to quickly determine at this late date whether their service providers can implement the necessary changes and provide communications and election forms to eligible individuals on a timely basis to accomplish these new in-plan Roth conversions.

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