

§ 1.408-11

26 CFR Ch. I (4-1-17 Edition)

or before the later of the date of purchase or the required beginning date under the IRA, provided that the contract requires a beneficiary to be irrevocably selected by the end of the year following the year of the rollover.

(e) *Roth IRAs.* A contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar and percentage limitation rules in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A-12. See A-14(d) of § 1.408A-6. If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid with respect to the contract will not be taken into account under paragraph (b)(2)(ii)(B) or

paragraph (b)(3)(ii)(B) of this A-12 after the date of the rollover or conversion.

(f) *Effective/applicability date.* This A-12 applies to contracts purchased on or after July 2, 2014.

[T.D. 8987, 67 FR 19024, Apr. 17, 2002, as amended by T.D. 9130, 69 FR 33293, June 15, 2004; T.D. 9673, 79 FR 37642, July 2, 2014]

§ 1.408-11 Net income calculation for returned or recharacterized IRA contributions.

(a) *Net income calculation for returned IRA contributions—(1) General rule.* For purposes of returned contributions under section 408(d)(4), the net income attributable to a contribution made to an IRA is determined by allocating to the contribution a *pro rata* portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

(2) *Special rule.* If an IRA is established with a contribution and no other contributions, distributions or transfers are made to or from that IRA, then the subsequent distribution of the entire account balance of the IRA pursuant to section 408(d)(4) will satisfy the requirement of that Internal Revenue Code section that the return of a contribution be accompanied by the amount of net income attributable to the contribution.

(b) *Definitions.* For purposes of this section the following definitions apply:

(1) *Adjusted opening balance.* The term *adjusted opening balance* means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is distributed as a returned contribution pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made to the IRA during the computation period.

(2) *Adjusted closing balance.* The term *adjusted closing balance* means the fair

market value of the IRA at the end of the computation period plus the amount of any distributions or transfers (including recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(3) *Computation period.* The term *computation period* means the period beginning immediately prior to the time that the contribution being returned was made to the IRA and ending immediately prior to the removal of the contribution. If more than one contribution was made as a regular contribution and is being returned from the IRA, the computation period begins immediately prior to the time the first contribution being returned was contributed.

(4) *Regular contribution.* The term *regular contribution* means an IRA contribution made by the IRA owner that is neither a trustee-to-trustee transfer from another IRA nor a rollover from another IRA or retirement plan.

(c) *Additional rules.* (1) When an IRA asset is not normally valued on a daily

basis, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. In addition, solely for purposes of this section, notwithstanding A-3 of § 1.408A-5, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(2) In the case of an IRA that has received more than one regular contribution for a particular taxable year, the last regular contribution made to the IRA for the year is deemed to be the contribution that is distributed as a returned contribution under section 408(d)(4), up to the amount of the contribution identified by the IRA owner as the amount distributed as a returned contribution.

(3) In the case of an individual who owns multiple IRAs, the net income calculation is performed only on the IRA containing the contribution being returned, and that IRA is the IRA that must distribute the contribution.

(d) *Examples.* The following examples illustrate the net income calculation under section 408(d)(4) and this section:

Example 1. (i) On May 1, 2004, when her IRA is worth \$4,800, Taxpayer A makes a \$1,600 regular contribution to her IRA. Taxpayer A requests that \$400 of the May 1, 2004, contribution be returned to her pursuant to section 408(d)(4). Pursuant to this request, on February 1, 2005, when the IRA is worth \$7,600, the IRA trustee distributes to Taxpayer A the \$400 plus attributable net income. During this time, no other contributions have been made to the IRA and no distributions have been made.

(ii) The adjusted opening balance is \$6,400 [\$4,800 + \$1,600] and the adjusted closing balance is \$7,600. Thus, the net income attributable to the \$400 May 1, 2004, contribution is \$75 [\$400 × (\$7,600 - \$6,400) ÷ \$6,400]. Therefore, the total to be distributed on February 1, 2005, pursuant to § 408(d)(4) is \$475.

Example 2. (i) Beginning in January 2004, Taxpayer B contributes \$300 on the 15th of each month to an IRA for 2004, resulting in an excess regular contribution of \$600 for that year. Taxpayer B requests that the \$600 excess regular contribution be returned to her pursuant to section 408(d)(4). Pursuant to this request, on March 1, 2005, when the IRA is worth \$16,000, the IRA trustee distributes to Taxpayer B the \$600 plus attributable net

income. The excess regular contributions to be returned are deemed to be the last two made in 2004: the \$300 December 15 contribution and the \$300 November 15 contribution. On November 15 the IRA was worth \$11,000 immediately prior to the contribution. No distributions or transfers have been made from the IRA and no contributions or transfers, other than the monthly contributions (including \$300 in January and February 2005), have been made.

(ii) As of the beginning of the computation period (November 15), the adjusted opening balance is \$12,200 [\$11,000 + \$300 + \$300 + \$300 + \$300] and the adjusted closing balance is \$16,000. Thus, the net income attributable to the excess regular contributions is \$187 [\$600 × (\$16,000 - \$12,200) ÷ \$12,200]. Therefore, the total to be distributed as returned contributions on March 1, 2005, to correct the excess regular contribution is \$787 [\$600 + \$187].

[T.D. 9056, 68 FR 23588, May 5, 2003]

§ 1.408(q)-1 Deemed IRAs in qualified employer plans.

(a) *In general.* Under section 408(q), a qualified employer plan may permit employees to make voluntary employee contributions to a separate account or annuity established under the plan. If the requirements of section 408(q) and this section are met, such account or annuity is treated in the same manner as an individual retirement plan under section 408 or 408A (and contributions to such an account or annuity are treated as contributions to an individual retirement plan and not to the qualified employer plan). The account or annuity is referred to as a deemed IRA.

(b) *Types of IRAs.* If the account or annuity meets the requirements applicable to traditional IRAs under section 408, the account or annuity is deemed to be a traditional IRA, and if the account or annuity meets the requirements applicable to Roth IRAs under section 408A, the account or annuity is deemed to be a Roth IRA. Simplified employee pensions (SEPs) under section 408(k) and SIMPLE IRAs under section 408(p) may not be used as deemed IRAs.

(c) *Separate entities.* Except as provided in paragraphs (d) and (g) of this section, the qualified employer plan