

IRS Delays Roth Catch-Up Requirement for High Earners

August 28, 2023

On August 25, 2023, the IRS issued Notice 2023-62 to address certain industry concerns over implementation of Section 603 of the SECURE 2.0 Act. Section 603 relevantly provides that, beginning in 2024, participants eligible to make catch-up contributions^[1] whose prior year's wages exceed \$145,000 (as indexed) may only make such catch-up contributions on a Roth basis. However, there remain a number of open questions regarding some of the finer points of the new provision. For example, under Section 603 it is unclear how the new requirement applies to those who technically have no wages (such as partners in a partnership or certain state and local government employees). In addition, a technical glitch in the statutory language inadvertently eliminated catch-up contributions altogether after 2023.

In response to this uncertainty and since many recordkeepers and payroll providers also expressed concerns about developing the systems capabilities necessary to administer the requirements of Section 603, Notice 2023-62 addresses several issues related to implementing Section 603. For example, the Notice expresses the IRS position that catch-up contributions are permitted in 2024 and future years, notwithstanding the technical error in statutory language. In addition, the Notice establishes an "administrative transition period" until 2026, during which catch-up contributions will be treated as satisfying the Section 603 rules, even if they are not designated as Roth contributions. Thus, it appears that this administrative transition period essentially creates a nonenforcement policy until 2026. Presumably, plans that are already prepared to implement the requirements of Section 603 in 2024 may still do so if desired.

The Notice also sets forth anticipated guidance on certain aspects of Section 603, subject to any comments the IRS may receive, including guidance providing that:

- Participants with no FICA wages (such as partners and certain governmental employees) will not be subject to Section 603;
- An employer may administratively treat a pre-tax catch-up election as a Roth catch-up election with respect to affected participants; and
- Wages from different employers will not be aggregated for purposes of Section 603.

It is also worth mention that the IRS specifically indicates that the Notice is not intended to provide comprehensive guidance as to Section 603 thereby foreshadowing that future guidance will be forthcoming.

If you have any questions about this how this guidance applies to your retirement plans, please contact the authors of this alert or your Miller Canfield attorney.

[1] Catch-up contributions allow participants over age 50 to defer additional amounts (\$7,500 for 2023) from their compensation to 401(k), 403(b), and governmental 457(b) plans.