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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

IRS Guidance Could Help Workers With Student Debt: Group

By **Emily Brill**

Law360 (August 29, 2018, 7:13 PM EDT) -- The Internal Revenue Service could clear the way for more debt-ridden workers to save for retirement by clarifying that companies won't lose tax benefits if they make 401(k) contributions when workers make student loan payments, a trade group that advocates for corporations' benefit interests said Tuesday.

The ERISA Industry Committee thanked the IRS for issuing a private letter ruling assuring employers that this 401(k)-contribution method is legal, but it urged the agency to go one step further.

"While we believe that current law allows employers to make contributions to their retirement plans on behalf of workers who repay student loan debt, the IRS has yet to clearly articulate that such contributions will not affect the tax-qualified status of an employer's retirement plan," the trade group's senior vice president of retirement policy, Will Hansen, wrote Tuesday in the committee's letter to the IRS.

The ERISA Industry Committee, better known as ERIC, encouraged the IRS to issue guidance stating that workers' 401(k) contributions won't be taxed if the company "matches" student loan payments with 401(k) payments.

Companies run the risk of losing this tax benefit if the IRS decides the student loan-matching strategy violates 401(k) discrimination rules preventing companies from treating younger workers' contributions differently than older workers', Hansen said Wednesday.

"You want to make sure you're following all the rules currently, because if you're not, you potentially lose the tax-qualified status of your 401(k) plans, which means all those contributions that individuals are putting in pre-tax would suddenly become taxable," Hansen told Law360.

ERIC's letter called the IRS' private letter ruling, which was released to the public Aug. 17, a step in the right direction.

Though the May 22 ruling didn't mention the company that requested it, Abbott Laboratories announced a benefit program in June with identical features to the 401(k) student loan program described in the ruling, and the company confirmed it received an IRS ruling greenlighting the program.

The program allows Abbott to make 401(k) contributions on behalf of employees who aren't saving for retirement but are paying off their student loans. The company will contribute the equivalent of 5 percent of a worker's paycheck to his or her 401(k) account if the worker makes a student loan payment equal to at least 2 percent of his or her paycheck.

Epstein Becker Green member Michelle Capezza urged employers considering adopting a similar program to obtain their own private letter ruling, because the May 22 ruling applies only to the company that requested it.

"While a private letter ruling provides insight, it can only be relied on with certainty by the taxpayer who requested the ruling," Capezza said Wednesday. "This [ruling] did not address the federal tax consequences of any aspect of any issue referenced in the letter and did not address any other requirements under the code, including any nondiscrimination testing."

Legislation amending the tax code to include "prescribed rules for integrating student loan repayment programs with qualified retirement plans" would best address the issue, Capezza said.

Morgan Lewis & Bockius LLP partner Brian Dougherty said Wednesday that student loan repayment programs must be designed carefully, but if they're executed well, they can provide a welcome benefit to workers.

"Despite the potential challenges, the addition of this type of feature to a plan sponsor's 401(k) plan would certainly be a welcome benefit to employees, especially those who feel as though they have to choose between saving for retirement and paying down student loan debt," Dougherty said. "[A student loan repayment] program could effectively eliminate that choice and make it easier for employees to do both."

Contributing to workers' retirement accounts, rather than helping them pay off their student loans directly, provides tax benefits for the employees, since retirement contributions are tax-deferred, McDermott Will & Emery LLP partner Jeffrey Holdvogt said.

"It's a way to provide a benefit to employees in a tax-incentivized way," Holdvogt said. "What I've seen working with employers in this space is there's been a lot of appetite to give some incentive to their employees who are dealing with student debt."

Hansen echoed Holdvogt's sentiment, saying that student loans have been a huge issue for ERIC's members for years.

"How do you drive down the debt people have and ensure they have a secure retirement when they're ready to retire?" he asked. "If we're able to take this private letter ruling as a starting point and see what it would take for the IRS to be comfortable expanding that relief so other employers are more willing to implement some sort of program, we could get moving on [a solution]."

--Editing by Haylee Pearl.

Clarification: This article has been updated to clarify Brian Dougherty's comments.