

Federal Update 2004-13

April 29, 2004

TO: NCTR Membership

FROM: Cindie Moore

RE: House Approves Tax Relief for Reservist and Guard Member Distributions

The Groom Law Group, an NCTR member, has provided us with a description of legislation that would affect plan participants who are 1) active duty members of the reserves or National Guard, and 2) have 401(k) or 403(b) accounts. The House passed the bill, H.R. 1779, the "Guardsmen and Reservists Financial Relief Act of 2004," on April 21 by a vote of 415-0.

H.R. 1779 would allow members of the reserves and National Guard who are called to active duty to make penalty-free withdrawals from certain types of retirement accounts without being subject to the 10 percent additional tax on early distributions (Code sec. 72(t)). Under the bill, members of the reserves and National Guard who are called to active duty for a period of 180 days or more could receive penalty-free "qualified reservist distributions" from an IRA or from amounts attributable to pre-tax contributions to a 401(k) plan or 403(b) contract during the period beginning on the date of the call-up order and ending at the close of their period of active duty. Conforming amendments would be made to the section 401(k) and 403(b) restrictions on the distribution of pre-tax contributions to permit such distributions. As written, the relief would not, however, apply to governmental section 457(b) plans or to amounts other than pre-tax contributions and earnings under qualified plans and 403(b) contracts (but not section 403(b)(7) custodial accounts).

Members of the reserves and National Guard would also be permitted to make one or more contributions – up to the total amount of the qualified reservist distributions – to the individual's IRA during the two-year period beginning after the end of the individual's active duty period (or, if later, the date of enactment) without the contributions being subject to the otherwise applicable IRA contribution limits. The contributions would not be deductible and could not be made to the individual's 401(k) plan or 403(b) contract.

The provisions would apply to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2005, and would be effective for distributions after September 11, 2001. It is not yet clear when or if the Senate will act upon H.R. 1779 or related legislation.