



## The Wasting Trust

If an employer has a profit sharing plan to which contributions were made in the past, but is not now making contributions because it cannot afford to do so, the plan can be used as a rollover vehicle even though no current contributions are made.

Some years ago the IRS suggested that a qualified plan could not retain its qualification unless the sponsoring employer continued to exist. The argument made by the IRS was that a plan, by definition, is a program maintained by an employer for its employees and if an employer ceases to exist are condition for continued qualification of the plan would not exist.

The American Society of Pension Actuaries contacted the IRS to discuss the impact of this position. Apparently, the IRS had not recognized that a significant number of Keogh plans were maintained without a sponsor, either because the unincorporated professional had incorporated or simply ceased to practice his or her profession. In addition, there were a large number of corporate plans in a similar position.

The IRS then indicated, although not in writing, that it would not continue to press its argument that a sponsorless wasting trust was not a qualified plan. The Districts were instructed not to disqualify such plans if they did come to their attention, and Rev. Rul. 89-87 was subsequently published dealing with frozen plans, another term for the wasting trust. That revenue ruling simply provided that a frozen plan had to continue to satisfy the qualification conditions imposed by changes in the law and had to be restated by December 31, 1989, to comply with TEFRA, DEFRA or REA, or terminated, and the assets distributed by that date.

The IRS indicated, again not in writing, that a second ruling would soon be published describing the procedures to follow with reference to sponsorless wasting trusts. That ruling was under development some years ago, but has yet to be issued. Based on the assurances received from the IRS at the time, and the position taken on audits since that time, it now appears that a sponsorless wasting trust (frozen plan) is qualified and could be a vehicle for a rollback of amounts held in a rollover IRA.