



## Employees May Choose Between Profit Sharing Plan and HRA Contributions

In Private Letter Ruling 202023001, the IRS has ruled that collectively bargained employees can allocate employer contributions between a profit sharing plan and a health reimbursement arrangement (“HRA”) without creating a 401(k) plan or violating the rules for HRAs.

### Facts

Pursuant to the applicable collective bargaining agreements, the HRA and profit sharing plan in question require participating employers to make contributions according to a contribution schedule. The union is proposing to amend the profit sharing plan and the HRA so that the employer contribution will be based on an annual election made by each covered employee before the beginning of each plan year. In the absence of an employee election, a default contribution will be allocated to each plan on behalf of the employee.

The union requested the IRS to rule that the proposed amendments will not cause the profit sharing plan to be treated as offering a cash or deferred arrangement under section 401(k) of the Internal Revenue Code, and that the amendments will not affect the tax treatment of HRA contributions and benefits.

### IRS Ruling


The IRS noted that, while employees would be permitted to make an annual irrevocable election of contributions to the plans, they would not be permitted to elect to have the contributions paid in cash or used towards taxable benefits. Accordingly, the IRS ruled that the proposed amendment to the profit sharing plan will not cause the plan to be treated as offering a cash or deferred arrangement pursuant to section 401(k).


Similarly, assuming other HRA requirements are met, if an employee makes an irrevocable annual election to have the employer contribute amounts to the HRA in lieu of the profit sharing plan, such amounts are paid solely by the participating employer and not pursuant to a salary reduction election. The amounts will be used to provide benefits that reimburse qualified eligible medical expenses and will not be used to provide for the payment of death benefits, bonuses, or separation pay. Therefore, the IRS has ruled that the contributions and benefits will receive favorable tax treatment.

In addition, because such amounts may not be used to provide other taxable or nontaxable benefits, the amounts contributed to the HRA would not be considered cafeteria plan contributions.

Private Letter Ruling 202023001 can be found at: <https://www.irs.gov/pub/irs-wd/202023001.pdf>


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