



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

November 1, 2023

DataPath Financial Services, Inc.
Attn: John Robbins, Jr., President/CEO
1601 Westpark Dr, Suite 9
Little Rock, AR 72204

Re: Application for Approval of Nonbank Trustee Status

Dear John Robbins, Jr.:

In a letter dated January 16, 2023, as supplemented by correspondence dated April 13, 2023, June 6, 2023, July 17, 2023, August 11, 2023, September 27, 2023, September 28, 2023, and October 16, 2023, you requested, pursuant to section 1.408-2(e) of the federal Income Tax Regulations ("Regulations"), a written Notice of Approval that DataPath Financial Services, Inc. may act as a passive nonbank trustee or custodian with respect to health savings accounts ("HSAs") under section 223 of the Internal Revenue Code ("Code").

Section 223(d)(1)(B) of the Code provides that the trustee of an HSA must be a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section. Section 223(d)(4)(E) provides, in general, that rules similar to section 408(h) (dealing with custodial accounts) also apply to HSAs.

The Regulations at section 1.408-2(e) contain the requirements that must be satisfied in order to act as a nonbank trustee or custodian. Section 1.408-2(e)(1) requires a person to file a written application with the Commissioner demonstrating that it meets sections 1.408-2(e)(2) through 1.408-2(e)(6).

Based on all the information submitted to this office and all the representations made in the application, we have concluded that DataPath Financial Services, Inc. meets the requirements of section 1.408-2(e) of the Regulations and, therefore, is approved to act as a passive nonbank trustee or custodian of HSAs under section 223 of the Code.

This Notice of Approval authorizes DataPath Financial Services, Inc. to act as a passive nonbank trustee or custodian. When DataPath Financial Services, Inc. acts as a passive nonbank trustee or custodian (within the meaning of section 1.408-2(e)(6)(i)(A) of the Regulations), it is authorized only to acquire and hold particular investments specified by the trust instrument or custodial agreement. As a passive nonbank trustee or

custodian, it cannot have the discretion under the written trust instrument or custodial agreement to direct investments of the trust (or custodial) funds.

DataPath Financial Services, Inc. may not act as a trustee or custodian unless it undertakes to act only under trust instruments or custodial agreements that contain a provision to the effect that the grantor is to substitute another trustee or custodian upon notification by the Commissioner that such substitution is required because DataPath Financial Services, Inc. has failed to comply with the requirements of section 1.408-2(e) of the Regulations or is not keeping such records, or making such returns or rendering such statements as are required by forms or Regulations. For example, one such form is Form 990-T for IRAs that have \$1,000 or more of unrelated business taxable income that is subject to tax by section 511(b)(1) of the Code.

DataPath Financial Services, Inc. is required by section 1.408-2(e)(6)(iv) of the Regulations to notify the Commissioner of Internal Revenue, at Internal Revenue Service, Attn: SE:T:EP:RA, Room 6213, 1111 Constitution Ave., NW, Washington, D.C. 20224, in writing, of any change that affects the continuing accuracy of any representations made in its application. Further, the continued approval of DataPath Financial Services, Inc. to act as a passive nonbank trustee or custodian of HSAs under section 223 of the Code, is contingent upon the continued satisfaction of the criteria set forth in section 1.408-2(e).

This Notice of Approval letter is not transferable to any other entity. An entity that is a member of a controlled group of corporations, within the meaning of section 1563(a) of the Code, may not rely on an approval letter issued to another member of the same controlled group. Furthermore, any entity that goes through an acquisition, merger, consolidation or other type of reorganization may not be able to rely on the approval letter issued to such entity prior to the acquisition, merger, consolidation, or other type of reorganization. Such entity may have to apply for a new Notice of Approval in accordance with section 1.408-2(e) of the Regulations.

This letter constitutes a notice that DataPath Financial Services, Inc. may act as a passive nonbank trustee or custodian of HSAs under section 223 of the Code, and does not bear upon its capacity to act as a trustee or custodian under any other applicable law. This is not an endorsement of any investment or retirement plan. The Internal Revenue Service does not review or approve investments and it does not recommend retirement plans.

This Notice of Approval is effective as of the date of this letter and will remain in effect until withdrawn by DataPath Financial Services, Inc. or revoked by the Internal Revenue Service. This Notice of Approval does not authorize DataPath Financial Services, Inc. to accept any fiduciary account before this notice becomes effective.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

DataPath Financial Services, Inc.

3

If you wish to inquire about this ruling, please contact Marynel Shea, badge number 1000777280, at 513-975-6735.

Sincerely,

Frederick L.
Parker Jr.

Digitally signed by Frederick
L. Parker Jr.
Date: 2023.11.01 12:03:09
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Frederick L. Parker, Manager
Employee Plans Technical Group 1

cc: Steven Mindy
Alston & Bird LLP
950 F Street, NW
Washington, DC 20004

