



## 402 (f) Notice Special Tax Rules on Distributions

This notice contains important information you will need before you decide how to receive your benefits from your retirement plan. This notice summarizes only the federal (not state or local) tax rules that apply to your payment.

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### Summary

Although your plan benefits will be subject to taxation, tax averaging or a tax-deferred rollover into an eligible retirement plan can lessen the tax or delay payment. A payment from the plan that is eligible for rollover can be taken into two ways. You can elect to have all or a portion of your vested account balance either (1) paid in a direct rollover or (2) paid to you.

#### If you choose a direct rollover:

- Your payment will be made directly to a Traditional IRA or, if you choose, to another employer plan that accepts your rollover.
- Your payment will not be taxable in the current year, and no income tax will be withheld
- Your payment will be taxable at the time you take it out of the Traditional IRA or the employer plan. Depending on the type of plan, the later distribution may be subject to different tax treatment than it would be if you received a distribution from this plan.

#### If you chose to have your plan benefits paid to you:

- You will receive only 80% of the taxable portion of the payment, and 20% will be sent to the IRS for taxes.
- The taxable portion of your payment will be taxed in the current year unless you roll it over. Under limited circumstances, you may be able to use special tax rules that could reduce the tax you owe. However, if you receive the payment before age 59 ½,\* you may also have to pay an additional 10% federal penalty tax.
- Within 60 days of receiving your payment, you will be able to roll it over to your Traditional IRA or to another employer plan, thus avoiding paying current taxes and penalties. However, you will have to replace the 20% that was withheld for taxes or it will be treated as income for the current year and will be taxed accordingly.

The term "Traditional IRA" as used here includes individual retirement accounts and individual retirement annuities but does not include SIMPLE IRAs, Coverdell Education Savings Accounts (formerly known as Education IRAs) or Roth IRAs.

The term "employer plan" refers to plans that are qualified under Section 401(a) of the Internal Revenue Code (including 401(k) plans, profit-sharing plans, stock bonus plans and money purchase pension plans), Section 403(a) annuity plans, 403(b) tax-sheltered plans (including annuity contracts and custodial accounts) and eligible 457 plans sponsored by state or local governments (but not 457 plans sponsored by nongovernmental entities).

An employer plan is not legally required to accept a rollover. Before you decide to roll over your payments to another employer plan, you should find out whether the plan accepts rollovers and, if so, the types of distributions it accepts as a rollover. Even if a plan accepts rollovers, it may not accept rollovers of certain types of distributions, such as after-tax amounts, employer securities or plan loans. You may wish to consider "splitting" your rollover amount between an employer plan in which you will participate and a Traditional IRA.

If an employer plan accepts your rollover, the plan may restrict subsequent distributions of the rollover amount or may require your spouse's consent for any subsequent distribution. A subsequent distribution from the accepting plan may also be subject to a different tax treatment than distributions from this plan. Check with the administrator of the accepting plan prior to making the rollover.

\*If you leave the company after age 55, the 10% penalty does not apply. The 10% penalty generally does not apply to distributions from an eligible 457 plan.

#### Payments that cannot be rolled over:

- A. Payments spread over long periods.** You cannot rollover a payment if it is part of a series of equal (or almost equal) payments that are made at least once a year and that will last for
1. your lifetime (or your life expectancy)
  2. your lifetime and your beneficiary's lifetime (or life expectancies) or
  3. a period of 10 years or more
- B. Hardship/Unforeseeable emergency withdrawal from a plan.** Hardship withdrawals or distributions due to unforeseeable emergencies cannot be rolled over to an employer plan or a Traditional IRA.
- C. Required minimum distributions.** Once you reach age 70 ½ or retire, whichever comes later, a certain portion of your payment cannot be rolled over because it is a "required minimum payment" that must be paid to you.

- D. Corrective distributions.** A distribution that is made to correct a failed nondiscrimination test or to correct a contribution that exceeded any legal limit for the calendar year cannot be rolled over.
- E. Loans treated as distributions.** The amount of a plan loan that becomes a taxable deemed distribution because of a default on loan cannot be rolled over. However, a loan offset amount is eligible for rollover. Ask your plan administrator if the distribution of your loan qualifies for rollover treatment.

The administrator of this plan should be able to tell you if your payment includes amounts that cannot be rolled over.

#### **Direct rollover:**

In a direct rollover, the eligible rollover distribution is paid directly from the plan to a Traditional IRA or another employer plan that accepts rollovers.

- A. Direct rollover to an IRA.** If you roll over after-tax contributions to a Traditional IRA, it is your responsibility to keep track of these after-tax contributions. This will enable you to determine the nontaxable amount of any future distributions. See IRS Publications 590, *Individual Retirement Arrangements*, for assistance in keeping track of such amounts.
- B. Direct rollover to a plan.** Before you decide to roll over your payment to another employer plan, you should check with the administrator of that plan about whether the plan accepts rollovers and, if so, the types of distributions it accepts. You should also check with the administrator of the receiving plan about any documents required to be completed before it will accept a rollover.
- C. Direct rollover of a series of payments.** If you receive eligible rollover distributions that are paid in a series for less than 10 years, your choice to make or not make a direct rollover for a payment will apply to all later payments in the series until you change your election. You may change your election for any later payment in the series.
- D. Change in tax treatment resulting from a direct rollover:** The tax treatment of any payment from the employer plan or Traditional IRA receiving your direct rollover might be different than if you received your benefit in a taxable distribution directly from the plan. For example if you were born before January 1, 1936, you might be entitled to 10 year averaging or capital gain treatment, as explained below. However, if you have your benefit rolled over to a section 403(b) tax-sheltered annuity, an eligible 457 plan or a Traditional IRA in a direct rollover, your benefit will no longer be eligible for that special treatment. See Section 3-C, "Additional 10% penalty tax if you are under age 59 ½," and if you were born before January 1, 1936 see Section 3-D, "Special tax Treatment".

#### **Tax treatment of payment made to you**

A distribution from the plan (other than a distribution of after-tax contributions) is taxable in the year you receive it unless, within 60 days, you roll it over to a Traditional IRA or another plan that accepts rollovers. If you do not roll it over, special tax rules may apply.

#### **A. Income tax withholding:**

- 1. Mandatory withholding.** If any portion of a payment is eligible to be rolled over but is paid to you instead, the trustee is required to withhold 20% of the taxable portion of your distribution for federal income tax (see example in B below).
- 2. Voluntary withholding.** If any portion of your payment is not an eligible rollover distribution but is taxable, the mandatory withholding rules do not apply and you may elect not to have any withholdings apply.

**B. 60-day rollover option.** If you have an eligible rollover distribution paid to you, you can still decide to roll over all or a portion of it to a Traditional IRA or another employer plan within 60 days after you receive the payment. The portion of your payment that is rolled over will not be taxable until you take it out. You can roll over up to 100% of the eligible rollover distribution, including an amount equal to the 20% that was withheld.

**Example:** If you choose to have an eligible rollover distribution of \$10,000 paid to you, you'll receive \$8,000 and the IRS will take \$2,000. The whole \$10,000 distribution is treated as income, but the \$2,000 is treated as a tax payment. You'll have 60 days after receiving the \$8,000 to roll it over to your Traditional IRA or an employer plan if you decide that is the best course for you. However, to roll over the full \$10,000, you'll need to replace the \$2,000 from another source (your savings, a loan, etc.). Thus, the full \$10,000 distribution will not be taxable when you file your return. The \$2,000 that had been sent to the IRS will apply as a tax payment, which may result in a tax refund. Suppose, however you do not replace the \$2,000 and roll over only the remaining \$8,000. When you file your return, the \$2,000 is treated as a taxable income (and may be subject to an early payment penalty tax). It is credited as a tax payment, which may result in a refund. (However, any refund is likely to be larger if you roll over the entire \$10,000).

**C. Additional 10% penalty tax if you are under age 59 ½.** If you receive a payment before you reach age 59 ½ and you do not roll it over, you may have to pay an extra federal penalty tax equal to 10% of the taxable portion of the payment. The 10% penalty does not apply to your payment if it is paid:

1. because you separate from service at age 55 or older
2. because you retire due to disability
3. as equal (or almost equal) payments over your life or life expectancy (or your and your beneficiary's lives or life expectancies)
4. as dividends with respect to stock by an Employee Stock Ownership Plan (ESOP) as described in Code Section 404(k)
5. directly to the government to satisfy a federal tax levy
6. to an alternate payee under a Qualified Domestic Relations Order (QDRO) or
7. to cover certain medical expenses

See IRS Form 5329 for more information on the 10% additional penalty tax.

**Note:** If your payment is from an eligible 457 plan, your distributions from the plan are generally not subject to the 10% penalty regardless of your age at the time of the distribution. If you roll over your 457 plan distributions into another employer plan that is not an eligible 457 plan, or into a Traditional IRA, any subsequent distributions may be subject to the penalty (as discussed above). Moreover, if your payment from an eligible 457 plan includes amounts that were previously rolled over from another employer plan that was not an eligible 457 plan; those amounts remain subject to the penalty unless one of the exceptions noted above applies.

**D. Special tax treatment.** A lump-sum distribution may be eligible for special tax treatment. A lump-sum distribution is a payment, within one taxable year, of your entire balance from the plan either because you have reached age 59 ½ or have separated from service. Also you must have been a participant in the plan for at least five years. Generally, you can elect special tax treatment only once in your lifetime and the election will apply to all lump-sum distributions that you receive in that same taxable year. If you have previously rolled over a payment from the plan, you cannot use this special tax treatment for later payments from the plan. If you roll

over your payments to a Traditional IRA, you will not be able to use this special tax treatment for later payments from the IRA. Also, if you roll over only a portion of your payment to a Traditional IRA, this special tax treatment is not available for the rest of the payments. IRS Form 4972 explains additional restrictions and contains more information on the special tax treatment.

- 1. 10-year averaging if you were born before January 1, 1936.** In this case, you can make a one-time election to calculate the tax on the payment by using "10-year averaging" (using 1986 tax rates). This often reduces the taxes you owe.
- 2. Capital gain treatment if you were born before January 1, 1936.** In addition to 10-year averaging, you may elect to have the part of your payment that is attributable to your pre-1974 participation in the plan (if any) taxed as long-term capital gain at a rate of 20%.

#### **Rules for after-tax contributions (that are not Roth after-tax contributions)::**

If you made after-tax contributions (see Section 4B for special rules applicable to Roth after-tax contributions) to the plan, these contributions can be rolled over to either a Traditional IRA or to another employer plan that accepts rollovers of after-tax contributions (not all plans that accept rollovers will take a rollover of after-tax contributions) The following rules apply:

- 1. Rolled over to a Traditional IRA.** You can roll over your after-tax contributions either directly in a direct rollover (see Section 2-A), or indirectly by following the 60-day rollover option (see Section 3-B). Once you roll over your after-tax contributions to a Traditional IRA, those amounts **cannot** be rolled back into an employer plan. If you roll over after-tax contributions to a Traditional IRA, it is your responsibility to keep track of, and report to the IRS on applicable forms, the amount of these after-tax contributions. This will enable the nontaxable amount of any future distributions to be determined.
- 2. Rolled over to an employer plan.** To roll over your after-tax contributions to an employer plan that accepts rollovers of after-tax contributions, you must instruct your current plan administrator to do the rollover on your behalf as a direct rollover. In other words, you **cannot** have the after-tax contributions paid to you first and then roll over the amount to an employer plan. Similarly, you **cannot** first roll over after-tax contributions to a Traditional IRA and then roll over that amount to an employer plan. A rollover of after-tax contributions from one plan to another can only be done from a 401(a) or 403(a) plan to a similar plan or from a 403(b) to another 403(b). After-tax contributions cannot be rolled over to an eligible 457 plan.

#### **Rules for Roth after-tax contributions made to 401(k) or 403(b) plans:**

If you made Roth after-tax contributions to the plan, these contributions can be rolled over to either a Roth IRA or to another 401(k) or 403(b) plan that accepts rollovers of Roth after-tax contributions. (Not all 401(k) or 403(b) plans that accept rollovers accept rollovers of Roth after-tax contributions). A rollover of Roth after-tax contributions from one plan to another can only be done from a 401(k) to a 401(k) Plan or from a 403(b) to another 403(b).

#### **Repayment of plan loans:**

If your employment ends and you have an outstanding loan from your plan, your employer may reduce (or "offset") your balance in the plan by the amount of the loan you have not repaid. The amount of your loan offset is treated as a distribution to you and will be taxed unless you roll over an equal amount to another qualified employer plan or a Traditional IRA within 60 days of the date offset. If the amount of your loan offset is the only amount you receive or are treated as having received, no amount will be withheld from it. If you receive other payments of cash or property from the plan, the 20% withholding amount will be based on the entire amount paid to you, including the amount of the loan offset. The amount withheld will be limited to the amount of other cash or property paid to you (other than any employer securities). The amount of a defaulted plan loan is a taxable deemed distribution cannot be rolled over.

#### **Surviving spouses, alternate payees and other beneficiaries:**

In general the rules summarized above apply to payments to beneficiaries, including surviving spouses of participants, and to alternate payees. (You are an alternate payee if your interest in the plan results from a QDRO issued by a court, usually in a connection within a divorce or legal separation.)

You may be able to use the special tax treatment for lump-sum distributions if you receive a payment from a qualified plan because of the participants' death and the participants met the appropriate age requirements, whether or not the participant had five years of participation in the plan. Regardless of whether the special tax treatment applies, your payment is not subject to the additional 10% penalty tax described in Section 3-C even if you are younger than age 59 ½ at the time of the distribution.

Your choices regarding rollovers depend on your status:

- If you are a **surviving spouse** or **alternate payee** who is a former spouse of the participant, you have the same choices as the participant would have had. Thus, you can have the payment paid as a direct rollover or paid to you. If you have it paid to you, keep it or roll it over to a Traditional IRA or to an employer plan in which you participate that accepts rollovers.
- If you are a **beneficiary** other than the surviving spouse, you can have the payment paid to you or you may choose a direct rollover into an "inherited" Traditional IRA (i.e., an IRA set up in the name of the decedent). You cannot make additional contributions to this IRA or consolidate it with any of your other IRAs, but you can set up one of the periodic distributions options, such as the five-year cash-out or life expectancy payments.

#### **Waiver of the 30-day period for consenting to distribution:**

This Notice explains, among other things, your right to choose to have your plan benefits directly rolled over to either a Traditional IRA or another employer plan or to have your benefits paid directly to you. If you choose to have your benefits paid directly to you; 20% of the payment will automatically be withheld and sent to the IRS as income tax withholdings. You have the right to consider whether or not to elect a direct rollover for at least 30 days from the date you receive this Notice. You can waive the 30-day period by indicating on the distribution form whether you want your benefits directly rolled over to a Traditional IRA or paid directly to you, and by submitting the signed form. The submission of your completed form before the end of the 30-day waiting period will constitute a waiver of the period, and your election may be implemented in less than 30 days from the time you received this Notice.

**Automatic rollover disclosures:**

If the amount of your eligible rollover distribution is more than \$1,000 and less than or equal to \$5,000, your payment may be directly rolled over to an IRA selected by the plan, unless you instruct otherwise. Your Roth account balance is treated separately from the rest of your plan balance for automatic rollover purposes. For more information about how and when the automatic rollover rules apply to this plan, contact the Plan Administrator named in the Summary Plan Description.

**How to obtain additional information:**

This Notice summarizes only the federal (not state or local) tax rules that might apply to your payment. The rules described above are complex and contain many conditions and exceptions that are not included in this Notice. Therefore, you may want to consult with the Plan Administrator or a professional tax adviser before you take a payment of your benefits from your plan. You can also find more specific information on the tax treatment of payments from qualified retirement plans in IRS Publication 575, Pension and Annuity Income, and IRS Publication 590, Individual Retirement Arrangements. These publications are available from your local IRS office, on the IRS's website at [www.irs.gov](http://www.irs.gov) or by calling 800/TAX FORMS.