

### Part III.--Administrative, Procedural, and Miscellaneous

#### **Safe Harbor Explanation - Certain Qualified Plan Distributions**

Notice 2000-11

##### **PURPOSE**

This notice contains a "Safe Harbor Explanation" that plan administrators may provide to recipients of eligible rollover distributions from qualified plans in order to satisfy § 402(f) of the Internal Revenue Code. It is an updated version of the Safe Harbor Explanation that was published in Notice 92-48, 1992-2 C.B. 377.

##### **BACKGROUND**

Section 402(f) requires a plan administrator to provide a written explanation to any recipient of a payment that could be rolled over (an "eligible rollover distribution") to an individual retirement arrangement described in Code § 408(a) or (b) ("traditional IRA") or to a qualified employer plan described in Code § 401(a) or an annuity described in Code § 403(a) ("qualified employer plan"). The written explanation must cover the direct rollover rules, the mandatory income tax withholding on distributions not directly rolled over, and the tax treatment of distributions not rolled over (including the special tax treatment available for certain lump sum distributions). Section 402(f) provides that this explanation must be given within a reasonable period of time before the plan makes an eligible rollover distribution.

Section 521(d) of the Unemployment Compensation Amendments of 1992, P.L. 102-318 (UCA) directed the Secretary of the Treasury to develop a model explanation that could be used to satisfy the requirements of § 402(f) of the Code, as amended. The model explanation was originally published as Notice 92-48 and is referred to in that Notice as a Safe Harbor Explanation.

This updated notice is being issued to reflect changes made to the Code and Income Tax Regulations that affect the information provided in the Safe Harbor Explanation. The Small Business Job Protection Act of 1996, P.L. 104-188, section 1401(a), amended Code § 401(a)(9) to alter the rules relating to the commencement of minimum required distributions and also amended Code § 402(d) to eliminate the special five-year averaging tax treatment for lump sum distributions (although transition rules retain ten-year special averaging for individuals who satisfy certain requirements). The Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA"), P.L. 105-206, section 3436, amended Code § 72(t) to provide an additional exception to the early withdrawal tax for tax levies on qualified plans. RRA, section 6005(c)(2)(A), also amended Code § 402(c)(4) to provide that certain hardship distributions are not eligible for rollover.

Temporary and Proposed Income Tax Regulations under Code §§ 401(a)(31), 402(f), 403(b) and 3405(c), which were published in conjunction with Notice 92-48, have since been finalized. Final regulations under Code §§ 402(c) and 3405(c) now address withholding on employer securities and the treatment of plan loan offset amounts, and new regulations have been published under Code § 401(a)(31), and also under § 402(f) (relating to paperless technologies).

#### SAFE HARBOR AND ALTERNATIVE EXPLANATION

This notice contains an updated model written explanation ("Safe Harbor Explanation") that meets the requirements of Code § 402(f) if it is provided to the recipient of an eligible rollover distribution within a reasonable period of time before the distribution is made. In general, under § 1.402(f)-1 of the regulations, a reasonable period of time for providing an explanation is no less than 30 days and no more than 90 days before the date on which a distribution is made.

In using the Safe Harbor Explanation, a plan administrator may "customize" the Safe

Harbor Explanation by omitting any portion that could not apply to the plan. For example, if the plan does not hold after-tax employee contributions, the paragraph headed "Non-taxable Payments" could be eliminated. Similarly, if the plan does not provide for distributions of employer stock or other employer securities, the paragraph headed "Employer Stock or Securities" could be eliminated. Other paragraphs that may not be relevant to a particular plan include, for example, "Payments Spread Over Long Periods," "Direct Rollover of a Series of Payments," "Special Tax Treatment," "Hardship Distributions," and "Repayment of Plan Loans." In addition, a plan administrator may provide additional information with the Safe Harbor Explanation, if the information is not inconsistent with the Safe Harbor Explanation.

Alternatively, a plan administrator can satisfy § 402(f) by providing distributees with an explanation that is different from the Safe Harbor Explanation. Any explanation must contain the information required by § 402(f) and must be written in a manner designed to be easily understood.

If the law governing the tax treatment of distributions or the other provisions covered by the Safe Harbor Explanation is amended after publication of this notice, the Safe Harbor Explanation will not satisfy § 402(f) to the extent that the Safe Harbor Explanation no longer accurately describes the relevant law.

#### EFFECT ON OTHER DOCUMENT

Notice 92-48 is obsoleted.

#### REQUEST FOR COMMENTS

The preamble to the proposed regulations under § 402(f) that were issued in December 1998 included an example of a summary § 402(f) notice that the Service and Treasury believe satisfies the requirements for a summary notice set forth in those proposed regulations. See 63

Fed. Reg. 70071, 70074 (December 18, 1998). The example was not intended as a model summary or as the exclusive form for such a summary. However, the Service and the Treasury believe that additional guidance providing one or more additional examples of summary notices may be appropriate. Accordingly, the Service and Treasury invite comments and suggestions from interested parties concerning the development of additional examples for use in the circumstances described in those proposed regulations. We encourage interested parties to submit examples of summary notices that may be used in the development of further guidance.

Comments related to this notice, including comments with respect to summary § 402(f) notices, can be addressed to CC:DOM:CORP:R (Notice 2000-11), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 2000-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at: [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

#### DRAFTING INFORMATION

The principal authors of this notice are Steven Linder of the Tax Exempt and Government Entities Division (T:EP) and Amy L. Speetjens of the Office of Chief Counsel (EBEO). For further information regarding this notice, contact the Employee Plans taxpayer assistance telephone service between the hours of 1:30 and 3:30 P.M. Eastern time, Monday through Thursday by calling (202) 622-6074. Mr. Linder can be reached at (202) 622-6214. Ms. Speetjens can be reached at (202) 622-6090. (These telephone numbers are not toll-free numbers.)

## TEXT OF THE SAFE HARBOR EXPLANATION

### SPECIAL TAX NOTICE REGARDING PLAN PAYMENTS

This notice contains important information you will need before you decide how to receive your Plan benefits.

This notice is provided to you by [INSERT NAME OF PLAN ADMINISTRATOR] (your "Plan Administrator") because all or part of the payment that you will soon receive from the [INSERT NAME OF PLAN] (the "Plan") may be eligible for rollover by you or your Plan Administrator to a traditional IRA or another qualified employer plan. A "traditional IRA" does not include a Roth IRA, SIMPLE IRA, or education IRA.

If you have additional questions after reading this notice, you can contact your plan administrator at [INSERT PHONE NUMBER OR OTHER CONTACT INFORMATION]

### SUMMARY

There are two ways you may be able to receive a Plan payment that is eligible for rollover:

- (1) certain payments can be made directly to a traditional IRA or, if you choose, another qualified employer plan that will accept it ("DIRECT ROLLOVER"), or
- (2) the payment can be PAID TO YOU.

If you choose a DIRECT ROLLOVER

- Your payment will not be taxed in the current year and no income tax will be withheld.
- Your payment will be made directly to your traditional IRA or, if you choose, to another qualified employer plan that accepts your rollover. Your Plan payment cannot be rolled over to a Roth IRA, a SIMPLE IRA, or an education IRA because these are not traditional IRAs.
- Your payment will be taxed later when you take it out of the traditional IRA or the qualified employer plan.

If you choose to have a Plan payment that is eligible for rollover PAID TO YOU

- You will receive only 80% of the payment, because the Plan Administrator is required to withhold 20% of the payment and send it to the IRS as income tax withholding to be credited against your taxes.

- 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 59-1/2, you also may have to pay an additional 10% tax.
- You can roll over the payment by paying it to your traditional IRA or to another qualified employer plan that accepts your rollover within 60 days after you receive the payment. The amount rolled over will not be taxed until you take it out of the traditional IRA, or the qualified employer plan.
- If you want to roll over 100% of the payment to a traditional IRA or another qualified employer plan, you must find other money to replace the 20% that was withheld. If you roll over only the 80% that you received, you will be taxed on the 20% that was withheld and that is not rolled over.

### MORE INFORMATION

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#### I. PAYMENTS THAT CAN AND CANNOT BE ROLLED OVER

Payments from the Plan may be "eligible rollover distributions." This means that they can be rolled over to an IRA or to another employer plan that accepts rollovers. Payments from a plan cannot be rolled over to a Roth IRA, a SIMPLE IRA, or an education IRA. Your Plan administrator should be able to tell you what portion of your payment is an eligible rollover distribution.

The following types of payments cannot be rolled over:

Non-taxable Payments. In general, only the "taxable portion" of your payment can be rolled over. If you have made "after-tax" employee contributions to the Plan, these contributions will be non-taxable when they are paid to you, and they cannot be rolled over. (After-tax employee contributions generally are contributions you made from your own pay that were already taxed.) Your Plan Administrator should be able to tell you how much of your payment is the taxable portion and how much is the after-tax employee contribution portion.

Payments Spread over Long Periods. You cannot roll over 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

- your lifetime (or your life expectancy), or
- your lifetime and your beneficiary's lifetime (or life expectancies), or
- a period of ten years or more.

Required Minimum Payments. Beginning when you reach age 70-1/2 or retire, whichever is later, a certain portion of your payment cannot be rolled over because it is a "required minimum payment" that must be paid to you. Special rules apply if you own 5% or more of your employer.

Hardship Distributions. A hardship distribution from your employer's 401(k) plan may not be eligible for rollover. Your Plan Administrator should be able to tell you if your payment includes amounts which cannot be rolled over.

## II. DIRECT ROLLOVER

A DIRECT ROLLOVER is a direct payment of the amount of your Plan benefits to a traditional IRA or another qualified employer plan that will accept it. You can choose a DIRECT ROLLOVER of all or any portion of your payment that is an eligible rollover distribution, as described in Part I above. You are not taxed on any portion of your payment for which you choose a DIRECT ROLLOVER until you later take it out of the traditional IRA or qualified employer plan. In addition, no income tax withholding is required for any portion of your Plan benefits for which you choose a DIRECT ROLLOVER.

DIRECT ROLLOVER to a Traditional IRA. You can open a traditional IRA to receive the direct rollover. If you choose to have your payment made directly to a traditional IRA, contact an IRA sponsor (usually a financial institution) to find out how to have your payment made in a direct rollover to a traditional IRA at that institution. If you are unsure of how to invest your money, you can temporarily establish a traditional IRA to receive the payment. However, in choosing a traditional IRA, you may wish to consider whether the traditional IRA you choose will allow you to move all or a part of your payment to another traditional IRA at a later date, without penalties or other limitations. See IRS Publication 590, Individual Retirement Arrangements, for more information on traditional IRAs (including limits on how often you can roll over between IRAs).

DIRECT ROLLOVER to a Plan. If you are employed by a new employer that has a qualified employer plan, and you want a direct rollover to that plan, ask the Plan Administrator of that plan whether it will accept your rollover. A qualified employer plan is not legally required to accept a rollover. If your new employer's plan does not accept a rollover, you can choose a DIRECT ROLLOVER to a traditional IRA.

DIRECT ROLLOVER of a Series of Payments. If you receive a payment that can be rolled over to a traditional IRA or another qualified employer plan that will accept it, and it is paid in a series for less than ten 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 are free to change your election for any later payment in the series.

### III. PAYMENT PAID TO YOU

If your payment can be rolled over under Part I above and the payment is made to you in cash, it is subject to 20% income tax withholding. The payment is taxed in the year you receive it unless, within 60 days, you roll it over to a traditional IRA or another qualified employer plan that accepts rollovers. If you do not roll it over, special tax rules may apply.

#### Income Tax Withholding:

Mandatory Withholding. If any portion of your payment can be rolled over under Part I above and you do not elect to make a DIRECT ROLLOVER, the Plan is required by law to withhold 20% of that amount. This amount is sent to the IRS as income tax withholding. For example, if you can roll over a payment of \$10,000, only \$8,000 will be paid to you because the Plan must withhold \$2,000 as income tax. However, when you prepare your income tax return for the year, you must report the full \$10,000 as a payment from the Plan. You must report the \$2,000 as tax withheld, and it will be credited against any income tax you owe for the year.

Voluntary Withholding. If any portion of your payment is taxable but cannot be rolled over under Part I above, the mandatory withholding rules described above do not apply. In this case, you may elect not to have withholding apply to that portion. To elect out of withholding, ask the Plan Administrator for the election form and related information.

Sixty-Day Rollover Option. If you receive a payment that can be rolled over under Part I above, you can still decide to roll over all or part of it to a traditional IRA or another qualified employer plan that accepts rollovers. If you decide to roll over, you must contribute the amount of the payment you received to a traditional IRA or another qualified plan within 60 days after you receive the payment. The portion of your payment that is rolled over will not be taxed until you take it out of the traditional IRA or the qualified employer plan.

You can roll over up to 100% of your payment that can be rolled over under Part I above, including an amount equal to the 20% that was withheld. If you choose to roll over 100%, you must find other money within the 60-day period to contribute to the traditional IRA or the qualified employer plan, to replace the 20% that was withheld. On the other hand, if you roll over only the 80% that you received, you will be taxed on the 20% that was withheld.

Example: The portion of your payment that can be rolled over under Part I above is \$10,000, and you choose to have it paid to you. You will receive \$8,000, and \$2,000 will be sent to the IRS as income tax withholding. Within 60 days after receiving the \$8,000, you may roll over the entire \$10,000 to a traditional IRA or a qualified employer plan. To do this, you roll over the \$8,000 you received from the Plan, and you will have to find \$2,000 from other sources (your savings, a loan, etc.). In this case, the entire \$10,000 is not taxed until you take it out of the traditional IRA or the qualified employer plan. If you roll over the entire \$10,000, when you file your income tax return you may get a refund of



part or all of the \$2,000 withheld.

If, on the other hand, you roll over only \$8,000, the \$2,000 you did not roll over is taxed in the year it was withheld. When you file your income tax return you may get a refund of part of the \$2,000 withheld. (However, any refund is likely to be larger if you roll over the entire \$10,000.)

Additional 10% Tax If You Are under Age 59-1/2. If you receive a payment before you reach age 59-1/2 and you do not roll it over, then, in addition to the regular income tax, you may have to pay an extra tax equal to 10% of the taxable portion of the payment. The additional 10% tax generally does not apply to (1) payments that are paid after you separate from service with your employer during or after the year you reach age 55, (2) payments that are paid because you retire due to disability, (3) payments that are paid as equal (or almost equal) payments over your life or life expectancy (or your and your beneficiary's lives or life expectancies), (4) dividends paid with respect to stock by an employee stock ownership plan (ESOP) as described in Code section 404(k), (5) payments that are paid directly to the government to satisfy a federal tax levy, (6) payments that are paid to an alternate payee under a qualified domestic relations order, or (7) payments that do not exceed the amount of your deductible medical expenses. See IRS Form 5329 for more information on the additional 10% tax.

Special Tax Treatment If You Were Born before January 1, 1936. If you receive a payment that can be rolled over under Part I and you do not roll it over to a traditional IRA or other qualified employer plan that will accept it, the payment will be taxed in the year you receive it. However, if the payment qualifies as a "lump sum distribution," it may be eligible for special tax treatment. (See also "Employer Stock or Securities", below.) A lump sum distribution is a payment, within one year, of your entire balance under the Plan (and certain other similar plans of the employer) that is payable to you after you have reached age 59-1/2 or because you have separated from service with your employer (or, in the case of a self-employed individual, after you have reached age 59-1/2 or have become disabled). For a payment to be treated as a lump sum distribution, you must have been a participant in the plan for at least five years before the year in which you received the distribution. The special tax treatment for lump sum distributions that may be available to you is described below.

Ten-Year Averaging. If you receive a lump sum distribution and you were born before January 1, 1936, you can make a one-time election to figure the tax on the payment by using "10-year averaging" (using 1986 tax rates). Ten-year averaging often reduces the tax you owe.

Capital Gain Treatment. If you receive a lump sum distribution and you were born before January 1, 1936 and if you were a participant in the Plan before 1974, you may elect to have the part of your payment that is attributable to your pre-1974 participation in the Plan taxed as long-term capital gain at a rate of 20%.

There are other limits on the special tax treatment for lump sum distributions. For example, you can generally elect this special tax treatment only once in your lifetime, and the election applies to all lump sum distributions that you receive in that same year. If you have

previously rolled over a distribution from the Plan (or certain other similar plans of the employer), you cannot use this special averaging treatment for later payments from the Plan. If you roll over your payment to a traditional IRA, you will not be able to use special tax treatment for later payments from the traditional 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 payment. See IRS Form 4972 for additional information on lump sum distributions and how you elect the special tax treatment.

**Employer Stock or Securities.** There is a special rule for a payment from the Plan that includes employer stock (or other employer securities). To use this special rule, 1) the payment must qualify as a lump sum distribution, as described above, except that you do not need five years of plan participation, or 2) the employer stock included in the payment must be attributable to "after-tax" employee contributions, if any. Under this special rule, you may have the option of not paying tax on the "net unrealized appreciation" of the stock until you sell the stock. Net unrealized appreciation generally is the increase in the value of the employer stock while it was held by the Plan. For example, if employer stock was contributed to your Plan account when the stock was worth \$1,000 but the stock was worth \$1,200 when you received it, you would not have to pay tax on the \$200 increase in value until you later sold the stock.

You may instead elect not to have the special rule apply to the net unrealized appreciation. In this case, your net unrealized appreciation will be taxed in the year you receive the stock, unless you roll over the stock. The stock (including any net unrealized appreciation) can be rolled over to a traditional IRA or another qualified employer plan, either in a direct rollover or a rollover that you make yourself.

If you receive only employer stock in a payment that can be rolled over, no amount will be withheld from the payment. If you receive cash or property other than employer stock, as well as employer stock, in a payment that can be rolled over, the 20% withholding amount will be based on the entire amount paid to you (including the employer stock but excluding the net unrealized appreciation). However, the amount withheld will be limited to the cash or property (excluding employer stock) paid to you.

If you receive employer stock in a payment that qualifies as a lump sum distribution, the special tax treatment for lump sum distributions described above (such as 10-year averaging) also may apply. See IRS Form 4972 for additional information on these rules.

**Repayment of Plan Loans.** If you end your employment and 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 at the time of the offset and will be taxed unless you roll over an amount equal to the amount of your loan offset to another qualified employer plan or a traditional IRA within 60 days of the date of the 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 repayment. The amount withheld will be limited to the amount of other cash or property paid to you (other than any employer securities).

#### IV. SURVIVING SPOUSES, ALTERNATE PAYEES, AND OTHER BENEFICIARIES

In general, the rules summarized above that apply to payments to employees also apply to payments to surviving spouses of employees and to spouses or former spouses who are "alternate payees." You are an alternate payee if your interest in the Plan results from a "qualified domestic relations order," which is an order issued by a court, usually in connection with a divorce or legal separation. Some of the rules summarized above also apply to a deceased employee's beneficiary who is not a spouse. However, there are some exceptions for payments to surviving spouses, alternate payees, and other beneficiaries that should be mentioned.

If you are a surviving spouse, you may choose to have a payment that can be rolled over, as described in Part I above, paid in a DIRECT ROLLOVER to a traditional IRA or paid to you. If you have the payment paid to you, you can keep it or roll it over yourself to a traditional IRA but you cannot roll it over to a qualified employer plan. If you are an alternate payee, you have the same choices as the employee. Thus, you can have the payment paid as a direct rollover or paid to you. If you have it paid to you, you can keep it or roll it over yourself to a traditional IRA or to another qualified employer plan that accepts rollovers.

If you are a beneficiary other than the surviving spouse, you cannot choose a direct rollover, and you cannot roll over the payment yourself.

If you are a surviving spouse, an alternate payee, or another beneficiary, your payment is generally not subject to the additional 10% tax described in section III above, even if you are younger than age 59-1/2.

If you are a surviving spouse, an alternate payee, or another beneficiary, you may be able to use the special tax treatment for lump sum distributions and the special rule for payments that include employer stock, as described in section III above. If you receive a payment because of the employee's death, you may be able to treat the payment as a lump sum distribution if the employee met the appropriate age requirements, whether or not the employee had 5 years of participation in the Plan.

#### 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 advisor before you take a payment of your benefits from your Plan. Also, you can 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 Internet Web Site at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX-FORMS.