

Internal Revenue Code Section 402(c)(1)

Taxability of beneficiary of employees' trust.

(c) Rules applicable to rollovers from exempt trusts.



(1) Exclusion from income. If—

- (A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,
- (B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and
- (C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(2) Maximum amount which may be rolled over. In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). The preceding sentence shall not apply to such distribution to the extent—

- (A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or
- (B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).

(3) Transfer must be made within 60 days of receipt.

(A) In general. Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

(B) Hardship exception. The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Eligible rollover distribution. For purposes of this subsection, the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made—

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.

(5) Transfer treated as rollover contribution under section 408. For purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

(6) Sales of distributed property. For purposes of this subsection—

(A) Transfer of proceeds from sale of distributed property treated as transfer of distributed property. The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

- (B) Proceeds attributable to increase in value. The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.
- (C) Designation where amount of distribution exceeds rollover contribution. In any case where part or all of the distribution consists of property other than money—
 - (i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and
 - (ii) the portion of the money or other property which is to be treated as included in the rollover contribution, shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.
- (D) Nonrecognition of gain or loss. No gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

(7) Special rule for frozen deposits.

- (A) In general. The 60-day period described in paragraph (3) shall not—
 - (i) include any period during which the amount transferred to the employee is a frozen deposit, or
 - (ii) end earlier than 10 days after such amount ceases to be a frozen deposit.
- (B) Frozen deposits. For purposes of this subparagraph, the term "frozen deposit" means any deposit which may not be withdrawn because of—
 - (i) the bankruptcy or insolvency of any financial institution, or
 - (ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

(8) Definitions. For purposes of this subsection

(A) Qualified trust. The term "qualified trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(B) Eligible retirement plan. The term "eligible retirement plan" means—

(i) an individual retirement account described in section 408(a),

(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(iii) a qualified trust,

(iv) an annuity plan described in section 403(a),

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

(9) Rollover where spouse receives distribution after death of employee. If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

(10) Separate accounting. Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

(11) Distributions to inherited individual retirement plan of nonspouse beneficiary.

(A) In general. If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

- (i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,
- (ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and
- (iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries. For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.