

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter D - Deferred Compensation, Etc.****PART I - PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.****Subpart A - General Rule****§ 402A. Optional treatment of elective deferrals as Roth contributions****(a) General rule**

If an applicable retirement plan includes a qualified Roth contribution program—

- (1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and
- (2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) Qualified Roth contribution program

For purposes of this section—

(1) In general

The term “qualified Roth contribution program” means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

(2) Separate accounting required

A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

- (A) establishes separate accounts (“designated Roth accounts”) for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and
- (B) maintains separate recordkeeping with respect to each account.

(c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

(1) Designated Roth contribution

The term “designated Roth contribution” means any elective deferral which—

- (A) is excludable from gross income of an employee without regard to this section, and
- (B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

(2) Designation limits

The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

- (A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over
- (B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

(3) Rollover contributions**(A) In general**

A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to—

- (i) another designated Roth account of the individual from whose account the payment or distribution was made, or
- (ii) a Roth IRA of such individual.

(B) Coordination with limit

Any rollover contribution to a designated Roth account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a designated Roth account shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term “qualified distribution” has the meaning given such term by section 408A (d)(2)(A) (without regard to clause (iv) thereof).

(B) Distributions within nonexclusion period

A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

- (i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or
- (ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

(C) Distributions of excess deferrals and contributions and earnings thereon

The term “qualified distribution” shall not include any distribution of any excess deferral under section 402 (g)(2) or any excess contribution under section 401 (k)(8), and any income on the excess deferral or contribution.

(3) Treatment of distributions of certain excess deferrals

Notwithstanding section 72, if any excess deferral under section 402 (g)(2) attributable to a designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

- (A) not be treated as investment in the contract, and
- (B) be included in gross income for the taxable year in which such excess is distributed.

(4) Aggregation rules

Section 72 shall be applied separately with respect to distributions and payments from a designated Roth account and other distributions and payments from the plan.

(e) Other definitions

For purposes of this section—

(1) Applicable retirement plan

The term “applicable retirement plan” means—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(A) an employees' trust described in section 401 (a) which is exempt from tax under section 501 (a), and

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403 (b).

(2) Elective deferral

The term "elective deferral" means any elective deferral described in subparagraph (A) or (C) of section 402 (g)(3).

(Added Pub. L. 107-16, title VI, § 617(a), June 7, 2001, 115 Stat. 103.)

Effective Date

Section applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107-16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.