

Internal Revenue Code Section 414(w)(2)

Definitions and special rules

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(w) Special rules for certain withdrawals from eligible automatic contribution arrangements.

(1) In general. If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals-- (A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.



(2) Permissible withdrawal. For purposes of this subsection –

(A) In general. --The term "permissible withdrawal" means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

(i) is made pursuant to an election by an employee, and

(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

(B) Time for making election. -- Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement.

(C) Amount of distribution. -- Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

(3) Eligible automatic contribution arrangement. For purposes of this subsection, the term "eligible automatic contribution arrangement" means an arrangement under an applicable employer plan—

- (A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,
- (B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and
- (C) which meets the requirements of paragraph (4).

(4) Notice requirements.

(A) In general. --The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

- (i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and
- (ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(B) Time and form of notice. --A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

- (i) the notice includes an explanation of the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),
- (ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and
- (iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

(5) Applicable employer plan. For purposes of this subsection, the term "applicable employer plan" means—

- (A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),
- (B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),
- (C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),
- (D) a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), and
- (E) a simple retirement account (as defined in section 408(p)).

(6) Special rule. A withdrawal described in paragraph (1) (subject to the limitation of paragraph (2)(C)) shall not be taken into account for purposes of section 401(k)(3) or for purposes of applying the limitation under section 402(g)(1).