

SPECIAL TAX NOTICE

ING Life Insurance and Annuity Company
A member of the ING family of companies
P.O. Box 990063
Hartford, CT 06199-0063



For distributions from Roth 401(k) or Roth 403(b) accounts please refer to the Special Tax Notice - Addendum beginning on page 6. This Special Tax Notice does not apply to payments from a tax-exempt 457(b) Top Hat Plan for select management and/or highly compensated employees. ING Life Insurance and Annuity Company will be defined as "the Company," "we," "us," or "our" in this document.

REGARDING PAYMENTS FROM YOUR ACCOUNT

This notice contains important information you will need before you decide how to receive benefits from your 403(b) Program, 401 Qualified Plan or Governmental 457 Plan account. We are required to provide this notice to you at least 30 days, but no more than 180 days, before the date of distribution. You have the right to consider whether to elect a direct rollover for at least 30 days after the notice is provided. Your Employer's retirement program may provide that by completing and returning the distribution request form in less than 30 days, you elect to waive the 30-day requirement. This would mean that you do not wish to wait 30 days before receiving your requested distribution. We will process your distribution request as of the date we receive it in good order at the above address.

If you are a participant or beneficiary under a Governmental 457 Plan, your plan may require that you choose the manner in which your deferred benefits will be paid within a specified period of time. Please consult with your plan administrator or us to determine the election period applicable to your benefits.

All or any portion of your payment that is an eligible rollover distribution may be either paid in a direct rollover or paid to you. A direct rollover is a direct payment of benefits to an eligible retirement plan that accepts rollovers. An eligible retirement plan is defined as a traditional Individual Retirement Arrangement (IRA), a 403(b) Program, a 401 Qualified Plan or a Governmental 457 Plan. Effective January 1, 2008, a payment from a qualified retirement plan, 403(b) or 457 plan may be directly rolled over to a Roth IRA subject to the restrictions that currently apply to a roll over from a traditional IRA into a Roth IRA. Please note that a traditional IRA does not include a SIMPLE IRA, or Education IRA (*also known as a Coverdell Education Savings Account*).

NOTICE OF YOUR RIGHT TO DEFER DISTRIBUTION

You may elect to (1) leave the assets in your Plan account until a later date (subject to IRS minimum distribution requirements), (2) take a distribution of your assets from your Plan account, or (3) roll over your assets from your Plan account to another retirement plan vehicle (including an IRA). When considering which alternative is best for you, you should consider the economic consequences which include evaluating any new investment options available to you if you move your account monies and the respective investment fees and expenses associated with any new investment option.

If you elect to take a distribution and not roll the assets over from your Plan account to an IRA or other retirement plan, you typically lose the opportunity to continue accumulating earnings on your plan account on a tax-deferred basis (tax-free for Roth contributions) for retirement. This means that by taking a cash distribution now and being taxed on it, you potentially may end up with lower retirement income even if you invest the after tax distribution.

Information on administrative fees and transactional fees assessed to your Plan account can be obtained from the following documents (Note: not all documents may apply to you):

- Summary Plan Description (SPD) for ERISA plans,
- Enrollment kit,
- Prospectus summary,
- Disclosure booklet, or
- Your individual contract.

To request a copy of the SPD, disclosure booklet and enrollment kit, call your local ING representative, your employer or plan administrator. To request a copy of the prospectus summary and individual contract, call the Customer Contact Center, using the toll-free number provided to you in your distribution package or on your ING statement of account. Administrative and transactional fees assessed on your Plan account will be reflected on your ING statement of account.

Information on the investment options available to you under the Plan today, including related fees or expenses, can be obtained from the Fund Performance and Fund Fact Sheets available online through ING Access at www.ingretirementplans.com or by calling us.

To learn more about your distribution options under the Plan please call us. To inquire about the tax consequences of each option, please contact a professional tax advisor.

KEEP FOR YOUR RECORDS

PAYMENTS THAT CANNOT BE DIRECTLY ROLLED OVER

The following payments cannot be rolled over and must be paid to you. Note that if a portion of your payment is taxable and is not an eligible rollover distribution, it is subject to 10% voluntary federal income tax withholding.

Non-taxable Payments – After-tax contributions cannot be rolled over to a Governmental 457 Plan.

Hardship Withdrawals and Unforeseeable Emergency Withdrawals – Hardship withdrawals from a 403(b) Program or 401 Qualified Plan and unforeseeable emergency withdrawals from a Governmental 457 Plan cannot be rolled over.

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 a period measured by your life expectancy*),
- your lifetime and your Beneficiary's lifetime (*or joint life expectancies*), or
- a period of ten years or more.

Required Minimum Distribution Payments – A certain portion of your distribution payment cannot be rolled over if it is a required minimum payment. (*Certain payments made upon a Participant's death are required minimum payments and cannot be rolled over.*)

Payments which are minimum required distributions generally must commence by April 1 of the calendar year following the calendar year in which the Participant (1) attains age 70½ or (2) retires, whichever is later. However, distributions from the 403(b) Program attributable to the 403(b) account value as of December 31, 1986, must begin by April 1 following the calendar year in which a Participant reaches age 75 or retires, whichever is later. If you are a Participant in a 401 Qualified Plan and you are considered a 5% Owner in the Employer sponsoring the Plan, special rules govern the timing of your required minimum distribution. If you attained age 70½ prior to January 1996, special rules apply to the definition of a required minimum payment.

Corrective Distributions – A distribution that is made to correct a failed nondiscrimination test or because legal limits on certain contributions were exceeded cannot be rolled over.

Loans Treated as Distributions – The amount of a plan loan that becomes a taxable deemed distribution because of a default cannot be rolled over. However, a loan offset amount is eligible for rollover, as discussed in the "Special Tax Treatment" section.

Eligible Automatic Contribution Arrangement (*Automatic Enrollment*) Permissible Withdrawal Option – Defaulted Elective Deferrals under an Eligible Automatic Contribution Arrangement that are returned under the Permissible Withdrawal option (*if permitted by the plan*) cannot be rolled over.

DIRECT ROLLOVER

You may choose a direct rollover of all or any portion of your payment that is an eligible rollover distribution. In a 403(b) Program, 401 Qualified Plan or Governmental 457 Plan direct rollover, payment is made to an eligible retirement plan or Roth IRA that accepts rollovers. Your distribution cannot be rolled over to a SIMPLE IRA, or an Education IRA because these are not eligible retirement plans. If you choose a direct rollover, you are not taxed on the taxable portion of the payment until it is distributed from the traditional IRA, 403(b) Program, or 401 Qualified Plan or from a Governmental 457 Plan (unless the direct rollover is from a pre-tax account to a Roth IRA).

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 Internal Revenue Service (IRS) Publication 590, "Individual Retirement Arrangements," for more information on traditional IRAs (*including limits on how often you can rollover between IRAs*).

Direct Rollover to Roth IRA – If you directly roll over a pre-tax distribution to a Roth IRA, the taxable portion of the distribution is subject to taxation for the taxable year in which the distribution occurs (except that a special taxation rule applies to distributions during 2010 that you roll over to a Roth IRA, under which the distribution can be subject to taxation ratably during 2011 and 2012). For distributions before January 1, 2010, you may not roll over a distribution from a pre-tax account to a Roth IRA if your modified adjusted gross income for the taxable year exceeds \$100,000. However, the adjusted gross income limit on direct rollovers from a pre-tax account to a Roth IRA does not apply to distributions after December 31, 2009. Review the information above in the subsection titled "Direct Rollover to a Traditional IRA" for information on contacting a Roth IRA sponsor see also IRS Publication 590 for information on Roth IRAs.

Direct Rollover from a 403(b) Program, 401 Qualified Plan, or Governmental 457 Plan to an Eligible Retirement Plan – If you are employed by a new Employer that has an eligible retirement plan, ask the Employer whether it will accept your rollover. Even if the Employer's plan does not accept the rollover, you can choose a direct rollover to a traditional IRA. If the Employer's plan accepts your rollover, the plan may provide restrictions on the circumstances under which you may later receive a distribution of the rollover amount or may require spousal consent to any subsequent distribution.

Direct Rollover of a Series of Payments – If you receive eligible rollover distributions that are paid in a series for less than ten (10) years, your choice of whether or not to roll over the 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.

DIRECT ROLLOVER (Continued)

Direct Rollover of After-Tax Contributions – If you made after-tax contributions, these contributions may be rolled into either a traditional IRA or to certain employer plans that accept rollovers of the after-tax contributions. The following rules apply:

- a) **Rollover into a Traditional IRA.** You can roll over your after-tax contributions to a traditional IRA either directly or indirectly. Your Employer should be able to tell you how much of your payment is the taxable portion and how much is the after-tax portion. If you roll over after-tax contributions to a traditional IRA, it is your responsibility to keep track of, and report to the Internal Revenue Service (IRS) on the applicable forms, the amount of these after-tax contributions. This will enable the nontaxable amount of any future distributions from the traditional IRA to be determined. Once you roll over your after-tax contributions to a traditional IRA, those amounts CANNOT later be rolled over to an employer plan.
- b) **Rollover from a 401(a) Qualified Plan.** You can roll over after-tax contributions from a 401 Qualified Plan to another such plan or a 403(b) program or a defined benefit plan using a direct rollover if the other plan provides separate accounting for amounts rolled over, including separate accounting for the after-tax employee contributions and earnings on those contributions.
- c) **Rollover into a 403(b) Program.** You can roll over after-tax contributions from a 403(b) program or a 401(a) to 403(b) program using a direct rollover if the other program provides separate accounting for amounts rolled over, including separate accounting for the after-tax employee contributions and earnings on those contributions.

NOTE:

- You CANNOT roll over after-tax contributions to a Governmental 457 plan.
- If you want to roll over your after-tax contributions to an employer plan that accepts these rollovers, you cannot have the after-tax contributions paid to you first. You must instruct the Employer to make a direct rollover on your behalf.
- You cannot first roll over after-tax contributions to a traditional IRA and then roll over that amount into an employer plan.

PAYMENT PAID TO YOU

Mandatory Withholding – If any portion of an eligible rollover distribution is paid to you, we are required by federal law to withhold 20% of the taxable amount and send it to the IRS as federal income tax withholding. For example, if your rollover distribution is \$10,000, only \$8,000 will be paid to you because the Plan must withhold \$2,000, or 20% of the taxable amount, as federal income tax. You will need to report the \$10,000 as a taxable payment from the 403(b) Program, 401 Qualified Plan or Governmental 457 Plan and the \$2,000 as federal income tax withheld on your IRS Form 1040. The \$2,000 will be credited against any Federal Income Tax you owe for the year. The payment is taxed in the year you receive it unless, within sixty (60) days of receipt, you roll it over to a traditional IRA or to another type of eligible retirement plan that accepts rollovers (see *Sixty-Day Rollover Option*).

Distributions from a 401 Qualified Plan, a 403(b) Program, Governmental 457 Plan or a 403(a) Plan may be excluded from income if used to pay for qualified health insurance premiums for eligible retired public safety officers. The amount excluded from income is limited to the amount paid for the qualified health insurance premiums of the officer, his or her spouse, or dependents for the tax year. The maximum annual exclusion is also capped at \$3,000.

State Withholding – If state income tax withholding is required on the payment, or if you elect to have it withheld, we will withhold such tax and send it to the state. For states that impose a state income tax on designated distributions (*pension plans*), we will assume that your state follows the federal tax basis for state taxation purposes. In addition, if the state requires income tax withholding, we will apply the state income tax withholding rate against the federal taxable amount.

If a state requires mandatory income tax withholding and a state withholding certificate/form is not submitted in a timely manner, state income tax withholding will be deducted based on the appropriate state default withholding election and rate.

State income tax withholding and reporting will be determined using your legal residency at the time the distribution is made.

The tax determination of your distribution can be complex and does vary based on your state of residency. You may want to consult with your own tax advisor to determine the proper tax treatment of your distribution.

Voluntary Withholding – If any portion of your payment is not an eligible rollover distribution but is taxable, the mandatory withholding rules do not apply. A 10% voluntary federal income tax withholding will automatically apply unless you elect to have no federal income tax withheld.

Sixty-Day Rollover Option – If you have an eligible rollover distribution paid to you, you may still decide to roll over all or part of it to an eligible retirement plan that accepts rollovers or to a Roth IRA. If you decide to roll over, you must make the rollover within sixty (60) days after you receive the payment. The taxable portion of your payment that is rolled over will not be taxed until you take it out of the eligible retirement plan. You may roll over up to 100% of the amount that was an eligible rollover distribution, including an amount equal to the 20% that was withheld. If, within the sixty (60) day period, you choose to roll over 100%, you must contribute other money to the eligible retirement plan to replace the 20% that was withheld. If you roll over only the 80% that you received, the 20% that was withheld will be included in your taxable income for the year. Note that if you indirectly roll over a pre-tax distribution to a Roth IRA, the taxable portion of the distribution is subject to taxation for the taxable year in which the distribution occurs. For more information see “Direct Rollover to Roth IRA” on the previous page.

PAYMENT PAID TO YOU *(Continued)*

For example, if your eligible rollover distribution from an eligible retirement plan was \$10,000 and you chose to have it paid to you, you will receive \$8,000, and \$2,000 will be sent to the IRS as federal income tax withholding. Within sixty (60) days after receiving the \$8,000, you may roll over up to \$10,000 to an eligible retirement plan that accepts rollovers. 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. In this case, the entire \$10,000 is not taxed until you take it out of the eligible retirement plan, and you may be eligible to receive a refund of the \$2,000 withheld when you file your income tax return.

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% Premature Withdrawal Tax If You Are Under Age 59½ – If you receive a payment before you reach age 59½ (and no other statutory exemption applies) and you do not roll it over, you may have to pay an extra premature distribution tax, in addition to federal income tax. Unless an exception applies, you will have to pay this extra tax, equal to 10% of the taxable portion of the payment, when you file your income tax return. 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 IRS 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 (QDRO), (7) payments that do not exceed the amount of your deductible medical expenses, (8) payments that are paid under the Permissible Withdrawal Option (if permitted by the plan) under Eligible Automatic Contribution Arrangements. This additional 10% tax is not applicable to distributions from a Governmental 457 Plan but will be applicable to monies originally contributed to another eligible retirement plan (*e.g., 401, 403(b) or traditional IRA*) subject to this tax which were subsequently rolled over to the Governmental 457 Plan. Any amount rolled from a Governmental 457 plan to another type of non-governmental, eligible retirement plan (*e.g., 401, 403(b) or traditional IRA*) will become subject to the additional 10% tax, if it is distributed to you before you reach age 59½, unless one of the exceptions applies.

SURVIVING SPOUSES, ALTERNATE PAYEES AND OTHER BENEFICIARIES

With some exceptions, the rules summarized above also generally 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 a 403(b) Program or 401 Qualified Plan results from a Qualified Domestic Relations Order or your interest in a Governmental 457 Plan results from a plan approved or certified Domestic Relations Order issued in connection with a divorce or legal separation.)* Some of these rules also apply to a deceased Employee's Beneficiary who is not a spouse.

- **If you are a Surviving Spouse or an Alternate Payee (*spouse or former spouse*)**, you have the same choices as the employee; therefore you may choose to have an eligible rollover distribution paid in a direct rollover to an eligible retirement plan that accepts rollovers or to a Roth IRA or paid to you. If you have the payment paid to you, you may keep it or roll it over yourself to an eligible retirement plan or Roth IRA. If you do not request a direct rollover and you have the payment paid to you, we are required by federal law to withhold 20% of the taxable amount and send it to the IRS as federal income tax withholding.
- **If you are a non-spouse Beneficiary**, you may choose to roll over the payment to an inherited IRA or Roth IRA via trustee-to-trustee transfer, if the plan permits.

If you are a Surviving Spouse, an Alternate Payee, or another Beneficiary, your payment is generally not subject to the additional 10% premature withdrawal tax described above. You may also be able to use the special tax treatment for lump-sum distributions and the special rule for payments that include Employer Stock, as described on the next page. 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 five (5) years of participation in the 401 Qualified Plan.

SPECIAL TAX TREATMENT *(Applicable to 401 qualified plans only.)*

Lump-Sum Distributions from a 401 Qualified Plan – If your eligible rollover distribution from your 401 account is not rolled over, the taxable portion of the distribution will be taxed in the year you receive it. However, if you were born before January 1, 1936, and your distribution qualifies as a "lump-sum distribution," it may be eligible for special tax treatment. A lump-sum distribution is defined as a payment, within one year, of your entire balance under the 401 Qualified Plan (*and certain other similar Plans of the Employer*) that is payable to you because you have reached age 59½ or have separated from service with your Employer. For a payment to qualify as a lump-sum distribution, you must have been a Participant in the plan for at least five (5) years. The special tax treatment for lump-sum distributions is described below.

- **Ten-Year Averaging** – If you receive a lump-sum distribution and you were born before January 1, 1936, you may make a one-time election to figure the tax on the payment by using 10-year averaging (*using 1986 tax rates*) that may reduce the tax you owe.
- **Capital Gain Treatment** – If you receive a lump-sum distribution, and you were born before January 1, 1936, 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%.

SPECIAL TAX TREATMENT *(Continued)*

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. You may not elect this special tax treatment if you rolled amounts to a 401 Qualified Plan from a 403(b) program or from an IRA not originally attributable to a qualified employer plan. If you have previously rolled over a payment from a 401 Qualified Plan (*or certain other similar Plans of the Employer*), you cannot use this special tax treatment for later payments from a 401 Qualified Plan. If you roll over your payment to a traditional IRA, governmental 457 plan or 403(b) program, you will not be able to use this special tax treatment for later payments from that traditional IRA, Governmental 457 plan or 403(b) program. Also, if you roll over only a portion of your payment to a traditional IRA, Governmental 457 plan or 403(B) program, this special tax treatment is not available for the rest of the payment. See IRS Form 4972, "Tax on Lump-Sum Distributions," for more information.

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 (5) years of participation in the Plan, 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 can be rolled over to an eligible retirement plan either in a direct rollover or a rollover that you make yourself. Generally, you will no longer be able to use the special rule for net unrealized appreciation if you roll the stock over to an eligible retirement plan.

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% federal income tax withholding will be based on the entire taxable 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 Loans – If your employment ends, and you have an outstanding loan from your Program or Plan, your Employer may reduce (*or "offset"*) your balance in the Program or Plan by the amount of the loan you have not repaid. In this event, 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 eligible retirement plan within sixty (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 Program or Plan, the 20% federal income tax 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*).

HOW TO OBTAIN ADDITIONAL INFORMATION

This notice summarizes only the federal (*not state or local*) tax rules that might apply to your payment. Since the rules are complex and contain many conditions and exceptions not included above, you may wish to consult a professional tax advisor before taking a payment of your benefits. Also, you can find more specific information on the tax treatment of payments from 403(b) Programs in IRS Publication 571, "Tax Sheltered Annuity Programs for Employees of Public Schools and Certain Tax-Exempt Organizations" and from 401 Qualified 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 Web site at www.irs.gov. Taxpayers may also order current and prior year forms, instructions and publications by calling 800-TAX-FORM (800-829-3676). Taxpayers may ask questions by calling the toll-free service line at 800-829-1040. TTY/TDD users may call 800-829-4059 to ask tax questions or to order forms and publications.

SPECIAL TAX NOTICE - ADDENDUM ADDITIONAL INFORMATION FOR DISTRIBUTIONS FROM ROTH 401(k) OR ROTH 403(b) ACCOUNTS

ING Life Insurance and Annuity Company
A member of the ING family of companies
P.O. Box 990063
Hartford, CT 06199-0063



Notice applies to payments from Roth 401(k) or Roth 403(b) accounts.

REGARDING PAYMENTS FROM YOUR ACCOUNT

The following information is specific to distributions from Roth accounts. For additional considerations, please refer to the foregoing discussion in the Special Tax Notice. The IRS has released final regulations, Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k), on January 3, 2006, and final regulations, Designated Roth Accounts under Section 402A, on April 30, 2007. The information below is based on the Frequently Asked Questions provided by the IRS on their Web site (www.irs.gov) and represents the position of ING Life Insurance and Annuity Company, until further guidance is released from the IRS. Since the rules are complex and contain many conditions and exceptions not covered below, you may wish to consult a professional tax advisor before taking a payment of your benefits.

Qualified Distributions – A qualified distribution is generally a distribution that is made after a 5-taxable-year period of participation and that either:

- is made on or after the date the employee attains age 59½,
- is made after the employee's death, or
- is attributable to the employee's being disabled.

A qualified distribution from a designated Roth account is not includible in the employee's gross income.

5-taxable-year period – The final regulations state that the 5-taxable-year period of participation begins on the first day of the employee's taxable year for which the employee first had designated Roth contributions made to the plan and ends when 5 consecutive taxable years have passed. If a direct rollover is made from a designated Roth account under another plan, the 5-taxable-year period for the employee under the recipient plan begins on the first day of the employee's taxable year for which the employee first had designated Roth contributions made to the other plan, if earlier.

Non-Qualified Distributions – Distributions of the following amounts are not treated as qualified distributions, are not eligible rollover distributions and are includible in income:

- Corrective distributions of elective deferrals contributed to a designated Roth account in excess of the section 415 limits (*lesser of \$46,000 or 100% of earnings for 2008*).
- Corrective distributions of excess deferrals under section 402(g) (*\$15,500 in 2008, \$20,500 if age 50 or older*).
- Corrective distributions of excess contributions or excess aggregate contributions.
- Deemed distributions under section 72(p) (*participant loan defaults*).

Under the final regulations, a nonqualified distribution is included in the distributee's gross income to the extent allocable to income on the contract and excluded from gross income to the extent allocable to investment in the contract (*basis*). The amount of a distribution allocated to investment in the contract is determined by applying to the distribution the ratio of the investment in the contract to the designated Roth account balance. For example, if a nonqualified distribution of \$5,000 is made from an employee's designated Roth account when the account consists of \$9,400 of designated Roth contributions and \$600 of earnings, the distribution consists of \$4,700 of designated Roth contributions (*that are not includible in the employee's gross income*) and \$300 of earnings (*that are includible in the employee's gross income*).

WITHDRAWALS FROM ROTH ACCOUNTS

Withdrawals – The plan's restrictions on withdrawals that apply to pre-tax elective contributions also apply to designated Roth contributions. So if your plan permits distributions from your 401(k) or 403(b) accounts on account of hardship, you may choose to receive a hardship distribution from your designated Roth account. But, such a distribution will consist of a pro-rata share of earnings and basis and the earnings will be included in gross income unless you have had the designated Roth account for five years and are either disabled or over age 59½.

ROLLOVERS OF DESIGNATED ROTH CONTRIBUTIONS

Direct Rollovers – The final regulations provide that if the portion of a distribution from a designated Roth account under a plan qualified under section 401(a) that is not includible in income is to be rolled over into a designated Roth account under another plan, the rollover of the distribution must be accomplished through a direct rollover (*i.e., a rollover to another designated Roth account is not available for the portion of the distribution not includible in gross income if the distribution is made directly to the employee*) and can only be made to a section 401(k) or 403(b) plan that has a designated Roth program.

Indirect Rollovers – If a distribution from a designated Roth account is made to the employee, the employee would still be able to roll over the entire amount (*or any portion thereof*) into a Roth IRA within 60 days of receipt. Under section 402(c)(2), if only a portion of the distribution is rolled over, the portion that is rolled over is treated as consisting first of the amount of the distribution that is includible in gross income. Alternatively, the employee is permitted to roll over the taxable portion of the distribution to a designated Roth account under either a section 401(k) or 403(b) plan within 60 days of receipt. If the designated Roth account distribution is non-qualified (see above definition of Non-qualified Distributions in Regarding Payments From Your Account), the earnings portion of the distribution will be considered an eligible roll over distribution subject to mandatory 20% federal withholding and mandatory state withholding may apply. Using funds other than plan assets, the employee can make up the withheld taxes and roll over the entire distribution. In addition, the employee's period of participation under the distributing plan is not carried over to the recipient plan for purposes of determining whether the employee satisfies the 5-taxable-year requirement under the recipient plan.

Special Note Regarding Rollovers to Roth IRAs – The final regulations provide that in the case of a rollover of a distribution from a designated Roth account maintained under a section 401(k) or 403(b) plan to a Roth IRA, the period that the rolled-over funds were in the designated Roth account does not count towards the 5-taxable-year period for determining qualified distributions from the Roth IRA. However, if an individual had established a Roth IRA in a prior year, the 5-year period for determining qualified distributions from a Roth IRA that began as a result of that earlier Roth IRA contribution applies to any distributions from the Roth IRA (*including a distribution of an amount attributable to a rollover contribution from a designated Roth account*).

Examples of the Application of Rollover Rules:

Employee A receives a \$14,000 eligible rollover distribution that is not a qualified distribution from A's designated Roth account, consisting of \$11,000 of investment in the contract and \$3,000 of income. The \$3,000 is subject to mandatory 20% Federal withholding and any applicable mandatory state withholdings. Within 60 days of receipt, Employee A rolls over \$7,000 of the distribution into a Roth IRA. The \$7,000 is deemed to consist of \$3,000 of income and \$4,000 of investment in the contract. Because the only portion of the distribution that could be includible in gross income (*the income*) is rolled over, none of the distribution is includible in Employee A's gross income.

Employee B receives a \$12,000 distribution, which is a qualified distribution that is attributable to the employee being disabled, from B's designated Roth account. Immediately prior to the distribution, the account consisted of \$21,850 of investment in the contract (*i.e., designated Roth contributions*) and \$1,150 of income. For purposes of determining recovery of investment in the contract, the distribution is deemed to consist of \$11,400 of investment in the contract [$\$12,000 \times 21,850 / (1,150 + 21,850)$] and \$600 of income [$\$12,000 \times 1,150 / (1,150 + 21,850)$]. Immediately after the distribution, B's designated Roth account consists of \$10,450 of investment in the contract and \$550 of income. This determination of the remaining investment in the contract will be needed if B subsequently is no longer disabled and takes a nonqualified distribution from the designated Roth account.