REVENUE PROCEDURE 92-93

Qualified plans: Elective deferrals: Employee contributions: Reporting requirements.--The IRS has provided guidance concerning the proper reporting of distributions that are treated as corrective disbursements. The guidance applies to elective deferrals or a return of employee contributions to reduce excess annual additions arising from the allocation of forfeitures, a reasonable error, either in estimating a participant's compensation, or in determining the amount of elective deferrals that may be made with respect to any individual under the limits of Code Sec. 415. The procedure is effective on January 1, 1993. For distributions prior to that date, payors may use any reasonable good-faith interpretation of the applicable laws and regulations.

SECTION 1. PURPOSE

This revenue procedure provides guidance concerning the proper reporting of a distribution of elective deferrals or a return of employee contributions to reduce excess annual additions arising from the allocation of forfeitures, a reasonable error in estimating a participant's compensation, or a reasonable error in determining the amount of elective deferrals that may be made with respect to any individual under the limits of section 415 of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 Section 415 of the Code limits the contributions that may be made to a qualified defined contribution plan on behalf of a participant for a year. This limit is the lesser of 25 percent of compensation or $30,000 (a lower limit may apply if benefits are also accrued under a defined benefit plan).

.02 Amounts contributed in excess of these limits (excess annual additions) may be corrected under section 1.415-6(b)(6) of the Income Tax Regulations to the extent the excess annual additions are due to the allocation of forfeitures or a reasonable error in estimating a participant's compensation, or in certain other limited facts and circumstances (only as the Commissioner provides). Prior to the amendment of the regulations on August 8, 1991, where correction was permitted, a plan could place these excess annual additions in a suspense account and allocate them to the participant or participants in subsequent years, or return employee after-tax contributions to the participants to the extent the return would reduce the excess annual additions.

.03 Under section 1.415-6(b)(6)(iv) of the regulations, if a plan returns employee contributions but does not return gains attributable to the returned employee contributions, these gains are treated as additional employee contributions for the limitation year in which the employee contributions were made. Thus, for example, such contributions must be taken into account for purposes of section 401(m) and section 415.

.04 Section 1.415-6 of the Income Tax Regulations was amended on August 8, 1991, to add guidance with respect to elective deferrals when the limits set forth in section 415 of the Code are exceeded. Under section 1.415-6(b)(6), a plan may provide that excess annual additions resulting from a reasonable error in determining the total elective deferrals (as defined in that section) permitted under section 415 may be corrected. The plan may provide that the suspense account methods set forth in section 1.415-6(b)(6)(i)-(iii) or the return of employee contributions may be used to correct these excess annual additions.

.05 In addition, the regulations were amended to add a new correction method under section 1.415-6(b)(6)(iv). Under this amendment, a plan may provide that excess annual additions may be corrected by distributing elective deferrals (as defined in 1.415-6(b)(6)(iv)), to the extent that the distribution of elective deferrals would reduce the excess annual additions.

SECTION 3. TREATMENT OF THE DISTRIBUTION OF ELECTIVE DEFERRALS

.01 The distribution of elective deferrals pursuant to section 1.415-6(b)(6)(iv) is a corrective disbursement rather than a distribution of accrued benefits. Thus, it is analogous to distributions under sections 401(k)(8) (distribution of excess contributions), 401(m)(6) (distribution of excess aggregate contributions), and 402(g) (distributions of excess deferrals). As with those distributions, it is inconsistent with the purpose of the regulations to subject this distribution to the spousal consent rules of section 417 of the Code, the requirements of section 72 of the Code, and various other sections governing distributions of accrued benefits. Thus, a distribution pursuant to section 1.415-6(b)(6)(iv) will generally be treated as a corrective disbursement rather than a distribution of accrued benefits. The subsections below describe the treatment of such distributions for certain tax and reporting purposes. However, for ease of administration, distributions under this section will be reported to plan participants and the Internal Revenue Service in the same manner as distributions of accrued benefits (see section 5 of this revenue procedure).

.02 The distribution is includible in income in the year distributed. No part of the distribution may be treated as a return of investment in the contract under section 72. The amount distributed is not subject to the additional tax on early distributions under section 72(t) and is not treated as a distribution for purposes of applying the excise tax under section 4980A.

.03 The distribution is not wages for the purposes of the Federal Insurance Contributions Act or the Federal Unemployment Tax Act.

.04 No notice or consent is required under sections 411(a)(11) and 417 with respect to the distribution.

.05 The distribution may be made without regard to the restrictions on distributions under section 401(k)(2)(B)(i).

.06 The withholding requirements of section 3405 of the Code apply to the portion of the distribution that is includible in income.

.07 The distribution may not be treated as a required distribution for purposes of section 401(a)(9).

.08 The distribution is not an eligible rollover distribution within the meaning of section 402(c)(4), as amended by the Unemployment Compensation Amendments of 1992.

SECTION 4. TREATMENT OF THE RETURN OF EMPLOYEE CONTRIBUTIONS

.01 Like the distribution of elective deferrals under section 1.415-6(b)(6)(iv), distribution of employee contributions to correct an excess annual addition is treated as a corrective disbursement. Thus, many of the requirements governing normal plan distributions do not apply to the distribution of employee contributions pursuant to section 1.415-6(b)(6)(iv).

.02 Employee contributions returned as excess annual additions pursuant to section 1.415-6(b)(6)(iv) are not includible in gross income, and are not included in the employee’s investment in the contract.

.03 Allocable gains distributed pursuant to section 1.415-6(b)(6)(iv) are includible in income in the year distributed. They may not be treated as including any return of investment in the contract.

.04 The distribution is not subject to the additional tax on early distributions under section 72(t) of the Code and is not treated as a distribution for purposes of applying the excise tax under section 4980A.

.05 The distribution is not wages for the purposes of the Federal Insurance Contributions Act or the Federal Unemployment Tax Act.

.06 No notice or consent is required under sections 411(a)(11) and 417 with respect to the distribution.

.07 The withholding requirements of section 3405 of the Code apply to the distribution.

.08 The distribution may not be treated as a required distribution for purposes of section 401(a)(9).

.09 The distribution is not an eligible rollover distribution within the meaning of section 402(c)(4), as amended by the Unemployment Compensation Amendments of 1992.

SECTION 5. REPORTING REQUIREMENTS FOR 415 ELECTIVE DEFERRALS

.01 A distribution of elective deferrals from a plan pursuant to section 1.415-6(b)(6)(iv) is reported on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

.02 A separate Form 1099-R must be used to report this distribution. In general, no other distribution may be reported with this distribution (including a distribution of excess deferrals, excess contributions or excess aggregate contributions). However, a distribution of employee contributions and allocable gains pursuant to section 1.415-6(b)(6)(iv) may be reported with this distribution. See section 6 of this revenue procedure for instructions on the reporting of such a distribution.

.03 Box 1 and Box 2a of the Form 1099-R should each show the total amount of the distribution. Box 2b of the form may not be used for reporting a distribution pursuant to section 1.415-6(b)(6)(iv). Box 5 of the form should be left blank (unless the distribution is being reported with a distribution of employee contributions pursuant to section 1.415-6(b)(6)(iv)). Box 7 should show a Code E.

.04 The distribution should be included under “Total Pensions and Annuities” on Form 1040 or Form 1040A.

SECTION 6. REPORTING REQUIREMENTS FOR EMPLOYEE CONTRIBUTIONS

.01 A return of employee contributions (and distribution of gains attributable to the employee contributions being returned) from a plan pursuant to section 1.415-6(b)(6)(iv) is reported on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

.02 A separate Form 1099-R must be used to report this distribution. In general, no other distribution may be reported with this distribution (including a distribution of excess deferrals, excess contributions or excess aggregate contributions). However, a distribution of elective deferrals pursuant to section 1.415-(6)(b)(6)(iv) may be reported with this distribution. See section 5 of this revenue procedure for instructions on the reporting of such a distribution.

.03 Box 1 should show the total amount of the distribution, including the employee contributions. Box 2a of the Form 1099-R should show the amount of the gains attributable to the employee contributions. Box 2b of the form may not be used for reporting a distribution pursuant to section 1.415-6(b)(6)(iv). Box 5 of the form should show the employee contributions being returned. Box 7 should show a Code E.

.04 The distribution should be included under “Total Pensions and Annuities” on Form 1040 or Form 1040A.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective on January 1, 1993. For distributions prior to the effective date, the payor may use any reasonable good faith interpretation of the applicable statutes and regulations.

DRAFTING INFORMATION

The principal author of this revenue procedure is Karen Field of the Employee Plans Technical and Actuarial Division. For more information concerning this revenue procedure, call the Employee Plans Technical and Actuarial Division Taxpayer Assistance Number, (202) 622-6074 (not a toll-free number), Monday through Thursday between 1:30 pm and 4:00 pm, Eastern Standard Time. Mrs. Field may be reached at (202) 622-6214 (also not a toll-free number).