

## TEXAS\$AVER 401(k) AND 457 PROGRAM SPECIAL TAX NOTICE

This notice explains how you can continue to defer federal income tax on your retirement savings in your Texa\$aver Plan and contains important information you will need before you decide how to receive your Plan benefits. This notice does not address any applicable state or local tax rules that may apply.

This notice is provided to you because all or part of the payment that you will soon receive from the Plan may be eligible for rollover by you or your Plan Administrator to an IRA or an eligible employer plan. A rollover is a payment by you or the Plan Administrator of all or part of your benefit to another plan or IRA that allows you to continue to postpone taxation of that benefit until it is paid to you, or in the case of Roth amounts or a Roth conversion, to obtain (or continue) tax-free investment returns. Your payment cannot be rolled over to a SIMPLE IRA or a Coverdell Education Savings Account (formerly known as an education IRA). A distribution of Roth amounts cannot be rolled over to any other type of IRA except a Roth IRA. An “eligible employer plan” includes a plan qualified under section 401(a) of the Internal Revenue Code, including a section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; a section 403(a) annuity plan; a section 403(b) tax-sheltered annuity; and an eligible section 457(b) plan maintained by a governmental employer (governmental 457 plan).

**An eligible employer plan is not legally required to accept a rollover. Before you decide to roll over your payment to another employer plan, you should find out whether the plan accepts rollovers and, if so, the types of distributions it accepts as rollovers.** You should also find out about any documents that are required to be completed before the receiving plan will accept a rollover. Even if a plan accepts rollovers, it might not be allowed to, or may choose not to, accept rollovers of certain types of distributions, such as after-tax or Roth amounts. If this is the case, and your distribution includes after-tax or Roth amounts, you may wish instead to roll your distribution over to an IRA or split your rollover amount between the employer plan in which you will participate and an IRA. If an employer plan accepts your rollover, the plan may restrict subsequent distributions of the rollover amount or may require your spouse's consent for any subsequent distribution. **A subsequent distribution from the plan that accepts your rollover may also be subject to different tax treatment than distributions from this Plan. Check with the administrator of the plan that is to receive your rollover prior to making the rollover.**

If you have additional questions after reading this notice, you should contact your Plan Administrator, ING, at (800) 634-5091.

### SUMMARY

There are two ways you may be able to receive a Plan payment that is eligible for rollover:

- Certain payments can be made directly to an IRA that you establish or to an eligible employer plan that will accept it and hold it for your benefit (“DIRECT ROLLOVER”); or
- The payment can be PAID TO YOU.

If you choose a DIRECT ROLLOVER:

- You choose whether your payment will be made directly to your IRA (traditional or Roth) or to an eligible employer plan that accepts your rollover. Your payment cannot be rolled over to a SIMPLE IRA or a Coverdell Education Savings Account because these are not traditional or Roth IRAs. A distribution of Roth amounts can be rolled over only to a Roth IRA or an eligible employer plan that accepts Roth amounts. A distribution of non-Roth amounts can be rolled over to an eligible employer plan, a traditional IRA or, by paying taxes on the non-Roth amounts and converting them to Roth amounts, a Roth IRA.
- If you roll the payment to a traditional IRA or an eligible employer plan, the taxable portion of your payment will be taxed later when you take it out of the traditional IRA or the eligible employer plan. **Depending on the type of plan, the later distribution may be subject to different tax treatment than it would be if you received a taxable distribution from this Plan.**
- If you roll the payment to a Roth IRA, a later distribution from the Roth IRA (including a distribution of earnings) will not be taxed, provided that the distribution is a “qualified distribution” from the Roth IRA. **In order to convert non-Roth amounts into Roth amounts by means of a rollover into a Roth IRA, you must otherwise be eligible to make such a conversion within an IRA.**

If you choose to have a Plan payment that is eligible for rollover PAID TO YOU:

- You will receive only 80% of the taxable amount of the payment, because the Plan Administrator is required to withhold 20% of that amount and send it to the IRS as income tax withholding to be credited against your taxes.

- The taxable amount of your payment will be taxed in the current year unless you roll it over. Under limited circumstances, you may be able to use special tax rules that could reduce the tax you owe. However, if you receive the payment before age 59½, you may have to pay an additional 10% tax. A “qualified distribution” of Roth amounts will not be subject to federal income tax.
- You can roll over all or part of the payment by paying it to your IRA or to an eligible employer plan that accepts your rollover within 60 days after you receive the payment. The amount rolled over will not be taxed until you take it out of the IRA or the eligible employer plan. Depending on the type of plan, the later distribution may be subject to different tax treatment than it would be if you did not roll over the distribution from the Plan. Like a “qualified distribution” of Roth amounts from the Plan, a “qualified distribution” of such amounts from a Roth IRA or an eligible employer plan will not be subject to federal income tax.
- If you want to roll over 100% of the payment to an IRA or an eligible employer plan, you must find other money to replace the 20% of the taxable portion that was withheld. If you roll over only the 80% that you received, you will be taxed on the 20% that was withheld and that is not rolled over.

**Your Right to Waive the 30-Day Notice Period.**

Generally, neither a DIRECT ROLLOVER nor a payment can be made from the plan until at least 30 days after your receipt of this notice. Thus, after receiving this notice, you have at least 30 days to consider whether or not to have your withdrawal directly rolled over. If you do not wish to wait until this 30-day notice period ends before your election is processed, you may waive the notice period by making an affirmative election indicating whether or not you wish to make a DIRECT ROLLOVER. Your withdrawal will then be processed in accordance with your election as soon as practical after it is received by the Plan Administrator.

**MORE INFORMATION**

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**I. PAYMENTS THAT CAN AND CANNOT BE ROLLED OVER**

Payments from the Plan may be “eligible rollover distributions.” This means that they can be rolled over to an IRA or to an eligible employer plan that accepts rollovers. Payments from a plan cannot be rolled over to a SIMPLE IRA or a Coverdell Education Savings Account. The portion of a payment (if any) that is drawn from an after-tax contributions account can be rolled over to an IRA or to an eligible employer plan that accepts after-tax rollover contributions. The portion of a payment (if any) that is drawn from a Roth account can only be rolled over to a Roth IRA or an eligible employer plan that accepts Roth rollovers. The portion of a payment (if any) that is drawn from other types of accounts can be rolled over to an eligible employer plan, a traditional IRA, or if you make a Roth conversion, a Roth IRA. Your Plan Administrator should be able to tell you what portion of your payment is an eligible rollover distribution.

**After-tax Contributions.** If you made after-tax contributions to the Plan, these contributions may be rolled into either an IRA or certain employer plans that accept rollovers of the after-tax contributions. The following rules apply:

**Rollover into an IRA.** You can roll over your after-tax contributions to an IRA either directly or indirectly. Your Plan Administrator 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 an IRA, it is your responsibility to keep track of, and report to the Service on the applicable forms, the amount of these after-tax contributions. This will enable the non-taxable amount of any future distributions from the IRA to be determined. Once you roll over your after-tax contributions to an IRA, those amounts CANNOT later be rolled over to an employer plan.

**Rollover into an Employer Plan.** You can roll over your after-tax contributions to an eligible employer plan using a DIRECT ROLLOVER if the other plan agrees to accept the rollover and provide separate accounting for amounts rolled over, including separate accounting for the after-tax employee contributions and earnings on those contributions. You can roll over

after-tax contributions to either a qualified defined contribution or a defined benefit plan under Code section 401(a) or a tax-sheltered annuity under Code section 403(b). 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 Plan Administrator of this Plan to make a DIRECT ROLLOVER on your behalf. Also, you cannot first roll over after-tax contributions to an IRA and then roll over that amount into an employer plan.

**Roth Contributions.** If you made Roth contributions to the Plan or a Roth rollover to the Plan, you may be able to roll the Roth amounts into either a Roth IRA or certain employer plans that accept rollovers of Roth amounts. The following rules apply:

**Rollover into a Roth IRA.** You can roll over your Roth amounts to a Roth IRA either directly or indirectly. You **cannot** roll over Roth amounts to a traditional IRA or any other type of IRA that is not a Roth IRA. You may establish a Roth IRA to hold a rollover of Roth amounts even if you are not eligible to contribute to a Roth IRA at this time. Once you roll over Roth amounts to a Roth IRA, those amounts **cannot** be later rolled over to an employer plan.

When you later receive a distribution from your Roth IRA, the earnings portion of the distribution from a Roth IRA is not taxable if the distribution is a “qualified distribution” from the Roth IRA. The rules for a qualified distribution from a Roth IRA are generally the same as for a qualified distribution from the Plan (as described later in this notice), except that the five-year holding period begins on the first day of the taxable year for which you or your spouse first made Roth IRA contributions or Roth conversion contributions. If you roll over Roth amounts to a Roth IRA, you **do not** receive credit towards the Roth IRA five-taxable-year holding period for the time that the rolled-over Roth amounts were held under the Plan (or any prior employer plan). The “earnings” portion of any Roth IRA distribution for determining which earnings could be taxed in the future depends on whether the distribution from the Plan was a “qualified distribution” or not (this term is described later in this notice). If you roll over a qualified distribution, the earnings portion of the Roth IRA consists only of earnings while held under the Roth IRA, and the earnings while held under the Plan are not taxable because they were previously distributed as a qualified distribution. By contrast, if you roll over a non-qualified distribution, the earnings portion of the Roth IRA also includes the earnings portion under the Plan, which will be taxed if the distribution is not a “qualified distribution” from the Roth IRA.

**Rollover into an Employer Plan.** You can roll over Roth amounts (including Roth contributions and earnings) to another qualified employer plan using a DIRECT ROLLOVER if the other plan accepts such Roth rollovers, and provides separate accounting for amounts rolled over, including separate accounting of Roth contributions and earnings on those contributions. You can roll over non-taxable Roth amounts to either an employer plan that is qualified under Code section 401(a) or a tax-sheltered annuity under Code section 403(b). If you want to roll over non-taxable Roth amounts to an employer plan that accepts these rollovers, you **must** utilize a DIRECT ROLLOVER method; you **cannot** have such amounts PAID TO YOU first.

If you receive a distribution of Roth amounts that is not a qualified distribution (this term is described later in this notice), the earnings portion of that distribution is taxable. In that case, you can have the distribution PAID TO YOU and roll over the taxable portion of the distribution using the 60-day rollover option, and you can make that rollover to any eligible employer plan that will accept this type of a rollover.

#### **Conversion of Non-Roth Amounts by Means of a Rollover into a Roth IRA.\***

You may be eligible to roll over non-Roth amounts into a Roth IRA and thereby make a Roth “conversion.” You may not make such a conversion if you are not otherwise eligible to make a Roth conversion within a Roth IRA, which generally means you are not eligible if: (1) your modified adjusted gross income for the year the distribution is made from the Plan exceeds \$100,000 or (2) you are married and lived with your spouse at some time during the taxable year and you filed a separate tax return. Any required minimum distribution you receive from an IRA or eligible retirement plan is disregarded for purposes of determining whether you are eligible to make a conversion to a Roth IRA.

The amount of the conversion, minus any return of your tax basis, is taxable as ordinary income in the year the conversion occurs (the year the rollover distribution occurs).\* The 10% penalty tax on early withdrawals does not apply to the conversion amount, but unless an exception applies, any withdrawal of conversion amounts from your Roth IRA within the five-calendar-year holding period beginning on the first day of the taxable year in which your first Roth IRA contributions were made would be subject to the 10% penalty tax on early distributions.

\*The conversion eligibility rules currently are set to expire in 2010, at which point Roth conversions will be allowed without regard to income limits. For a conversion that occurs in 2010, you may be allowed to spread the tax impact over a two-year period.

**Payments That Cannot be Rolled Over.** The following types of payments 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 (1) your lifetime (or a period measured by your life expectancy), or (2) your lifetime and your beneficiary's lifetime (or a period measured by your joint life expectancies), or (3) a period of 10 years or more.

**Required Minimum Payments.** Beginning when you reach age 70½ or retire, whichever is later, a certain portion of your payment cannot be rolled over because it is a "required minimum payment" that must be PAID TO YOU. Special rules apply if you own 5% or more of your employer.

**Hardship Distributions.** A hardship distribution cannot be rolled over.

**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 Part III below. Ask the Plan Administrator of the Plan if distribution of your loan qualifies for rollover treatment.

The Plan Administrator of this Plan should be able to tell you if your payment includes amounts that cannot be rolled over.

## II. DIRECT ROLLOVER

A DIRECT ROLLOVER is a direct payment of the amount of your Plan benefits to an IRA or an eligible employer plan that will accept it. You can choose a DIRECT ROLLOVER of all or any portion of your payment that is an eligible rollover distribution, as described in Part I above. If your DIRECT ROLLOVER is into a traditional IRA or an eligible employer plan, you are not taxed on any taxable portion of your payment until you later take it out of the traditional IRA or eligible employer plan. If your DIRECT ROLLOVER is into a Roth IRA, you are taxed on the taxable portion of your payment in the conversion to Roth treatment, and if the later distribution from the Roth IRA is a "qualified distribution," you are not taxed when you take it out of the Roth IRA.

In addition, no income tax withholding is required for any taxable portion of your Plan benefits for which you choose a DIRECT ROLLOVER. This Plan might not let you choose a DIRECT ROLLOVER if your distributions for the year are less than \$200.

Any eligible rollover distribution that you receive from the Plan that is otherwise non-taxable, and that you wish to roll over to an eligible employer plan, can be rolled over only in a DIRECT ROLLOVER. This includes any qualified distribution (as described later in this notice) of Roth amounts or the portion of any non-qualified distribution that reflects Roth contributions.

**DIRECT ROLLOVER to an IRA.** You can open an IRA to receive the DIRECT ROLLOVER. If you choose to have your payment made directly to an IRA, contact an IRA sponsor (usually a financial institution) to find out how to have your payment made in a DIRECT ROLLOVER to an IRA at that institution. If you are unsure of how to invest your money, you can temporarily establish an IRA to receive the payment. However, in choosing an IRA, you may wish to make sure that the IRA you choose will allow you to move all or a part of your payment to another IRA at a later date, without penalties or other limitations. (See IRS Publication 590, Individual Retirement Arrangements for more information on IRAs (including limits on how often you can roll over between IRAs).)

**DIRECT ROLLOVER to a Plan.** If you are employed by a new employer that has an eligible employer plan, and you want a DIRECT ROLLOVER to that plan, ask the plan administrator of that plan whether it will accept your rollover. An eligible employer plan is not legally required to accept a rollover. Even if your new employer's plan does not accept a rollover, you can choose a DIRECT ROLLOVER to an IRA. If the employer 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. Check with the plan administrator of that plan before making your decision.

**DIRECT ROLLOVER of a Series of Payments.** If you receive a payment that can be rolled over to an IRA or an eligible employer plan that will accept it, and it is paid in a series of payments for fewer than 10 years, your choice to make or not to make a DIRECT ROLLOVER for a 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.

**Change in Tax Treatment Resulting from a DIRECT ROLLOVER.** The tax treatment of any payment from the eligible employer plan or traditional IRA receiving your DIRECT ROLLOVER might be different than if you received your benefit in a taxable distribution directly from the Plan. For example, if you were born before January 1, 1936, you might be entitled to 10-year averaging or capital gain treatment, as explained below. However, if you have your benefit rolled over to a section 403(b) tax-sheltered annuity, a governmental 457 plan, or an IRA in a DIRECT ROLLOVER, your benefit will no longer be eligible for that special treatment. See the sections below entitled “Additional 10% Tax if You Are under Age 59½” and “Special Tax Treatment if You Were Born before January 1, 1936.”

### III. PAYMENT PAID TO YOU

If your payment can be rolled over (see Part I above) and the payment is PAID TO YOU in cash, it is subject to 20% federal income tax withholding on the taxable portion (state tax withholding may also apply). The payment is taxed in the year you receive it unless, within 60 days, you roll it over to an IRA or an eligible employer plan that accepts rollovers. If you do not roll it over, special tax rules may apply.

#### INCOME TAX WITHHOLDING

**Mandatory Withholding.** If any portion of your payment can be rolled over under Part I above and you do not elect to make a DIRECT ROLLOVER, the Plan is required by law to withhold 20% of the taxable amount. This amount is sent to the IRS as federal income tax withholding. For example, if you can roll over a taxable payment of \$10,000, only \$8,000 will be paid to you because the Plan must withhold \$2,000 as income tax. However, when you prepare your income tax return for the year, unless you make a rollover within 60 days (see “Sixty-Day Rollover Option” below), you must report the full \$10,000 as a taxable payment from the Plan. You must report the \$2,000 as tax withheld, and it will be credited against any income tax you owe for the year. There will be no income tax withholding if your payments for the year are less than \$200.

**Voluntary Withholding.** If any portion of your payment is taxable but cannot be rolled over under Part I above, the mandatory withholding rules described above do not apply. In this case, you may elect not to have withholding apply to that portion. If you do nothing, 10% will be taken out of this portion of your payment for federal income tax withholding. To elect out of withholding, ask the Plan Administrator for the election form and related information.

**Sixty-Day Rollover Option.** If you receive a payment that can be rolled over under Part I above, you can still decide to roll over all or part of it to an IRA or to an eligible employer plan that accepts rollovers. If you decide to roll over, **you must contribute the amount of the payment you received to an IRA or eligible employer plan within 60 days after you receive the payment.** The portion of your payment that is rolled over will not be taxed until you take it out of the traditional IRA or the eligible employer plan.

This 60-day rollover option is not available for a rollover to an eligible employer plan for the non-taxable portion of any distribution of Roth amounts from the Plan, but the option is available for a rollover to a Roth IRA. A rollover of Roth amounts to an eligible employer plan can be done only by a DIRECT ROLLOVER.

You can roll over up to 100% of your payment that can be rolled over under Part I above, including an amount equal to the 20% of the taxable portion that was withheld. If you choose to roll over 100%, you must find other money within the 60-day period to contribute to the traditional IRA or the eligible employer plan, to replace the 20% that was withheld. On the other hand, if you roll over only the 80% of the taxable portion that you received, you will be taxed on the 20% that was withheld.

**Example:** The taxable portion of your payment that can be rolled over under Part I above is \$10,000, and you choose to have it PAID TO YOU. You will receive \$8,000, and \$2,000 will be sent to the IRS as income tax withholding. Within 60 days after receiving the \$8,000, you may roll over the entire \$10,000 to an IRA or an eligible employer plan. 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 (your savings, a loan, etc.). In this case, the entire \$10,000 is not taxed until you take it out of the traditional IRA or an eligible employer plan. If you roll over the entire \$10,000, when you file your income tax return you may get a refund of part or all of the \$2,000 withheld.

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% Tax If You Are under Age 59½.** If you receive a payment before you reach age 59½ and you do not roll it over, then, in addition to the regular income tax, you may have to pay an extra tax equal to 10% of the taxable portion of the payment. 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 as described in 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, or (7) payments that do not exceed the amount of your deductible medical expenses. See IRS Form 5329 for more information on the additional 10% tax.

The additional 10% tax will not apply to distributions from a governmental 457 plan, except to the extent the distribution is attributable to an amount you rolled over to that plan (adjusted for investment returns) from another type of eligible employer plan or IRA. Any amount rolled over from a governmental 457 plan to another type of eligible employer plan or to an 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.

**Taxation of Roth Amounts – “Qualified Distributions” and Other Distributions.** If you have made Roth contributions or a Roth rollover to the Plan, and you receive those amounts in a “qualified distribution,” then such amounts, including earnings while under this Plan, are not subject to federal income tax. A “qualified distribution” from the Plan generally is a distribution that is made after a five-calendar-year period of participation in the Plan (or your prior employer’s plan from which you made the rollover to this Plan) starting with the year in which you first made a Roth contribution, and the distribution:

- is made on or after you reach age 59½;
- is made after your death; or
- is attributable to your being disabled (within the meaning of Section 72(m) of the Code).

If the distribution from the Plan is not a qualified distribution, then the earnings portion of the distribution is included in your gross income for federal tax purposes. The actual Roth contributions you made to this Plan or a prior employer’s plan are never taxed at distribution. If you do not satisfy the requirements for a distribution to be a qualified distribution (for example, if you are under age 59½), a rollover to a Roth IRA or an eligible employer plan that accepts the rollover may preserve your ability to satisfy the requirements upon a later distribution from the Roth IRA or employer plan. However, you do **not** receive credit under the Roth IRA for any period of time the Roth amounts were held under this Plan (or the plan of a prior employer) towards meeting the Roth IRA’s five-calendar-year holding period when determining the tax treatment of a distribution from the Roth IRA.

**Special Tax Treatment If You Were Born before January 1, 1936.** If you receive a payment from a plan qualified under section 401(a) or a section 403(a) annuity plan that can be rolled over under Part I and you do not roll it over to an IRA or an eligible employer plan, the payment will be taxed in the year you receive it. However, if the payment qualifies as a “lump sum distribution,” it may be eligible for special tax treatment. (See also “Employer Stock or Securities” below.) A lump sum distribution is a payment, within one year, of your entire balance under the Plan (and certain other similar plans of the employer) that is payable to you after you have reached age 59½ or because you have separated from service with your employer (or, in the case of a self-employed individual, after you have reached age 59½ or have become disabled). For a payment to be treated as a lump sum distribution, you must have been a participant in the plan for at least five years before the year in which you received the distribution. The special tax treatment for lump sum distributions that may be available to you is described below.

**Ten-Year Averaging.** If you receive a lump sum distribution and you were born before January 1, 1936, you can make a one-time election to figure the tax on the payment by using “10-year averaging” (using 1986 tax rates). Ten-year averaging often reduces the tax you owe.

**Capital Gain Treatment.** If you receive a lump sum distribution and you were born before January 1, 1936, and you were a participant in the Plan before 1974, you may elect to have the part of your payment that is attributable to your pre-1974 participation in the Plan taxed as long-term capital gain at a rate of 20%.

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 into this Plan from a 403(b) tax-sheltered annuity contract or from an IRA not originally attributable to a qualified employer plan. If you previously rolled over a distribution from this Plan (or certain

other similar plans of the employer), you cannot use this special averaging treatment for later payments from the Plan. If you roll over your payment to an IRA, governmental 457 plan, or 403(b) tax-sheltered annuity, you will not be able to use special tax treatment for later payments from that IRA, plan, or annuity. Also, if you roll over only a portion of your payment to an IRA, governmental 457 plan, or 403(b) tax-sheltered annuity, this special tax treatment is not available for the rest of the payment. See IRS Form 4972 for additional information on lump sum distributions and how you elect the special tax treatment.

**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 years of plan participation, 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 IRA or another eligible employer 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 IRA or another eligible employer plan.

If the Plan includes employer stock, and if Roth amounts have been invested in employer stock, the special tax treatment of net unrealized appreciation may or may not be meaningful to you. A qualified distribution (as described above) of Roth amounts is not subject to federal income tax, thus appreciation on employer stock is treated no differently than other earnings under the Plan. In the case of a qualified distribution of employer stock, your cost basis in the stock after distribution will equal the fair market value of the stock at the time of distribution, and any subsequent appreciation will be taxed as capital gains when the stock is sold. If the distribution is not a qualified distribution, then net unrealized appreciation may escape immediate tax at distribution under the rules described above. Your cost basis in that case will equal the amount of Roth contributions you invested in stock for purposes of determining the gain on later sale.

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% withholding amount will be based on the entire taxable amount PAID TO YOU (including the value of the employer stock determined by 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 Plan Loans.** If your employment ends and you have an outstanding loan from your Plan, your employer may reduce (or “offset”) your balance in the Plan by the amount of the loan you have not repaid. 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 qualified employer plan or an IRA within 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 Plan, the 20% withholding amount will be based on the entire amount PAID TO YOU, including the amount of the loan offset. The amount withheld will be limited to the amount of other cash or property PAID TO YOU (other than any employer securities). The amount of a defaulted plan loan that is a taxable deemed distribution cannot be rolled over.

**Special Election by Eligible Retired Public Safety Officers.** If you are an “eligible retired public safety officer,” you may make an election to exclude up to \$3,000 of your otherwise taxable payment from your gross income, and not be taxed on the amount you exclude, by instead having your payment directly made to the provider of an accident or health insurance plan or a qualified long-term care insurance contract covering you, your spouse, or your dependents. All distributions are combined from all of your eligible retirement plans (section 401(a), 457(b), 403(a) and 403(b) plans) for purposes of the \$3,000 limit. You are an “eligible retired public safety officer” if you separated from service as a public safety officer of the employer maintaining the plan, and your

separation from service was due to your disability or attainment of normal retirement age. Contact the Plan Administrator for more information about this special election.

#### **IV. SURVIVING SPOUSES, ALTERNATE PAYEES, AND OTHER BENEFICIARIES**

In general, the rules summarized above that apply to payments to employees also 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 the Plan results from a “qualified domestic relations order,” which is an order issued by a court, usually in connection with a divorce or legal separation.

If you are a surviving spouse or an alternate payee, you may choose to have a payment that can be rolled over, as described in Part I above, paid in a DIRECT ROLLOVER to an IRA or to an eligible employer plan or PAID TO YOU. If you have the payment PAID TO YOU, you can keep it or roll it over yourself to an IRA or to an eligible employer plan. Thus, you have the same choices as the employee.

A plan may, but is not required to, allow non-spouse beneficiaries to make a DIRECT ROLLOVER of their share of an employee’s account. If you are a beneficiary other than a surviving spouse or a former spouse who is an alternate payee, you should check with the Plan Administrator to see whether the Plan allows you to make a DIRECT ROLLOVER.

If the Plan allows a non-spouse beneficiary to make a DIRECT ROLLOVER, the rules governing inherited IRAs will govern after the rollover. Under inherited IRA rules, the beneficiary’s entire interest must be distributed either by the end of the fifth calendar year after the year of the employee’s death or over the life or life expectancy of the beneficiary, depending on factual circumstances. (There are detailed rules governing inherited IRAs that are beyond the scope of this summary. For the complete rules, consult IRS Publication 590, Individual Retirement Arrangements.) Like an original owner, an inherited owner generally will not owe tax on the assets in the IRA until distribution from the IRA. With respect to Roth amounts, the minimum distribution rules that apply to traditional IRAs apply to Roth IRAs in the same manner as if the Roth IRA owner died before his or her required beginning date.

If you are a surviving spouse, an alternate payee, or another beneficiary, your payment is generally not subject to the additional 10% tax described in Part III above, even if you are younger than age 59½.

If you are a surviving spouse, an alternate payee, or another beneficiary, you may be able to use the special tax treatment for lump sum distributions and the special rule for payments that include employer stock, as described in Part III above. 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 years of participation in the Plan.

#### **HOW TO OBTAIN ADDITIONAL INFORMATION**

This notice summarizes only the federal (not state or local) tax rules that might apply to your payment. The rules described above are complex and contain many conditions and exceptions that are not included in this notice. Therefore, you may want to consult with the Plan Administrator or a professional tax advisor before you take a payment of your benefits from your Plan. Also, you can find more specific information on the tax treatment of payments from qualified employer 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’ Internet Web Site at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX-FORMS.