

be illustrated by the following example: A, a professor who reports his income on the calendar year basis, became a full-time employee of X University on October 1, 1958 (beginning of X University's 1958-1959 academic year) and continued as a full-time employee for the academic years 1958-1959, 1959-1960, and 1960-1961. X University was, during all such academic years, an organization described in section 501(c)(3) and exempt from tax under section 501(a). X University's academic year runs for a period of 8 months: October through May. A received an annual salary, all of which was includible in his gross income, of \$8,000 for the 1958-1959 academic year, \$8,800 for the 1959-1960 academic year, and \$9,600 for the 1960-1961 academic year. Starting in 1958, X University contributed amounts toward the purchase of annuity contracts for A and such purchase was not part of a qualified annuity plan. X University paid, as premiums for such contracts, \$1,000 in 1958, \$2,000 in 1959, \$2,400 in 1960, and \$1,400 in 1961. The amount of such premiums which is excludable from A's gross income for the year in which paid is computed as follows:

1958	
(1) Amount contributed by employer for annuity contracts in 1958	\$1,000.00
(2) Includible compensation for most recent one-year period of service (since A was employed for only 3/4 of a year at the close of 1958, this period is counted as most recent one-year period of service) 3/4 × \$8,000	\$3,000.00
(3) 20% × includible compensation	\$600.00
(4) Number of years of service (although A was employed for less than a year, he is considered to have one-year of service)	1
(5) Item (4) × item (3)	\$600.00
(6) Contributions excludable in prior taxable years of A	None
(7) Amount excludable from A's gross income for 1958 ((5)-(6))	\$600.00
(8) Amount includible in A's gross income for 1958 ((1)-(7))	\$400.00
1959	
(9) Amount contributed by employer for annuity contracts in 1959	\$2,000.00
(10) Includible compensation for most recent one-year period of service. (3/4 × \$8,800+1/4×\$8,000)	\$8,800.00
(11) 20% × includible compensation	\$1,660.00
(12) Number of years of service	1 3/4
(13) Item (12) × item (11)	\$2,282.50
(14) Contributions excludable in prior taxable years of A (item 7)	\$600.00
(15) Amount excludable from A's gross income for 1959 ((13)-(14))	\$1,682.50
(16) Amount includible in A's gross income for 1959 ((9)-(15))	\$317.50

1960	
(17) Amount contributed by employer for annuity contracts in 1960	\$2,400.00
(18) Includible compensation for most recent one-year period of service (3/4×\$9,600+1/4×\$8,800)	\$9,100.00
(19) 20% × includible compensation	\$1,820.00
(20) Number of years of service	2 3/4
(21) Item (20) × item (19)	\$4,322.50
(22) Contributions excludable in prior taxable years ((7) + (15))	\$2,282.50
(23) Amount excludable from A's gross income for 1960 ((21) - (22))	\$2,040.00
(24) Amount includible in A's gross income for 1960 ((17) - (23))	\$360.00
1961	
(25) Amount contributed by employer for annuity contracts in 1961	\$1,400.00
(26) Includible compensation for most recent one-year period of service (5/6 × \$9,600+1/6×\$9,600)	\$9,600.00
(27) 20% × includible compensation	\$1,920.00
(28) Number of years of service	3
(29) Item (28) × item (27)	\$5,760.00
(30) Contributions excludable in prior taxable years ((7) + (15) + (23))	\$4,322.50
(31) Amount excludable from A's gross income for 1961 (item (25) since it is less than (29) - (30))	\$1,400.00
(32) Amount includible in A's gross income for 1961 ((25) - (31))	None

[T.D. 6783, 29 FR 18360, Dec. 24, 1964, as amended by T.D. 6885, 31 FR 7802, June 2, 1966; T.D. 7748, 46 FR 1696, Jan. 7, 1981; T.D. 7836, 47 FR 42337, Sept. 27, 1982; T.D. 8115, 51 FR 45736, Dec. 19, 1986]

§ 1.403(b)-2 Eligible rollover distributions; questions and answers.

The following questions and answers relate to eligible rollover distributions from annuities, custodial accounts, and retirement income accounts described in section 403(b) of the Internal Revenue Code of 1986, as amended by sections 521 and 522 of the Unemployment Compensation Amendments of 1992 (Public Law 102-318, 106 Stat. 290) (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 402(f), and 3405(c), see §§ 1.401(a)(31)-1, 1.402(c)-2, 1.402(f)-1, and § 1.3405(c)-1 of this chapter, respectively.

LIST OF QUESTIONS

Q-1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan from annuities, custodial accounts, and retirement income accounts described in section 403(b)?

Q-2: Is a section 403(b) annuity required to provide the direct rollover option described in section 401(a)(31) as a distribution option?

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Q-3: Is the payor of a section 403(b) annuity required to provide a distributee of an eligible rollover distribution with an explanation of the direct rollover option?

Q-4: When do sections 403 (b)(8) and (b)(10), as amended by UCA, and this §1.403(b)-2 apply to distributions from section 403(b) annuities?

QUESTIONS AND ANSWERS

Q-1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan from annuities, custodial accounts, and retirement income accounts described in section 403(b)?

A-1: Under section 403(b)(8), as amended by UCA, any eligible rollover distribution from a section 403(b) annuity is permitted to be rolled over to an eligible retirement plan. For purposes of this section, a section 403(b) annuity includes an annuity contract, a custodial account, and a retirement income account described in section 403(b). For purposes of section 403(b)(8) and this section, an eligible retirement plan means another section 403(b) annuity or an individual retirement plan (as defined in § 1.402(c)(2), Q&A-2 but does not include a qualified plan (as defined in § 1.402(c)-2), Q&A-2. Except to the extent otherwise provided in this section, an eligible rollover distribution from a section 403(b) annuity is an eligible rollover distribution described in section 402(c) (2) and (4) and § 1.402(c)-2, Q&A-3 through Q&A-10 and Q&A-14, except that the distribution is from section 403(b) annuity rather than a qualified plan. Thus, for example, to the extent that corrective distributions described in § 1.402(c)-2, Q&A-4 are properly made from a section 403(b) annuity, such distributions are not eligible rollover distributions. Similarly, in the case of annuity distributions from an annuity contract described in section 403(b), the entire amount of any such annuity payment made on or after January 1 of the year in which an employee attains (or would have attained) age 70½ will be treated as an amount required under section 401(a)(9) and, thus, will not be an eligible rollover distribution. The rules with respect to rollovers in sections 402 (c)(1), (c)(3), and (c)(9) and § 1.402(c)-2, Q&A-11 through Q&A-13 and Q&A-15 also apply

to eligible rollover distributions from section 403(b) annuities.

Q-2: Is a section 403(b) annuity required to provide the direct rollover option described in section 401(a)(31) as a distribution option?

A-2: (a) *General rule.* Yes. Pursuant to section 403(b)(10), section 403(b) does not apply to an annuity contract, custodial account, or retirement income account unless the annuity contract, custodial account, or retirement income account provides that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan (as defined in Q&A-1 of this section) and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. For purposes of determining whether a section 403(b) annuity has satisfied this direct rollover requirement, the provisions of § 1.401(a)(31)-1 apply to the section 403(b) annuity as though it were a plan qualified under section 401(a) unless otherwise provided in this section. For example, as described in § 1.401(a)(31)-1, Q&A-15 a direct rollover from a section 403(b) annuity to another section 403(b) annuity is a distribution and a rollover and not a transfer of funds between section 403(b) annuities and, thus, is not subject to the applicable law governing transfers of funds between section 403(b) annuities. In applying the provisions of § 1.401(a)(31)-1, the payor of the eligible rollover distribution is treated as the plan administrator.

(b) *Mandatory withholding.* As in the case of an eligible rollover distribution from a qualified plan, if a distributee of an eligible rollover distribution from a section 403(b) annuity does not elect to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover, the eligible rollover distribution is subject to 20-percent income tax withholding imposed under section 3405(c). See § 31.3405(c)-1 of this chapter for provisions regarding the withholding requirements relating to eligible rollover distributions.

Q-3: Is the payor of a section 403(b) annuity required to provide the distributee of an eligible rollover distribution with an explanation of the direct rollover option?

A-3: Yes. In order to ensure that the distributee of an eligible rollover distribution from a section 403(b) annuity has a meaningful right to elect a direct rollover, the distributee must be informed of the option. Thus, within a reasonable time period before making an eligible rollover distribution, the payor must provide an explanation to the distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover. For purposes of satisfying the reasonable time period, the qualified plan timing rule provided in §1.402(f)-1, Q&A-2 does not apply to section 403(b) annuities. However, a payor of a section 403(b) annuity will be deemed to have provided the explanation within a reasonable time period if the payor complies with the time period in that rule.

Q-4: When do sections 403(b)(8) and (b)(10), as amended by UCA, and this §1.403(b)-2 apply to distributions from section 403(b) annuities?

A-4: (a) *General rule*—(1) *Statutory effective date*. Section 403(b)(8), as amended by UCA, and section 403(b)(10), as amended by UCA, apply to distributions made on or after January 1, 1993. In addition, the underlying section 403(b) annuity document must be amended at the time provided in, and the section 403(b) annuity must operate in accordance with the requirements of §1.401(a)(31)-1, Q&A-19. Section 522 of UCA provides a special effective date for governmental section 403(b) annuities. This special effective date is specified in §1.403(b)-2T (as it appeared in the April 1, 1995 edition of 26 CFR part 1).

(2) *Regulatory effective date*. This section applies to distributions made on or after October 19, 1995. For distributions made on or after January 1, 1993 and before October 19, 1995, §1.403(b)-2T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for distributions made on or after January 1, 1993 but before October 19, 1995, a section 403(b) annuity may satisfy section 403(b)(10) by substituting

any or all provisions of this section for the corresponding provisions of §1.403(b)-2T, if any.

[T.D. 8619, 60 FR 49214, Sept. 22, 1995, as amended by T.D. 8880, 65 FR 21315, Apr. 21, 2000]

§ 1.403(b)-3 Required minimum distributions from annuity contracts purchased, or custodial accounts or retirement income accounts established, by a section 501(c)(3) organization or a public school.

Q-1. Are section 403(b) contracts subject to the distribution rules provided in section 401(a)(9)?

A-1. (a) Yes, section 403(b) contracts are subject to the distribution rules provided in section 401(a)(9). For purposes of this section, the term *section 403(b) contract* means an annuity contract described in section 403(b)(1), custodial account described in section 403(b)(7), or retirement income account described in section 403(b)(9).

(b) For purposes of applying the distribution rules in section 401(a)(9), section 403(b) contracts will be treated as individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) (IRAs). Consequently, except as otherwise provided in paragraph (c) of this A-1, the distribution rules in section 401(a)(9) will be applied to section 403(b) contracts in accordance with the provisions in §1.408-8 for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003.

(c)(1) The required beginning date for purposes of section 403(b)(10) is April 1 of the calendar year following the later of the calendar year in which the employee attains 70½ or the calendar year in which the employee retires from employment with the employer maintaining the plan. The concept of 5-percent owner has no application in the case of employees of employers described in section 403(b)(1)(A).

(2) The rule in A-5 of §1.408-8 does not apply to section 403(b) contracts. Thus, the surviving spouse of an employee is not permitted to treat a section 403(b) contract of which the spouse is the sole beneficiary as the spouse's own section 403(b) contract.