

plan, but the \$3,000 must be included by H in H's income for 2006.

*Example 5.* (i) *Facts.* Assume the same facts as in *Example 3*, except that H's deferral under the eligible governmental plan is limited to \$14,000 and H also makes a deferral of \$4,000 to an eligible plan of Employer Y, a tax-exempt entity.

(ii) *Conclusion.* The results are the same as in *Example 3*, namely, because of the application of the individual limitation under § 1.457-5, H has an excess deferral of \$3,000. If the \$3,000 excess deferral is not distributed to H, each plan will continue to be an eligible plan, but the \$3,000 must be included by H in H's income for 2006.

*Example 6.* (i) *Facts.* Assume the same facts as in *Example 5*, except that X is a tax-exempt entity and thus its plan is an eligible plan of a tax-exempt entity.

(ii) *Conclusion.* The results are the same as in *Example 5*, namely, because of the application of the individual limitation under § 1.457-5, H has an excess deferral of \$3,000. If the \$3,000 excess deferral is not distributed to H, each plan will continue to be an eligible plan, but the \$3,000 must be included by H into H's income for 2006.

[T.D. 9075, 68 FR 41234, July 11, 2003; 68 FR 51446, Aug. 27, 2003]

#### § 1.457-5 Individual limitation for combined annual deferrals under multiple eligible plans

(a) *General rule.* The individual limitation under section 457(c) and this section equals the basic annual deferral limitation under § 1.457-4(c)(1)(i)(A), plus either the age 50 catch-up amount under § 1.457-4(c)(2), or the special section 457 catch-up amount under § 1.457-4(c)(3), applied by taking into account the combined annual deferral for the participant for any taxable year under all eligible plans. While an eligible plan may include provisions under which it will limit deferrals to meet the individual limitation under section 457(c) and this section, annual deferrals by a participant that exceed the individual limit under section 457(c) and this section (but do not exceed the limits under § 1.457-4(c)) will not cause a plan to lose its eligible status. However, to the extent the combined annual deferrals for a participant for any taxable year exceed the individual limitation under section 457(c) and this section for that year, the amounts are treated as excess deferrals as described in § 1.457-4(e).

(b) *Limitation applied to participant.*

The individual limitation in this section applies to eligible plans of all employers for whom a participant has performed services, including both eligible governmental plans and eligible plans of a tax-exempt entity and both eligible plans of the employer and eligible plans of other employers. Thus, for purposes of determining the amount excluded from a participant's gross income in any taxable year (including the underutilized limitation under § 1.457-4 (c)(3)(ii)(B)), the participant's annual deferral under an eligible plan, and the participant's annual deferrals under all other eligible plans, must be determined on an aggregate basis. To the extent that the combined annual deferral amount exceeds the maximum deferral limitation applicable under § 1.457-4 (c)(1)(i)(A), (c)(2), or (c)(3), the amount is treated as an excess deferral under § 1.457-4(e).

(c) *Special rules for catch-up amounts under multiple eligible plans.* For purposes of applying section 457(c) and this section, the special section 457 catch-up under § 1.457-4 (c)(3) is taken into account only to the extent that an annual deferral is made for a participant under an eligible plan as a result of plan provisions permitted under § 1.457-4 (c)(3). In addition, if a participant has annual deferrals under more than one eligible plan and the applicable catch-up amount under § 1.457-4 (c)(2) or (3) is not the same for each such eligible plan for the taxable year, section 457(c) and this section are applied using the catch-up amount under whichever plan has the largest catch-up amount applicable to the participant.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

*Example 1.* (i) *Facts.* Participant F is age 62 in 2006 and participates in two eligible plans during 2006, Plans J and K, which are each eligible plans of two different governmental entities. Each plan includes provisions allowing the maximum annual deferral permitted under § 1.457-4(c)(1) through (3). For 2006, the underutilized amount under § 1.457-4 (c)(3)(ii)(B) is \$20,000 under Plan J and is \$40,000 under Plan K. Normal retirement age is age 65 under both plans. Participant F defers \$15,000 under each plan. Participant F's includible compensation is in each case in

excess of the deferral. Neither plan designates the \$15,000 contribution as a catch-up permitted under each plan's special section 457 catch-up provisions.

(i) *Conclusion.* For purposes of applying this section to Participant F for 2006, the maximum exclusion is \$20,000. This is equal to the sum of \$15,000 plus \$5,000, which is the age 50 catch-up amount. Thus, F has an excess amount of \$10,000 which is treated as an excess deferral for Participant F for 2006 under § 1.457-4(e).

*Example 2.* (i) *Facts.* Participant E, who will turn 63 on April 1, 2006, participates in four eligible plans during 2006 Plan W which is an eligible governmental plan; and Plans X, Y, and Z which are each eligible plans of three different tax-exempt entities. For 2006, the limitation that applies to Participant E under all four plans under § 1.457-4 (c)(1)(i)(A) is \$15,000. For 2006, the additional age 50 catch-up limitation that applies to Participant E under all four plans under § 1.457-4 (c)(2) is \$5,000. Further, for 2006, different limitations under § 1.457-4(c)(3) and (c)(3)(ii)(B) apply to Participant E under each of these plans, as follows: under Plan W, the underutilized limitation under § 1.457-4 (c)(3)(ii)(B) is \$7,000; under Plan X, the underutilized limitation under § 1.457-4 (c)(3)(ii)(B) is \$2,000; under Plan Y, the underutilized limitation under § 1.457-4 (c)(3)(ii)(B) is \$8,000; and under Plan Z, § 1.457-4 (c)(3) is not applicable since normal retirement age is age 62 under Plan Z. Participant E's includible compensation is in each case in excess of any applicable deferral.

(ii) *Conclusion.* For purposes of applying this section to Participant E for 2006, Participant E could elect to defer \$23,000 under Plan Y, which is the maximum deferral limitation under § 1.457-4 (c)(1) through (3), and to defer no amount under Plans W, X, and Z. The \$23,000 maximum amount is equal to the sum of \$15,000 plus \$8,000, which is the catch-up amount applicable to Participant E under Plan Y and which is the largest catch-up amount applicable to Participant E under any of the four plans for 2006. Alternatively, Participant E could instead elect to defer the following combination of amounts: an aggregate total of \$20,000 to any of the four plans; or \$22,000 to Plan W and none to any of the other three plans.

(iii) If the underutilized amount under Plans W, X, and Y for 2006 were in each case zero (because E had always contributed the maximum amount or E was a new participant) or an amount not in excess of \$5,000, the maximum exclusion under this section would be \$20,000 for Participant E for 2006 (\$15,000 plus the \$5,000 age 50 catch-up amount), which Participant E could contribute to any of the plans.

[T.D. 9075, 68 FR 41240, July 11, 2003; 68 FR 51446, Aug. 26, 2003]

### § 1.457-6 Timing of distributions under eligible plans.

(a) *In general.* Except as provided in paragraph (c) of this section (relating to distributions on account of an unforeseeable emergency), paragraph (e) of this section (relating to distributions of small accounts), § 1.457-10(a) (relating to plan terminations), or § 1.457-10(c) (relating to domestic relations orders), amounts deferred under an eligible governmental plan may not be paid to a participant or beneficiary before the participant has a severance from employment with the eligible employer or when the participant attains age 70½, if earlier. For rules relating to loans, see paragraph (f) of this section. This section does not apply to distributions of excess amounts under § 1.457-4(e). However, except to the extent set forth by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, this section applies to amounts held in a separate account for eligible rollover distributions maintained by an eligible governmental plan as described in § 1.457-10(e)(2).

(b) *Severance from employment—(1) Employees.* An employee has a severance from employment with the eligible employer if the employee dies, retires, or otherwise has a severance from employment with the eligible employer. See regulations under section 401(k) for additional guidance concerning severance from employment.

(2) *Independent contractors—(i) In general.* An independent contractor is considered to have a severance from employment with the eligible employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the eligible employer if the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration does not constitute a good faith and complete termination of the contractual relationship if the eligible employer anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, an eligible employer is considered to anticipate