§ 1.402(g)(3)–1  Employer contributions to purchase a section 403(b) contract under a salary reduction agreement.

(a) General rule. With respect to an annuity contract under section 403(b), except as provided in paragraph (b) of this section, an elective deferral means an employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement within the meaning of section 3121(a)(5)(D).

(b) Special rule. Notwithstanding paragraph (a) of this section, for purposes of section 403(b), an elective deferral only includes a contribution that is made pursuant to a cash or deferred election (as defined at §1.401(k)–1(a)(3)). Thus, for purposes of section 402(g)(3)(C), an elective deferral does not include a contribution that is made pursuant to an employee’s one-time irrevocable election made on or before the employee’s first becoming eligible to participate under the employer’s plans or a contribution made as a condition of employment that reduces the employee’s compensation.

(c) Applicable date. This section is applicable for taxable years beginning after December 31, 2008.

[T.D. 9340, 72 FR 41140, July 26, 2007]

§ 1.402A–1  Designated Roth Accounts.

Q–1. What is a designated Roth account?

A–1. A designated Roth account is a separate account under a qualified cash or deferred arrangement under a section 403(a) plan, or under a section 403(b) plan, to which designated Roth contributions are permitted to be made in lieu of elective contributions and that satisfies the requirements of §1.401(k)–1(f) (in the case of a section 403(a) plan) or §1.401(b)–3(c) (in the case of a section 403(b) plan).

Q–2. How is a distribution from a designated Roth account taxed?

A–2. (a) The taxation of a distribution from a designated Roth account depends on whether or not the distribution is a qualified distribution. A qualified distribution from a designated Roth account is not includible in the distributee’s gross income.

(b) Except as otherwise provided in paragraph (c) of this A–2, a qualified distribution is a distribution that is both—

(1) Made after the 5-taxable-year period of participation defined in A–4 of this section has been completed; and

(2) Made on or after the date the employee attains age 59 1/2, made to a beneficiary or the estate of the employee on or after the employee’s death, or attributable to the employee’s being disabled within the meaning of section 72(m)(7).

(c) A distribution from a designated Roth account is not a qualified distribution to the extent it consists of a distribution of excess deferrals and attributable income described in §1.402(g)–1(e). See A–11 of this section for other amounts that are not treated as qualified distributions, including excess contributions described in section 401(k)(8), and excess aggregate contributions described in section 401(m)(8), and income, on any of these excess amounts.

Q–3. How is a distribution from a designated Roth account taxed if it is not a qualified distribution?

A–3. Except as provided in A–11 of this section, a distribution from a designated Roth account that is not a qualified distribution is taxable to the distributee under section 402 in the case of a plan qualified under section 401(a) and under section 403(b)(1) in the case of a section 403(b) plan. For this purpose, a designated Roth account is treated as a separate contract under section 72. Thus, except as otherwise provided in A–5 of this section for a rollover, if a distribution is before the annuity starting date, the portion of any distribution that is includible in gross income as an amount allocable to income on the contract and the portion not includible in gross income as an amount allocable to investment in the contract is determined under section 72(e)(8), treating the designated Roth account as a separate contract. Similarly, in the case of any amount received as an annuity, if a distribution is on or after the annuity starting date, the portion of any annuity payment...