

However, a plan may distribute to a participant any excess deferrals (and any income allocable to such amount) not later than the first April 15 following the close of the taxable year of the excess deferrals. In such a case, the plan will continue to be treated as an eligible plan. However, any excess deferral is included in the gross income of a participant for the taxable year of the excess deferral. If the excess deferrals are not corrected by distribution under this paragraph (e)(3), the plan is an ineligible plan under which benefits are taxable in accordance with § 1.457-11. For purposes of determining whether there is an excess deferral resulting from a failure of a plan to apply the limitations of paragraphs (c)(1) through (3) of this section, all eligible plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan.

(4) *Excess deferrals arising from application of the individual limitation.* An eligible plan may provide that an excess deferral that is a result solely of a failure to comply with the individual limitation under § 1.457-5 for a taxable year may be distributed to the participant, with allocable net income, as soon as administratively practicable after the plan determines that the amount is an excess deferral. An eligible plan does not fail to satisfy the requirements of paragraphs (a) through (d) of this section or §§ 1.457-6 through 1.457-10 (including the distribution rules under § 1.457-6 and the funding rules under § 1.457-8) solely by reason of a distribution made under this paragraph (e)(4). Although a plan will still maintain eligible status if excess deferrals are not distributed under this paragraph (e)(4), a participant must include the excess amounts in income as provided in paragraph (e)(1) of this section.

(5) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. (i) Facts. In 2006, the eligible plan of State Employer X in which Participant H participates permits a maximum deferral of the lesser of \$15,000 or 100 percent of includible compensation. In 2006, H, who has compensation of \$28,000, nevertheless defers \$16,000 under the eligible plan. Participant H is age 45 and normal retirement age under the plan is age 65. For 2006, the applicable dollar limit under paragraph (c)(1)(i)(A) of this section is \$15,000. Employer X discovers the error in January of 2007 when it completes H's 2006 Form W-2 and promptly distributes \$1,022 to H (which is the sum of the \$1,000 excess and \$22 of allocable net income).

(ii) *Conclusion.* Participant H has deferred \$1,000 in excess of the \$15,000 limitation

provided for under the plan for 2006. The \$1,000 excess must be included by H in H's income for 2006. In order to correct the failure and still be an eligible plan, the plan must distribute the excess deferral, with allocable net income, as soon as administratively practicable after determining that the amount exceeds the plan deferral limitations. In this case, \$22 of the distribution of \$1,022 is included in H's gross income for 2007 (and is not an eligible rollover distribution). If the excess deferral were not distributed, the plan would be an ineligible plan with respect to which benefits are taxable in accordance with § 1.457-11.

Example 2. (i) Facts. The facts are the same as in *Example 1*, except that X uses a number of separate arrangements with different trustees and annuity insurers to permit employees to defer and H elects deferrals under several of the funding arrangements none of which exceeds \$15,000 for any individual funding arrangement, but which total \$16,000.

(ii) *Conclusion.* The conclusion is the same as in *Example 1*.

Example 3. (i) Facts. The facts are the same as in *Example 1*, except that H's deferral under the eligible plan is limited to \$11,000 and H also makes a salary reduction contribution of \$5,000 to an annuity contract under section 403(b) with the same Employer X.

(ii) *Conclusion.* H's deferrals are within the plan deferral limitations of Employer X. Because of the repeal of the application of the coordination limitation under former paragraph (2) of section 457(c), H's salary reduction deferrals under the annuity contract are no longer considered in determining H's applicable deferral limits under paragraphs (c)(1) through (3) of this section.

Example 4. (i) Facts. The facts are the same as in *Example 1*, 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 governmental plan of a different employer. Participant H is age 45 and normal retirement age under both eligible plans is age 65.

(ii) *Conclusion.* Because of the application of the individual limitation under § 1.457-5, H has an excess deferral of \$3,000 (the sum of \$14,000 plus \$4,000 equals \$18,000, which is \$3,000 in excess of the dollar limitation of \$15,000). The \$3,000 excess deferral, with allocable net income, may be distributed from either plan as soon as administratively practicable after determining that the combined amount exceeds the deferral limitations. 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 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.

■ **Par. 3.** Sections 1.457-5 through 1.457-12 are added to read as follows:

§ 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