

## The CARES Act 401k summary

**Background.** A distribution from a qualified retirement plan is subject to a 10% additional tax unless the distribution meets an exception under Code Sec. 72(t).

### No 10% additional tax for coronavirus-related retirement plan distributions

**New law.** The CARES Act provides that the Code Sec. 72(t) 10% additional tax does not apply to any coronavirus-related distribution, up to \$100,000. (Act Sec. 2202(a)(1))

A coronavirus-related distribution is any distribution (subject to dollar limits discussed below), made on or after January 1, 2020, and before December 31, 2020, from an eligible retirement plan (defined in Code Sec. 402(c)(8)(B)), made to a qualified individual. (Act Sec. 2202(a)(4)(A))

A qualified individual is an individual (1) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC), (2) whose spouse or dependent (as defined in Code Sec. 152) is diagnosed with such virus or disease by such a test, or (3) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury. (Act Sec. 2202(a)(4)(A)(ii))

The administrator of an eligible retirement plan may rely on an employee's certification that the employee satisfies the conditions of (3) above in determining whether any distribution is a coronavirus-related distribution. (Act Sec. 2202(a)(4)(B))

*Limit on distribution.* The aggregate amount of distributions received by an individual which may be treated as coronavirus-related distributions for any tax year cannot not exceed \$100,000. (Act Sec. 2202(a)(2)(A))

If a distribution to an individual would (without regard to the \$100,000 limit in Act Sec. 2202(a)(2)(A)) be a coronavirus-related distribution, a plan is not treated as violating the Code merely because the plan treats such distribution as a coronavirus-related distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds \$100,000. (Act Sec. 2202(a)(2)(B))

For this purpose, the term "controlled group" means any group treated as a single employer under Code Sec. 414(b), Code Sec. 414(c), Code Sec. 414(m), or Code Sec. 414(o). (Act Sec. 2202(a)(2)(C))

*Distribution can be contributed back to retirement plan.* Any individual who receives a coronavirus-related distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such

individual is a beneficiary and to which a rollover contribution of such distribution could be made under Code Sec.

402(c), Code Sec. 403(a)(4), Code Sec. 403(b)(8), Code Sec. 408(d)(3), or Code Sec. 457(e)(16), as the case may be. (Act Sec. 2202(a)(3)(A))

If a contribution is made pursuant to Act Sec. 2202(a)(3)(A) with respect to a coronavirus-related distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer is, to the extent of the amount of the contribution, treated as having received the coronavirus-related distribution in an eligible rollover distribution (as defined in Code Sec. 402(c)(4)) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution. (Act Sec. 2202(a)(3)(B))

If a contribution is made pursuant to Act Sec. 2202(a)(3)(A) with respect to a coronavirus-related distribution from an individual retirement plan, then, to the extent of the amount of the contribution, the coronavirus-related distribution is treated as a distribution described in Code Sec. 408(d)(3) and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution. (Act Sec. 2202(a)(3)(C))

*Distribution can be included in income over three years.* In the case of any coronavirus-related distribution, unless the taxpayer elects not to, any amount required to be included in gross income for such tax year will be so included ratably over the 3-taxyear period beginning with such tax year. (Act Sec. 2202(a)(5)(A)) For this purpose, rules similar to the rules of Code Sec. 408A(d)(3)(E) apply. (Act Sec. 2202(a)(5)(B))

For purposes of Code Sec. 401(a)(31), Code Sec. 402(f), and Code Sec. 3405, coronavirus-related distributions are not treated as eligible rollover distributions. (Act Sec. 2202(a)(6)(A))

Also, a coronavirus-related distribution is treated as meeting the requirements of Code Sec. 401(k)(2)(B)(i), Code Sec. 403(b)(7)(A)(i), Code Sec. 403(b)(11), Code Sec. 457(d)(1)(A), and 5 USC 8433(h)(1). (Act Sec. 2202(a)(6)(B))

*Loans from qualified plans.* The CARES Act provides flexibility for loans from certain retirement plans for coronavirus-related relief. (Act Sec. 2202(b))

*Effective date.* Act Sec. 2202 applies to distributions made on or after January 1, 2020, and before December 31, 2020. (Act Sec. 2202(a)(4)(A))