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Treas. Reg. Section 1.1411-8(b)(4)(ii)

Exception for distributions from qualified plans

(a) General rule. Net investment income does not include any distribution from a qualified plan or arrangement. For this purpose, the term qualified plan or arrangement means any plan or arrangement described in section 401(a), 403(a), 403(b), 408, 408A, or 457(b).

(b) Rules relating to distributions. This paragraph (b) provides rules for purposes of paragraph (a) of this section. For purposes of section 1411(c)(5) and this section, a distribution means the following:

(1) Actual distributions. Any amount actually distributed from a qualified plan or arrangement, as defined in paragraph (a) of this section, is a distribution within the meaning of section 1411(c)(5), and thus is not included in net investment income. Examples include a rollover to an eligible retirement plan within the meaning of section 402(c)(8)(B), a distribution of a plan loan offset amount within the meaning of Q&A-13(b) of §1.72(p)-1, and certain corrective distributions under the Internal Revenue Code (Code).

(2) Amounts treated as distributed. Any amount that is treated as distributed from a qualified plan or arrangement under the Code for purposes of income tax is a distribution within the meaning of section 1411(c)(5), and thus is not included in net investment income. Examples include a conversion to a Roth IRA described in section 408A and a deemed distribution under section 72(p).

(3) Amounts includible in gross income. Any amount that is not treated as a distribution but is otherwise includible in gross income pursuant to a rule relating to amounts held in a qualified plan or arrangement described in paragraph (a) of this section is a distribution within the meaning of section 1411(c)(5), and thus is not included in net investment income. For example, any income of the trust of a qualified plan or arrangement that is applied to purchase a participant's life insurance coverage (the P.S. 58 costs) is a distribution within the meaning of section 1411(c)(5), and thus is not included in net investment income.

(4) Amounts related to employer securities.

(i) Dividends related to employer securities. Any dividend that is deductible under section 404(k) and is paid in cash directly to plan participants or beneficiaries is a distribution within the meaning of section 1411(c)(5), and thus is not included in net investment income. However, any amount paid as a dividend after the employer securities have been distributed from a qualified plan is not a distribution within the meaning of section 1411(c)(5), and thus is included in net investment income.



(ii) Amounts related to the net unrealized appreciation in employer securities. The amount of any net unrealized appreciation attributable to employer securities (within the meaning of section 402(e)(4)) realized on a disposition of those employer securities is a distribution within the meaning of section 1411(c)(5), and thus is not included in net investment income. However, any appreciation in value of the employer securities after the distribution from the qualified plan is not a distribution within the meaning of section 1411(c)(5), and is included in net investment income.

(c)Effective/applicability date. This section applies to taxable years beginning after December 31, 2013. However, taxpayers may apply this section to taxable years beginning after December 31, 2012, in accordance with §1.1411-1(f).