INVESTMENT COMPANY INSTITUTE

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IRS REVENUE RULING ON DISTRIBUTION RESTRICTIONS APPLICABLE TO ROLLOVER AMOUNTS IN PLANS

[17062] February 5, 2004 TO: PENSION MEMBERS No. 10-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 11-04 RE: IRS REVENUE RULING ON DISTRIBUTION RESTRICTIONS APPLICABLE TO ROLLOVER AMOUNTS IN PLANS The Internal Revenue Service recently issued Revenue Ruling 2004-121 concerning plan distribution restrictions applicable to amounts attributable to rollover contributions. The Revenue Ruling is intended to clarify the portability provisions of the Internal Revenue Code, including those enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).2 The Revenue Ruling holds that if an eligible retirement plan separately accounts for amounts attributable to rollover contributions made to the plan, distributions of those amounts are not subject to the restrictions on permissible timing that apply (under applicable Internal Revenue Code requirements) to distributions of other amounts from the plan. Accordingly, a plan may permit the distribution of amounts attributable to rollover contributions at any time pursuant to an individual's request.3 In reaching this conclusion, the IRS cited prior revenue rulings providing that a plan may permit amounts attributable to an employee's after-tax contributions and amounts attributable to rollovers (in a profit sharing plan) to be immediately distributable.4 1 Revenue Ruling 2004-12 is currently available at http://www.irs.gov/pub/irs-drop/rr-04-12.pdf. 2 See Institute Memorandum to Pension Members No. 21-01 and Pension Operations Advisory Committee No. 35-01 (13566), dated May 31, 2001 (summary of EGTRRA pension provisions); Institute Memorandum to Tax Members No. 12-02, Accounting/Treasurers Committee No. 11-02, Transfer Agent Advisory Committee No. 22-02, Pension Members No. 10-02 and Pension Operations Advisory Committee No. 16-02 (14553), dated March 19, 2002 (summary of Job Creation and Worker Assistance Act of 2002, which amended portions of EGTRRA). 3 The Revenue Ruling provides the following example. Where a receiving plan is a money purchase pension plan and the plan separately accounts for amounts attributable to rollover contributions, a plan provision permitting the in-service distribution of those amounts would not cause the plan to fail the IRS requirement that employer contributions to a pension plan may not be distributed prior to retirement, death, disability or other severance from employment, or termination of the plan. See Treas. Reg. section 1.401-1(b)(1)(i). The Revenue Ruling provides similar examples for 403(b) plans and 457 governmental plans. 4 Rev. Rul. 69-277, 1969 C.B. 116, and Rev. Rul. 94-76, 1994 C.B. 46. 2 Notwithstanding this general holding, the Revenue Ruling provides that distributions of amounts attributable to rollover contributions are subject to the survivor annuity requirements of Code sections 401(a)(11) and 417, the minimum distribution requirements of Code section 401(a)(9), and the additional tax on premature distributions under Code section 72(t), as applicable to the

receiving plan. Thus, for instance, where a distribution from an IRA is rolled into a qualified plan, distributions attributable to the rollover assets would be subject to the exceptions from the section 72(t) tax that apply to qualified plans, rather than those applicable to IRAs. Finally, the Revenue Ruling provides that the holding does not apply to amounts received by a plan resulting from (1) a merger, consolidation or transfer of plan assets under section 414(l) or (2) plan-to-plan transfers otherwise permitted between section 403(b) tax-sheltered annuities and between section 457 eligible governmental plans. Thomas T. Kim Associate Counsel

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