WEST VIRGINIA CODE: §8-22A-12

§8-22A-12. Direct rollovers.

Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; and (C) any hardship distribution described in Section 401(k)(2)(B)(i(iv) of the Internal Revenue Code. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified trust described in Section 401(a) or to an annuity contract described in Section 403(a) or 403(b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable, or to a Roth IRA described in Section 408A of the Internal Revenue Code.

(2) "Eligible retirement plan" means an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this plan, an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution, or a Roth IRA described in Section 408A of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution to a designated beneficiary (other than a surviving spouse) as the term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

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(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. The term "distributee" also includes a designated beneficiary (other than a surviving spouse) as the term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan.

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