

SPECIAL TAX NOTICE REGARDING PLAN PAYMENTS



NYC EMPLOYEES'
RETIREMENT SYSTEM

October 2021

This notice contains important information you will need to decide how to receive your benefits from the New York City Employees' Retirement System (NYCERS). NYCERS is a Qualified Pension Plan under §401(a) of the Internal Revenue Code. This notice explains the difference between funds that can be "rolled over" to an IRA or employer plan, and those that cannot.

A payment from the Plan that is eligible for "rollover" may be taken in one of three ways. You may choose to have the taxable portion of your payment distributed:

1. In a "**direct rollover**," which is a payment of your NYCERS benefits to your Individual Retirement Account (IRA) or Qualified Employer Plan; or
2. Paid to you; or
3. A combination of #1 and #2.

1. DIRECT ROLLOVER

You can choose to have any or all of your payment that constitutes an "eligible rollover distribution" distributed as a direct rollover. In a direct rollover, the distribution is paid directly from the Plan to an IRA or Employer Plan that accepts rollovers. If you choose a direct rollover, you are not taxed on a payment until you withdraw it from the IRA or Employer Plan. No withholding tax will be taken from the part of a benefit which is rolled over.

Direct Rollover to an IRA

You may open an IRA to receive the direct rollover. (The term "IRA," as used in this notice, includes individual retirement accounts and individual retirement annuities.) If you choose to have your payment made directly to an IRA, contact an IRA sponsor (usually a financial institution) to find out how to have your payment made in a direct rollover to an IRA at that institution. If you are unsure of how to invest your money, you may wish to consult an investment advisor. For more information on IRAs (including limits on how often you can roll over between IRAs), see IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs), and IRS Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs), both of which can be found on the IRS website at www.irs.gov.

Direct Rollover to a Qualified Employer Plan

The term "qualified employer plan" as used in this notice includes tax-qualified employer plans, qualified employer annuities, tax-sheltered annuity plans (403(b) plans), or eligible state or local government Section 457 deferred compensation plans. You can make a direct rollover from NYCERS into a qualified employer plan in the same way that you can make a direct rollover to an IRA.

Payment Election Form

If you are electing to roll over any part of your eligible rollover distribution, you need to precisely designate the name, address and account number of your rollover institution, and indicate whether that institution is an IRA or a qualified employer plan. Do not return the election form to NYCERS until you are sure that your rollover institution is able to accept such payment from us.

2. PAYMENTS THAT CAN BE ROLLED OVER

The "taxable portion" of your payment is generally an eligible rollover distribution. In addition, non-taxable payments may be rolled over.

Non-Taxable Payments

After-tax employee contributions are contributions made from the employee's pay that have already been taxed. If "after tax" employee contributions have been made to NYCERS, these contributions will be non-taxable when they are paid to you, and they may be rolled over. If you receive a partial payment of your total benefit (such as a refund or loan at retirement), an allocable portion of your after-tax contributions is generally included in the payment, so you cannot take a payment of **only** after-tax contributions. In addition, special rules apply when you do a rollover, as described below and on the next page.

You may roll over to an IRA a payment that includes after-tax contributions through either a direct rollover or a 60-day rollover (see the 60-Day Rollover Option paragraph on the next page). You must keep track of the aggregate amount of the after-tax contributions in all of your IRAs (in order to determine your taxable income for later payments from the IRAs).



If you do a direct rollover of only a portion of the amount paid from the Plan and the rest is paid to you, the portion rolled over is first taken from the amount that would be taxable if not rolled over. For example, if you receive a distribution of \$12,000, of which \$2,000 is after-tax contributions, and you directly roll over \$10,000 to an IRA that is not a Roth IRA, no amount is taxable. This is because the \$2,000 not rolled over is treated as after-tax contributions. If you execute a direct rollover of the entire amount paid from the Plan to two or more destinations at the same time, you can choose which destination receives the after-tax contributions.

Similarly, if you do a 60-day rollover of only a portion of a payment made to you into an IRA, the portion rolled over is first taken from the amount that would be taxable if not rolled over. For example, if you receive a distribution of \$12,000, of which \$2,000 is after-tax contributions, and no part of the distribution is directly rolled over, if you do a 60-day rollover of \$10,000 to an IRA that is not a Roth IRA, no amount is taxable. This is because the \$2,000 not rolled over is treated as after-tax contributions.

At this time, NYCERS is only able to process a direct rollover of “after tax” money to a Roth IRA. Special rules apply to rollovers to, and distributions from, Roth IRAs, so you may wish to consult an investment advisor. For more information, see IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs) and IRS Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs), both of which can be found on the IRS website at www.irs.gov.

You may roll over to an employer plan all of a payment that includes after-tax contributions, but only through a direct rollover (and only if the receiving plan separately accounts for after-tax contributions and is not a governmental section 457(b) plan). You can do a 60-day rollover to an employer plan of part of a payment that includes after-tax contributions, but only up to the amount of the payment that would be taxable if not rolled over.

3. PAYMENTS THAT CANNOT BE ROLLED OVER

- Certain payments spread over a period of at least 10 years or over your life or life expectancy (or the joint lives or joint life expectancies of you and your beneficiary), e.g., monthly pension payments;
- Required minimum distributions after age 70½ (if you were born before July 1, 1949), after age 72 (if you were born after June 30, 1949), or after death;

- Corrective distributions of contributions that exceed tax law limitations; and
- Loans treated as deemed distributions (for example, loans in default due to missed payments before your employment ends).

NYCERS will inform you what portion of a payment is eligible for rollover.

4. PAYMENTS PAID DIRECTLY TO YOU

Income Tax Withholding

Mandatory Withholding

If you elect to have a portion of the payment that is an eligible rollover distribution paid to you, NYCERS is required by law to withhold 20% of that amount. This amount is sent to the IRS as income tax withholding. The payment is taxed in the year you receive it unless, within 60 days, you roll it over. If you do not roll it over, special tax rules may apply. See the 60-Day Rollover Option paragraph below for details.

For example, if your eligible rollover distribution is \$100,000, only \$80,000 will be paid to you because the Plan must withhold \$20,000 as income tax. For additional assistance, please consult an income tax professional when preparing your income tax return for the year.

60-Day Rollover Option

If you have an eligible rollover distribution paid to you, you may choose to roll over all or part of it. If you decide to roll over any part of your payment, you must make the rollover within 60 days after you receive the payment. The portion of your payment that is rolled over will not be taxed until you withdraw it from the IRA or Employer Plan.

You can roll over up to 100% of the eligible rollover distribution, including an amount equal to the 20% that was withheld. However, you may receive a tax refund of that amount. If you choose to roll over 100%, you may use other money within the 60-day period to replace the 20% that was withheld. You will not receive a NYCERS refund of the withholding tax. Alternately, if you roll over only the 80% that you received, you will be taxed on the 20% that was withheld (including an additional 10% tax on early distributions, if applicable.)

Example: Your employer rollover distribution is \$100,000, and you choose to have it paid to you. You will receive \$80,000, and \$20,000 will be sent to the IRS as income tax withholding. Within 60 days after receiving the distribution,



you may still roll over any amount up to the \$100,000. In this case, the entire \$100,000 is not taxed until you withdraw it from the IRA. In order to have the full \$100,000 to roll over you will need to find \$20,000 from some other source. If you roll over the entire \$100,000, you may get a refund of the \$20,000 withheld when you file your tax return for the year. Alternately, if you roll over \$80,000 or less, only the amount that you did not roll over will be taxed.

It is important to note that if you elect to roll over the taxable amount, the distribution rules, restrictions, and tax consequences of the institution you choose may differ from NYCERS' rules. You should retain any records that identify NYCERS as the source of funds that have been rolled over in order to avoid New York State and local income taxes on future withdrawals.

10% Penalty

Some types of withdrawals from qualified retirement plans are subject to a 10% IRS penalty. You will incur the 10% IRS penalty if:

- You have not reached age 55 at the time of separation (retirement or termination of membership) and distribution, or
- A withdrawal is being paid for a reason other than for a separation from service, and you are under the age of 59½.

The 10% penalty does not apply to certain additional payments from the Plan, such as the following:

- Payments that start after you separate from service, if paid at least annually in equal or close to equal amounts over your life or life expectancy (or the joint lives or joint life expectancies of you and your beneficiary), e.g., a monthly pension payment paid to you for the rest of your life;
- Payments from a governmental plan made after you separate from service, if you are a qualified public safety employee and you will be at least age 50 in the year of the separation;
- Payments made due to disability;
- Payments after your death;
- Corrective distributions of contributions that exceed tax law limitations;
- Payments made directly to the government to satisfy a Federal tax levy;
- Payments made under a domestic relations order; and
- Payments exempted from the additional income tax by Federal legislation relating to certain emergencies and disasters.

However, there are a few differences and certain additional exceptions which apply for payments from an IRA. See below for more information.

Payments after death of the participant

If you are not a Plan participant:

If you receive a distribution after the participant's death that you do not roll over, the distribution generally will be taxed in the same manner described in the "Payment Made Directly to You" section on page 2. However, the 10% additional income tax on early distributions and the special rules for public safety officers do not apply, and the special rule described for participants who were born on or before January 1, 1936 applies only if the deceased participant was born on or before January 1, 1936.

If you are a surviving spouse:

- If you receive a payment from the Plan as the surviving spouse of a deceased participant, you have the same rollover options that the participant would have had, as described on page 1.
- In addition, if you choose to roll over to an IRA, you may treat the IRA as your own or as an inherited IRA.
- An IRA you treat as your own is handled like any other IRA you participate in: payments made to you before age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies), and required minimum distributions from your IRA do not have to start until after you are age 70½ (if you were born before July 1, 1949) or age 72 (if you were born after June 30, 1949).
- If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the participant had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the participant had not started taking required minimum distributions from the Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the participant would have been age 70½ (if the participant was born before July 1, 1949) or age 72 (if the participant was born after June 30, 1949).

If you are a surviving beneficiary other than a spouse:

If you receive a payment from the Plan because of the participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA.



Special Tax Treatment: Averaging Methods and Capital Gains

If your eligible rollover distribution is not rolled over, it will be taxed in the year you receive it. However, if it qualifies as a “lump-sum distribution” it may be eligible for special tax treatment. A lump-sum distribution is a payment, within one year, of the member’s entire balance under the Plan. For a payment to qualify for the special tax treatment below, you must be at least age 59½ at the time of distribution.

Ten-Year Averaging

If you receive a lump-sum distribution and you were born on or before January 1, 1936, you can make a one-time election to determine the tax on the payment by using “10-year averaging” (using 1986 tax rates) instead of 5-year averaging (using current tax rates). Like the 5-year averaging rules, 10-year averaging often reduces the tax you owe.

Capital Gain Treatment

In addition, if you receive a lump-sum distribution and you were born on or before January 1, 1936, you may elect to have the part of your payment that is attributable to pre-1974 participation in the Plan (if any) taxed as long-term capital gain, which has a current rate of 20%. This amount will be stated on the tax form (Form 1099-R) sent from NYCERS to you after the end of the year.

There are other limits on the special tax treatment for lump-sum distributions. For example, you can generally elect this special tax treatment only once in your lifetime, and the election applies to all lump-sum distributions that you receive in that same year. If you have previously rolled over a payment from NYCERS (or certain other similar plans of the employer), you cannot use this special tax treatment for later payments from the Plan. If you roll over your payment to an IRA, you will not be able to use this special tax treatment for later payments from the IRA. In addition, if you roll over only a portion of your payment to an IRA, this special tax treatment is not available for the rest of the payment. Additional restrictions are described in IRS Form 4972, available on the IRS website, which also has more information on lump-sum distributions and how to elect the special tax treatment.

Nonresident Aliens

If you are a nonresident alien and you do not elect a direct rollover to a U.S. IRA or U.S. Employer Plan, the Plan is generally required to withhold 30% (instead of withholding 20%) of the payment for Federal income taxes. If the amount withheld exceeds the amount of tax you owe (for example, if you do a 60-day rollover), you may request an income tax refund by filing IRS Form 1040NR and attaching your IRS Form 1042-S. See Form W-8BEN to claim a reduced rate of withholding under an income tax treaty. For more information, see IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities. All forms and publications referenced in this section are available on the IRS website at www.irs.gov.

HOW TO OBTAIN ADDITIONAL INFORMATION

This notice summarizes only the Federal (not state or local) income tax rules that might apply to your payment. Benefits from NYCERS are not subject to New York State income taxes. If you are a resident of any other state, refer to that state’s tax regulations. The rules described in this notice contain many conditions and exceptions that are not included in this notice. Therefore, you may want to consult with a professional tax advisor before you take a payment of your benefits from NYCERS.

In addition, you can find more specific information on the tax treatment of payments from qualified retirement plans in IRS Publication 575, Pension and Annuity Income; IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs); and IRS Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs). These publications are available from your local IRS office, at www.irs.gov or by calling 1-800-TAX-FORMS.

