

CORPORATE MARKETS

No. 2008-8 rev.
Date: October 22, 2015

Voya Qualified
Plan Consulting

Mike Smith, QPA, QKA

Carla Ennis, QPA, QKA, APA

Stacia Hastings, QKA

Robert Kaplan, CFP, CPC,
QPA, APA

Susan Belanger

Helpful Web Links

[Voya 401\(k\) InfoCenter](#)

[Department of Labor](#)

[Department of Labor
Compliance and Voluntary
Correction Assistance](#)

[Taking the Mystery Out of
Retirement Planning](#)

[Internal Revenue Service](#)

[Internal Revenue Service
Correcting Plan Errors](#)

HEART Act of 2008 Provides Relief to Employees on Military Leave

QPN Highlights

No action required at this time

- *Qualified Reservist Distribution Rules Made Permanent.*
- *A survivor of an individual who dies while performing military service must be entitled to any additional benefits that would be provided under the plan.*
- *Differential wages paid to employees on military duty are now treated as compensation.*
- *Certain military death benefits may be rolled over to a Roth IRA or Coverdell education savings account.*

Background -On June 17, 2008 President Bush signed the Heroes Earnings Assistance and Relief Tax Act of 2008, now referred to as the HEART Act. HEART amends the Internal Revenue Code and the Social Security Act providing certain tax benefits to military personnel, including provisions related to employee benefit plans. This QPN covers those provisions as they relate to qualified plans, 403(b) plans, 457(b) Plans and Roth IRAs.

Qualified Reservist Distribution Rules Made Permanent – The Pension Protection Act of 2006 (PPA) provided

for special distribution rules for individuals ordered or called to active military duty after September 11, 2001, and before December 31, 2007. *The HEART Act makes these distribution rules permanent for qualified reservist distributions for individuals ordered or called to active duty on or after December 31, 2007.*

Qualified reservist distribution defined - A qualified reservist distribution is a distribution: 1) from an IRA or attributable to elective deferrals under a 401(k) plan, 403(b) annuity, or certain similar arrangements, 2) made to an individual who was called to active duty for a period in excess of 179 days or for an indefinite period, and 3) that is made during the period beginning on the date of such order or call to duty and ending on the close of the active duty period.

10% early withdrawal penalty waived - The 10% early withdrawal penalty on taxable amounts distributed before age 59 ½, disability or death (unless an exception applies) is waived for qualified reservist distributions.

Repayment of distribution permitted – Any person who receives a qualified reservist distribution may repay the amount of the distribution to an IRA. This may be done in one or more

contributions to the IRA during the two-year period that begins on the day after the active military duty period ends. The dollar limitations otherwise applicable to contributions to IRAs do not apply to contributions made to repay a qualified reservist distribution. The individual is not permitted to take a deduction for contributions made to the IRA under this rule.

Effective date – This provision is effective on the date of enactment, June 17, 2008.

Survivor and Disability Payments – HEART adds a new tax qualification requirement for a plan qualified under section 401(a) of the Internal Revenue Code (IRC) by adding section 401(a)(37) (retroactive to January 1, 2007). Under the new requirement the plan must provide that a survivor of an individual who dies while performing qualified military service (as defined under IRC 414(u)), must be entitled to any additional benefits (except benefit accruals) that would be provided under the plan, if the individual had resumed employment with the employer and died while employed by that employer. For example, if the plan provides for accelerated vesting, ancillary life insurance or other survivor benefits that would be attributable to a participant who died while employed by the employer, those benefits must be provided to the beneficiary of such individual. Conforming amendments also apply this requirement to 403(b) and 457(b) plans. The provision also conditions the deduction timing rule of section 404(a)(2) (permitting contributions for the purchase of employee retirement annuities that meet certain requirements applicable to tax qualified plans to be deducted in the year of payment) on satisfaction of the new qualification requirement.

For benefit accrual purposes, the employer is permitted to treat any individual who leaves employment to perform qualified military service and cannot be later reemployed on account of death or disability, as if the individual had been rehired as of the day before the date of death or disability and then had terminated employment on the date of death or disability (“a deemed rehired employee”). The plan is permitted to comply fully or partially

with the benefit accrual restoration provisions required under the Uniformed Services Employment and Reemployment Rights Act (USERRA) that would apply if the individual had actually been rehired.

If the plan complies fully or partially with the benefit accrual requirements of USERRA the following conditions apply: 1) all employees of the employer that perform qualified military service who die or become disabled must be credited with benefits on a reasonably equivalent basis; and 2) if the plan credits deemed rehired employees with benefits that are contingent on employee contributions or elective contributions, the plan must determine the rate of such contributions on the basis of the actual average contributions or deferrals made by the employee during the 12-month period prior to military service (or if less, the average for the actual period of service).

Effective date and plan amendment deadline – Plans must be in operational compliance with this provision with regard to deaths and disabilities occurring on or after January 1, 2007. In general, a plan must be amended to include the provision on or before the last day of the plan year beginning on or after January 1, 2010 (2012 for governmental plans).

Differential Pay - Differential pay is defined as wages paid by the employer of an employee who has been called to active duty with the United States uniformed services, in an amount that is the difference between the employee’s military pay and the wages the employee would have received if he had continued to work for the employer.

Differential Pay is Now Compensation - Under current law differential pay is not treated as wages for the purposes of Federal income tax withholding, because the employee is treated as terminating the employment relationship. As a result, differential pay must be reported on the Form 1099. HEART changes current law to include differential wage payments as compensation.

For this purpose differential pay is any payment which: 1) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days; and 2) represents all or a portion of the wages that the individual would have received from the employer if the individual were performing services for the employer.

Differential pay under a retirement plan – Any retirement plan that is subject to USERRA must: 1) treat individuals receiving differential wage payments (as defined above for purposes of wage withholding) as an employee of the employer and 2) the differential wage payment is required to be treated as compensation. Further, these retirement plans are not treated as failing to meet the minimum participation and nondiscrimination standards as a result of any contribution or benefit that is based on the differential wage payment if all of the employer's employees: 1) are entitled to differential wage payments on a reasonably equivalent basis; and 2) all employees that are eligible to participate in the plan are permitted to contribute against differential pay on a reasonably equivalent basis.

In-service distributions permitted – An individual is treated as being severed from employment while performing service in the uniformed services while on active duty for a period of more than 30 days. Therefore the individual is not prohibited from requesting a distribution of: 1) elective deferrals from a 401(k) plan; 2) salary reduction contributions under a 403(b) plan; or 3) contributions to a custodial account under a 403(b)(7) plan. However, if a distribution of any such contributions is taken the individual must be suspended from making elective deferrals or employee contribution for a six-month period beginning on the date of the distribution.

IRA contributions – Differential wage payments are included as compensation for the purposes of the limitation on contributions to an IRA.

Effective date and plan amendment deadline – The wage withholding rules are effective for

remuneration paid after December 31, 2008. All other aspects of this provision are effective with respect to years beginning after December 31, 2008. Generally, plans must be amended for this provision by the last day of the plan year beginning on or after 2010 (2012 for Governmental plans).

Rollover of Military Death Benefits - An individual who receives a military death gratuity* or a Service members Group Life Insurance (SGLI)** payment may contribute that amount to a Roth IRA, notwithstanding the contribution limits that otherwise apply to a Roth IRA. Alternatively the individual receiving these payments may contribute them to a Coverdell education savings account (formerly known as an Education IRA), notwithstanding the annual limits that would otherwise apply to the account. The maximum that can be contributed to a Roth IRA or one or more Coverdell education savings accounts in aggregate is limited to the sum of the death gratuity and SGLI payment the individual receives.

Contribution of these amounts to the Roth IRA is treated as a qualified rollover to the Roth IRA and the contribution of these amounts to a Coverdell education savings account is treated as a permissible rollover to that account. These amounts cannot be contributed to the Roth IRA or education savings account later than one year after the date on which the death gratuity or SGLI payment is received by the individual.

If a distribution of these contributions is made from a Roth IRA that is not a qualified distribution or a distribution from an education savings account that is not a qualified education distribution, the amount of the distribution attributable to the contribution of the military death gratuity or SGLI payment is treated as nontaxable investment in the contract.

Effective date – This provision is generally effective for payments made on account of deaths from injuries occurring on or after the date of enactment, June 17, 2008. In addition, contributions may be made to a Roth IRA or Coverdell education savings account of a military death gratuity or SGLI payment received by an individual, with respect to a

death from injury occurring on or after October 7, 2001, and before the date of enactment of the provision, June 17, 2008, if the individual makes the contribution to the account no later than one year after the date of enactment.

* The death gratuity (as defined under Section 1477 of Title 10 of the United States Code) is a one-time non-taxable payment to help surviving family members deal with the financial hardships that accompany the loss of a service member.

** SGLI (as defined under section 1967 of Title 38 of the United States Code) is a program of low cost group life insurance for certain individuals including (but not limited to) service members on active duty, ready reservists and members of the National Guard.

Revision of Tax Rules on Expatriation of Individuals - The HEART Act also contains some complicated rules for taxation of expatriates which includes (but is not limited to) taxation of certain benefits under qualified and nonqualified retirement plans. We suggest that any employer with a plan participant who falls into this category seek advice from their tax advisor as should any participant who becomes an expatriate

Effective date – This provision is generally effective for U.S. citizens who relinquish citizenship or long-term residents who terminate their residency on or after the date of enactment, June 17, 2008.

IRS Circular 230 Disclosure

Any tax discussion contained in this communication was not intended or written to be used, and cannot be used by the recipient or any other person, for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on such person. Any tax discussion contained in this communication was written to support the promotion or marketing of the transactions or matter discussed herein.

Neither Voya Financial® or its affiliated companies or representatives offer legal or tax advice. Please seek the advice of a tax attorney or tax advisor prior to making a tax-related insurance/investment decision.