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Alaska Electrical Retirement Savings Plan
Testing Protocols
July 1, 2021

Introduction

This document describes the annual discrimination testing that is undertaken by the Alaska Electrical Retirement Savings Plan ("AERSP"), contributing employers' roles and responsibilities related to the testing process, and the consequences if the discrimination rules are violated.

Background

The AERSP is a multiemployer defined contribution plan that covers more than 2,200 bargained and non-bargained participants and allows active participants to voluntarily contribute from 1% to 50% of their compensation (contributions applied to compensation up to law's annual limit; $290,000 in 2021) in a combination of pre-tax and/or after-tax monies. Nearly all of the 100+ participating employers also contribute hourly for bargained IBEW 1547 members through Bargaining Agreements while some also contribute hourly or as a percentage of compensation for non-bargained employees through Special Agreements.

The law prohibits discrimination in favor of highly compensated participants and defines detailed rules for separate testing of voluntary pre-tax ("ADP Testing") and after-tax ("ACP Testing") contribution amounts. Highly compensated participants in the AERSP are those participants with (1) taxable compensation from all employers in the year prior to the year being tested at or above the law's threshold ($130,000 in 2020 for testing 2021 voluntary contributions), and/or (2) 5% owners of a participating company in the year being tested or the prior year (2020 or 2021 for 2021 testing).

In the event of a failed test in the AERSP, the minimum amount of voluntary contributions will be returned to highly compensated employees in accordance with the law so that the tests are passed.

The laws also impose the following limits and tax rules:

- **Annual Pre-tax salary deferral limit (IRC Section 402(g))**—This is a calendar year dollar limit for total pre-tax contributions across *all qualified defined contribution plans* deferred by any ***individual;*** this limit is subject to periodic updates for cost-of-living changes. For 2021, the dollar limit is $19,500. For active participants that are at least age 50 by the end of the calendar year (December 31, 2021 with respect to the 2021 limits), up to an additional $6,500 in pre-tax contributions to the AERSP is permitted ("catch-up contributions") making the deferral limit $26,000 for those that are age 50 or older during 2021.

Pre-tax deferrals during a year exceeding these limits that are refunded by plan sponsors no later than April 15th of the year following, along with any investment income, will subject the individual to income tax on these amounts. Excess deferrals are taxed for the year made and income on the excess is taxed in the year refunded. Excess deferrals that are refunded after April 15th of the year following the year contributed subject the individual to additional (double) taxation on the excess deferrals (taxed both in the year contributed and in the year distributed from the plan) and a 10% early distribution penalty on the amount refunded during the refund year.

- **Maximum Contribution limit (IRC Section 415)**—This is an annual dollar limit (subject to periodic cost-of-living change) on the total amount of ***employer plus employee*** contributions for an individual to all qualified defined contribution plans in which the employer participates. For 2021, the dollar limit is the lesser of 100% of compensation or $58,000. For purposes of testing for this limit for an individual, all contributions (voluntary pre-tax other than catch-up, voluntary after-tax and employer) remitted to AERSP as well as all contributions to all other qualified defined contribution plans that the employer participates in must be aggregated. Note, the determination as to whether contributions from other employers to any other multiemployer defined contribution plans must be included for an individual is dependent upon the rules of the multiemployer plan. *For contributions to the AERSP, contributions by other employers on behalf of a participant are not counted for 415 limit testing.*

  Contributions that are refunded by plan sponsors no later than April 15th of the year following the year contributed, along with any investment income, will subject the individual to income tax on these amounts. Excess contributions are taxed for the year made and income on the excess is taxed in the year refunded.

  Per IRS 415 rules, excess contributions (and income) are to be refunded in the following order:

  1. Unmatched *pre-tax* voluntary employee contributions
  2. Employer matched *pre-tax* voluntary employee contributions
  3. After-tax or other employer contributions.

  Any match and other employer excess contributions are returned to an unallocated account for employer use in defraying current or future year contributions.

  When these 415 limits are exceeded, AERSP requires any after-tax employee contributions or employer contributions to other plans to be refunded before any contributions to the AERSP are refunded.

If the 402(g) per-tax deferral limit and the 415 limit are exceeded for an individual, the 402(g) excess should be corrected first.