

Memo

To: Participants in International Brotherhood of Electrical Workers Local Union No. 252 Defined Contribution/401(k) Plan (the “DC/401(k) Plan”)

From: IBEW Local 252, Ryan Husse, Business Manager  
IBEW Local 252, Mike Cox, President  
Trustees of Electrical Workers Local Union No. 252 Defined Contribution/401(k) Plan  
Electrical Workers Local No. 252 Fringe Funds Office, Mary Ann Doneth and Jennifer Jones

Re: Warning of Potential Adverse Consequences of Not Withholding Federal Income Taxes from COVID-19 Distributions and Not Budgeting for Either Periodic Repayments of COVID-19 Distributions or Tax Liabilities

Dated: October 9, 2020

**Overview:** This memo seeks to provide you with information regarding the taxation of COVID-19 Distributions from the DC/401(k) Plan. If you received or plan on receiving a COVID-19 Distribution, you would be well-served to start budgeting money to repay one-third (1/3<sup>rd</sup>) of your COVID-19 Distributions by each of the due dates for your 2020, 2021 and 2022 income tax returns (“Timely Periodic Repayment(s)”). Failure to timely make those repayments will result in additional taxable income to you of amounts equal to one-third (1/3<sup>rd</sup>) of your COVID-19 Distributions in 2020, 2021 and 2022 respectively, resulting in the need to begin budgeting for money to timely pay any resulting income taxes (and if necessary, timely estimated tax payments). If you do not make all Timely Periodic Repayments by their due dates, your COVID-19 Distribution may still ultimately become non-taxable if you will have repaid the full amount of the COVID-19 Distribution by the date which is three years from the date you receive your COVID-19 Distribution, however you will have to: (i) include some or all of an amount equal to one-third (1/3<sup>rd</sup>) of your COVID-19 Distribution as taxable income for each calendar year to the extent you do not make a Timely Periodic Repayment; (ii) pay resulting income taxes; and, (iii) amend relevant tax returns for years for which you paid income taxes relating to your COVID-19 Distribution and have repaid an amount equal to one-third (1/3<sup>rd</sup>) of your COVID-19 Distribution for such year, in order to obtain a refund of income taxes you paid for the relevant year(s) as a result of your COVID-19 Distribution.

The income tax rules are complex. More information can also be found in the IRS Notice 2020-50, which can be found at <https://www.irs.gov/pub/irs-drop/n-20-50.pdf> and at the IRS’ “*Coronavirus-Related Relief for Retirement Plans and IRAs Questions and Answers*” which can be found at <https://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers>. You are also encouraged to consult with a tax advisor to obtain more information to fit your specific situation.

**Discussion:** The DC/401(k) Plan has since April 1, 2020 allowed “COVID-19 Distributions” (which are technically a coronavirus-related distribution under Section 2202(a) of the CARES Act) of up to \$100,000, subject to certain limitations, to a Plan participant (“Participant”):

- who, or whose spouse or dependent (as defined by section 152 of the Internal Revenue Code), is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (“COVID-19”) by a federally approved test; or
- who experiences adverse financial consequences as a result of Participant, Participant’s spouse or member of Participant’s household (which is someone sharing the Participant’s principal residence):
  - being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19;
  - being unable to work due to lack of childcare due to COVID-19;
  - having a reduction in pay (or self-employment income) due to COVID-19;
  - having a job offer rescinded or start date for a job delayed due to COVID-19; or

- having a business which any of them own or operate, closed or reducing hours due to COVID-19.

ADP is exclusively administering the COVID-19 Distributions from the Plan. The purpose of this memo is to supplement any tax information which ADP may have supplied to you regarding COVID-19 Distributions.

The tax rules are as follows:

- Favorable tax treatment for COVID-19 Distributions is available, but you must comply with certain rules (the key rules of which are set forth below) . You should include a Form 8915-E, Qualified 2020 Disaster Retirement Plan Distributions and Repayments, with your Form 1040s for 2020, 2021 and 2022 to take advantage of any favorable tax treatment.
- There are two methods for you to include the taxable portion of a COVID-19 Distribution in income. You are permitted to include the taxable portion of the distribution in income ratably over a 3-year period that begins in the year of the distribution (i.e. the three-year period of 2020, 2021, 2022) . Alternatively, you are permitted to elect out of the 3-year ratable income inclusion and include the entire amount of the taxable portion of the distribution in income in the year of the distribution (which is 2020). This election cannot be made or changed after the timely filing of your federal income tax return (including extensions) for the year of the distribution. Example. You receive a \$30,000 distribution from the Plan on July 1, 2020. You elect on Form 8915-E, Qualified 2020 Disaster Retirement Plan Distributions and Repayments, to treat the COVID-19 distribution as a coronavirus-related distribution. You use the 3-year ratable income inclusion for the \$30,000 distribution. You should include \$10,000 in income with respect to the COVID-19 Distribution on each of your 2020, 2021, and 2022 federal income tax returns.
- A **timely** repayment of your COVID-19 Distribution will avoid federal income taxation of the distribution. The timing of the repayment is important. For purposes of this section of this memo, it is assumed that you will not elect to include all of the income attributable to your COVID-19 Distribution in 2020 but instead choose to include such income ratably over the three-year period of 2020, 2021 and 2022. Any repayment should be reported on your tax return for the year of repayment on an IRS Form 8415.
  - If you include the income attributable to your COVID-19 Distribution over a 3-year period and you repay (technically “recontribute”) any portion of the coronavirus-related distribution to an eligible retirement plan (you will probably choose to make the recontributions to the IBEW 252 Plan, but you could make the recontribution to any qualified retirement plan or IRA which will accept it) at any date before the timely filing of your federal income tax return (that is, **by the tax return’s due date, including extensions**) for each of relevant 2020, 2021 and/or 2022 calendar years, the amount of the recontributions will reduce the ratable portion of the COVID-19 Distribution that is otherwise includible in gross income for each relevant calendar year, and you will not be required to pay any income tax on the COVID-19 Distribution at any time.
    - To illustrate, if you receive a COVID-19 Distribution of \$75,000 in 2020, you choose to include the distribution amount in income over a 3-year period (2020, 2021, and 2022), you choose to repay \$25,000 of the COVID-19 Distribution to the Plan on each of April 10, 2021, April 10, 2022, and April 10, 2023. Without the April 10, 2021, April 10, 2022, and April 10, 2023 repayments, you should include \$25,000 in income with respect to the COVID-19 Distribution on each of your 2020, 2021, and 2022 tax returns. However, as a result of the April 10, 2021, April 10, 2022, and April 10, 2023 repayments, you should include \$0 in income with respect to the COVID-19 Distribution

on your 2020, 2021 and 2022 tax returns. The April 10 date was chosen arbitrarily, any date prior to the filing deadline (including extensions) of 2020, 2021, or 2022 tax returns will cause the same result, provided that the entire amount of the COVID-19 distribution is repaid by the date which is three years from the date you received the COVID-19 Distribution. This repayment method (the “**Most Tax Advantageous Manner of Repayment**”) is the way for you to achieve not paying any income tax at any time on your COVID-19 Distribution (assuming that you met the IRS rules for the favorable tax treatment available for a coronavirus-related distribution under Section 2202(a) of the CARES Act when you received the COVID-19 Distribution).

- Section 2222 of the CARES Act allows you up to 3 years from the date you receive your COVID-19 Distribution to repay the distribution. Even if you do not (or cannot) repay the COVID-19 Distribution in the Most Tax Advantageous Manner of Repayment described above, if you completely repay the full amount of your COVID-19 Distribution by the third year anniversary date of your receipt of the COVID-19 Distribution (“**Latest Possible Manner of Repayment**”), you can still ultimately avoid income taxation of the COVID Distribution, but you will have to report:
  - one-third (1/3<sup>rd</sup>) of your COVID-19 Distribution in your 2020 income tax return, and pay the resulting income taxes, if you do not repay the one-third (1/3<sup>rd</sup>) of your COVID-19 Distribution which is includible in your 2020 income by the 2021 due date (including extensions) for your 2020 income tax return;
  - one-third (1/3<sup>rd</sup>) of your COVID-19 Distribution in your 2021 income tax return, and pay the resulting income taxes, if you do not repay one-third (1/3<sup>rd</sup>) of your COVID-19 Distribution which is includible in your 2021 income by the 2022 due date (including extensions) for your 2021 income tax return; and
  - one-third (1/3<sup>rd</sup>) of your COVID-19 Distribution in your 2022 income tax return, and pay the resulting income taxes, if you do not repay one-third (1/3<sup>rd</sup>) of your COVID-19 Distribution which is includible in your 2022 income by the 2023 due date (including extensions) for your 2022 income tax return
    - Failure to pay any resulting taxes will cause you to incur penalties and interest and possibly forced collection activity from the IRS or the Michigan Department of Treasury, or the taxing authority of the state in which you were required to file an income tax return for 2020, 2021, or 2022.

If and when you ultimately repay the full amount of the COVID-19 Distribution before the expiration of the date which is three years after your receipt of your COVID-19 Distribution, but after the 2023 due date (including extensions) for your 2022 income tax return, your COVID-19 Distribution will become non-taxable, but you will have to do several things:

- First, budget for the payment of enough federal and state income taxes during 2020, 2021 and 2022, to cause enough income taxes being paid during each of these years, either in the form of estimated tax payments or income tax withholdings from your wages (and, at least for 2020, income tax withholding from your COVID-19 Distribution) to avoid any penalties for underpayment of estimated taxes for those years, remember to factor in the required inclusion of one-third (1/3<sup>rd</sup>) of the COVID Distribution for those three years - talk to your tax advisor for more details;
- Second, budget enough money to pay the additional federal and state income taxes for 2020, 2021 and 2022 which you incur in those years due to your COVID-19 Distribution.

- Third, you should set aside enough money to repay the COVID-19 Distribution in full before the expiration of the date which is three years after the date of your receipt of your COVID-19 Distribution;
- Fourth, after you fully repay your COVID-19 Distribution, you must amend your previously filed 2020, 2021 and 2022 federal and state income tax returns in order to “reverse” your prior inclusion of your COVID-19 Distribution ratably in those years and to seek a refund of the income taxes you hopefully will have already paid which are attributable to the inclusion of the COVID-19 Distribution in the 2020, 2021 and 2022 years. Remember to file those amended returns as soon as possible after you repay your COVID-19 distribution. You amend your Form 1040s filing a Form 1040X for each of 2020, 2021 and 2022, within three years from the date you filed the respective original return which you wish to amend, or within two years from the date you paid the respective tax, whichever is later. You amend your form MI-1040, by filing another MI-1040 (following the instructions for how to file an amended return) for each of 2020, 2021 and 2022, within four years from the original due date of each relevant tax return you wish to amend.
- There are many COVID-19 Distribution repayment scenarios which lie somewhere between the **Most Tax Advantageous Manner of Repayment** and the **Latest Possible Manner of Repayment**. You are encouraged to review IRS Notice 2020-50 or the IRS’s Questions and Answers which are listed on page 1 of this memo in the “Overview” section to determine if you can find guidance for your planned repayment scenario. You are also encouraged to consult with your tax advisor for advice which is more specific to your situation.
- Finally, you may choose not to repay any of your COVID-19 Distribution. If that is your situation, as stated earlier, you must report the taxable portion of the distribution in income ratably over the 3-year period of 2020, 2021, and 2022 (unless in the unlikely event you elect to include the entire amount of the taxable portion of the COVID-19 Distribution in income in 2020), which will result in additional tax liability for 2020, 2021 and 2022 and may require you to make estimated tax payments for those years. Your Form 1040 for 2020-2022 should include, based upon the information currently available to us (which could change) a Form 8915-E.

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