

# Retirement & Insurance Report



Delta MEC Retirement and Insurance Committee



09-02

March 18, 2009

(Revision 1: May 1, 2009)

## FAQs: Roth IRA Rollover

In early January, the pre-merger MECs sent separate communications to the respective pilot groups providing an overview of Section 125 of the *Worker, Retiree, and Employer Recovery Act of 2008*, Public Law No. 110-458 (the “Act”). Section 125 allows airline employees to roll over to a Roth IRA the taxable portion of certain payments they received in connection with their airline’s bankruptcy. We encourage you to re-read the respective communications as background to this *Retirement and Insurance Report*. For pre-merger NWA pilots, *NWA MEC R&I Committee Update: Lost Retirement Savings Act*, dated January 14, 2009, may be found under the R&I Committee tab of the Northwest MEC website. For pre-merger DAL pilots, *Capitol Hill Brief 09-01: Roth IRA Legislation Enacted*, dated January 8, 2009, may be found on the Legislative Affairs Committee page of the Delta MEC website.

Under the Act, the Company must report to each qualifying employee, and to the IRS, the amount eligible for rollover to a Roth IRA. The report was due to each qualifying employee by March 23, 2009, for eligible amounts received on or before December 23, 2008 (the date of enactment). If you received eligible payments as described in the Act, then on or about March 23, 2009, the Company provided you with IRS Form 8935, “*Airline Payments Report*,” indicating the total dollar amount you are eligible to roll over to a Roth IRA under the Act. If you wish to make a rollover under the provisions of the Act, you must do so on or before June 22, 2009.

Recently ALPA and the Company met with the IRS to gain their perspective on certain aspects of Section 125. The FAQs below, along with the previous communications, should answer most of your questions.

We remind you that, in issuing these FAQs, neither ALPA nor any representative of ALPA is providing financial, investment or tax advice to the pilot membership or to any individual. Since each individual’s situation is different, you are strongly encouraged to contact a tax advisor and/or financial advisor to understand what may be the best course of action for you and your family.

If, after carefully reading this *Retirement and Insurance Report*, you have any further questions, please contact:

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**1. What is a Roth IRA?**

A Roth IRA is a type of Individual Retirement Account, a tax-favored account designed to help you save for retirement.

**2. Do the normal Roth IRA income and contribution limits apply?**

No. Under the usual rules that apply to Roth IRAs, contributions may not be made by any individual whose annual income exceeds a stated level, and the amount of annual contributions is limited to a stated dollar amount. These limits do not apply to rollovers made pursuant to Section 125 of the Act.

**3. What are the advantages of making a rollover contribution to a Roth IRA?**

A Roth IRA provides a number of tax advantages. Amounts you contribute as a rollover to a Roth IRA are made out of funds you have already paid taxes on (after-tax amounts), and the account may grow tax-free, with tax-free withdrawals in retirement, provided you meet certain conditions.

**4. I already have a Roth IRA. Do I need to open another one for this purpose?**

No. You may make a rollover to your current Roth IRA, or you may open one or more new Roth IRAs to make the qualifying rollover.

**5. How much may I roll over to a Roth IRA under the provisions of the Act?**

You may roll over to a Roth IRA all or any portion of your total airline payment amount, as shown on IRS Form 8935. Delta will provide you with Form 8935 on or about March 23, 2009, showing the total airline payment amount you are eligible to roll over to a Roth IRA (with respect to qualifying airline payments you received on or before December 23, 2008).

**6. What action must I take to roll over my qualifying airline payment amount to a Roth IRA?**

First, ALPA strongly recommends that you consult a tax and/or financial planning advisor before electing to roll over all or any portion of your qualifying airline payment amount. If you decide that making a rollover is right for you, your next step is to choose a financial institution. In addition to presenting the funds for rollover, you may need to provide your financial institution with a copy of the IRS Form 8935 you received from the Company. You should advise your financial institution that the transfer of funds is to be treated as a rollover under Section 125 of the *Worker, Retiree, and Employer Recovery Act*. Using this description will assist your financial institution in correctly characterizing the transaction in its recordkeeping system.

Finally, you must complete your rollover on or before June 22, 2009 (with respect to airline payments made on or before December 23, 2008, as reported to you on the Form 8935 sent on or about March 23, 2009).

**7. Should I open a Roth IRA at a specific financial institution?**

You may open a Roth IRA at any financial institution that offers the Roth IRA product and permits rollover-type transfers.

**8. In making the rollover, must I use the same funds I received in my qualifying airline payments?**

No. When making a rollover to a Roth IRA, you do not need to use the same exact funds you received from the Company — whether the funds you received consisted of cash or shares of Company stock. You may use other funds, including funds you received as a gift. However, you may *not* directly transfer funds from your 401(k) plan, other qualified retirement plan account or traditional IRA.

**9. May I make rollovers to more than one Roth IRA and/or to more than one financial institution?**

Yes. You may make rollovers to any number of Roth IRAs at any number of financial institutions, so long as the total amount of your rollovers does not exceed the total qualifying airline payment amount reported to you on IRS Form 8935.

**10. Must I roll over cash, or may I roll over stock or other property?**

As we understand the law, your rollover contribution to a Roth IRA must consist of cash, with one exception. Under the exception, you may — but need not — make a rollover of the shares of Company stock you received as part of your qualifying airline payment.

**11. May I roll over my Delta common stock shares into a Roth IRA?**

Yes, if these were shares you received as part of your qualifying airline payment, and also if an in-kind rollover is permitted by your Roth IRA financial institution. Please note that shares of Delta common stock recently distributed as *merger equity* (Pilot Shares) are *not* part of your qualifying airline payment eligible for rollover.

**12. As a former NWA pilot, may I roll over the DAL common stock I received in exchange for the NWA shares I received as part of the equity claim?**

Yes. The Delta shares a former NWA pilot received in exchange for the taxable NWA shares received as part of the equity claim are eligible for rollover. (Of course, such an in-kind rollover must also be permitted by your Roth IRA financial institution.) Again, please note that shares of Delta common stock recently

distributed as *merger equity* (Pilot Shares) are not part of your qualifying airline payment eligible for rollover.

**13. May I roll over a combination of cash and my qualifying Delta shares into the Roth IRA?**

Yes, if permitted by your Roth IRA's financial institution.

**14. May I roll over shares of another company's stock, or other property, into the Roth IRA?**

It is our understanding that, other than cash, the only property you may roll over to a Roth IRA under Section 125 is the Company stock you received as part of your qualifying airline payments.

**15. The value of my qualifying Delta shares has decreased since I received my qualifying airline payments. Will that impact the total amount I may roll over?**

No. Your total eligible rollover amount is based on the total gross pre-tax dollar value of your qualifying airline payments, not the number of shares you received or the current value of those shares. The Company will report to you on IRS Form 8935 the total *dollar* amount you are eligible to roll over. If you received taxable Company stock, the dollar amount eligible for rollover will be based on the valuation of the shares at the time they were issued. This amount will be added to any taxable cash payments you may have received to determine your total eligible rollover amount, as reported on IRS Form 8935.

**16. May I withdraw the initial rollover contributions immediately, if needed, without paying the 10% penalty? What about the earnings?**

After you make a rollover contribution to a Roth IRA, you may take tax-free and penalty-free distributions from the Roth IRA at any time, up to the total initial rollover amount. However, you may take tax-free and penalty-free distributions of earnings on the rollover amount only if your rollover Roth IRA (or other Roth IRA) has been in effect for at least five years, and your distribution was made after you reach age 59-1/2, or because you are disabled, or after your death, or satisfies the requirements of an exception regarding the purchase of a first home. Other exceptions may also apply.

**17. Does this information impact my W2 or tax filing?**

No. There is no need to file an amended tax return.

**18. Will the IRS issue any guidance on this subject?**

Apart from issuing Form 8935 and accompanying instructions, we do not anticipate that IRS will issue further guidance on Section 125.

**19. Where may I obtain further information?**

In addition to consulting your tax and/or financial advisor, you may wish to refer to IRS Publication 590, Individual Retirement Arrangements, Chapter 2, Roth IRAs, available on the IRS website at <http://www.irs.gov/publications/p590/index.html>.

**20. What is the exact language of Section 125?**

**SEC. 125. ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE CARRIER BANKRUPTCY TO ROTH IRAS.**

(a) GENERAL RULE.—If a qualified airline employee receives any airline payment amount and transfers any portion of such amount to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of the date of the enactment of this Act), then such amount (to the extent so transferred) shall be treated as a qualified rollover contribution described in section 408A(e) of the Internal Revenue Code of 1986, and the limitations described in section 408A(c)(3) of such Code shall not apply to any such transfer.

(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) AIRLINE PAYMENT AMOUNT.—

(A) IN GENERAL.—The term “airline payment amount” means any payment of any money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee—

(i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, and

(ii) in respect of the qualified airline employee’s interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount. The amount of such payment shall be determined without regard to any requirement to deduct and withhold tax from such payment under sections 3102(a) and 3402(a).

(B) EXCEPTION.—An airline payment amount shall not include any amount payable on the basis of the carrier’s future earnings or profits.

(2) QUALIFIED AIRLINE EMPLOYEE.—The term “qualified airline employee” means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which—

(A) is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, and

(B) was terminated or became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006.

(3) REPORTING REQUIREMENTS.—If a commercial passenger airline carrier pays 1 or more airline payment amounts, the carrier shall, within 90 days of such payment (or, if later, within 90 days of the date of the enactment of this Act), report—

(A) to the Secretary of the Treasury, the names of the qualified airline employees to whom such amounts were paid, and

(B) to the Secretary and to such employees, the years and the amounts of the payments. Such reports shall be in such form, and contain such additional information, as the Secretary may prescribe.

(c) EFFECTIVE DATE.—This section shall apply to transfers made after the date of the enactment of this Act with respect to airline payment amounts paid before, on, or after such date.

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### **The following FAQs were added in Revision 1 of this document**

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**21. What if I make a rollover contribution to a Roth IRA under Section 125 but find that I need the money again soon? May I withdraw the initial rollover contributions immediately, if needed, without paying the 10% early distribution penalty? What about the earnings?**

After you make a rollover contribution to a Roth IRA, you may take tax-free and penalty-free distributions from the Roth IRA at any time, up to your total initial rollover amount. However, you may take tax-free and penalty-free distributions of *earnings* on the rollover amount only if your rollover Roth IRA (or other Roth IRA) has been in effect for at least 5 years, *and* your distribution was made after you reach age 59-1/2, or because you are disabled, or after your death, or if the withdrawal satisfies the requirements of an exception regarding the purchase of a first home. Other exceptions may also apply. See IRS Publication 590, pp. 67-68, for details.

**22. May I make a rollover contribution to a Roth IRA under Section 125 by converting my traditional IRA to a Roth IRA?**

No; the IRS has advised ALPA that this is not permissible under Section 125 of WRERA.

**23. I must sell my current stock investments in a taxable account at a loss in order to obtain the cash to make a Roth IRA rollover under Section 125, and after making the rollover I intend to purchase the same stock investments in my Roth IRA. Will my ability to claim a loss on the sale be impacted by the “wash sale” rules?**

Ordinarily, if you sell stock in a taxable account at a loss, you will incur a capital loss that you may deduct on your tax return (assuming you are otherwise eligible to claim the capital loss). However, under the “wash sale” rules, if you sell stock at a loss and within the 30 days before or after the sale you purchase substantially identical stock, even if the purchase is made by your IRA, then your loss could be disallowed. The best course of action to avoid this possibility is either to wait at least 30 days after the sale before purchasing substantially identical stock or to purchase different stock. See IRS Revenue Ruling 2008-5 for details.

**24. May I take an in-service withdrawal or a loan from my accounts under the DPSP or NWA RSP and use those proceeds to make the Roth IRA rollover under Section 125?**

You may be able to take in-service withdrawals from your accounts under the DPSP or NWA RSP (but not from the DC Plan or NWA MP3), and use some or all of these withdrawals (net of any applicable taxes and penalties) to fund a Roth IRA transfer under Section 125, according to the chart shown below. Not all pilots will have money in these various sub-accounts; please consult Fidelity or ING for any eligible amounts should you wish to consider this option. Also, you may not take a withdrawal of funds directly from the brokerage account; you would need to move those funds to the core funds prior to withdrawal.

Due to the different plan provisions, the rules for in service withdrawals are somewhat different for the DPSP and for the NWA RSP. Please see below for a review of the various alternatives.

<b>Source of funds eligible for in-service withdrawal</b>	<b>Plan</b>	<b>Notes</b>
After tax contributions	DPSP	1,2
	RSP	2
Pre 1989 employer contributions	DPSP	3
Pilot/Employer sub-account	RSP	3

**Note 1:** You must withdraw 100% of your after-tax contribution amount (referenced as the “401(a) after-tax source” on the Fidelity website). If you elect to withdraw your after-tax contributions, your ability to make contributions to the DPSP will be suspended for three months.

**Note 2:** Since only after-tax money may be transferred to a Roth IRA under Section 125, you may transfer all or a portion of your returned after-tax contributions to the Roth IRA (up to the amount on your Form 8935) and roll over the earnings on your after-tax contributions to a traditional IRA (to avoid current income tax, and to avoid the 10% early distribution penalty if you are under age 59-1/2 and no other exception applies). If your withdrawal of the total value of your after-tax account is less than the principal amount of your contributions, you might be able to claim a loss. See IRS Publication 575 and consult your tax advisor for details.

**Note 3:** Since the pre-1989 employer contribution account and the NWA RSP Pilot Employer account consist solely of pre-tax Company contributions and earnings, you could transfer a withdrawal from either of these accounts to a Roth IRA (up to the amount on your Form 8935) only by first including the withdrawal in your taxable income, subject to both income tax and the 10% early distribution tax if you are under age 59-1/2 and no other exception applies. You could roll over to a traditional IRA the portion of your withdrawal from the pre-1989 employer contribution account that you do not include in your taxable income.

Additionally, you may take a loan from your accounts under either the DPSP or NWA RSP, up to \$50,000, subject to applicable Plan rules and restrictions, and could use those funds (or any other borrowed funds) to make the Roth IRA rollover under Section 125.

**25. How can I obtain another copy of my IRS Form 8935?**

If you need another copy of your IRS Form 8935, contact Delta at 1-800-MY-DELTA.

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**End of Revision 1**

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