Guides for Qualification of Pension, Profit-Sharing, and Stock Bonus Plans

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Contents

Guides for Qualification

Pension, Profit-Sharing, and Stock Bonus Plans

Part 1
Introduction

(a) Purpose

It is the purpose of this publication to provide updated guides by correlating those Revenue Rulings that have been published relative to the qualification of plans and trusts (except those that include self-employed individuals) with the applicable provisions of the Internal Revenue Code of 1954 and the corresponding Income Tax Regulations. The issues presented are not all-inclusive but have been found to be present in many plans. It is contemplated that as new issues of general import arise additional rulings will be published. Guides that are applicable only to plans that include self-employed individuals are not treated separately in this publication, but references to provisions of the Code and regulations pertaining to such plans are made as appropriate. Neither are guides included herein with respect to pension or annuity plans that also provide medical benefits for retired employees.

(b) Guides Previously Published

There are listed below the compendium-type Revenue Rulings that have been published previously for the purpose of setting forth guides in effect at the time of publication with respect to the qualification of plans.

Revenue Ruling 33, C.B. 1953–1, 267, published on March 16, 1953;

Revenue Ruling 57–163, C.B. 1957–1, 128, published on April 22, 1957;

Revenue Ruling 61–157, C.B. 1961–2, 67, published on August 28, 1961;

Revenue Ruling 65–178, C.B. 1965–2, 94, published on July 12, 1965; and

Revenue Ruling 69–421, C.B. 1969–2, 59, published on August 11, 1969.

(c) References

Wherever appropriate throughout this publication, references are made to Revenue Rulings that discuss specific issues more extensively. Reference is made only to those rulings that are within the context of the particular guides presented. The appendix sets forth a tabulation of the rulings referred to, with a reference to the part of this publication in which each is cited. Such a reference in no way affects the conclusion of the Revenue Ruling to which the reference is made.

(d) Statutory Background

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries constitutes a qualified trust under section 401(a) of the Code, if it meets the further requirements set forth in that section as to source of contributions, nondiversion, coverage, nondiscrimination in contributions or benefits, nonforfeitable rights on termination, application of forfeitures, and, in the case of a plan covering self-employed individuals, the additional requirements applicable to such plans. A qualified trust is exempt from tax under section 501(a) unless exemption is denied under section 502 because it is operated as a feeder organization, or under section 503 because it has engaged in a prohibited transaction. An exempt trust, however, is subject to tax under section 511 on its unrelated business taxable income. Various tax benefits to employers, employees, and their beneficiaries stem from an exempt trust. A trust, however, is not the only vehicle through which such benefits may be provided. For example, tax deferment and the long-term capital gain treatment are also provided for employees and their beneficiaries under section 403(a) of the Code, and deduction for employer contributions are allowable under section 404(a)(2), in the case of nontrusteed annuity plans that meet the requirements of those sections.

Part 2
Qualified Pension, Annuity, Profit-sharing, and Stock Bonus Plans

Section 401(a) of the Internal Revenue Code of 1954—Regulations Section 1.401–1

(a) Applicable Plans

The provisions of section 401(a) of the Code are applicable only to qualified trusteed pension, profit-sharing, and stock bonus plans. A custodial account, as defined in section 401(f) of the Code, is treated as a qualified trust and is subject to the same requirements that apply to a trust. Nontrusteed annuity plans under which tax deferment and capital gains are provided for in section 403(a) of the Code and deductions for employer contributions are allowable under section 404(a)(2), and qualified bond purchase plans as defined in section 405(a) are subject to some of the requirements of section 401(a) and section 401(d). Paragraphs (3) through (8) of section 401(a) are applicable to all such annuity and bond purchase plans. In addition if such annuity and bond purchase plans cover self-employed individuals as defined in section 401(c)(1) of the Code, they must also meet the requirements of section 401(a)(9). Furthermore, if any of the self-employed individuals are owner-employees as defined in section 401(c)(3) of the Code, the plans must also satisfy the requirements of sections 401(a)(10) and 401(d), except section 401(d)(1) (bank trustee); but, in the case of bond purchase plans, sections 401(d)(5)(B) (limited contributions) and 401(d)(8), (excess con-

ributions) are not applicable. See section 405(a)(1) of the Code. For definitions of the applicable plans, see the Income Tax Regulations: Section 1.401–1(b)(1)(i) for ...on plans, section 1.401–1(b)(1)(ii) for profit-shar... plans, section 1.401–1(b)(1)(iii) for stock bonus plans, section 1.404(a)–3(a) for annuity plans, section 1.401–9 for face-amount certificates treated as annuity contracts, and section 1.405–1(b) for bond purchase plans. Section 1.401–8 describes custodial accounts.

(b) Funded Plans

A qualified plan must be a funded plan. Contributions may be made to a trust or under a custodial account, or may be used to pay premiums on insurance contracts, or to purchase face-amount certificates or used to buy retirement bonds. A qualified plan does not provide for direct payments by an employer to his employees, as in the case of a pay-as-you-go pension plan. See Rev. Rul. 71–91, C.B. 1971–1, 116. However, employer contributions to or under a recognized funding medium may, under appropriate circumstances, be delayed pursuant to an established funding method. Thus, a qualified pension plan may provide that current contributions be made by employees only, but that the employer is obligated to pay the full amount of the stipulated benefits to each retired employee-participant after the funds in the trust forming a part of such plan have been fully exhausted. See Rev. Rul. 54–152, C.B. 1954–1, 149. The employer may also make contributions in any year ...bstitute for the otherwise required employee contributions. Rev. Rul. 68–25, C.B. 1968–1, 151. It should be observed, however, that minimum funding requirements must be maintained even if contributions are made by employees only. See part 6(d) hereof.

(c) Plan of Deferred Compensation

A qualified plan is a plan of deferred compensation. A pension plan provides systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. See section 1.401–1(b)(1)(i) of the regulations. A plan does not qualify as a pension plan under section 401(a) of the Code where all compensation is deferred and paid after retirement in the form of benefits under the plan. See Rev. Rul. 69–230, C.B. 1969–1, 116. A profit-sharing plan must provide a definite predetermined formula for allocating contributions among participants and for distributing the accumulated funds after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as layoff, illness, disability, retirement, death, or severance of employment. See section 1.401–1(b)(1)(ii) of the regulations. The term "fixed number of years" is considered to mean at least two years. See Rev. Rul. 71–295, I.R.B. 1971–28, 48. A specified period, such as the completion of 60 ...nths of participation under the plan is an event on ...e occurrence of which distributions may be made. See Rev. Rul. 68–24, C.B. 1968–1, 150. A stock bonus plan is similar to a profit-sharing plan except that the contributions by the employer are not necessarily dependent upon profits and the benefits are distributable in stock of the employer company. See section 1.401–1(b)(1)(iii) of the regulations. A qualified bond purchase plan is established and maintained solely to purchase for and distribute to employees or their beneficiaries U.S. retirement plan bonds. See section 1.405–1(b) of the regulations.

(d) Domestic Trust

A qualified employees' trust must be organized or created in the United States and maintained at all times as a domestic trust. See section 1.401–1(a)(3)(i) of the regulations. If, however, a foreign situs trust meets the requirements of section 401(a) of the Code in all other respects, employers making contributions thereunder are allowed deductions within the applicable limits, as provided in section 404(a)(4). Beneficiaries are granted the same tax treatment, in accordance with section 402(c), as is applicable to beneficiaries of a domestic trust. It should be noted, however, that unless a non-resident alien beneficiary is engaged in a trade or business in the United States, or provision is otherwise made by treaty, the long-term capital gain treatment does not apply to distributions to such beneficiary and withholding of tax applies to the distributions, regardless of whether the trust is foreign or domestic. See sections 871 and 1441 of the Code and corresponding regulations.

(e) Plan and Trust of Multiple Employers

A single plan and trust may be maintained by two or more employers, regardless of their affiliation, but each must meet all applicable requirements. See section 1.401–1(d) of the regulations and Rev. Rul. 69–250, C.B. 1969–1, 116.

(1) Pooled Funds

Where, under specified conditions, separate qualified and exempt trusts pool their funds in a group trust created to provide diversification of investments, the group trust may also be exempt and the status for exemption of the separate trusts will not be adversely affected. See Rev. Rul. 56–267, C.B. 1956–1, 206, and Rev. Rul. 66–297, C.B. 1966–2, 234.

(2) Corporate Participation in Joint Ventures

Once an employer-employee relationship is established between a partnership or joint venture and the individuals rendering services to the partnership or joint venture, the relationship is also established between those individuals and each partner or joint venturer for purposes of section 401(a) of the Code. Accordingly, a corporation that participates in a joint venture is required to take the employees of the joint venture into account in determining whether its employees' plan meets the requirements of section 401(a) of the Code. See Rev. Rul. 68–370, C.B. 1968–2, 174.

(f) Written Program

A qualified plan must be a definite written program setting forth all provisions essential for qualification. See section 1.401–1(a)(2) of the regulations. In the case of a trusteed plan, there must be a valid existing trust, complete in all respects and recognized as such under the applicable local law, pursuant to a plan in effect. However, in establishing a trust under a plan of an employer on the accrual basis, if only the trust corpus is lacking at the close of the first taxable year, the trust is deemed to be in effect for such taxable year if the corpus is furnished no later than the due date of the employer's return, plus extensions of time in which to file. See Rev. Rul. 57–419, C.B. 1957–2, 264. The trust must be evidenced by an executed written document setting forth the terms thereof. See Rev. Rul. 69–231, C.B. 1969–1, 118. In the case of a non-trusteed annuity plan evidenced only by contracts with an insurance company, the plan is not in effect until such contracts are executed and issued. Where, however, the plan is separate and apart from a group annuity contract, or annuity contracts, the plan may be in effect before the close of the first taxable year if (1) appropriate steps are taken to establish the plan in such year by applying for the insurance contracts pursuant to authorization by the employer's board of directors or acknowledgment in the case of an unincorporated employer, setting forth a definite plan for the purchase of retirement annuities under annuity contracts, under which liability is created to provide the intended benefits, (2) the application has been accepted by the insurance company, the contracts or abstracts have been prepared in sufficient detail setting forth all terms, and at least a part payment of the premiums due has been irrevocably made, and (3) the plan has been communicated to the employees. See Rev. Rul. 59–402, C.B. 1959–2, 122.

(g) Source of Contributions

Contributions to a qualified trust are made by the employer, or employees, or both, or, in the case of a profit-sharing plan or stock bonus plan in which contributions are determined with reference to profits of a group of affiliated corporations, contributions on behalf of employees of a loss member may be made up by the profit-making corporations. See sections 401(a) and 404(a)(3)(B) of the Code. Also, as provided in section 406 of the Code, a domestic corporation may include in its qualified plan, and make contributions on behalf of, employees of a foreign subsidiary who are citizens of the United States and covered for social security benefits in this country, and, in accordance with section 407, a domestic parent corporation may similarly include in its qualified plan, and make contributions on behalf of, employees of a domestic subsidiary who are citizens of the United States engaged in foreign service. Although a qualified plan must provide for contributions by one or more of the parties mentioned above, contributions by others are not precluded. See Rev. Rul. 69–35, C.B. 1969–1, 117. Thus, for example, the past service liability under a pension plan may be funded in whole or in part by a transfer to the pension trust of a portion of the corpus of a fund created by a former director of the employer-bank to provide welfare benefits for employees of the bank, and the current service cost may be funded by the earnings of the balance of the fund, supplemented by contributions from the employer, when necessary, provided that such funding is done on a uniform basis on behalf of all participants. See Rev. Rul. 63–46, C.B. 1963–1, 85. Also, funds may be transferred from a non-exempt welfare fund to an exempt pension trust. See Rev. Rul. 68–223, C.B. 1968–1, 154. Since a profit-sharing plan must provide for participation in the employer's profits, the qualification of such a plan will be adversely affected by an amendment to permit employees to make voluntary contributions prior to the time they become eligible to share in the employer's profits. See Rev. Rul. 68–651, C.B. 1968–2, 167. However, a plan will not fail to qualify as a profit-sharing plan merely because it provides that employer contributions shall be made from current profits or accumulated earned surplus, as determined under generally accepted accounting principles and practices without regard to whether the employer has current or accumulated earnings and profits for Federal income tax purposes. See Rev. Rul. 66–174, C.B. 1966–1, 81.

(h) Permanency

A qualified plan is a permanent and continuing program. A plan that is abandoned without a valid business reason within a few years after it is set up does not satisfy this requirement. Also, if the plan is discontinued before ample provision is made for comparable benefits for employees other than those in whose favor discrimination is prohibited, it will be deemed not to have been a bona fide program for the exclusive benefit of employees in general from its inception. This is especially true in the case of a pension plan under which benefits are funded at a higher rate for employees in whose favor discrimination is prohibited than for other employees. In the case of a profit-sharing plan, merely making a single or occasional contribution out of profits for employees does not satisfy the requirement for permanency. There must be recurring and substantial contributions. See section 1.401–1(b)(2) of the regulations. For a more detailed discussion of the applicable principles and illustrative cases, see Rev. Rul. 55–60, C.B. 1955–1, 37, Rev. Rul. 69–24, C.B. 1969–1, 110, and Rev. Rul. 69–25, C.B. 1969–1, 113. See also section 4.04 of Rev. Proc. 72–6, I.R.B. 1972–1, 20, for information to be filed for a determination as to the effect of a curtailment or termination on the prior qualification of a plan; Rev. Rul. 69–252, C.B. 1969–1, 128, as to notice by the trustee on termination of a plan; section 1.401–6(c) of the regulations, as to the effect of a suspension of contributions;

Rev. Rul. 69–157, C.B. 1969–1, 115, as to continued qualification of the plan and exemption of the trust where contributions are discontinued for a valid business reason but the trust is retained to make distributions in accordance with the original terms of the plan; and Rev. Rul. 69–159, C.B. 1969–1, 133 and Rev. Rul. 70–257, C.B. 1970–1, 90, as to union negotiated plans. A qualified profit-sharing plan may, under appropriate circumstances, provide that an employee may elect each year to participate in the trust forming a part of such plan or to accept his share in cash. See, however, parts 4(d) and 5(a) as to meeting the requirements for coverage and nondiscrimination in contributions or benefits. A profit-sharing plan that does not contain a definite contribution formula may qualify if all other applicable requirements are met. See section 1.401–1(b)(1)(ii) of the regulations and Rev. Proc. 56–22, C.B. 1956–2, 1380.

(i) Communication to Employees

The employees are to be apprised of the establishment of a qualified plan and the salient provisions thereof. The most effective way of doing so is to furnish each employee with a copy of the plan. Where this is not feasible, however, various substitutes may be used. It will be sufficient that a booklet summarizing the plan in all its essential features be furnished the employees, or that a notice be posted on the company's bulletin board, which must be in conspicuous view, stating that a plan has been established, setting forth the type thereof, specifying the eligibility requirements, containing a synopsis of all benefits provided thereunder, indicating whether employees are to contribute and, if so, the amount or rate of contributions, defining the provisions for vesting, and, in the case of a profit-sharing or stock bonus plan, setting forth the employer contribution formula, if any. In all cases where substitutes are used for furnishing employees with copies of the plan, the medium used must clearly state that a copy of the complete plan may be inspected at a designated place on the company's premises during reasonable times which must be stated. See Rev. Rul. 71–90, C.B. 1971–1, 115.

(j) Employee Participants

A qualified plan must benefit employees or their beneficiaries exclusively. See section 1.401–1(a)(3)(ii) of the regulations. However, a plan is for the exclusive benefit of the employees or their beneficiaries even though it may cover former employees or employees who are temporarily on leave. See section 1.401–1(b)(4) of the regulations. See also, Rev. Rul. 66–175, C.B. 1966–1, 82, which holds that a union-negotiated industry wide pension plan will not fail to qualify merely because it permits certain former employees of participating employers to make voluntary contributions to the trust fund. A self-employed individual who derives earned income from self-employment after 1962, is considered an employee and may participate in a qualified plan to a limited extent. See section 401(c)(1) of the Code. The term "employee" does not include a self-employed individual when the term "common-law" employee is used or when the context otherwise requires that the term "employee" does not include a self-employed individual. See section 1.401–10(b)(3) of the regulations. A qualified plan cannot be maintained where there are no employees, active or retired, who are covered thereunder. See Rev. Rul. 70–316, C.B. 1970–1, 91. An arrangement does not qualify as a plan under section 401(a) of the Code if the benefits that it provides are not payable to an employee but only to his beneficiary upon his death. See Rev. Rul. 56–656, C.B. 1956–2, 280.

(1) Partners and Sole Proprietors

Except to the limited extent applicable to the participation of self-employed individuals after 1962, partners and sole proprietors are not employees and therefore are not eligible to participate in a qualified plan. Neither are they to be credited for services as partners or sole proprietors prior to becoming employees in a successor corporation, either for prior service benefits or for meeting eligibility requirements. See Rev. Rul. 69–144, C.B. 1969–1, 115.

(2) Stockholder Participants

Stockholders who are bona fide employees of a corporation may participate in the corporation's plan to the same extent as other employees. See section 1.401–1(b)(3) of the regulations. This is true even though the corporation is an electing small business corporation as defined in section 1371 of the Code. See Rev. Rul. 66–218, C.B. 1966–2, 120. If, however, the plan is designed as a subterfuge for the distribution of profits to stockholders, it will not qualify as a plan for the exclusive benefit of employees. The plan must not be weighted in favor of stockholder-employees with respect to meeting the eligibility requirements or the requirements as to nondiscrimination in contributions or benefits. See section 1.401–1(b)(3) of the regulations. For example, where the coverage requirements of a plan are limited so as to preclude employees other than the company's sole stockholder from participating, the plan does not qualify. See Rev. Rul. 63–108, C.B. 1963–1, 87. For the rules regarding professional service corporations see section 301.7701–2 of the Regulations on Procedure and Administration.

(3) Attorneys and Other Practitioners

An attorney or other professional person may be a bona fide employee and, as such, eligible to participate in a qualified plan. The mere fact that a professional person has an independent income from the practice of his profession will not necessarily preclude him from participating in such a plan. He must, however, be an employee for all purposes, including coverage for social security or a similar public program, if applicable to other employees, and for income tax withholding purposes. If his actual employment for such purposes commences as of a certain date, he is not to be credited for services prior thereto, such as, for example, meeting the years-of-service requirements to be eligible to participate in the plan or to obtain benefits based on past

services. An individual, however, may be treated as a self-employed person with respect to one activity and yet be a common-law employee regarding another. For example, an attorney may be a common-law employee of a corporation and maintain an office for his independent practice of law in the evenings. See Rev. Rul. 69–569, C.B. 1969–2, 91, and Rev. Rul. 70–29, C.B. 1970–1, 86.

(4) Insurance Agents

Section 7701(a)(20) of the Code provides that for the purpose of contributions to, and distributions from, a pension, profit-sharing, or stock bonus trust, or under an annuity plan, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of the Federal Insurance Contribution Act or, in the case of services performed before January 1, 1951, would be considered an employee if his services were performed during 1951. Thus, the same rules apply in determining the eligibility for inclusion of full-time life insurance salesmen in a qualified plan as are applicable in determining their tax status for old age and survivors disability insurance purposes. Also, such full-time salesmen are treated as "common law" employees for participation in a plan which includes self-employed individuals. Insurance brokers and others who are not full-time insurance salesmen within the purview of section 3121(d)(3)(B) of the Code, however, may not be included in a qualified plan except as self-employed individuals.

(k) Investment of Trust Funds

Investments of an exempt employees' trust are subject to the following provisions and requirements: (1) as a function of a trust which under section 401(a) of the Code is part of a plan of an employer for the exclusive benefit of his employees or their beneficiaries, the investments must be consistent with such purpose; (2) the investments must not constitute prohibited transactions, as defined in section 503(c), or section 503(j) if owner-employees are included in the plan; (3) investments that result in unrelated business taxable income subject the trust to tax under section 511 on such income; and (4) the investments must not be used to operate a feeder organization.

(1) Exclusive Benefit Requirement

The primary purpose of benefitting employees or their beneficiaries must be maintained with respect to investments of the trust funds as well as with respect to other activities of the trust. This requirement, however, does not prevent others from also deriving some benefit from a transaction with the trust. For example, a sale of securities at a profit benefits the seller, but if the purchase price is not in excess of the fair market value of the securities at the time of sale and the applicable investment requisites set forth below have been met, the investment is consistent with the exclusive-benefit-of-employees requirement. The requisites are: (1) the cost must not exceed fair market value at time of purchase; (2) a fair return commensurate with the prevailing rate must be provided; (3) sufficient liquidity must be maintained to permit distributions in accordance with the terms of the plan; and (4) the safeguards and diversity that a prudent investor would adhere to must be present. However, the requirement set forth in item (2) with respect to a fair return is not applicable to obligatory investments in employer securities in the case of a stock bonus plan. See Rev. Rul. 69–65, C.B. 1969–1, 114. Upon compliance with these requisites, if the trust instrument and local law permit investments in the stock or securities of the employer, such investments are not deemed to be inconsistent with the purposes of section 401(a) of the Code. The Internal Revenue Service, however is to be notified if trust funds are invested in stock or securities of, or loaned to, the employer or related or controlled interests so that a determination may be made whether the trust serves any purpose other than constituting part of a plan for the exclusive benefit of employees. See section 1.401–1(b)(5)(ii) of the regulations. Such notification is to be made as part of the annual information return, Form 990–P, unless an advance determination letter is requested and, if so, at the time of making a request to the appropriate District Director for such letter. The notification is to include the information called for in Revenue Procedure 72–6, I.R.B. 1972–1, 20, and be certified by the accounting or other responsible officer. The notification should be made on Form 4575. The requirements an exempt employees' trust must comply with in order to invest funds in the stock or securities of an employer corporation are enumerated in Rev. Rul. 69–494, C.B. 1969–2, 88.

(2) Prohibited Transactions

Exemption will be denied to an employees' trust that engages in a prohibited transaction within the purview of section 503(c) of the Code, or section 503(j) if owner-employees are included in the plan. Special rules, however, apply to the requirement for adequate security in the case of obligations acquired by the trust under the conditions of section 503(h) of the Code and, pursuant to section 503(i), in the case of loans to unincorporated employers engaged in the stock brokerage business.

(3) Unrelated Business Taxable Income

An exempt employees' trust is taxable under section 511 of the Code on its unrelated business taxable income, as defined in section 512, which is derived from any unrelated trade or business, as defined in section 513. Special rules are set forth in section 514 of the Code with respect to business leases. If business lease indebtedness is incurred, rental income is includible in gross income in the ratio that the business lease indebtedness, at the close of the taxable year, bears to the adjusted basis of the property at such time.

(4) Feeder Organizations

An employees' trust that is operated for the primary purpose of carrying on a trade or business for profit is denied exemption under section 502 of the Code, even through all of its profits are payable to one or more exempt organizations.

(5) Common Trust Funds

The exempt status of an employees' trust will not be adversely affected merely because the trustee, a bank, invests the funds of the trust in a common trust fund maintained by the bank and exempt under section 584 of the Code. See Rev. Rul. 67–301, C.B. 1967–2, 146.

(l) Designation of Beneficiaries

Beneficiaries of employees under a qualified plan may be designated by the respective participants without restriction, or they may be restricted under the plan to specified persons or to a group of persons, who are the natural objects of the employee's bounty, his estate, or his dependents. See Rev. Rul. 70–173, C.B. 1970–1, 87.

(m) Definitely Determinable Benefits

Benefits under a qualified pension plan must be definitely determinable. Benefits are not definitely determinable if funds arising from forfeitures on termination of service, or other reason, may be used to provide increased benefits for the remaining participants instead of being used as soon as possible to reduce the amount of contributions by the employer. See section 1.401–1(b)(1)(i) of the regulations. However, a qualified pension plan may anticipate the effect of forfeitures in determining the costs under the plan. A determination of the amount of forfeitures under such a plan must be made at least once during each taxable year of the employer. See section 1.401–7 of the regulations and part 7(a) hereof. The requirement regarding the application of forfeitures is equally applicable to pension plans of the money-purchase type. See Rev. Rul. 109, C.B. 1953–1, 288, and Rev. Rul. 60–73, C.B. 1960–1, 155. Benefits that vary with the increase or decrease in the market value of the assets from which such benefits are payable or that vary with the fluctuation of a specified and generally recognized cost-of-living index, are consistent with a plan providing for definitely determinable benefits. See Rev. Rul. 185, C.B. 1953–2, 202, and Rev. Rul. 68–116, C.B. 1968–1, 177. In a stock bonus or profit-sharing plan provision may also be made that forfeitures be used to reduce the employer contributions that otherwise would be required under the contribution formula, but such application of forfeitures is not mandatory in plans of these types. See part 7(b) hereof. It should be observed, however, that whatever provision is made for absorbing forfeitures, discrimination in favor of employees who are officers, shareholders, supervisors, or highly compensated must not result. Where there is a provision for offsetting benefits under a pension plan by benefits purchasable under a profit-sharing plan operating concurrently and covering the same employees, neither plan will qualify. See Rev. Rul. 69–502, C.B. 1969–2, 89. As distinguished by Rev. Rul. 70–371, C.B. 1970–2, 85 and Rev. Rul. 70–578, C.B. 1970–2, 86.

(n) Incidental Benefits

Primarily, qualified plans provide the benefits that pertain to the respective types. Thus, a qualified pension plan does not provide for the payment of benefits not customarily included in that type of plan, such as layoff benefits or benefits for sickness, accident, hospitalization, or medical expenses, except hospitalization and medical expenses for retired employees as provided for in section 401(h) of the Code. See sections 1.401–1(b)(1)(i) and 1.401–14 of the regulations. Neither may such a plan provide only such benefits as are furnished through the purchase of ordinary life insurance contracts that may be converted to life annuities at the normal retirement date. See Rev. Rul. 54–67, C.B. 1954–1, 149, and Rev. Rul. 65–25, C.B. 1965–1, 173. However, a provision in a pension plan permitting a retired employee to authorize the trustee to deduct and pay union dues from his monthly pension benefit will not cause the plan to fail to qualify. See Rev. Rul. 68–159, C.B. 1968–1, 153. Furthermore, the annuity portion of an insurance contract by means of which an employees' nontrusted annuity plan is funded may, if otherwise satisfactory, qualify even though the contract also provides separate term life insurance and accident and health insurance. See Rev. Rul. 56–633, C.B. 1956–2, 279. If life insurance benefits are applied to reduce employer contributions under a pension plan, amounts contributed by the employer for such insurance constitute advance funding and are not currently deductible. See Rev. Rul. 55–748, C.B. 1955–2, 234. Where the life or accident and health insurance features are incidental to the primary benefit of a qualified plan, they may be included in such plan to a limited extent. See section 1.401–1(b)(1)(i) and section 1.401–14 of the regulations.

(1) Life Insurance Under Pension and Annuity Plans

In a pension or annuity plan funded with insurance contracts, the life insurance benefit is deemed to be incidental where it provides a pre-retirement death benefit no greater than 100 times the monthly annuity, that is, $1,000 of life insurance for each $10 of monthly annuity. See Rev. Rul. 60–83, C.B. 1960–1, 157. This is true even though the pension plan involved is of the money purchase type. However, a money purchase plan may, in the alternative, incorporate the limitation applicable to the incidental use of trust funds to purchase ordinary life insurance contracts under a qualified profit-sharing plan. See Rev. Rul. 66–143, C.B. 1966–1, 79, as clarified by Rev. Rul. 68–31, C.B. 1968–1, 151. The death benefit is similarly incidental in a plan providing a post retirement death benefit equal to 50 percent of base salary in effect in the year preceding retirement, requiring less than 10 percent of the cost of the plan exclusive of the death benefit. See Rev. Rul. 60–59, C.B. 1960–1, 154. Also, the death benefit payable under a qualified pension plan to the widow of an employee who died prior to attaining normal retirement age may be regarded as incidental where the value of such benefit does not exceed the death benefit that would have been payable had the benefit been funded under a typical retirement

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income contract. See Rev. Rul. 61–121, C.B. 1961–2, 65. Revenue Ruling 70–611, C.B. 1970–2, 89 presents guides for determining whether a death benefit payable under a unit benefit plan to a spouse in the event of an employee's death before retirement is "incidental." Where the plan is funded by ordinary life insurance contracts plus an auxiliary fund, it may permit a pre-retirement death benefit equal to the greater of (a) the proceeds of the ordinary life insurance contracts, or (b) the sum of (i) the reserve under the life insurance contracts and (ii) the employee's account in the auxiliary fund. On the other hand, a death benefit equal to the sum of the proceeds of the ordinary life insurance contracts and the amount of the employee's account in the auxiliary fund would exceed the death benefit under a typical level premium retirement income contract with a face amount of 100 times the anticipated monthly retirement benefit, and would preclude the plan from qualifying. See Rev. Rul. 68–453, C.B. 1968–2, 163.

(2) Life Insurance Under Profit-Sharing Plans

In the case of a profit-sharing plan that provides for the use of trust funds that have not been accumulated for at least two years, to purchase and pay premiums on ordinary life insurance contracts, the insurance feature is deemed to be incidental if: (1) the aggregate life insurance premiums for each participant is less than one-half of the aggregate of the contributions allocated to the credit of the participant at any particular time, and (2) the plan requires the trustee to convert the entire value of the life insurance contract at or before retirement into cash, or to provide periodic income so that no portion of such value may be used to continue life insurance protection beyond retirement, or to distribute the contract to the participant. See Rev. Rul. 54–51, C.B. 1954–1, 147, as amplified by Rev. Rul. 57–213, C.B. 1957–1, 157, and Rev. Rul. 60–84, C.B. 1960–1, 159.

(3) Accident and Health Insurance Under Profit-Sharing Plans

Where profit-sharing funds have not been accumulated for at least two years, distributions therefrom to pay premiums for accident and health insurance are treated as incidental if the aggregate of such distributions does not exceed 25 percent of the funds allocated to the account of the participant for whom the insurance is acquired. If such funds are used to purchase both ordinary life and accident and health insurance, the amount expended for accident and health insurance, plus one-half of the premiums paid for ordinary life insurance, may not in the aggregate exceed 25 percent of the funds allocated to an employee's account. See Rev. Rul. 61–164, C.B. 1961–2, 99.

(o) Employee Withdrawals Under A Pension Plan

A qualified pension plan may provide for the payment, prior to normal retirement, of a pension due to disability and for incidental death benefits through insurance or from the accumulated funds. It may also provide hospitalization and medical benefits for retired employees in accordance with section 401(h) of the Code. Withdrawals of funds by employees for other purposes, however, whether in times of financial need or otherwise, are subject to restrictions.

(1) Funds Consisting of Employer Contributions or Increments

A pension plan must not permit participants, prior to any severance of employment or the termination of the plan, to withdraw all or a part of the funds accumulated on their behalf which consist of employer contributions or fund increments. See Rev. Rul. 69–277, C.B. 1969–1, 116. However, a profit-sharing plan may permit such withdrawals under appropriate circumstances. See Rev. Rul. 60–323, C.B. 1960–2, 148, modifying Rev. Rul. 56–693, C.B. 1956–2, 282.

(2) Discontinuance of Participation

Upon discontinuance of participation in a pension plan, an employee may be permitted to withdraw his own contributions together with an amount that represents the increments actually earned thereon, but not in excess of such increments. See Rev. Rul. 60–281, C.B. 1960–2, 146.

(3) Employee Voluntary Contributions

A pension plan may provide for withdurawals by participants of their voluntary contributions which are made in addition to compulsory contributions, where such withdrawals do not affect an employee's participation in the plan, the employer's past or future contributions on behalf of such employee, or the basic benefits provided by both the participant's and employer's nonwithdrawable contributions. See Rev. Rul. 60–323, C.B. 1960–2, 148.

(4) Conversion of Contributory to Noncontributory Plan

Where a contributory pension plan is amended to provide for employer contributions only, provision may be made for a refund of employee contributions if discrimination does not result in favor of employees who are officers, shareholders, supervisors, or highly compensated. See Rev. Rul. 70–259, C.B. 1970–1, 108.

(5) Increments on Employee Contributions

The recognition of an employee's right to withdraw his own contributions carries with it the right to receive any increments actually earned thereon. See Rev. Rul. 60–281, C.B. 1960–2, 146 and Rev. Rul. 67–340, C.B. 1967–2, 147. Thus, a qualified pension plan that permits an employee to withdraw his voluntary contributions may permit the employee to withdraw any increments on the withdrawn contributions. See Rev. Rul. 69–277, C.B. 1969–1, 116.

(p) Profit-Sharing and Stock Bonus Plans of Affiliated Companies

In the case of a profit-sharing plan, or stock bonus plan in which contributions are determined with reference to profits, of an affiliated group of corporations within the purview of section 1504 of the Code, contributions made by other members of the group for the benefit of employees of a corporation that is prevented from mak-

ing a contribution because it lacks current or accumulated earnings or profits may be deducted only to the extent and in the manner provided in section 404(a)(3)(B) of the Code and section 1.404(a)–10 of the regulations. See Rev. Rul. 69–35, C.B. 1969–1, 117.

(q) Feeder Plan

A stock bonus or profit-sharing plan that provides that the funds therein may be used to meet the costs of a pension or annuity plan operated concurrently and covering the same employees, if and when the employer suspends contributions to the latter plan, is generally called a "feeder" plan. Such a plan does not qualify because it relieves the employer from contributing to the pension or annuity plan and, therefore, is not for the exclusive benefit of employees or their beneficiaries. See section 1.401–1(b)(3) of the regulations. An employee who has a vested right under a stock bonus or profit-sharing plan, however, may, if the plan so provides, authorize a transfer of all or a part of his vested interest in order to make up a deficiency in the employer's contribution under the pension or annuity plan. In such a case, the amount transferred is includible in the employee's gross income to the same extent as if such interest had been distributed. See Rev. Rul. 69–295, C.B. 1969–1, 177. It should be observed that a "feeder plan" differs from a "feeder organization." See paragraph (k)(4) hereof and section 502 of the Code which denies exemption under section 501 to an organization that is operated for the primary purpose of carrying on a trade or business for profit even though all of its profits are payable to one or more organizations exempt under section 501.

(r) Contingency or Surplus Reserves

The practice of contributing the full amount of annual premiums under an insured pension plan, without reduction for accumulated dividends and regardless of the amount of the allowable deduction limitation, would result in the creation of a contingency or surplus reserve. If a significant part of a trust fund consists of such a reserve, the plan's qualification could be adversely affected. If the advance funding, however, is minor in relation to the actuarial liability under the plan, if there is no possibility of the reversion of a substantial amount to the employer on termination of the plan, and if the advance funding is exclusively for the benefit of the employees or their beneficiaries, such advance funding would not adversely affect the qualification of the plan. Advance funding does not give rise to a current deduction. Accordingly, the deduction otherwise allowable under section 404(a) of the Code, for any taxable year, to the employer must be reduced by the amount of dividends earned, and interest credited on accumulations thereof, in the current or next preceding taxable year. See Rev. Rul. 60–33, C.B. 1960–1, 152, and Rev. Rul. 70–421, C.B. 1970–2, 85.

(s) Valuation of Securities on Inventory Date

Any type of qualified plan that provides for distributions in accordance with amounts stated or ascertainable and credited to participants, as in profit-sharing, stock bonus, and trusteed pension plans of the money-purchase type, must provide for a valuation of securities held by the trust, at least once a year, on a specified inventory date, in accordance with a method consistently followed and uniformly applied. The fair market value on the inventory date is to be used for this purpose. The respective accounts of participants are to be adjusted in accordance with the valuation. If, for example, as a result of a valuation on the inventory date, John Doe's account, which previously showed a balance of $1,000, is to be increased by one-tenth of 1 percent of the increase in the value of the trust assets, and such increase is $50,000, his interest is to be increased by $50. See Rev. Rul. 70–125, C.B. 1970–1, 87. A profit-sharing plan that provides for interim valuations in addition to a valuation each year will qualify provided that the use of the interim valuation and the subsequent adjustment to each participant's account does not result in the prohibited discrimination. See Rev. Rul. 71–27, C.B. 1971–1, 121.

(t) Allocation of Stock Bonus and Profit-Sharing Funds

All funds in an exempt stock bonus or profit-sharing trust must be allocated to participants in accordance with a definite formula. Thus, no reserves are to be established by withholding allocations from participants. If suspense accounts are maintained, provision is to be made for ascertaining the respective shares of participants in such accounts and such shares are to be included in the distribution. See Rev. Rul. 70–125, C.B. 1970–1, 87.

(u) Plans Providing for Lump-Sum Distributions Only

A plan that provides for lump-sum distributions only, but does not contain the basic requisites of a profit-sharing or stock bonus plan, is not a qualified plan under section 401(a) of the Code. A pension plan provides systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. A profit-sharing plan provides for participation in the employer's profits by his employees or their beneficiaries. A stock bonus plan provides benefits similar to those of a profit-sharing plan, except that the contributions by the employer are not necessarily dependent upon profits and the benefits are distributable in stock of the employer corporation. See section 1.401–1(b)(1)(iii) of the regulations. Where, however, a plan provides for employee contributions up to 10 percent of earnings and for employer contributions whether or not it has profits equal to the amounts contributed by the employees, and benefits are paid only in the form of lump-sum cash distributions on retirement or separation from the service for other reasons, the plan is not one within the purview of section 401(a) and, therefore, does not qualify under such section. See Rev. Rul. 62–195, C.B. 1962–2, 125.

Part 3

Impossibility of Diversion under the Trust Instrument

Section 401(a)(2) of the Internal Revenue Code of 1954 —Regulations Section 1.401–2

(a) Trust Instrument Must Make Prohibited Diversion Impossible

Section 401(a)(2) of the Code requires that under the trust instrument it must be impossible "* * * at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of * * * employees or their beneficiaries * * *." The term "trust instrument" means a written document. Although an oral trust may be recognized under the applicable local law, section 401(a)(2) requires the trust instrument to make the prohibited diversion impossible. The trust instrument must definitely and affirmatively make it impossible for the nonexempt use or diversion to occur. See section 1.401–2(a)(2) of the regulations. The trust must also constitute a valid trust under the law in the jurisdiction to which it is subject. See Rev. Rul. 57–419, C.B. 1957–2, 264, and Rev. Rul. 69–231, C.B. 1969–1, 118.

(b) Payment of Employer's Claims

A qualified trust may contain a spendthrift clause precluding the use of trust funds for the payment of debts or other obligations of participants and preventing a sale, transfer, or assignment of a participant's interest. It may, however, limit such prohibition so as not to be applicable to indebtedness due the employer. The repayment of a loan owing by an employee is for the economic benefit of the employee since it relieves him of a liability. If a trust did not contain a spendthrift clause so that an employee's creditors could reach his interest, the fund would still be for the exclusive benefit of employees. Accordingly, the mere fact that the employer is the only one who has that right does not change the result. See Rev. Rul. 56–432, C.B. 1956–2, 284.

(c) Conditional Payments

A provision in a newly established plan for the return of employer contributions only in the event that the Commissioner of Internal Revenue determines that the plan is not qualified does not, of itself, prevent qualification of the plan and exemption of the trust. The plan must be in full force and effect, and the nonreversionary provisions must otherwise prevent the nonexempt use of the funds. It is only by the Commissioner's determination that the plan does not qualify that a recovery of employer contributions made prior to such determination is possible. Under such circumstances, the conditional payment, and the provision therefor, are held not to prevent qualification of the plan and exemption of the trust. See Rev. Rul. 60–276, C.B. 1960–2, 150.

(d) Erroneous Actuarial Computation

Trust funds must not be used for purposes other than for the exclusive benefit of employees or their beneficiaries prior to the termination of the trust and the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, and, only then, may recovery be had in the case of a pension trust to the extent of any surplus existing because of an actuarial error. In determining whether any surplus exists on termination of a trust, and the amount thereof, all liabilities, contingent as well as fixed, with respect to employees and their beneficiaries under the trust must be taken into account. Fixed liabilities are the amounts required to provide the benefits payable to those who have become entitled to them. Contingent liabilities are the benefit credits accrued up to the time of termination of the trust for employees (and their beneficiaries) who might have become entitled to benefits if the trust had been continued indefinitely. If such liabilities are to be discharged by commuting the payments (other than through the purchase of insurance company contracts), the value thereof at the time of termination of the trust must be determined for this purpose by use of assumptions no less conservative in any respect than were used in determining costs during the previous life of the trust, and no discount for severances other than death may be assumed. See Rev. Rul. 71–152, C.B. 1971–1, 127.

(e) No Reversion in Profit-Sharing or Stock Bonus Plans

Allocations under profit-sharing and stock bonus plans are not predicated upon amounts actuarially necessary to provide stipulated retirement benefits. See section 1.401–1(b)(1)(i) of the regulations to the effect that a plan designed to provide benefits for employees or their beneficiaries to be paid upon retirement or over a period of years after retirement will, for the purposes of section 401(a) of the Code, be considered a pension plan if the employer contributions under the plan can be determined actuarially on the basis of definitely determinable benefits, or, as in the case of money purchase pension plans, such contributions are fixed without being geared to profits. Consequently, in profit-sharing and stock bonus plans there can be no reversion of any kind since such plans do not provide benefits that are predicated on actuarial assumptions or computations. See Rev. Rul. 71–149, C.B. 1971–1, 118.

(f) Application of Dividends and Other Credits Under Group Annuity Contracts

Provisions analogous to that set forth in section 401

example, if employees are also required to contribute 5 percent of compensation in order to participate, and, say, 750 of them are eligible to do so, then if at least 600 actually do contribute and are covered under the plan, the requirements of section 401(a)(3)(A) of the Code are met. See also the example in section 1.401–3(a)(3) of the regulations.

(c) Classification of Employees

In lieu of meeting the percentage requirements of section 401(a)(3)(A) of the Code, an employer may set up a classification of employees which, if found by the Commissioner of Internal Revenue not to discriminate in favor of officers, shareholders, supervisors, or highly compensated employees, will satisfy the requirements of section 401(a)(3)(B). Under such section, plans may qualify where coverage is limited to employees who (1) are within a prescribed age group, (2) have been employed for a stated number of years, (3) have been employed in certain designated departments, or (4) are in other classifications, provided that the effect of covering only such employees does not discriminate in favor of employees within the enumerations with respect to which discrimination is prohibited. See section 1.401–3 (d) of the regulations and Rev. Rul. 66–12, C.B. 1966–1, 72. The percentage of total employees covered and the percentage of employees in whose favor discrimination is prohibited in relation to total employees participating under a plan are not the sole factors in determining whether a classification meets the nondiscrimination requirements. See Rev. Rul. 68–244, C.B. 1968–1, 158, and Rev. Rul. 70–200, C.B. 1970–1, 101.

(d) Immediate and Deferred Profit-Sharing Plans

A profit-sharing plan that is qualified under section 401(a) of the Code is a plan of deferred compensation and, as such, provides for distributing the funds accumulated thereunder after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as illness, disability, retirement, death, layoff, or severance of employment. See section 1.401–1 (b)(1)(ii) of the regulations. Thus, employees who receive the amounts allocated to their accounts before the expiration of such period of time or the occurrence of such contingency are not considered covered under the plan for the purposes of section 401(a)(3)(A) and (B) of the Code. See section 1.401–3(c) of the regulations. If the employee has a right of election to receive his share of the profits in cash or to have it deferred through payment into a trust for his benefit, qualification of the plan is made by reference only to those employees who participate in the trust. See Rev. Rul. 56–497, C.B. 1956–2, 284.

(e) Different Eligibility Requirements for Present and Future Employees

A provision for different eligibility requirements for present and future employees is not necessarily discriminatory within the purview of section 401(a)(3)(B) of the Code. If present employees who are officers, shareholders, supervisors, or highly compensated can meet the requirements for new employees there is no objection to the dual requirements. See Rev. Rul. 70–75, C.B. 1970–1, 95. For example, if all present employees regardless of age are eligible and only those new employees who are at least 30 years old may participate, but all present employees who fall within one or more of the categories enumerated in section 401(a)(3)(B) of the Code are at least 30 years of age, the eligibility provision is not objectionable, even though there are other present employees who are under 30 years of age. Similarly, if all present employees are eligible regardless of years of service but only those future employees who will complete five years of service will be eligible, but all present employees who are officers, shareholders, supervisors, or highy compensated have at least five years of service, although there are other present employees who have less than five years, the eligibility provision is acceptable. If, however, in the above illustrations, there are employees within the enumerated categories who are under 30 years of age or have less than five years of service, the prohibited discrimination is likely to arise in operation when new employees are added, and, therefore, in such a case such a provision would not be aceptable as a basis for a favorable advance determination letter.

(f) Continuing Participation in the Event of Leave of Absence

Plans may provide for continued participation in the event of leave of absence for a specified purpose, such as service in the Armed Forces, sickness, or disability. In addition, a plan will not fail to qualify merely because it contains a provision permitting continued participation by employees on leaves of absence granted pursuant to an established leave policy that is applied to all participants in a uniform and nondiscriminatory manner. Under those circumstances, the plan need not specify the purpose for which leave will be granted. See Rev. Rul. 71–181, C.B. 1970–1, 88. All participants under similar circumstances, however, must be treated alike. See Rev. Rul. 69–38, C.B. 1969–1, 131.

(g) Burdensome Contributions

Section 1.401–3(d) of the regulations provides in part: "* * * if a contributory plan is offered to all of the employees, but the contributions required of the employee participants are so burdensome as to make the plan acceptable only to the highly paid employees, the classification will be considered discriminatory in favor of such highly paid employees." For example, if the plan requires employee contributions of 10 percent of compensation, it will be necessary to determine whether lower paid employees are kept out of the plan because of such requirement. If it is found that lower paid employees are not participating because of the contribution

requirement, the classification may be held to discriminate in favor of a group enumerated in section 401(a)(3)(B) and (4) of the Code. Generally, however, employee contributions of six percent or less are not deemed to be burdensome. In cases where the plan provides for optional rates of contribution by employees, and employer contributions or the benefits are geared to the employee contributions in such a way that a higher rate of employee contributions will result in larger benefits from employer contributions, the employee contributions may similarly be found to be burdensome and to result in discrimination in contributions or benefits in contravention of section 401(a)(4) of the Code, but generally only if the highest rate of employee contribution permitted is in excess of six percent of compensation. The test is whether the contribution provisions operate to deprive lower paid employees of benefits at least as high in proportion to compensation as are provided for higher paid employees after taking into account differentials permitted under the requirements for integration with social security benefits. See Rev. Rul. 72–58, I.R.B. 1972–7, 8. See subparagraph (j) below.

(h) Voluntary Contributions

Where employees are permitted to make voluntary contributions to which employer contributions are not geared, a potential disproportionate allocation of employer contributions is not present. Such voluntary contributions, however, must be kept within reasonable bounds. Accordingly, provisions may be made for voluntary employee contributions of amounts up to 10 percent of compensation, provided that employer contributions, or the benefits derived therefrom, are not geared to employee contributions which must be used to provide additional benefits only for the individual contributing employee. See Rev. Rul. 59–185, C.B. 1959–1, 86, Rev. Rul. 69–217, C.B. 1969–1, 115 and Rev. Rul. 70–658, C.B. 1970–2, 87.

(i) Classification Within Purview of Statute But Discriminatory in Operation

A classification may appear to be satisfactory on paper but if in actual operation of the plan it discriminates in favor of employees who are highly compensated, etc., the plan will fail to qualify. For example, a plan ostensibly covers all employees regardless of service but nonforfeitable rights are provided only for those who have at least 15 years of service and stay on until the normal retirement age of 65. Except for a handful of executives who are shareholders and officers, employees are migratory workers who stay on the job for a relatively short time and then move elsewhere. Although the coverage provisions on paper seem satisfactory, in actual operation only the executive employees will benefit. Accordingly, both paragraphs (3)(B) and (4) of section 401(a) of the Code are considered together in determining whether the requirements of each are met. See Rev. Rul. 71–263, C.B. 1971–1, 125. It is possible in the illustration used that the plan may qualify if satisfactory provisions for vesting are incorporated therein. See part 5(c) hereof. In the case of a profit-sharing plan under which employees may elect to receive their shares in cash or to participate in a trust, the trust must include enough lower paid employees to demonstrate that in the operation of the plan there is no discrimination in favor of higher paid employees. See Rev. Rul. 56–497, C.B. 1956–2, 284.

(j) Integration

Plans that exclude employees who earn less than a specified amount or provide proportionately lesser benefits for such employees may qualify if the benefits under the plan integrate with those provided under the Social Security Act or a similar program (e.g. Railroad Retirement Act). The total benefits, inclusive of those under the social security or similar program, are used for comparative purposes. If a plan is properly integrated, a classification that excludes all employees who are compensated below the compensation level used for integration purposes will not be considered discriminatory solely because the contributions or benefits based on that part of excluded remuneration differ from contributions or benefits based on the part of remuneration that is not so excluded. See section 1.401–3(e) of the regulations which establishes the general basis for the integration of pension, annuity, profit-sharing, and stock bonus plans with benefits provided under the Social Security Act or similar program.

(1) Integration With OASI Benefits

Revenue Ruling 71–446, I.R.B. 1971–41, 8 (together with the rulings cited therein), provides guides for the integration of pension, annuity, profit-sharing, and stock bonus plans with old-age and survivors insurance benefits provided under the Social Security Act. Section 14.03 of that Revenue Ruling provides than an integrated profit-sharing or stock bonus plan may provide benefits only upon retirement, death, or other separation from service. However, that provision does not preclude such a plan from providing death benefits, by the purchase of life insurance or otherwise. See Rev. Rul. 68–299, C.B. 1968–1, 157.

(2) Integration Of Disability Benefits

Revenue Ruling 69–5, C.B. 1969–1, 125, provides guides for the integration of disability benefits provided under an integrated pension or annuity plan with disability benefits under the Social Security Act.

(3) Integration With Railroad Retirement Act Benefits

Revenue Ruling 12, C.B. 1953–1, 290, Revenue Ruling 61–147, C.B. 1961–2, 102, and Revenue Ruling 67–261, C.B. 1967–2, 148, provide guides for integrating benefits under pension or annuity plans with those provided by the Railroad Retirement Act. Interim guides for issuing advance determination letters on pension and annuity plans designed to integrate with benefits provided by the Railroad Retirement Act, as amended through

1968, are set forth in Revenue Ruling 70–149, C.B. 1970–1, 95.

(4) Integration With Benefits Provided Under Other Public Programs

Benefits provided under a pension, annuity, profit-sharing, or stock bonus plan may be integrated with those provided under a state or Federal program that, like the social security program, requires employer contributions and makes benefits available to the general public. Thus, benefits payable under a state workmen's compensation law or an occupational diseases law may be an acceptable offset against benefits payable under a qualified plan. However, benefits payable under a qualified plan may not be offset by disability damages recovered by an employee in a common law action against the employer. See Rev. Rul. 68–243, C.B. 1968–1, 157. Revenue Ruling 71–244, C.B. 1971–1, 119, sets forth provisions under which a plan may be integrated with benefits provided under a social security system of a foreign country.

(5) Integration Under Plans Covering Self-Employed Individuals

Separate rules apply to integrated plans that provide contributions or benefits for self-employed individuals. For such rules see sections 1.401–11(c) and 1.401–12(h) of the regulations.

(k) Variable Benefit Under Integrated Plans

A pension plan (other than a money-purchase plan) that covers only employees' earnings in excess of a specified amount, or under which benefits are offset by all or part of the primary social security benefit, and under which excess earnings are used to provide additional benefits for participants, will not meet the integration requirements unless the plan contains proper limitations on the amount of excess earnings that may be credited to a participant's account, or proper limitations on the amount of benefit provided thereunder. See section 17 of Revenue Ruling 71–446, I.R.B. 1971–41, 8.

(l) Coverage Limited to Employees Exempt from Overtime Pay Provision of the Fair Labor Standards Act

A classification that consists only of employees who are exempt from the overtime provisions of the Fair Labor Standards Act is not automatically nondiscriminatory. Such a classification may be acceptable in a particular case if it either includes enough employees to satisfy the percentage coverage requirements or if it in fact does not discriminate in favor of employees within the enumerations with respect to which discrimination is prohibited. Section 13(a) of the Fair Labor Standards Act, as amended, 29 U.S.C. 213(a), provides that the overtime pay provisions shall not apply to certain employees including an employee who is employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman, as such terms are defined and delineated by regulations of the Wage and Hour Division of the Department of Labor. These regulations provide minimum compensation levels for employees within the prescribed categories. Hence, a plan covering only such employees which has the effect of covering substantially only salaried and clerical employees earning above a certain minimum compensation level satisfy the integration requirements in order to qualify. See subpart (j) hereof. Furthermore, the classification may be found to be discriminatory if it consists primarily of employees who are officers, shareholders, supervisors, or highly compensated, or if there are relatively many salaried or clerical employees earning in excess of the specified compensation levels who are not exempt from the overtime provisions of the Fair Labor Standards Act and are therefore excluded from the plan. See Rev. Rul. 59–14, C.B. 1959–1, 84.

(m) Coverage Limited to Salaried and Clerical Employees

Section 401(a)(5) of the Code provides that a classification shall not be considered discriminatory within the meaning of section 401(a)(3)(B) merely because it is limited to salaried or clerical employees. Where such a classification does not result in discrimination on behalf of employees in whose favor discrimination is prohibited the coverage requirement of section 401(a)(3)(B) of the Code is satisfied regardless of whether the excluded employees are covered under a similar or comparable plan. See Rev. Rul. 66–12, C.B. 1966–1, 72, as clarified by Rev. Rul. 68–244, C.B. 1968–1, 158. On the other hand, where limitation of coverage to salaried or clerical employees results in covering primarily employees who are officers, shareholders, supervisors, or highly compensated, to the exclusion of lower-paid, hourly-rated employees, the plan will fail to qualify. The fact that the hourly-rated employees are union members does not, of itself, make the salaried classification nondiscriminatory. See Rev. Rul. 66–14, C.B. 1966–1, 75. See also Rev. Rul. 66–13, C.B. 1966–1, 73. Further, where the salaried plan, when considered by itself, does not meet the coverage requirements of section 401(a)(3)(B) of the Code, the plan will not qualify merely because the employer makes contributions on behalf of the hourly-rated employees, if the contributions or benefits under the plan for the hourly-rated employees are not comparable to those provided for the highly compensated salaried employees. See Rev. Rul. 66–15, C.B. 1966–1, 83, amplified by Rev. Rul. 70–183, C.B. 1970–1, 104.

(n) Coverage Requirements Must be Met on at Least One Day in Each Quarter

The coverage requirements of section 401(a)(3) of the Code, either on the percentage basis under section 401(a)(3)(A) or on the basis of a nondiscriminatory classification under section 401(a)(3)(B), may be satisfied for an entire taxable year if such requirements are

met on at least one day in each quarter of the taxable year. See section 401(a)(6) of the Code and 1.401–3 (g) of the regulations. For example, assuming that returns are filed on a calendar year basis, if the percentage basis is applicable and on the first day of the taxable year 1,000 employees have at least the minimum service requirements prescribed by section 401(a)(3)(A) of the Code, it is sufficient if not less than 700 employees are eligible to participate and not less than 80 percent of those eligible are actually participating on that day even though employee turnover changes the percentages to less than 70 and 80 on all other days prior to April 1 of the same year. The percentage requirements will again have to be met on at least one day during the quarter commencing with April 1, and so on for the other quarters during the year. See Rev. Rul. 71–192, C.B. 1971–1, 119.

(o) Denial of Participation for Failure to Enter Plan Upon Becoming Eligible

Plans may provide for denial of participation for failure to enter the plan upon becoming eligible provided that participation requires something substantially more than mere consent on the part of the employee. For example, under an employee contributory plan, if an employee refuses to sign a prescribed form for participation authorizing salary deductions in accordance with the plan, the plan may provide for the denial of participation at any other time or for a limited time. Similarly, under an insured plan that requires a physical examination and information as to condition of health, the plan may provide that refusal to take the examination or furnish the information will bar the employee from participation. Adequate notice, however, must be given the employee and the consequences of his failure to comply must be clearly presented to him after which, if he refuses to join, the exclusion provisions of the plan become operative as to such employee. Such provisions must be uniformly applied so as not to result in the prohibited discrimination. See Rev. Rul. 71–312, I.R.B. 1971–29, 87.

(p) Reentry Into Plan After Discontinuance of Participation

Plans may provide for reentry after discontinuance of original participation upon severance of employment or for other reasons, such as failure to continue contributions on the part of the employee. Such provisions, however, must be uniformly applied and in no event should they permit a duplication of benefits. See Rev. Rul. 1970–126, C.B. 1970–1, 95.

(q) Delay in Purchasing Insurance Contracts

Generally, a statement in a plan exonerating the trustee from liability in the event of a reasonable delay in the purchase of insurance contracts for participants will not adversely affect the qualification of the plan, provided, however, that the benefits are calculated from the effective date of participation. See Rev. Rul. 71–327, I.R.B. 1971–30, 25.

(r) Employees of More Than One Employer

In the case of a pension plan maintained by more than one employer, where employees covered by the plan may receive compensation from more than one of the participating employers, the aggregate compensation may be used in determining the employee's eligibility for benefits in the plan. See Rev. Rul. 55–276, C.B. 1955–1, 401.

(s) Past Service With Former Employers

Past service with former employers may be used for the purpose of determining eligibility to participate in a qualified employees' pension plan of a present employer and for determining benefits thereunder, provided (1) such former employer, if not a participant in a group plan with the present employer, is specified in the plan or trust; (2) all employees having such past service are treated uniformly; (3) the use of such past service factor does not produce discrimination in favor of employees who are officers, shareholders, supervisors, or highly compensated, and (4) there is no duplication of benefits. See also sections 1.401–10(b)(4) and 1.401–12(e)(2)(iii) of the regulations with respect to past service under a plan that provides benefits for self-employed individuals. Although the plan may satisfy the nondiscrimination requirements of section 401(a) of the Code, deductions for employer contributions thereunder still have to qualify as ordinary and necessary business expenses and constitute reasonable compensation, as required by section 162(a)(1) of the Code. See Rev. Rul. 62–139, C.B. 1962–2, 123.

Part 5

Discrimination in Contributions or Benefits

Section 401(a)(4) of the Internal Revenue Code of 1954 —Regulations Section 1.401–4

(a) Nondiscriminatory Contributions or Benefits

One of the requirements for qualification of a plan is that there must be no discrimination in contributions or benefits in favor of employees who are officers, shareholders, supervisors, or highly compensated, as against other employees whether within or without the plan. See section 1.401–4(a)(1)(i) of the regulations. Thus, for example, a profit-sharing plan which provides for allocations of employer contributions among participants to the extent of 20 percent of compensation for highly compensated employees, and but 10 percent for all

others, is discriminatory within the purview of section 401(a)(4) of the Code. See Rev. Rul. 69–158, C.B. 1969–1, 126. Similar considerations apply to pension and annuity plans. However, differences in favor of higher paid employees may be acceptable if the plan is satisfactorily integrated with the benefits provided under the Social Security Act or similar public retirement program. See part 4(j) hereof. Also, as provided in section 1.401–4(a)(1)(ii) of the regulations, any amount allocated to an employee that is withdrawn before the expiration of the time or the occurrence of an event specified in section 1.401–1(b)(1)(ii) of the regulations is not considered in determining whether contributions under the plan discriminate in favor of employees who are officers, etc. See Rev. Rul. 56–497, C.B. 1956–2, 284. A pension plan that meets the coverage requirements of section 401(a)(3)(A) of the Code for a taxable year is not discriminatory, for that taxable year, merely because it fails to provide benefits for ineligible employees. See Rev. Rul. 68–301, C.B. 1968–1, 161.

(b) Variation in Contributions or Benefits

Variations in contributions or benefits may be provided so long as the plan, viewed as a whole for the benefit of employees in general, with all its attendant circumstances, does not discriminate in favor of employees who are officers, etc. See section 1.401–4(a)(2)(iii) of the regulations. In some cases benefits under a money purchase pension plan or a profit-sharing plan may vary by reason of an allocation formula that takes into consideration years of service. See Rev. Rul. 68–652, C.B. 1968–2, 176; Rev. Rul. 68–653, C.B. 1968–2, 177; Rev. Rul. 68–654, C.B. 1968–2, 179 and Rev. Rul. 68–592, C.B. 1968–2, 166. While the situation described in Revenue Ruling 68–653 illustrates the result in a case under which the addition of units of compensation and units of service did not result in the prohibited discrimination, and Revenue Ruling 68–654 illustrates a case in which the multiplication of units of compensation by units of service resulted in such discrimination, it was not intended to imply by those rulings that any formula using the addition approach is automatically acceptable and that any formula using the multiplication method is basically discriminatory. The result of the operation of the formula is controlling in each case. If the application of any type of formula results in the prohibited discrimination, as measured by the ratio of benefits to compensation, the formula is not acceptable. See also Rev. Rul. 57–77, C.B. 1957–1, 158. Thus, a pension or profit-sharing plan will not qualify if contributions and benefits for rank-and-file employees are based solely on compensation while those for officer-employees are based on compensation plus credits under an unfunded arrangement to pay them additional amounts at a later date. See Rev. Rul. 68–454, C.B. 1968–2, 164. Compare Revenue Ruling 69–145, C.B. 1969–1, 126, however, where basing benefits on compensation plus credits under an unfunded arrangement did not result in prohibited discrimination. A profit-sharing plan will not fail to qualify under section 401(a) of the Code merely because it provides that forfeitures will be allocated to participants on the basis of their account balances; however, whether this provision results in prohibited discrimination must be determined on a year to year basis. See Rev. Rul. 71–4, C.B. 1971–1, 120.

(c) Vested Rights

Various provisions are in use, ranging from complete and immediate vesting through different forms of graduated vesting (upon completion of stated service or participation requirements and/or reaching a specified age) to no vesting until attainment of normal or stated retirement age. Full vesting of an employee's interest is then required. See subparagraph (1) hereof. Full vesting is also required upon termination of a plan or upon the complete discontinuance of contributions thereunder. See section 401(a)(7) of the Code and part 6 hereof.

(1) Factual Determination

A determination as to satisfactory vesting provisions will of necessity depend on the facts in a particular case. For example, where a company with a large employee turnover experience establishes a plan covering all employees, but provides no vested rights prior to normal retirement, the discriminatory situation described in part 4(i) hereof may result. See Rev. Rul. 71–150, C.B. 1971–1, 123. Accordingly, an advance favorable determination as to the qualification of such plan is not warranted. The situation may be remedied, however, by a provision for fully vested rights after a reasonable waiting period. See Rev. Rul. 68–302, C.B. 1968–1, 163 and Rev. Rul. 71–151, C.B. 1971–1, 123.

(2) Vesting on Retirement

A plan will not be held to qualify if it fails to provide that an employee who has reached the normal retirement age (in the case of a pension or annuity plan) or the stated age or other specified event has transpired (in the case of a profit-sharing or stock bonus plan) and has satisfied any reasonable and uniformly applicable requirements as to length of service or participation, is vested in the contributions made or benefits payable under the plan. See Rev. Rul. 66–11, C.B. 1966–1, 71, and Rev. Rul. 68–302, C.B. 1968–1, 163.

(3) Discontinuance for Cause

A qualified plan may provide (a) for discontinuance of benefits to a retired employee for cause which must be distinctly specified (such as, for example, taking a position with a competitor of the employer or divulging the employer's trade secrets to competitors) or (b) for the suspension of benefits for any period of time during which primary insurance benefits under the Social Security Act are discontinued because of employment after retirement. See Rev. Rul. 82, C.B. 1953–1, 288. Similarly, provision may be made for the granting of less liberal rights under such circumstances. Whatever provisions

are made, however, must not discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated. Furthermore, such provisions cannot cause the loss of an employee's benefits after the plan has been terminated or employer contributions thereunder have been discontinued. See section 401(a)(7) of the Code.

(d) Topheaviness

Section 401(a)(5) of the Code provides, in part, that a plan shall not be considered discriminatory within the meaning of section 401(a)(3)(B) or (4) merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees. However, in the case of pension and annuity plans that are based on a salary classification, i.e., exclusion of employees earning less than a specified amount, the benefits under the plan must integrate with those provided under the Social Security Act or similar public retirement plan. See part 4(j) hereof. If under the benefit formula of a pension or annuity plan benefits are provided that bear a uniform relationship to compensation, or that do not discriminate in favor of the group with respect to which discrimination is prohibited when social security or similar Federal or State retirement benefits are taken into account, the benefits and contributions are not discriminatory provided, however, that the plan contains the safeguards required by the termination rule set forth in section 1.401–4(c) of the regulations. See subpart (e) below. A pension or annuity plan that is not in conformance with the foregoing requirements does not comply with section 401(a)(4) of the Code with respect to nondiscrimination as to contributions or benefits. A ceiling or similar limitation on the amount of benefits is not required, however, in view of the provisions of section 401(a)(5) of the Code; but a plan under which benefits are limited may be satisfactory where otherwise certain essential requirements may not be fully met. See Rev. Rul. 71–255, C.B. 1971–1, 114.

(e) Normal Retirement Age

The normal retirement age in a pension or annuity plan is the lowest age specified in the plan at which the employee has the right to retire without the consent of the employer and receive retirement benefits based on service to date of retirement at the full rate set forth in the plan (i.e., without actuarial or similar reduction because of retirement before some later specified age). Ordinarily, the normal retirement age under pension and annuity plans is 65, the same as under the old-age survivors, and disability insurance provisions of the Social Security Act. A different age may be specified, provided that if it is lower than 65 it represents the age at which employees customarily retire in the particular company or industry and is not a device to accelerate funding. In profit-sharing or stock bonus plans, where there is a stated retirement age it is merely one of several events that may be designated as fixing the time for making distributions. Since the amount of the distributions is dependent upon profits, there is no definitely stated rate of benefits payable at such age. Consequently, the stated retirement age in a profit-sharing or stock bonus plan does not have the same significance as "normal retirement age" in a pension plan. See Rev. Rul. 71–147, C.B. 1971–1, 116.

(f) Optional Retirement Prior to Normal Retirement Age

Any reasonable optional early retirement age will generally be acceptable provided, however, that if the employer's consent is required, the value of the early retirement benefit does not exceed the value of the employee's vested benefits at that time. This requirement was first announced in Revenue Ruling 57–163, C.B. 1957–1, 128, originally published in I.R.B. 1957–16, 10, on April 22, 1957. Prior to that date, determination letters had been issued on the qualification of plans that provided for early retirement with the employer's consent if it appeared that the prohibited discrimination would not result because of such provision. Such determination letters continue in effect unless and until revoked. See Rev. Rul. 58–151, C.B. 1958–1, 192, as amplified by Rev. Rul. 58–604, C.B. 1958–2, 147. As for provisions in disability and hardship cases, see paragraph (m) hereof. If the optional early retirement age is earlier than 65 (60 for women), and if integration with old-age, survivors', and disability insurance, or with the benefits under the Railroad Retirement Act, is involved (see part 4(j) hereof), the benefits which depend on integration must be appropriately limited. See sections 9 and 10 of Rev. Rul. 71–446, I.R.B. 1971–41, 8, where integration with OASDI benefits is involved, or paragraph 7 of Rev. Rul. 12, C.B. 1953–1, 290, paragraph 10 of Rev. Rul. 61–147, C.B. 1961–2, 102, and section 12.04 of Rev. Rul. 70–149, C.B. 1970–1, 95, where integration with Railroad Retirement Benefits is involved.

(g) Participation After Normal Retirement Age

The normal retirement age is the time from which definitely determinable benefits under a pension plan become fixed and payable. An employee who has reached such age and has fulfilled the service requirement and other uniformly applicable provisions of the plan must be permitted to retire and to commence receiving the benefits payable thereunder. Arrangements, however, may be mutually made for continued employment beyond normal retirement age. In such event, provision may be made with respect to the treatment of the pension benefits such as, for example, payment as though the employee had actually retired, deferment to actual retirement without increment for the interval between normal retirement date and actual retirement, or actuarial equivalent on

actual retirement of the benefit at normal retirement age. Whatever provisions are made, however, must be uniformly applied to all participants. See Rev. Rul. 71–24, C.B. 1971–1, 114.

(1) Additional Benefits for Service After Normal Retirement Age

Provision may be made for additional benefits on account of service after normal retirement age provided such provision is uniformly applicable to all employees under similar circumstances and does not result in the prohibited discrimination. See Rev. Rul. 69–414, C.B. 1969–2, 59. In a unit-benefit plan, the units may be continued during the time of the extended service and the total computed to the time of actual retirement. Under a money-purchase plan, the regular rate of contributions may continue to actual retirement. Under a fixed-benefit plan the benefits payable at actual retirement may be the actuarial equivalent of those payable at normal retirement age.

(2) Continued Participation Under a Profit-Sharing or Stock Bonus Plan

A provision for continued participation under a profit-sharing or stock bonus plan and for contributions to provide additional benefits for employees who remain in employment beyond the stated age does not adversely affect the qualification of the plan, provided, however, that such provision is uniformly applied to all employees under similar circumstances and does not result in the prohibited discrimination. See Rev. Rul. 69–414, C.B. 1969–2, 59.

(h) Basis of Compensation on Which Benefits Are Computed

Section 401(a)(5) of the Code provides in part: "Neither shall a plan be considered discriminatory * * * merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship *to the total compensation, or the basic or regular rate of compensation,* of such employees * * *" (Emphasis supplied). Thus, total compensation (which may include bonuses, commissions, or overtime pay), basic compensation, or regular rate of compensation may be used, provided that whatever is used is consistently and uniformly applicable to all participants. See also subpart (b) hereof with respect to variations in contributions or benefits.

(i) Imputed Compensation

Employer contributions under a qualified employees' pension plan on behalf of uncompensated employees, who are also officers, may not be based on imputed compensation for these employees since such treatment would not be consistently and uniformly applicable to all participants and would, therefore, result in the prohibited discrimination. See Rev. Rul. 62–206, C.B. 1962–2, 129.

(j) Final Pay Plans

Section 1.401–1(b)(3) of the regulations provides in part: "* * * a plan is not for the exclusive benefit of employees in general if, by any device whatever, it discriminates either in eligibility requirements, contributions, or benefits in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or the highly compensated employees. See section 401(a)(3), (4), and (5)." Thus, benefits computed at a uniform rate of compensation for all participants may be nondiscriminatory but if compensation is adjusted to favor one or a select few the plan may become discriminatory in operation. See section 401(a)(5) of the Code. For example, under a 50 percent fixed benefit plan, a $25,000-a-year officer who fulfills all requirements for retirement would be entitled to an annuity of $12,500, but if shortly before retirement his compensation is increased to $50,000 per annum his retirement annuity, computed on final salary, would be $25,000, or 100 percent of compensation before the increase, whereas others would only be receiving 50 percent. Section 1.401–1(b)(3) of the regulations also points out: "The law is concerned not only with the form of a plan but also with its effects in operation. For example, section 401(a)(5) specifies certain provisions which of themselves are not discriminatory. However, this does not mean that a plan containing these provisions may not be discriminatory in actual operation." Accordingly, in any case where increases in compensation during the last 3 years of employment are taken into account for the purpose of computing benefits, provision is generally made that such benefits are to be based on compensation averaged over a period of at least 3 years. In a pension plan which provides both past and future service credits the past service credits may be computed on the average compensation for the 3-year period immediately preceding the establishment of the plan. See Rev. Rul. 71–330, I.R.B. 1971–30, 27.

(k) Adjustment of Benefits Due to Increases or Decreases in Compensation

Consistent and uniform bases of compensation for determining benefits under a plan are essential in order to preclude the prohibited discrimination. If benefits are based on compensation at the time the plan is established, and if certain highly compensated employees are within a few years of retirement, their benefits will be based on the highest, or nearly the highest, compensation, while lower paid employees who entered the service of the employer shortly before the plan was established will receive benefits based on the lowest, or nearly the lowest, compensation. To eliminate discrimination, a consistent and uniform application should prevail as between both groups, e.g., where compensation within a few years before retirement that includes salary increments since

original employment is used for the highly compensated employees, similar compensation should be used for the lower paid employees. Therefore, provision is to be made for increases in benefits when compensation on which benefits are computed is increased. See Rev. Rul. .69–251, C.B. 1969–1, 127 and Rev. Rul. 71–331, I.R.B. 1971–30, 28. Plans may also provide for decreases in benefits because of decreases in compensation but since the aforesaid result is not present such provision is not required.

(l) Discretion as to Payment of Benefits Under Basic Options

Pension or annuity plans may include various modes of settlement for payment of benefits if under each mode the distribution has the same value as a distribution determined under any other mode of settlement provided for under the plan, and if, upon retirement each participant is entitled to a fully vested right in the amount which has been accumulated for his benefit. In an insured pension or annuity plan, any type of benefit that is provided under the options contained in the insurance contract is the actuarial equivalent of any other option. Consequently, discretion in the trustee to determine under which option benefits will be paid does not result in the prohibited discrimination. See Rev. Rul. 71–296, I.R.B. 1971–28, 49. Similarly, discretion may be provided for in a profit-sharing plan permitting the trustee to determine whether lump-sum or periodic distributions are to be made in particular cases. The amounts distributable must be fully vested in the employee and, if periodic distributions are to be made to some as against lump-sum payments to others, the distribution must reflect the actual increments and losses in the participant's account. See Rev. Rul. 71–540, I.R.B. 1971–49, 11.

(m) Provisions for Disability and Hardship Cases

Pension plans may contain provisions for early retirement because of disability provided that the term "disability" is defined and the rules with respect thereto are uniformly and consistently applied to all employees in similar circumstances. Provisions may also be made in stock bonus and profit-sharing plans for accelerated distributions because of hardship provided that the term "hardship" is defined, the rules with respect thereto are uniformly and consistently applied, and the distributable portion does not exceed the employee's vested interest. See Rev. Rul. 71–224, C.B. 1971–1, 124. Similar provisions, however, are not permissible under a pension plan, since, as provided for in section 1.401–1(b)(1)(i) of the regulations, such a plan is established and maintained "primarily to provide systematically for the payment of definitely determinable benefits to * * * employees over a period of years, usually for life, after retirement." See Rev. Rul. 56–693, C.B. 1956–2, 282, as modified by Rev. Rul. 60–323, C.B. 1960–2, 148.

(n) Provision That Benefits Be Based on Cash Surrender Value in Insured Plans

If an insured plan provides that benefits shall be based on cash surrender values, all contracts purchased must provide uniform cash surrender value with respect to all employees under similar circumstances. See Rev 71–328, I.R.B. 1971–30, 26.

(o) Loan Privileges

Provision may be made for granting loans to participants provided the loans are granted in a uniform and nondiscriminatory manner. The qualification of a plan will not be affected by a provision in the trust instrument that adequately secured loans bearing a reasonable rate of interest and providing for repayment within a specified period of time may be granted to employee-participants even though such loans may be in amounts exceeding their vested interests. See Rev. Rul. 67–288, C.B. 1967–2, 151. However, "so-called" loans may constitute "distributions" if there is a tacit understanding between the parties that collection is not intended or if, for some other reason, the transaction does not create a debtor-creditor relation. See Rev. Rul. 67–258, C.B. 1967–2, 68.

(p) Past Service Benefits in Plans That Contain a Minimum Age or Service Requirement for Eligibility

A plan that contains a minimum age or service requirement for eligibility and provides for past service credits for all prior service of original, but not subsequent, participants will generally be considered objectionable within the purview of section 401(a)(3)(B) and (4) of the Code unless it can be demonstrated that such credits do not result in the prohibited discrimination. However, where the difference is only one year, e.g., if there is a one year waiting period for eligibility, but original participants are given credit for all prior service, including the one year waiting period, and new participants do not receive credit based on the one year, such a provision may be acceptable. Provision may also be made for credits on account of past services rendered after attainment of a specified age or completion of minimum service, if applied to original as well as subsequent participants. See Rev. Rul. 70–77, C.B. 1970–1, 103.

(q) Right of Trustee to Borrow on Insurance Contracts

Provision may be made granting the trustee the right to borrow against the loan values of insurance contracts, provided, however, that in doing so the remaining interest of employees in whose favor discrimination is prohibited is proportionately no greater than the interest of other employees. See Rev. Rul. 71–329, I.R.B. 1971–30, 26.

(r) Earmarked Investments

Where amounts to be distributed to participants under an employees' trust are measured by investments that have been earmarked for their respective accounts, the trustee is to invest each participant's interest proportionately, unless all participants have the right to direct the trustee to select the type of investment with respect to their individual shares. See Rev. Rul. 70–370, C.B. 1970–2, 84.

Part 6
Termination of a Qualified Plan

Section 401(a)(7) of the Internal Revenue Code of 1954 —Regulations Sections 1.401–4(c) and 1.401–6

(a) Employees' Rights on Termination of Plan

A qualified plan must expressly provide that upon its termination, or complete discontinuance of contributions thereunder, the rights of each employee to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the rights of each employee to the amounts credited to his account at such time, are nonforfeitable. See section 1.401–6(a)(1) of the regulations. The failure of an otherwise qualified plan to specifically provide in the first year of the plan that employees' rights to benefits will become nonforfeitable upon discontinuance of contributions does not prevent the plan from meeting the requirements of section 401(a) of the Code where the employer makes the first year's contributions, required to bring the plan into existence, provided the necessary provision is added by amendment during the second year of the plan's existence. See Rev. Rul. 68–137, C.B. 1968–1, 164. A qualified pension or annuity plan must generally include limitations on benefits to certain highly paid employees in accordance with the termination rule set forth in section 1.401–4(c) of the regulations. See subpart (c) hereof.

(b) Provision for Allocation of Unallocated Funds

Provision must also be made for the allocation of any previously unallocated funds to participating employees upon termination of the plan or complete discontinuance of contributions. Any provision for allocation is acceptable if it (1) specifies the method to be used, (2) does not discriminate in favor of employees enumerated in section 401(a)(4) of the Code, and (3) is not in conflict with the restrictions set forth in section 1.401–4(c) of the regulations as to compliance with the "termination rule." See subpart (c) hereof. The allocation of funds may be in cash or in the form of other benefits provided under the plan. The allocation of funds contributed by the employer among the employees, however, need not necessarily benefit all covered employees. For example, an allocation may be satisfactory if priority is given to benefits for employees over the age of 50 at the time of termination of the plan, or those who then have at least 10 years of service, or those who meet both such age and service requirements, provided, however, that there is no possibility of discrimination in favor of employees who are officers, shareholders, supervisors, or highly compensated. See section 1.401–6(a)(2) of the regulations and Rev. Rul. 71–314, I.R.B. 1971–29, 88. Similarly, if the prohibited discrimination does not result, the funds may be used, for example, to continue benefits first to retired employees, then for employees who have met the requirements for retirement but have not yet retired, then for employees over age 60, and so on down to younger groups, until the funds are fully exhausted.

(c) Termination Rule

If benefits for employees who are officers, etc., are funded, or substantially so, because of their nearness to retirement, and benefits for other employees are not similarly funded prior to termination of the plan, the prohibited discrimination will result. Consequently, if employer contributions may be used for the benefit of an employee who is among the 25 highest paid at the time the plan is established and whose anticipated annual pension exceeds $1,500, the plan must include limitations in accordance with the "termination rule." See section 1.401–4(c) of the regulations. Guides for applying the termination rule are set forth in Rev. Rul. 55–60, C.B. 1955–1, 37; Rev. Rul. 61–10, C.B. 1961–1, 143; Rev. Rul. 65–294, C.B. 1965–2, 136; Rev. Rul. 67–114, C.B. 1967–1, 85; and Rev. Rul. 67–213, C.B. 1967–2, 149. A provision for restriction on distributions to the 25 highest paid employees is not acceptable if the trustee is not applicable to profit-sharing and stock bonus plans Rev. Rul. 66–176, C.B. 1966–1, 85. The termination rule contained in section 1.401–4(c) of the regulations is not aplicable to profit-sharing and stock bonus plans since acceptable allocation formulae under such plans are designed to preclude the prohibited discrimination under comparable circumstances. Furthermore, the restrictions included in the termination rule need not be included in certain types of money purchase pension plans. See Rev. Rul. 69–415, C.B. 1969–2, 96. The requirements pertaining to permanency, however, are applicable to all types of plans. See part 2(h) hereof.

(d) Discontinuance or Suspension of Contributions and Curtailments

A discontinuance of contributions is similar to a termination of the plan in that employees who become eligible to enter the plan subsequent to the discontinuance receive no benefits and no additional benefits, attributable to employer contributions, accrue to any of the participants unless contributions are resumed. The same requisites that apply to a termination of a plan are, therefore, equally applicable to a discontinuance. In such case, vesting of employees' rights is required. See subpart (a) hereof and section 1.401–6(c) of the regula-

tions. See part 2(h) hereof, however, with respect to the effect on continued exemption of the trust where contributions are discontinued for a valid business reason.

(1) Suspensions

A suspension is a temporary cessation of contributions which may ripen into a discontinuance. In the case of a pension or annuity plan, however, a suspension of contributions will not necessarily require vesting of employees' rights merely because of the existence of such situation, and the applicability of a prior ruling as to the qualification of the plan under section 401(a) of the Code will not be adversely affected by the suspension if the following conditions are met, namely: (1) The benefits to be paid or made available under the plan are not affected at any time by the suspension, and (2) the unfunded past service cost at any time (which includes any unfunded prior normal cost and unfunded interest on any unfunded cost) does not exceed the unfunded past service cost as of the date of establishment of the plan (plus any additional past service or supplemental costs added by amendment). See section 1.401–6(c) of the regulations. In the case of a profit-sharing plan, contributions must be recurring and substantial. See section 1.401–1(b)(2) of the regulations. A determination as to whether a suspension of contributions under a profit-sharing plan constitutes a discontinuance will be made upon consideration of the facts and circumstances of the particular case. For factors in determining whether a suspension of contributions under a profit-sharing plan constitutes a discontinuance, see Rev. Rul. 71–94, C.B. 1971–1, 126.

(2) Curtailments

Where a plan that requires employee contributions is amended so as to make it noncontributory, and provision is also made for a refund of employee contributions, the plan is curtailed but its status for qualification is thereby not adversely affected if the prohibited discrimination does not result. See Rev. Rul. 70–259, C.B. 1970–1, 108.

Part 7
Application of Forfeitures

Section 401(a)(8) of the Internal Revenue Code of 1954 —Regulations Section 1.401–7

(a) Forfeitures Under Pension Plans

A qualified pension plan must provide that forfeitures arising from severance of employment, death, or for any other reason, must not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer contributions thereunder. See section 401(a)(8) of the Code. The amounts forfeited must be used as soon as possible to reduce the employer's contributions under the plan. See section 1.401–1(b)(1)(i) and 1.401–7 of the regulations and Part 2(m) hereof. See Rev. Rul. 67–68, C.B. 1967–1, 86, for some examples of plan provisions that satisfy the requirements of section 401(a)(8) of the Code.

(b) Forfeitures Under Profit-Sharing and Stock Bonus Plans

Provision may be made in profit-sharing and stock bonus plans that forfeitures be used to reduce employer contributions that otherwise would be required under the contribution formula contained in the plan. Although such application is not mandatory, whatever provision is made must not result in prohibited discrimination. See Rev. Rul. 71–313, I.R.B. 1971–29, 88.

Appendix

Revenue Rulings cited in this publication

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
12	1953–1, 290	4(j)(3); 5(f)

Integration with benefits under Railroad Retirement Act as amended through October 1951; extended to cover integration at $4,800 by Rev. Rul. 61–147, C.B. 1961–2, 102.

33	1953–1, 267	1(b)

Guides for qualification released in 1953; replaced by Rev. Rul. 57–163, C.B. 1957–1, 128, guides released in 1957; further replaced by Rev. Rul. 61–157, C.B. 1961–2, 67, guides released in Rev. Rul. 65–178, C.B. 1965–2, 94, guides 1961; released in 1965; and Rev. Rul. 69–421, C.B. 1969–2, 59.

82	1953–1, 288	5(c)(3)

Suspension of plan benefits on suspension of Social Security benefits because of post retirement employment.

109	1953–1, 288	2(m)

Forfeitures under money-purchase pension plan may not be used to increase benefits to remaining participants; see also Rev. Rul. 60–73, C.B. 1960–1, 155.

185	1953–2, 202	2(m)

Variable annuities under qualified plan; see also Rev. Rul. 60–337, C.B. 1960–2, 151.

54–51	1954–1, 147	2(n)(2)

Incidental life insurance under profit-sharing plan; amplified by Rev. Rul. 57–213, C.B. 1957–1, 157, and Rev. Rul. 60–84, C.B. 1960–1, 159.

54–67	1954–1, 149	2(n)

Plan funded only with ordinary life insurance contracts does not qualify; see also Rev. Rul. 65–25, C.B. 1965–1, 173.

54–152	1954–1, 149	2(b)

Contributions by employees only to retirement but employer is obligated to pay stipulated benefits after trust funds are exhausted; clarified by Rev. Rul. 66–205, C.B. 1966–2, 119.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
55–60	1955–1, 37	2(h); 6(c)

Termination of pension plan after 10-year period of restriction on benefits for 25 highest paid employees.

55–81	1955–1, 392	4(a)

Plan covering one individual who is the only employee.

55–276	1955–1, 401	4(r)

Total compensation from two employers for participation in $3,600 excess plan maintained jointly by both.

55–748	1955–2, 234	2(n)

Life insurance proceeds payable to employees' trust.

56–267	1956–1, 206	2(e)(l)

Qualification of pooled investment trust; distinguished by Rev. Rul. 67–301, C.B. 1967–2, 146; see also Rev. Rul. 66–297, C.B. 1966–2, 234.

56–432	1956–2, 284	3(b)

Preference to employer to employee's interest in plan to pay indebtedness.

56–497	1956–2, 284	4(d); 4(i); 5(a)

Cash and trusteed profit-sharing plan.

56–633	1956–2, 279	2(n)

Qualification of annuity portion of contract which also includes group term life and accident and health insurance.

56–656	1956–2, 280	2(j)

Plan providing for election to pay beneficiary only does not qualify; distinguished by Rev. Rul. 60–59, C.B. 1960–1, 154.

56–693	1956–2, 282	2(o)(1); 5(m)

Employee withdrawals prior to severance of employment; modified by Rev. Rul. 60–323, C.B. 1960–2, 148.

57–77	1957–1, 158	5(b)

Profit-sharing allocations by retirement units; see also Rev. Rul. 68–652, C.B. 1968–2, 176; Rev. Rul. 68–653, C.B. 1968–2, 177; Rev. Rul. 68–654, C.B. 1968–2, 179; and Rev. Rul. 68–592, C.B. 1968–2, 166.

Revenue Rulings cited in this publication—Cont.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
57–163	**1957–1, 128**	**1(c); 5(f)**

Guides for qualification released in 1957; replaced Rev. Rul. 33, C.B. 1953–1, 267; replaced by Rev. Rul. 61–157, C.B. 1961–2, 67; further replaced by Rev. Rul. 65–178, C.B. 1968–2, 94, and Rev. Rul. 69–421, C.B. 1969–2, 59.

57–213	**1957–1, 157**	**2(n)(2)**

Incidental life insurance under profit-sharing plan; amplifies Rev. Rul. 54–51, C.B. 1954–1, 147; see also Rev. Rul. 60–84, C.B. 1960–1, 159.

57–419	**1957–2, 264**	**2(f); 3(a)**

Trust instrument executed during taxable year but corpus furnished during grace period in following year.

58–151	**1958–1, 192**	**5(f)**

Early retirement with employer's consent; amplified by Rev. Rul. 58–604, C.B. 1958–2, 147.

58–604	**1958–2, 147**	**5(f)**

Early retirement with employer's consent amplifies Rev. Rul. 58–151, C.B. 1958–1, 192.

59–14	**1959–1, 84**	**4(f)**

Coverage of employees exempt under wage-hour provisions of Fair Labor Standards Act.

59–185	**1959–1, 86**	**4(h)**

Voluntary employee contributions.

59–402	**1959–2, 122**	**2(f)**

Annuity plan in effect.

60–33	**1960–1, 152**	**2(r)**

Accumulation of dividends on insurance contracts. See also Rev. Rul. 70–421, C.B. 1970–2, 85.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
60–59	**1960–1, 154**	**2(n)(1)**

Post retirement death benefits; Rev. Rul. 56–656, C.B. 1956–2, 280, distinguished.

60–73	**1960–1, 155**	**2(m)**

Application of forfeitures in money-purchase pension plan; see also Rev. Rul. 109, C.B. 1953–1, 288.

60–83	**1960–1, 157**	**2(n)(1)**

Profit-sharing investments in paid-up units of endowment insurance.

60–84	**1960–1, 159**	**2(n)(2)**

Incidental life insurance under profit-sharing plan; amplifies Rev. Rul. 54–51, C.B. 1954–1, 147; see also Rev. Rul. 57–213, C.B. 1957–1, 157.

60–276	**1960–2, 150**	**3(c)**

Conditioning contributions under new plan on favorable determination letter; supersedes Rev. Rul. 59–309, C.B. 1959–1, 117.

60–281	**1960–2, 146**	**2(o)(2); 2(o)(5)**

Withdrawal of employee contributions and increments thereon on discontinuance of participation.

60–323	**1960–2, 148**	**2(o)(1); 2(o)(3); 5(m)**

Withdrawal of employee voluntary contributions; see also Rev. Rul. 56–693, C.B. 1956–2, 282.

61–10	**1961–1, 143**	**6(c)**

Lump-sum distributions under plan subject to limitations on benefits for 25 highest paid employees.

61–121	**1961–2, 65**	**2(n)(1)**

Incidental preretirement death benefits under non-insured pension plan.

Revenue Rulings cited in this publication—Cont.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
61–147	**1961–2, 102**	**4(j)(3); 5(f)**

Guides for integrating pension benefits with benefits under Railroad Retirement Act, as amended through 1960; Rev. Rul. 12, C.B. 1953–1, 290, supplemented.

61–157	**1961–2, 67**	**1(b)**

Guides for qualification released in 1961; replaced Rev. Rul. 57–163, C.B. 1967–1, 128; replaced by Rev. Rul. 65–178, C.B. 1965–2, 94 and Rev. Rul. 69–421, C.B. 1969–2, 59.

61–164	**1961–2, 99**	**2(n)(3)**

Incidental accident and health insurance under profit-sharing plan.

62–139	**1962–2, 123**	**4(s)**

Past service with former employer.

62–195	**1962–2, 125**	**2(u)**

Plan providing lump-sum distributions only, not geared to profits or distributing employer stock, not qualified.

62–206	**1962–2, 129**	**5(f)**

Imputed compensation for computing benefits adversely affects qualification of plan.

63–46	**1963–1, 85**	**2(g)**

Funding pension benefits by transfer of funds in trust established by third party.

65–25	**1965–1, 173**	**2(n)**

Plan covering self-employed individuals providing only such benefits as are available under ordinary life insurance contracts not qualified. See also Rev. Rul. 54–67, C.B. 1954–1, 149.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
63–108	**1963–1, 87**	**2(j)(3)**

Plan covering sole stockholder—employee only not qualified; see also Rev. Rul. 55–81, C.B. 1955–1, 392.

65–178	**1965–2, 94**	**1(b)**

Guides for qualification released in 1965; replaced Rev. Rul. 61–157, C.B. 1961–2, 67; replaced by Rev. Rul. 69–421, C.B. 1969–2, 59.

65–294	**1965–2, 136**	**6(c)**

Treatment of excess reserves arising from application of restrictions imposed on benefits of highest paid employees.

66–11	**1966–1, 71**	**5(c)(2)**

Deferral of payment of employee's vested benefit.

66–12	**1966–1, 72**	**4(c); 4(m)**

Salaried-only pension plan that is not discriminatory; clarified by Rev. Rul. 68–244, C.B. 1968–1, 158.

66–13	**1966–1, 73**	**4(m)**

Salaried-only profit-sharing plan that is discriminatory.

66–14	**1966–1, 75**	**4(m)**

Salaried-only profit-sharing plan that is discriminatory even though the hourly employees are unionized and the employer may not unilaterally include them in the plan.

66–15	**1966–1, 83**	**4(m)**

Salaried-only profit-sharing plan that is discriminatory because the percentage of employer contributions for salaried employees exceeds the percentage of employer contributions under a pension plan for hourly employees; amplified by Rev. Rul. 70–183, C.B. 1970–1, 104.

66–92	**1966–1, 77**	**2(j)(2)**

Tax classification of professional service organizations and deferred compensation plans established by such organizations.

Revenue Rulings cited in this publication—Cont.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
66–143	1966–1, 79	2(n)(1)

Incidental life insurance under a trusteed money-purchase pension plan; clarified by Rev. Rul. 68–31, C.B. 1968–1, 151.

66–174	1966–1, 81	2(g)

Profit-sharing plan that permits employer contributions to be made out of current profits or accumulated earned surplus regardless of whether there are earnings or profits for Federal income tax purposes.

66–175	1966–1, 82	2(j)

Voluntary contributions by former employees of employer participating in qualified, multi-employer negotiated pension plan.

66–176	1966–1, 85	6(c)

Provision in plan that insurer or trustee is obligated to apply restrictions on benefits to highest paid employees only upon notification by employer.

66–218	1966–2, 120	2(j)(3)

Inclusion of shareholder-employees in plan established by electing small business corporation.

66–297	1966–2, 234	2(e)(1)

Qualification of pooled investment trust and exemption of common trust fund.

67–68	1967–1, 86	7(a)

Pension plan provisions that meet the requirements of section 401(a)(8) prohibiting use of forfeitures to increase plan benefits

67–114	1967–1, 85	6(c)

Application of limitations imposed on benefits of highest paid employees where a change in a pension or annuity plan increases benefits.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
67–213	1967–2, 149	6(c)

Pension plan considered terminated by transfer of assets to trustee of profit-sharing trust.

67–258	1967–2, 68	5(o)

Inclusion of proceeds representing loan value of annuity contract in gross income of employee when received from insurance company.

67–288	1967–2, 151	5(o)

Qualification of pension plan that permits adequately-secured loans in excess of an employee's vested interest.

67–301	1967–2, 146	2(k)(5)

Effect of investing funds of employees' trust in common trust fund; distinguishes Rev. Rul. 56–267, C.B. 1956–1, 206.

67–340	1967–2, 147	2(o)(5)

Return of employee contributions pursuant to amendment that makes plan noncontributory.

68–24	1968–1, 150	2(c)

Withdrawal of employee contributions after five years of participation in a profit-sharing plan.

68–25	1968–1, 151	2(b)

Payment by employer of part or all of contribution otherwise required of employee in a particular year.

68–31	1968–1, 151	2(n)(1)

Incidental death benefits under qualified money purchase pension plan; clarifies Rev. Rul. 66–143, C.B. 1966–1, 79.

68–116	1968–1, 177	2(m)

Use of variable annuity contracts. See also Rev. Rul. 185, C.B. 1953–2, 202.

Revenue Rulings cited in this publication—Cont.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
68–137	1968–1, 164	6(a)

Qualification of pension plan that does not contain express language relating to discontinuance of contributions during its first year of operation.

68–159	1968–1, 153	2(n)

Pension plan that permits trustee to deduct and pay retired employee's union dues from his monthly pension.

68–223	1968–1, 154	2(g)

Transfer of funds from non-exempt employees' welfare fund to qualified employees' trust.

68–243	1968–1, 157	4(j)(4)

Integration of plan benefits with benefits provided under state workmen's compensation and occupational diseases laws.

68–244	1968–1, 158	4(c); 4(m)

Effect of percentage of high paid employees and percentage of total employees covered under salaried-only plan in determining whether plan meets coverage requirements; clarifies Rev. Rul. 66–12, C.B. 1966–1, 72.

68–299	1968–1, 157	4(j)(1)

Provision for life insurance under integrated profit-sharing plan; amplifies Rev. Rul. 61–75, C.B. 1961–1, 140; supersedes Rev. Rul. 67–426, C.B. 1967–2, 149.

68–301	1968–1, 161	5(a)

Qualified plan that meets the coverage requirements of section 401(a)(3)(A) need not provide benefits for ineligible employees.

68–302	1968–1, 163	5(c)(1); (2)

Vesting provisions under qualified plans.

68–370	1968–2, 174	2(e)(2)

Meeting coverage and nondiscrimination requirements where corporate employer participates in a partnership or a joint venture that has its own employees.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
68–453	1968–2, 163	2(n)(1)

Incidental life insurance benefits under a qualified plan.

68–454	1968–2, 164	5(b)

Use of credits under unfunded nonqualified deferred compensation plan in determining benefits under a qualified pension plan; distinguishes Rev. Rul. 54–13, C.B. 1959–1, 83; distinguished by Rev. Rul. 69–145, C.B. 1969–1, 126.

68–592	1968–2, 166	5(b)

Allocation of employer contributions under money purchase pension plan on basis of service as well as compensation.

68–651	1968–2, 167	2(g)

Plan intended to qualify as a profit-sharing plan contains provision to permit employees to make voluntary contributions prior to the time they become eligible to share in the employer's profits.

68–652	1968–2, 176	5(b)

Qualification of employees' profit-sharing plan that contains a years-of-service factor in formula for allocating employer contributions.

68–653	1968–2, 177	5(b)

Profit-sharing formula weighted by years of service through adding compensation and service units.

68–654	1968–2, 179	5(b)

Profit-sharing formula weighted by years of service through multiplying compensation and service units.

69–5	1969–1, 125	4(j)(2)

Guides for integration of disability benefits provided under pension and annuity plans with disability benefits provided under the Social Security Act.

69–24	1969–1, 110	2(h)

Effect of terminations and curtailments of plans previously held to be qualified; see also Rev. Rul. 55–60, C.B. 1955–1, 37, and Rev. Rul. 69–25, C.B. 1969–1, 113.

69–25	1969–1, 113	2(h)

Qualification of plans that are abandoned or discontinued within a few years after they are established; see also Rev. Rul. 69–24, C.B. 1969–1, 110.

Revenue Rulings cited in this publication—Cont.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
69–35	1969–1, 117	2(g); 2(p)

Allocation of contribution made to the common employees' trust maintained by an affiliated group to employees of an employer other than the employer making the contribution.

69–38	1969–1, 131	4(f)

Leave of absence may be with Armed Forces.

69–65	1969–1, 114	2(k)(1)

Application of fair return investment requisite to obligatory investment by stock bonus trust in stock of the employer; modifies Rev. Rul. 57–372, C.B. 1957–2, 256.

69–144	1969–1, 115	2(j)(1)

Past service credit for period in which employee was a partner or proprietor of predecessor business.

69–145	1969–2, 126	5(b)

Basing benefits on compensation plus credits under an unfunded arrangement does not result in the prohibited discrimination; distinguishes Rev. Rul. 68–454, C.B. 1968–2, 164.

69–157	1969–1, 115	2(h)

Retention of exempt status for employees' trust after contributions have been discontinued.

69–158	1969–1, 126	5(a)

Two contribution formulas in one plan covering two classes of employees.

69–159	1969–1, 133	2(h)

Deductions under union-negotiated plans.

69–217	1969–1, 115	4(h)

Employees' voluntary contributions under qualified plans.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
69–230	1969–1, 116	2(c)

Deferral of 100 percent of compensation under plan intended to qualify as pension plan.

69–231	1969–1, 118	2(f); 3(a)

Written trust instrument executed before close of taxable year. See also Rev. Rul. 56–673, C.B. 1956–2, 281.

69–250	1969–1, 116	2(e)

Multi-employer plan and trust.

69–251	1969–1, 127	5(k)

Increase in benefits upon increase in compensation.

69–252	1969–1, 128	2(h)

Notification by trustee of termination of plan.

69–277	1969–1, 116	2(o)(1); 2(o)(5)

Withdrawal of increments on employees' voluntary contributions at time contributions are withdrawn.

69–295	1969–1, 117	2(q)

Use of employees' vested interest under profit-sharing plan to make up deficiency in employer's contributions under pension plan.

69–414	1969–2, 59	5(g)(1); (2)

Continued participation under a profit-sharing plan after a stated age.

69–415	1969–2, 96	6(c)

Failure to include termination rule will not necessarily qualify a plan.

69–421	1969–2, 59	1(b)

Guides for qualification released in 1969; replaced Rev. Rul. 65–178, C.B. 1965–2, 94.

69–494	1969–2, 88	2(k)(1)

Requirements to be met for trust's investment in employer stock or securities. P S 49 superseded.

Revenue Rulings cited in this publication—Cont.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited

69–502 **1969–2, 89** **2(m)**

Where benefits of a profit-sharing plan offset benefits of pension plan covering the same employees, neither plan qualifies. Distinguished by Rev. Rul. 70–371, C.B. 1970–1, 85 and Rev. Rul. 70–578, C.B. 1970–2, 86.

69–569 **1969–2, 91** **2(j)(4)**

Plan that covers an attorney-employee who is also a self-employed attorney. See also Rev. Rul. 70–29, C.B. 1970–1, 86.

70–29 **1970–1, 86** **2(j)(4)**

An attorney who works for an annual fee is not an employee. PS 15 superseded. See also Rev. Rul. 69–569, C.B. 1969–2, 91.

70–75 **1970–1, 95** **4(e)**

Dual eligibility requirements.

70–77 **1970–1, 103** **5(p)**

Past service benefits where plans contain a minimum age or service requirement for eligibility.

70–125 **1970–1, 87** **2(s); 2(t)**

Plan must provide for valuation of securities at least once a year.

70–126 **1970–1, 95** **4(p)**

Plan may provide reentry to former participants.

70–149 **1970–1, 95** **4(j)(3); 5(f)**

Guides for integrating benefits with benefits under Railroad Retirement Act as amended through 1968.

70–173 **1970–1, 87** **2(l)**

Designation of beneficiaries. Rev. Rul 54–398, C.B. 1954–2, 239 superseded.

Plan need not specify the purpose of the leave of absence.

70–181 **1970–1, 88** **4(f)**

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited

70–183 **1970–1, 104** **4(m)**

Profit-sharing plan covering shareholders disqualifies where employer contributions are 15% of compensation and union plan covering hourly paid employees requires employer contribution of 3%; amplifies Rev. Rul. 66–15, C.B. 1966–1, 83.

70–200 **1970–1, 101** **4(c)**

A plan covering employees in all compensation ranges and which does not discriminate qualifies.

70–257 **1970–1, 90** **2(h)**

Qualification of collectively-bargained industry-wide pension plan negotiated for 5 year period.

70–259 **1970–1, 108** **2(o)(4); 6(d)(3)**

Refund of employees' contributions. Rev. Rul. 55–14, C.B. 1955–1, 302 and Rev. Rul. 61–79, C.B. 1961–1, 138, superseded.

70–316 **1970–1, 91** **2(j)**

Plan cannot remain in qualified status when there are no employees eligible to participate. Rev. Rul. 55–629, C.B. 1955–2, 588 superseded.

70–370 **1970–2, 84** **5(r)**

Earmarked investments.

70–371 **1970–2, 85** **2(m)**

Contribution to a profit-sharing plan may be offset by contributions to a pension plan. Rev. Rul. 69–502, C.B. 1969–2, 89, distinguished. See also Rev. Rul. 70–578, C.B. 1970–2, 86.

70–421 **1970–2, 85** **2(r)**

A trust with a significant reserve that may revert to the employer on termination does not qualify. See also Rev. Rul. 60–33, C.B. 1960–1, 152.

70–578 **1970–2, 86** **2(m)**

Two plans qualify where amount of offset of benefits is definitely determinable. Rev. Rul. 69–502, C.B. 1969–2, 89, distinguished. See also Rev. Rul. 70–371, C.B. 1970–2, 85.

70–611 **1970–2, 89** **2(n)(1)**

Guides for determining incidental death benefits where employee dies before retirement.

Revenue Rulings cited in this publication—Cont.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
70–658	1970–2, 87	4(h)

Employee voluntary contribution of 10% in addition to required contribution of 3% may qualify.

71–4	1971–1, 120	5(b)

Profit-sharing plan that provides for forfeitures to be allocated on the basis of remaining participants' account balances does not discriminate.

71–24	1971–1, 114	5(g)

Participation after normal retirement age.

71–27	1971–1, 121	2(s)

Plan may provide for valuation of securities more often than once a year.

71–90	1971–1, 115	2(i)

Substitute methods for informing employees of plan.

71–91	1971–1, 116	2(b)

Unfunded, pay-as-you-go plan.

71–94	1971–1, 126	6(d)

Determination as to whether a suspension of contributions constitutes a discontinuance. Rev. Rul. 60–2, C.B. 1960–1, 164, superseded.

71–147	1971–1, 116	5(e)

The stated retirement age in a profit-sharing plan does not have the same significance as the normal retirement age in a pension plan.

71–149	1971–1, 118	3(e)

No reversion in profit-sharing and stock bonus plans.

71–150	1971–1, 123	5(c)(1)

Vesting requirements where there is a large turnover of rank-and-file employees.

71–151	1971–1, 123	5(c)(1)

Permissible vesting methods depend on the facts in each case.

Content and subsequent action, if any

Revenue Ruling number	Cumulative Bulletin reference	Part of this publication in which cited
71–152	1971–1, 127	3(d)

Erroneous actuarial error.

71–192	1971–1, 119	4(n)

Coverage requirements must be met on at least one day in each quarter.

71–224	1971–1, 124	5(m)

Profit-sharing plan may provide for a "hardship" distribution provided it is uniformly applied.

71–244	1971–1, 119	4(j)(4)

Integration with benefits under a social security system of a foreign country.

71–255	1971–1, 114	5(d)

A ceiling on the amount of benefits is not required.

71–263	1971–1, 125	4(i)

Plan that covers all employees where most are migratory employees does not qualify in operation.

	Internal Revenue Bulletin reference	
71–295	1971–28, 48	2(c)

Fixed number of years means at least 2 years. Rev. Rul. 54–231, C.B. 1954–1, 150, superseded.

71–296	1971–28, 49	5(l)

Plan may permit trustee to elect the method of distribution.

71–297	1971–28, 50	3(f)(4)

Return to employer after discontinuance of contributions.

71–312	1971–29, 87	4(o)

Plan may deny participation to employees who refuse deductions or physical examination.

71–313	1971–29, 88	7(b)

A profit-sharing plan may provide that forfeitures be used to reduce employer contributions.

Revenue Rulings cited in this publication—Cont.

Content and subsequent action, if any

Revenue Ruling number	Internal Revenue Bulletin reference	Part of this publication in which cited
71–314	1971–29, 88	6(b)

Allocation of unallocated funds on termination of plan.

71–327	1971–30, 25	4(q)

Plan exonerating trustee for reasonable delay in purchasing annuity contracts.

71–328	1971–30, 26	5(n)

Insured plan that provides benefits based on cash surrender values.

71–329	1971–30, 26	5(q)

Right of trustee to borrow on loan value of insurance contracts.

71–330	1971–30, 27	5(j)

Past service benefits based on a 3-year average does not discriminate.

71–331	1971–30, 28	5(k)

Contributions based on one-year's compensation without allowances for increases or decreases in compensation may be discriminatory.

Content and subsequent action, if any

Revenue Ruling number	Internal Revenue Bulletin reference	Part of this publication in which cited
71–446	1971–41, 8	4(j)(1); (k); 5(f)

Guides for integration of retirement benefits provided by pension, annuity, profit-sharing and stock bonus plans with old age and survivors' insurance benefits provided under the Social Security Act as amended through June 30, 1971.

71–540	1971–49, 11	5(l)

Periodic distributions to some and lump-sum to others.

72–58	1972–7, 8	4(g)

Burdensome contributions.

Revenue Procedure number	Cumulative Bulletin reference	
56–22	1956–2, 1380	2(h)

Continued application of prior determination letter where profit-sharing plan is amended only to drop indefinite contribution formula.

	Internal Revenue Bulletin reference	
72–6	1972–1, 20	2(h); 2(k)(1)

Processing requests for qualification of individually designed plans and exemption of related trusts or custodial accounts.