

(2) *Manner of obtaining permission for revocation.* [Reserved]

(Secs. 302(c)(2)(B), 412(c)(2)(B) of the Internal Revenue Code of 1954 (88 Stat. 871, 914))

[T.D. 7335, 39 FR 44009, Dec. 20, 1974]

**§ 11.412(c)-12 Extension of time to make contributions to satisfy requirements of section 412.**

(a) *In general.* Section 412(c)(10) of the Internal Revenue Code of 1954 provides that for purposes of section 412 a contribution for a plan year made after the end of such plan year but not later than two and one-half months after the last day of such plan year shall be deemed to have been made on such last day. Section 412(c) (10) further provides that the two and one-half month period may be extended for not more than six months under regulations.

(b) *Six month extension of two and one-half month period.* (1) For purposes of section 412 a contribution for a plan year to which section 412 applies that is made not more than eight and one-half months after the end of such plan year shall be deemed to have been made on the last day of such year.

(2) The rules of this section relating to the time a contribution to a plan is deemed made for purposes of the minimum funding standard under section 412 are independent from the rules contained in section 404(a) (6) relating to the time a contribution to a plan is deemed made for purposes of claiming a deduction for such contribution under section 404.

(Sec. 412(c)(10), Internal Revenue Code of 1954 (88 Stat. 917; 26 U.S.C. 412(c)(10)))

[T.D. 7439, 41 FR 46597, Oct. 22, 1976]

**§ 11.415(c)(4)-1 Special elections for section 403(b) annuity contracts purchased by educational institutions, hospitals and home health service agencies.**

(a) *Limitations applicable to contributions for section 403(b) annuity contracts—(1) In general.* An annuity contract described in section 403(b) which is treated as a defined contribution plan (as defined in section 414(i)) is subject to the rules regarding the amount of annual additions (as defined in section 415(c)(2)) that may be made to a participant's account in a defined con-

tribution plan for any limitation year (as defined in subparagraph (2) of this paragraph) under section 415(c)(1) and Revenue Ruling 75-481, 1975-2 C.B. 188. An annual addition to the account of an individual under a section 403(b) annuity contract in excess of such limitation for a limitation year is includible in the gross income of the individual for the taxable year with or within which such limitation year ends and reduces the exclusion allowance under section 403(b)(2) for such taxable year to the extent of the excess. Such annuity contracts are, of course, also subject to the limitation imposed by section 403(b)(2) with respect to the amount that may be contributed by the employer for the purchase of an annuity contract described in section 403(b) and be excluded from the gross income of the employee on whose behalf such annuity contract is purchased. In general, the excludable contribution for such an annuity contract for a particular taxable year is the lesser of the exclusion allowance computed under section 403(b)(2) for such taxable year or the limitation imposed by section 415(c)(1) for the limitation year ending with or within such taxable year. For purposes of the limitation imposed by section 415(c)(1), the amount contributed toward the purchase of an annuity contract described in section 403(b) is treated as allocated to the employee's account as of the last day of the limitation year ending with or within the taxable year during which such contribution is made.

(2) *Limitation year.* For purposes of this section—

(i) Except as provided in subdivision (ii) of this subparagraph, the limitation year applicable to an individual on whose behalf an annuity contract described in section 403(b) has been purchased by an employer shall be the calendar year unless such individual elects to change the limitation year to another 12-month period and attaches a statement to his income tax return filed for the taxable year in which such change is made.

(ii) The limitation year applicable to an individual described in subdivision (i) of this subparagraph who is in control (within the meaning of section 414 (b) or (c) as modified by section 415(h))

of any employer shall be the same as the limitation year of such employer.

(3) *Special elections.* Under section 415(c)(4), special elections are permitted with respect to section 403(b) annuity contracts (including custodial accounts treated as section 403(b) annuity contracts under section 403(b)(7)) purchased by educational institutions (as defined in section 151(e)(4) and the regulations thereunder), home health service agencies (as defined in subparagraph (4) of this paragraph) and hospitals. In lieu of the limitation described in section 415(c)(1)(B) otherwise applicable to the annual addition (as defined in section 415(c)(2)) that may be made to the account of a participant in a qualified defined contribution plan for a particular limitation year, an individual for whom an annuity contract described in this subparagraph is purchased may elect, in accordance with the provisions of paragraph (b) of this section, to have substituted for such limitation the amounts described in subparagraph (5)(i) or (5)(ii) of this paragraph. In lieu of the exclusion allowance determined under section 403(b)(2) and the regulations thereunder otherwise applicable for the taxable year with or within which the limitation year ends to an individual on whose behalf an annuity contract described in this subparagraph is purchased, such an individual may elect, in accordance with the provisions of paragraph (b) of this section, to have substituted for such exclusion allowance the amount described in subparagraph (5)(iii) of this paragraph.

(4) *Definition.* For purposes of this section, a home health service agency is an organization described in section 501(c)(3) which is exempt from taxation under section 501(a) and which has been determined by the Secretary of Health, Education, and Welfare to be a home health agency under section 1395(x)(o) of Title 42 of the United States Code.

(5) *Elections.* (i) For the limitation year that ends with or within the taxable year in which an individual separates from the service of his employer (and only for such limitation year), the “(A) election limitation” shall be the exclusion allowance computed under section 403(b)(2)(A) and the regulations thereunder (without regard to section

415) for the taxable year in which such separation occurs taking into account such individual’s years of service (as defined in section 403(b)(4) and the regulations thereunder) for the employer and contributions described in section 403(b)(2)(A)(ii) and the regulations thereunder during the period of years (not exceeding 10) ending on the date of separation. For purposes of the preceding sentence, all service for the employer performed within such period must be taken into account. However, the “(A) election limitation” shall not exceed the amount described in section 415(c)(1)(A) (as adjusted under section 415(d)(1)(B)) applicable to such individual for such limitation year.

(ii) For any limitation year, the “(B) election limitation” shall be equal to the least of the following amounts—

(A) \$4,000, plus 25 percent of the individual’s includable compensation (as defined in section 403(b)(3) and the regulations thereunder) for the taxable year with or within which the limitation year ends,

(B) The amount of the exclusion allowance determined under section 403(b)(2)(A) and the regulations thereunder for the taxable year with or within which such limitation year ends, or

(C) \$15,000.

(iii) For any taxable year, the “(C) election limitation” shall equal the lesser of the amount described in section 415(c)(1)(A) (as adjusted under section 415(d)(1)(B)) or the amount described in section 415(c)(1)(B) applicable to the individual for the limitation year ending with or within such taxable year. For purposes of the preceding sentence, compensation described in section 415(c)(1)(B) taken into account for a particular limitation year does not include amounts contributed toward the purchase of an annuity contract described in section 403(b) during such limitation year (whether or not includable in the gross income of the individual on whose behalf such contribution is made).

(b) *Special rules for elections and salary reduction agreements for years before final regulations are published—(1) Election.* (i) For a limitation year which

ends before or with or within the taxable year in which applicable final regulations under section 415 are first published in the FEDERAL REGISTER, an individual may wish to take advantage of the alternative limitations described in section 415(c)(4). One way of doing this is to attach a statement of intention to his individual tax return for the taxable year. The statement should provide that the individual intends to elect one of those alternative limitations. It should also specify which alternative he intends to elect. No form is prescribed for the statement of intention, but it must include the individual's name, address and Social Security number. If the individual is not required to file an income tax return for the taxable year to which the statement of intention is to apply, the statement of intention may still be filed at the Internal Revenue Service Center where that individual would file the return if he were required to file. It should be filed by the time he would have filed his return. The Internal Revenue Service will treat the statement of intention as an actual election for all taxable years through the taxable year in which applicable final regulations under section 415 are first published in the FEDERAL REGISTER for all purposes, except that it will not be irrevocable. If, pursuant to this subdivision, an individual takes advantage of an alternative limitation for a taxable year, then, except as provided in paragraph (b)(1)(iii) of this section, the individual may not take advantage of any other alternative limitation pursuant to this subdivision for any taxable year. If an individual does not file a statement of intention, he will still be able to take advantage of the alternative limitations for these taxable years. He will be able to do this if he determines his income tax liability for the taxable year in a way which is consistent with one of the alternative limitations.

(ii) The actual election for all taxable years through the taxable year in which applicable final regulations under section 415 are first published in the FEDERAL REGISTER will be made by filing the election with the Internal Revenue Service at the time and in the

manner to be described by final regulations under section 415.

(iii) When an individual makes the actual election for any taxable year through the taxable year in which applicable final regulations under section 415 are published in the FEDERAL REGISTER, he may choose any of the alternative limitations, even if his choice is inconsistent with the alternative limitation which he used in determining his income tax liability for that taxable year. He may also choose not to elect any of the alternative limitations, even if he used one of them in determining his income tax liability for that taxable year. However, if his choice is different from the choice which he used in determining his income tax liability for the taxable year, there may be an adjustment in his tax for that year. For purposes of section 6654 (relating to failure of an individual to pay estimated tax), a difference in tax for such a year resulting from a difference in these choices will not be treated as an underpayment. This rule applies to the extent the difference in tax is due to the actual election of one of the alternative limitations or to a final decision not to use one of the alternative limitations for the taxable year.

(2) *Salary reduction agreements for 1976 and 1977.* (i) An individual who is employed by an organization described in paragraph (a)(3) may make a salary reduction agreement for his taxable year beginning in 1976 or 1977 at any time before the end of the 1976 or 1977 taxable year, respectively, without the agreement's being considered a new agreement within the meaning of § 1.403(b)-1(b)(3)(i). The agreement for 1976 may be made on or before June 15, 1977, if that date is later than the end of the individual's 1976 taxable year. The agreement for 1977 may be made on or before April 17, 1978, if that date is later than the end of the individual's 1977 taxable year.

(ii) This subparagraph applies only if the individual actually elects one of the alternative limitations under section 415(c)(4) for 1976 or 1977 (as the case may be).

(iii) The salary reduction agreement for 1976 may be made effective with respect to any amount earned during the

taxpayer's most recent one-year period of service (as described in § 1.403(b)-1(f)) ending not later than the end of the 1976 taxable year, notwithstanding § 1.403(b)-1(b)(3)(i). Similarly, the salary reduction agreement for 1977 may be made effective with respect to such period of service ending not later than the end of the 1977 taxable year.

(iv) If the salary reduction agreement for 1976 is entered into at any time after December 31, 1976, or if the salary reduction agreement for 1977 is entered into at any time after December 31, 1977, an amended Form W-2 must be filed on behalf of the individual.

(3) *Election is irrevocable.* The election described in paragraph (a)(3) of this section, once made in accordance with the provisions of subparagraph (1) of this paragraph, shall be irrevocable with respect to the limitation years or taxable years to which such election relates.

(4) *Limitations.* With respect to any limitation or taxable year, an election by an individual pursuant to subparagraph (1) of this paragraph to have any subdivision of paragraph (a)(5) of this section apply to contributions made on his behalf by his employer with respect to any section 403(b) annuity contract will preclude an election to have any other subdivision of paragraph (a)(5) apply for any future limitation or taxable year with respect to any section 403(b) annuity contract contributions made by any employer of such individual. With respect to any limitation year, an election by an individual to have paragraph (a)(5)(i) of this section apply to contributions made on his behalf by his employer with respect to any section 403(b) annuity contract will preclude an election to have any subdivision of paragraph (a)(5) apply for any future limitation or taxable year with respect to any section 403(b) annuity contract contributions made by any employer of such individual.

(5) *Aggregation rules*—(i) *Annuity contracts described in section 403(b).* For purposes of applying the limitations of this section for a particular limitation or taxable year, all contributions toward the purchase of annuity contracts described in section 403(b) made on behalf of an individual by his employer and any related employer (as defined in

subdivision (ii) of this subparagraph) must be aggregated without regard to:

(A) Whether such individual makes any election pursuant to subparagraph (1) of this paragraph for such year; and

(B) Whether such individual files a statement of intention pursuant to subparagraph (1) of this paragraph, for such year. In addition, any other aggregation required by Revenue Ruling 75-481, 1975-2 C.B. 188, must be made to the extent applicable.

(ii) *Definition.* For purposes of this section, with respect to a particular employer, a related employer is any other employer which is a member of a controlled group of corporations (as defined in section 414(b), and the regulations thereunder and as modified by section 415(h)) or a group of trades or business (whether or not incorporated) under common control (as defined in section 414(c) and the regulations thereunder and as modified by section 415(h)) in which such particular employer is a member.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* Doctor M is an employee of H Hospital (an organization described in section 501(c)(3) and exempt from taxation under section 501(a)) for the entire 1976 calendar year. M is not in control of H within the meaning of section 414 (b) or (c), as modified by section 415(h). M uses the calendar year as the taxable year and M uses the calendar year as the limitation year. M has includible compensation (as defined in section 403(b)(3) and the regulations thereunder) and compensation (as defined in section 415(c)(3)) for taxable year 1976 of \$30,000, and M has 4 years of service (as defined in § 1.403(b)-1(f)) with H as of December 31, 1976. During M's prior service with H, H had contributed a total of \$12,000 on M's behalf for annuity contracts described in section 403(b), which amount was excludable from M's gross income for such prior years. Thus, for the limitation year ending with or within taxable year 1976, M's exclusion allowance determined under section 403(b)(2)(A) is \$12,000 ( $(.20 \times \$30,000 \times 4) - \$12,000$ ). The limitation imposed by section 415(c)(1) that is applicable to M for limitation year 1976 is the lesser of \$26,825 (the amount described in section 415(c)(1)(A) adjusted under section 415(d)(1)(B) for limitation year 1976) or \$7,500 (the amount described in section 415(c)(1)(B)). Absent the special elections provided in section 415(c)(4), \$7,500 would be the maximum contribution H could make for

annuity contracts described in section 403(b) on M's behalf for limitation year 1976 without increasing M's gross income for taxable year 1976. However, because H is an organization described in section 415(c)(4), M may make a special election with respect to amounts contributed by H on M's behalf for section 403(b) annuity contracts for 1976. Assume that M does not separate from the service of H during 1976 and that, therefore, the "(A) election limitation" described in section 415(c)(4)(A) is not available to M. If M elects the "(B) election limitation" for 1976, H could contribute \$11,500 on M's behalf for annuity contracts described in section 403(b) for that year (the least of \$11,500 (the amount described in section 415(c)(4)(B)(i)); \$12,000 (the amount described in section 415(c)(4)(B)(ii)), and \$15,000 (the amount described in section 415(c)(4)(B)(iii))). If M elects the "(C) election limitation" for 1976, H could only contribute up to \$7,500 (the lower of the amounts described in section 415(c)(1)(A) or (B)) for section 403(b) annuity contracts on M's behalf for 1976 without increasing M's gross income for that year.

*Example (2).* Assume the same facts as in example (1) except that H had contributed a total of \$18,000 on M's behalf for annuity contracts in prior years, which amount was excludable from M's gross income for such prior years. Accordingly, for 1976, M's exclusion allowance determined under section 403(b)(2)(A) is \$6,000 ( $(.20 \times \$30,000 \times 4) - \$18,000$ ). The limitation imposed by section 415(c)(1) applicable to M for 1976 is \$7,500 (the lesser of the amount described in section 415(c)(1)(A) or (B)). Absent the special elections provided in section 415(c)(4), \$6,000 would be the maximum amount H could contribute for annuity contracts described in section 403(b) on M's behalf for 1976 without increasing M's gross income for that year. However, if M elects the "(C) election limitation" for 1976, H may contribute up to \$7,500 without increasing M's gross income for that year.

*Example (3).* G, a teacher, is an employee of E, an educational institution described in section 151(e)(4). G uses the calendar year as the taxable year and G uses the 12-month consecutive period beginning July 1 as the limitation year. G has includible compensation (as defined in section 403(b)(3) and the regulations thereunder) for taxable year 1976 of \$12,000 and G has compensation (as defined in section 415(c)(3)) for the limitation year ending with or within taxable year 1976 of \$12,000. G has 20 years of service (as defined in § 1.403(b)-1(f)) as of May 30, 1976, the date G separates from the service of E. During G's service with E before taxable year 1976, E had contributed \$34,000 toward the purchase of a section 403(b) annuity contract on G's behalf, which amount was excludable from G's gross income for such prior years. Of this amount, \$19,000 was so contributed and excluded during the 10 year period ending on

May 30, 1976. For the taxable year 1976, G's exclusion allowance determined under section 403(b)(2)(A) is \$14,000 ( $(.20 \times \$12,000 \times 20) - \$34,000$ ). Absent the special elections described in section 415(c)(4), \$3,000 (the lesser of G's exclusion allowance for taxable year 1976 or the section 415(c)(1) limitation applicable to G for the limitation year ending with or within such taxable year) would be the maximum excludable contribution E could make for section 403(b) annuity contracts on G's behalf for the limitation year ending with or within taxable year 1976. However, because E is an organization described in section 415(c)(4), G may make a special election with respect to amounts contributed on G's behalf by E for section 403(b) annuity contracts for the limitation year ending with or within taxable year 1976. Because G has separated from the service of E during such taxable year, G may elect the "(A) election limitation" as well as the "(B) election limitation" or the "(C) election limitation". If G elects the "(A) election limitation" for the limitation year ending with or within taxable year 1976, E could contribute up to \$5,000 ( $(.20 \times \$12,000 \times 10) - \$19,000$ ) on G's behalf for section 403(b) annuity contracts for such limitation year without increasing G's gross income for the taxable year with or within which such limitation year ends. If G elects the "(B) election limitation" for such limitation year, E could contribute \$7,000 (the least of \$7,000 (the amount described in section 415(c)(4)(B)(i)); \$14,000 (the amount described in section 415(c)(4)(B)(ii)); and \$15,000 (the amount described in section 415(c)(4)(B)(iii))). If G elects the "(C) election limitation" for taxable year 1976, E could contribute \$3,000 (the lesser of the amounts described in section 415(c)(1)(A) or (B)).

(d) *Plan year.* For purposes of section 415 and this section, an annuity contract described in section 403(b) shall be deemed to have a plan year coinciding with the taxable year of the individual on whose behalf the contract has been purchased unless that individual demonstrates that a different 12-month period should be considered to be the plan year.

(e) *Effective date.* The provisions of this section are applicable for taxable years beginning in and for limitation years ending with or within taxable years beginning in 1976.

(Sec. 415(c)(4)(D) of the Internal Revenue Code of 1954 (88 Stat. 983; 26 U.S.C. 415(c)(4)(D)))

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