

§ 1.404(a)-10

26 CFR Ch. I (4-1-02 Edition)

ILLUSTRATION OF PROVISIONS OF SECTION 404(A)(3)(A) FOR A PLAN PUT INTO EFFECT IN THE TAXABLE (CALENDAR) YEAR 1954, BEFORE GIVING EFFECT TO SECTION 404(A)(7) (ALL FIGURES REPRESENT THOUSANDS OF DOLLARS AND ALL TAXABLE (CALENDAR) YEARS ARE YEARS WHICH END WITH OR WITHIN A TAXABLE YEAR OF THE TRUST FOR WHICH IT IS EXEMPT UNDER SECTION 501(A))—Continued

| | Taxable (calendar) years | | | | | | |
|--|--------------------------|------|------|------|------|------|------|
| | 1954 | 1955 | 1956 | 1957 | 1958 | 1959 | 1960 |
| 2. Primary limitation applicable to year: 15 percent of covered compensation in year ¹ | 57 | 54 | 51 | 48 | 45 | 42 | 39 |
| 3. Secondary limitation applicable to year: | | | | | | | |
| (i) Twice primary limitation | | | | 96 | 90 | 84 | |
| (ii) (a) Aggregate primary limitations (see item 2) | | | | 210 | 255 | 297 | |
| (b) Aggregate prior deductions (see item 4 (iii)) | | | | 90 | 186 | 255 | |
| (c) Excess of (a) over (b) | | | | 120 | 69 | 42 | |
| (iii) Lesser of (i) or (ii) | | | | 96 | 69 | 42 | |
| 4. Amount deductible for year on account of: | | | | | | | |
| (i) Contributions in year | 57 | 10 | 15 | 96 | 69 | 40 | 30 |
| (ii) Contributions carried over | 0 | 8 | 0 | 0 | 0 | 2 | 3 |
| (iii) Total | 57 | 18 | 15 | 96 | 69 | 42 | 33 |
| 5. Excess contributions carried over to succeeding years. | 8 | 0 | 0 | 4 | 5 | 3 | 0 |

¹ Compensation otherwise paid or accrued during the year to the employees who are beneficiaries of trust funds accumulated under the plan in the year.

[T.D. 6500, 25 FR 11687, Nov. 26, 1960, as amended by T.D. 6534, 26 FR 516, Jan. 20, 1961]

§ 1.404(a)-10 Profit-sharing plan of an affiliated group; application of section 404(a)(3)(B).

(a) Section 404(a)(3)(B) allows a corporation a deduction to the extent provided in paragraphs (b) and (c) of this section for a contribution which it makes for another corporation to a profit-sharing plan or a stock bonus plan under which contributions are determined by reference to profits, provided the following tests are met:

(1) The corporation for which the contribution is made and the contributing corporation are members of an affiliated group of corporations as defined in section 1504, relating to the filing of consolidated returns, and both such corporations participate in the plan. However, it is immaterial whether all the members of such group participate in the plan.

(2) The corporation for which the contribution is made is required under the plan to make the contribution, but such corporation is prevented from making such contribution because it has neither current nor accumulated earnings or profits, or because its current and accumulated earnings or profits are insufficient to make the required contribution. To the extent that such a corporation has any current or

accumulated earnings or profits, it is not considered to be prevented from making its required contribution to the plan.

(3) The contribution is made out of the current or accumulated earnings or profits of the contributing corporation.

(b) The amount that is deductible under section 404(a)(3)(B) is determined by applying the rules of section 404(a)(3)(A) and § 1.404(a)-9 as if the contribution were made by the corporation for which it is made. For example, the primary limitation described in paragraph (e) of § 1.404(a)-9 is determined by reference to the compensation otherwise paid or accrued to the employees of the corporation for which the contribution is made, and the secondary limitation described in paragraph (d) of § 1.404(a)-9 and the contribution carry-over described in paragraph (c) of § 1.404(a)-9 are determined by reference to the prior contributions and deductions of such corporation. The contributing corporation may deduct the amount so determined subject to the limitations contained in paragraph (c) of this section. The contributing corporation shall not treat such amount as a contribution made by it in applying the rules of section 404(a)(3)(A) and § 1.404(a)-9 either for the taxable year

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for which the contribution is made or for succeeding taxable years. The corporation for which the contribution is made shall treat the contribution as having been made by it in applying the rules of section 404(a)(3)(A) and § 1.404(a)-9 for succeeding taxable years.

(c) The allowance of the deduction under section 404(a)(3)(B) does not depend upon whether the affiliated group does or does not file a consolidated return. If a consolidated return is filed, it is immaterial which of the participating corporations makes the contribution and takes the deduction or how the contribution or the deduction is allocated among them. However, if a consolidated return is not filed, the contribution which is deductible under section 404(a)(3)(B) by each contributing corporation shall be limited to that portion of its total current and accumulated earnings or profits (adjusted

for its contribution deductible without regard to section 404(a)(3)(B)) which the prevented contribution bears to the total current and accumulated earnings or profits of all the participating members of the group having such earnings or profits (adjusted for all contributions deductible without regard to section 404(a)(3)(B)). For the purpose of this section, current earnings or profits shall be computed as of the close of the taxable year without diminution by reason of any dividends during the taxable year, and accumulated earnings or profits shall be computed as of the beginning of the taxable year.

(d) The application of section 404(a)(3)(B) may be illustrated by the following example in which the affiliated group does not file a consolidated return:

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
|-------------|------------|-------------|-------------|-----------|-------|---------|---------|----------|---------|------------|
| A | (\$10,000) | (\$140,000) | (\$150,000) | \$200,000 | 1/5 | \$6,000 | ..... | ..... | ..... | ..... |
| B | (5,000) | 105,000 | 100,000 | 300,000 | 3/10 | 9,000 | \$9,000 | \$91,000 | 6/326× | \$1,674.85 |
| C | 75,000 | 175,000 | 250,000 | 500,000 | 1/2 | 15,000 | 15,000 | 235,000 | 6/326× | 4,325.15 |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 235,000 | ..... |
| Total | 60,000 | 140,000 | 200,000 | 1,000,000 | ..... | 30,000 | 24,000 | 326,000 | ..... | 6,000.00 |

- Column:
- (1) Member.
 - (2) Earnings and profits of the taxable year.
 - (3) Accumulated earnings and profits at beginning of taxable year.
 - (4) Total current and accumulated earnings and profits (column 2 plus column 3).
 - (5) Compensation of participating employees.
 - (6) Contribution formula: 50 percent of consolidated earnings and profits, allocated among participating member in proportion of covered payroll of each to covered payroll of consolidated group.
 - (7) Individual contribution had it not been prevented.
 - (8) Individual contribution made by each employer for its own employees.
 - (9) Balance of accumulated earnings and profits (column 4 minus column 8).
 - (10) Proportion of make-up contribution.
 - (11) Make-up contribution.

[T.D. 6500, 25 FR 11688, Nov. 26, 1960]

§ 1.404(a)-11 Trusts created or organized outside the United States; application of section 404(a)(4).

In order that a trust may constitute a qualified trust under section 401(a) and be exempt under section 501(a), it must be created or organized in the United States and maintained at all times as a domestic trust. See paragraph (a) of § 1.401-1. Paragraph (4) of section 404(a) provides, however, that an employer which is a resident, a corporation, or other entity of the United States, making contributions to a foreign stock bonus, pension, or profit-

sharing trust, shall be allowed deductions for such contributions, under the applicable conditions and within the prescribed limits of section 404(a), if such foreign trust would qualify for exemption under section 501(a) except for the fact that it is a trust created, organized, or maintained outside the United States. Moreover, if a non-resident alien individual, foreign corporation, or other entity is engaged in trade or business within the United States and makes contributions to a foreign stock bonus, pension, or profit-sharing trust, which would qualify under section 401(a) and be exempt under section 501(a) except that it is