

be reinstated) as of the close of the taxable year of the recipient within which the distribution is made. In addition, in the case of an employee who has separated from service, the employee's balance does not include an amount which is subject to forfeiture not later than the close of the plan year within which the employee incurs a one-year break in service (within the meaning of section 411) if—

(1) By reason of the break in service, the amount is actually forfeited at or prior to the close of that plan year, and

(2) The break in service occurs within 25 months after the employee's separation from service. In the case of a plan which uses the elapsed time method of crediting service, the break in service may occur within 25 months of the employee's severance from service. See Department of Labor regulations relating to the elapsed time method for the date an employee severs from service.

An employee may assume that an amount subject to forfeiture will be treated as forfeited by the date prescribed in paragraphs (a) (1) and (2) of this section if, under the plan, forfeiture will occur not later than that date. Therefore, he may assume that a distribution is a lump sum distribution at the time it is made, if the other requirements for lump sum distributions are satisfied. However, if the amount is not forfeited by that date, the amount will be taken into account in determining the balance to the credit of the employee. Accordingly, the distribution will not be a lump sum distribution because it did not include the employee's entire balance under the plan.

(b) *Rollover contribution.* As described in paragraph (a) of this section, an employee may assume that a distribution is a lump sum distribution even though part of the balance of his account has not been forfeited at the time the distribution is made. He may then roll the distribution over as a contribution to an individual retirement arrangement pursuant to section 402(a)(5) or 403(a)(4). It may be subsequently determined that the distribution was not a lump sum distribution because an amount subject to forfeiture was not in fact forfeited within the time required in paragraph (a) of this section. In that case, the contribution will be an excess

contribution to the individual retirement arrangement, deemed made in the first taxable year of the employee in which it can be determined that an amount subject to forfeiture will not be forfeited.

(c) *Effective date.* This section is effective for distributions made in taxable years of recipients beginning after December 31, 1973.

[T.D. 7488, 42 FR 27882, June 1, 1977]

§ 11.402(e)(4)(B)-1 Election to treat an amount as a lump sum distribution.

(a) *In general.* For purposes of sections 402, 403, and this section, an amount which is described in section 402(e)(4)(A) and which is not an annuity contract may be treated as a lump sum distribution under section 402(e)(4)(A) only if the taxpayer elects for the taxable year to have all such amounts received during such year so treated. Not more than one election may be made under this section with respect to an employee after such employee has attained age 59½.

(b) *Taxpayers eligible to make the election.* Individuals, estates, and trusts are the only taxpayers eligible to make the election provided by this section. In the case of a lump sum distribution made with respect to an employee to 2 or more trusts, the election provided by this section shall be made by the employee or by the personal representative of a deceased employee.

(c) *Procedure for making election—(1) Time and scope of election.* An election under this section shall be made for each taxable year to which such election is to apply. The election shall be made before the expiration of the period (including extension thereof) prescribed in section 6511 for making a claim for credit or refund of the assessed tax imposed by Chapter I of Subtitle A of the Code for such taxable year.

(2) *Manner of making election.* An election by the taxpayer with respect to a taxable year shall be made by filing Form 4972 as a part of the taxpayer's income tax return or amended return for the taxable year.

(3) *Revocation of election.* An election made pursuant to this section may be revoked within the time prescribed in subparagraph (1) of this paragraph for

making an election, only if there is filed, within such time, an amended income tax return for such taxable year, which includes a statement revoking the election and is accompanied by payment of any tax attributable to the revocation. If an election for a taxable year is revoked, another election may be made for that taxable year under subparagraphs (1) and (2) of this paragraph.

(Sec. 402(e)(4)(B) of the Internal Revenue Code of 1954 (88 Stat. 989, 26 U.S.C. 402(e)(4)(B)))

[T.D. 7339, 40 FR 1016, Jan. 6, 1975]

§ 11.404(a)(6)-1 Time when contributions to "H.R. 10" plans considered made.

(a) *In general.* Section 404(a)(6), as amended by section 1013(c)(2) of the Employee Retirement Income Security Act of 1974, provides that for purposes of paragraphs (1), (2), and (3) of section 404(a), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Under section 1017(b) of the Employee Retirement Income Security Act of 1974 (prior to its amendment by the Tax Reduction Act of 1975), in the case of a plan which was in existence on January 1, 1974, the foregoing provision generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after December 31, 1975. In the case of a plan not in existence on January 1, 1974, the foregoing provision generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after September 2, 1974. See § 11.410(a)-2(c) for time a plan is considered in existence. See also § 11.410(a)-2(d), which provides that a plan in existence on January 1, 1974 may elect to have certain provisions, including the amendment to section 404(a)(6) contained in section 1013 of the Employee Retirement Income Security Act of 1974, apply to a plan year beginning after September 2, 1974, and before the otherwise applicable effective date contained in that section.

(b) "*H.R. 10*" plans may elect new provision. Under section 402 of the Tax Reduction Act of 1975 (89 Stat. 47), in the case of a plan which was in existence on January 1, 1974, and which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) of the Code and § 1.401-10(b), the provision described in paragraph (a) of this section shall apply for taxable years of an employer ending with or within plan years beginning after December 31, 1974, but only if the employer (within the meaning of section 401(c)(4) of the Code and § 1.401-10(e)) elects to have such provisions apply as provided in paragraph (c) of this section.

(c) *Manner of election.* The election described in paragraph (b) of this section shall be considered to be made if the employer (as described in paragraph (b) of this section)—

(1) Makes a contribution which relates to his preceding taxable year within the time prescribed in paragraph (a) of this section to a plan described in paragraph (b) of this section, and

(2) Claims a deduction for such contribution on his tax return for such year (or, in the case of a contribution by a partnership on behalf of a partner, the contribution is shown on Schedule K of the partnership tax return for such year); no formal statement is necessary. In the case of an employer whose income tax return for the year on account of which the payment is made is required to be filed (determined without regard to extensions of time) on or before April 15, 1976, and who made a payment within the time prescribed in paragraph (a) of this section, the election also may be made by filing an amended return or claim for refund with respect to such year on or before September 30, 1976.

(d) *Election is irrevocable.* Any election made under paragraph (c) of this section, once made, shall be irrevocable.

(e) *Examples.* The rules of this section are illustrated by the following examples.

Example (1). On October 15, 1976, the ABC Partnership made a contribution to the ABC Profit Sharing Plan and Trust on behalf of partners and common-law employees with respect to the plan year ending December 31,