

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,

1975. The ABC Profit Sharing Trust was exempt under section 501 (a) throughout 1975. The contribution for both partners and employees was reflected on the partnership return for the calendar year 1975 which was filed on October 10, 1976; proper extensions of the due date of the partnership return had been received, extending the due date to October 15, 1976. The election is valid since all requirements of this section have been met.

*Example (2).* The XYZ Partnership made a plan contribution on April 10, 1976, with respect to the plan year ending December 31, 1975, but the amount contributed for 1975 was not reflected in the partnership return filed for the calendar year 1975 on April 15, 1976. However, the XYZ Partnership filed an amended partnership return for the year 1975 on September 30, 1976, claiming a deduction for the employee-related contribution and setting forth on Schedule K the contribution relating to partners. The election is valid, since the contribution on account of 1975 was made within the time required, and was shown on the amended tax return of the employer for 1975 filed within the time prescribed in paragraph (c)(2) of this section.

*Example (3).* Mr. Smith, a sole proprietor whose taxable year is the calendar year, made a contribution to the Smith Profit Sharing Plan and Trust on April 15, 1976, for the plan year which began December 1, 1974, and ended November 30, 1975. The plan was in existence on January 1, 1974. Since the contribution was made within the time prescribed by this section and was on account of a taxable year of the employer ending within a plan year which began after December 31, 1974, the contribution may be deducted on Mr. Smith's return for 1975, even though the contribution was for a plan year beginning before December 31, 1974.

*Example (4).* The DEF Partnership, reporting its income on the basis of a fiscal year ending June 30, made a contribution to its "H.R. 10" plan which was in existence on January 1, 1974, and whose plan year was the calendar year. The contribution was made on September 30, 1975, and was on account of the taxable year of the partnership ending June 30, 1975. The contribution was properly reflected in the partnership return for the fiscal year ending June 30, 1975. The partnership's election to have section 404(a)(6), as amended, apply to its fiscal year ending June 30, 1975, is valid since that year ended with or within a plan year beginning after December 31, 1974.

[T.D. 7402, 41 FR 5633, Feb. 9, 1976]

#### § 11.408(a)(2)-1 Trustee of individual retirement accounts.

A person may demonstrate to the satisfaction of the Commissioner that the manner in which he will administer

the trust will be consistent with the requirements of section 408 only upon the filing of a written application to the Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224. Such application must meet the applicable requirements of the regulations under section 401(d)(1) relating to nonbank trustees of pension and profit-sharing trusts benefiting owner-employees.

(Sec. 408(a)(2) of the Internal Revenue Code of 1954 (88 Stat. 959, 26 U.S.C. 408(a)(2)))

[T.D. 7390, 40 FR 53580, Nov. 19, 1975]

#### § 11.410-1 Election by church to have participation, vesting, funding, etc., provisions apply.

(a) *In general.* If a church or convention or association of churches which maintains any church plan, as defined in section 414(e), makes an election under this section, certain provisions of the Code and Title I of the Employee Retirement Income Security Act of 1974 (the "Act") shall apply to such church plan as if such plan were not a church plan. The provisions of the Code referred to are section 410 (relating to minimum participation standards), section 411 (relating to minimum vesting standards), section 412 (relating to minimum funding standards), section 4975 (relating to prohibited transactions), and paragraphs (11), (12), (13), (14), (15), and (19) of section 401(a) (relating to joint and survivor annuities, mergers and consolidations, assignment or alienation of benefits, time of benefit commencement, certain social security increases, and withdrawals of employee contributions, respectively).

(b) *Election is irrevocable.* An election under this section with respect to any church plan shall be binding with respect to such plan and, once made, shall be irrevocable.

(c) *Procedure for making election*—(1) *Time of election.* An election under this section may be made for plan years for which the provisions of section 410(d) of the Code apply to the church plan. By reason of section 1017(b) of the Act section 410(d) does not apply to a plan in existence on January 1, 1974, for plan years beginning before December 31, 1975. Section 1017(d) of the Act permits a plan administrator to elect to have