

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

certain provisions of the Code (including section 410(d)) apply to a plan before the otherwise applicable effective dates of such provisions. See § 420.0-1 of the regulations in this chapter (Temporary Regulations on Procedure and Administration under the Employee Retirement Income Security Act of 1974). Therefore, an election under section 410(d) of the Code may be made for a plan year beginning before December 31, 1975, only if an election has been made under section 1017(d) of the Act with respect to that plan year.

(2) *By whom election is to be made.* The election provided by this section may be made only by the plan administrator of the church plan.

(3) *Manner of making election.* The plan administrator may elect to have the provisions of the Code described in paragraph (a) of this section apply to the church plan as if it were not a church plan by attaching the statement described in subparagraph (5) of this paragraph to either (i) the annual return required under section 6058(a) (or an amended return) with respect to the plan which is filed for the first plan year for which the election is effective or (ii) a written request for a determination letter relating to the qualification of the plan under section 401(a), 403(a), or 405(a) of the Code and, if trustee, the exempt status under section 501(a) of the Code of a trust constituting a part of the plan.

(4) *Conditional election.* If an election is made with a written request for a determination letter, the election may be conditioned upon issuance of a favorable determination letter and will become irrevocable upon issuance of such letter.

(5) *Statement.* The statement described in subparagraph (3) of this paragraph shall indicate (i) that the election is made under section 410(d) of the Code and (ii) the first plan year for which it is effective.

(Sec. 410(d), Internal Revenue Code, 1954 (88 Stat. 901; 26 U.S.C. 410(d)))

[T.D. 7363, 40 FR 27217, June 27, 1975]

§ 11.410(b)-1 Minimum coverage requirements.

(a)-(c) [Reserved]

(d) *Special rules.* (1) [Reserved]

(2) *Discrimination.* The determination as to whether a plan discriminates in favor of employees who are officers, shareholders, or highly compensated, is made on the basis of the facts and circumstances of each case, allowing a reasonable difference between the percentage of such employees benefited by the plan to all employees benefited by the plan and the percentage of all such employees of the employer to all employees of the employer. A showing that a specified percentage of employees covered by a plan are not officers, shareholders, or highly compensated, without a showing that the difference (if any) between such percentage and the percentage of all employees who are not officers, shareholders, or highly compensated is reasonable, is not sufficient to establish that the plan does not discriminate in favor of employees who are officers, shareholders, or highly compensated.

(Sec. 410, Internal Revenue Code of 1954 (88 Stat. 898; 26 U.S.C. 410))

[T.D. 7380, 40 FR 45816, Oct. 3, 1975, as amended by T.D. 7508, 42 FR 47197, Sept. 20, 1977]

§ 11.412(c)-7 Election to treat certain retroactive plan amendments as made on the first day of the plan year.

(a) *General rule.* Under section 412(c)(8), a plan administrator may elect to have any amendment which is adopted after the close of the plan year to which it applies deemed to have been made on the first day of such plan year if the amendment—

(1) Is adopted no later than 2 and one-half months after the close of such plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(2) Does not reduce the accrued benefit of any participant determined as of the beginning of such plan year, and

(3) Does not reduce the accrued benefit of any participant determined as of the time of adoption of the amendment, or, if it does so reduce such accrued benefit, it is shown that the plan administrator filed a notice with the Secretary of Labor notifying him of the amendment, and—

(i) The Secretary of Labor approved the amendment, or