

§ 1.411(d)-3

26 CFR Ch. I (4-1-04 Edition)

1974 applies is considered terminated on a particular date if, as of that date—

(i) The plan is voluntarily terminated by the plan administrator under section 4041 of the Employee Retirement Income Security Act of 1974, or

(ii) The Pension Benefit Guaranty Corporation terminates the plan under section 4042 of the Employee Retirement Income Security Act of 1974.

For purposes of this subparagraph, the particular date of termination shall be the date of termination determined under section 4048 of such Act.

(3) *Other plans.* In the case of a plan not described in paragraph (c)(2) of this section, a plan is considered terminated on a particular date if, as of that date, the plan is voluntarily terminated by the employer, or employers, maintaining the plan.

(d) *Complete discontinuance*—(1) *General rule.* For purposes of this section, a complete discontinuance of contributions under the plan is contrasted with a suspension of contributions under the plan which is merely a temporary cessation of contributions by the employer. A complete discontinuance of contributions may occur although some amounts are contributed by the employer under the plan if such amounts are not substantial enough to reflect the intent on the part of the employer to continue to maintain the plan. The determination of whether a complete discontinuance of contributions under the plan has occurred will be made with regard to all the facts and circumstances in the particular case, and without regard to the amount of any contributions made under the plan by employees. Among the factors to be considered in determining whether a suspension constitutes a discontinuance are:

(i) Whether the employer may merely be calling an actual discontinuance of contributions a suspension of such contributions in order to avoid the requirement of full vesting as in the case of a discontinuance, or for any other reason;

(ii) Whether contributions are recurring and substantial; and

(iii) Whether there is any reasonable probability that the lack of contributions will continue indefinitely.

(2) *Time of discontinuance.* In any case in which a suspension of a profit-sharing plan maintained by a single employer is considered a discontinuance, the discontinuance becomes effective not later than the last day of the taxable year of the employer following the last taxable year of such employer for which a substantial contribution was made under the profit-sharing plan. In the case of a profit-sharing plan maintained by more than one employer, the discontinuance becomes effective not later than the last day of the plan year following the plan year within which any employer made a substantial contribution under the plan.

(e) *Contributions or benefits which remain forfeitable.* Under section 411 (d) (2) and (3), section 411(a) and this section do not apply to plan benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4). Accordingly, in such a case, plan benefits may be required to be reallocated without regard to this section. See § 1.401-4(c).

(Sec. 411 (88 Stat. 901; 26 U.S.C. 411))

[T.D. 7501, 42 FR 42339, Aug. 23, 1977]

§ 1.411(d)-3 Other special rules.

(a) *Class year plans*—(1) *General rule.* Under section 411(d)(4), the requirements of section 411(a)(2) for a class year plan shall be deemed to be satisfied if such plan provides that each employee's rights to or derived from employer contributions on his behalf for any plan year are nonforfeitable no later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of section 411 and the regulations thereunder, the term "class year plan" means a profit-sharing, stock bonus, or money purchase plan which provides that the nonforfeitable rights of employees to or derived from employer contributions are determined separately for each plan year. "See § 1.411(d)-5 for rules that apply to class year plans for contributions made for plan years beginning after October 22, 1986."

(2) *Other rules*—(i) *Prohibited forfeiture on withdrawals.* In the case of a class year plan, section 401(a)(19) and the regulations thereunder shall be applied separately to each plan year.

(ii) *Distribution rules.* The rules of § 1.411(a)-7(d) apply to a class year plan. For example, under the rule in § 1.411(a)-7(d)(2)(ii)(D), a class year plan would be permitted to limit the time of repayment to a 5-year period beginning on the date of withdrawal, or under the rule in § 1.411(a)-7(d)(2)(iii), a class year plan would restore the amount of the forfeited account balance in the event of repayment. For purposes of applying subparagraphs (2) and (3) of § 1.411(a)-7(d), relating to withdrawal of mandatory contributions, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time. Any repayments shall be treated as being on account of plan years in succeeding order of time. For purposes of applying any rule of such paragraph (e.g., paragraph (d)(2)(ii)(C)) the term “one-year break in service” means any plan year in which under subparagraph (1) of this paragraph a class year plan may forfeit an employee’s rights.

(iii) *Computation of years for withdrawals.* In applying the requirement of paragraph (a)(1) of this section that rights must be nonforfeitable no later than the end of the fifth plan year following the plan year for which contributions are made, any plan year for which there has been a withdrawal of contributions and no repayment of such contributions (determined as of the last day of the plan year) is not required to count toward the five years. For example, assume that contributions are made for A in 1981 to a calendar year plan. Under the general rule of paragraph (a)(1) of this section, the contributions must be nonforfeitable on December 31, 1986. If in 1982, A withdraws the contributions for 1981, and repays these contributions in 1984, 1982 and 1983 are not required to be counted toward the five years because at the end of each year there is a withdrawal and no repayment of such withdrawal. Accordingly, the plan must provide that A’s interest in the contribution

for 1981 will be vested on December 31, 1988.

(b) *Prohibition against accrued benefit decrease.* Under section 411(d)(6) a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, unless the plan amendment satisfies the requirements of section 412(c)(8) (relating to certain retroactive amendments) and the regulations thereunder. For purposes of determining whether or not any participant’s accrued benefit is decreased, all the provisions of a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting accrued benefits include, for example, provisions relating to years of service and breaks in service for determining benefit accrual, and to actuarial factors for determining optional or early retirement benefits.

(c) *Rules applicable to section 414(k) plan.* For special rules applicable to defined benefit plans which provide a benefit derived from employer contributions which is based partly on a participant’s separate account, see section 414(k) and the regulations thereunder.

(Sec. 411 (88 Stat. 901; 26 U.S.C. 411))

[T.D. 7501, 42 FR 42340, Aug. 23, 1977, as amended by T.D. 8038, 50 FR 29375, July 19, 1985; T.D. 8219, 53 FR 31854, Aug. 22, 1988; 53 FR 48534, Dec. 1, 1988]

§ 1.411(d)-4 Section 411(d)(6) protected benefits.

Q-1: What are “section 411(d)(6) protected benefits”?

A-1: (a) *In general.* The term “section 411(d)(6) protected benefit” includes any benefit that is described in one or more of the following categories—

(1) Benefits described in section 411(d)(6)(A).

(2) Early retirement benefits and retirement-type subsidies described in section 411(d)(6)(B)(i), including qualified social security supplements as defined in § 1.401(a)(4)-12, and

(3) Optional forms of benefit described in section 411(d)(6)(B)(ii).