

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

APPLICABILITY TO CERTAIN EMPLOYERS ENGAGED IN TRADE OR BUSINESS OF SHIPPING BULK CARGOES IN GREAT LAKES MARITIME INDUSTRY

Pub. L. 96-364, title I, §108(c)(2), Sept. 26, 1980, 94 Stat. 1268, provided that:

“(A) For the purpose of applying section 4205 of the Employee Retirement Income Security Act of 1974 [this section] in the case of an employer described in subparagraph (B)—

“(i) ‘more than 75 percent’ shall be substituted for ‘70 percent’ in subsections (a) and (b) of such section.

“(ii) ‘25 percent or less’ shall be substituted for ‘30 percent’ in subsection (b) of such section, and

“(iii) the number of contribution units for the high base year shall be the average annual number of such units for calendar years 1970 and 1971.

“(B) An employer is described in this subparagraph if—

“(i) the employer is engaged in the trade or business of shipping bulk cargoes in the Great Lakes Maritime Industry, and whose fleet consists of vessels the gross registered tonnage of which was at least 7,800, as stated in the American Bureau of Shipping Record, and

“(ii) whose fleet during any 5 years from the period 1970 through and including 1979 has experienced a 33 percent or more increase in the contribution units as measured from the average annual contribution units for the calendar years 1970 and 1971.”

APPLICABILITY TO SPECIFIED PLAN YEAR, CESSATION OF CONTRIBUTION OBLIGATIONS, AND CONTRIBUTION BASE UNITS OF EMPLOYER

Pub. L. 96-364, title I, §108(d), Sept. 26, 1980, 94 Stat. 1269, as amended by Pub. L. 98-369, div. A, title V, §558(b)(2), July 18, 1984, 98 Stat. 899, provided that: “For purposes of section 4205 of the Employee Retirement Income Security Act of 1974 [this section]—

“(1) subsection (a)(1) of such section shall not apply to any plan year beginning before September 26, 1982,

“(2) subsection (a)(2) of such section shall not apply with respect to any cessation of contribution obligations occurring before September 26, 1980, and

“(3) in applying subsection (b) of such section, the employer’s contribution base units for any plan year ending before September 26, 1980, shall be deemed to be equal to the employer’s contribution base units for the last plan year ending before such date.”

LIABILITY OF CERTAIN EMPLOYERS ANNOUNCING PUBLICLY BEFORE DECEMBER 13, 1979, TOTAL CESSATION OF COVERED OPERATIONS AT A FACILITY IN A STATE; AMOUNT, COVERAGE, DETERMINATIVE FACTORS, ETC.

Pub. L. 96-364, title I, §108(e), Sept. 26, 1980, 94 Stat. 1269, provided that:

“(1) In the case of a partial withdrawal under section 4205 of the Employee Retirement Income Security Act of 1974 [this section], an employer who—

“(A) before December 13, 1979, had publicly announced the total cessation of covered operations at a facility in a State (and such cessation occurred within 12 months after the announcement),

“(B) had not been obligated to make contributions to the plan on behalf of the employees at such facility for more than 8 years before the discontinuance of contributions, and

“(C) after the discontinuance of contributions does not within 1 year after the date of the partial withdrawal perform work in the same State of the type for which contributions were previously required, shall be liable under such section with respect to such partial withdrawal in an amount not greater than the amount determined under paragraph (2).

“(2) The amount determined under this paragraph is the excess (if any) of—

“(A) the present value (on the withdrawal date) of the benefits under the plan which—

“(i) were vested on the withdrawal date (or, if earlier, at the time of separation from service with the employer at the facility),

“(ii) were accrued by employees who on December 13, 1979 (or, if earlier, at the time of separation from service with the employer at the facility), were employed at the facility, and

“(iii) are attributable to service with the withdrawing employer, over

“(B)(i) the sum of—

“(I) all employer contributions to the plan on behalf of employees at the facility before the withdrawal date,

“(II) interest (to the withdrawal date) on amounts described in subclause (I), and

“(III) \$100,000, reduced by

“(ii) the sum of—

“(I) the benefits paid under the plan on or before the withdrawal date with respect to former employees who separated from employment at the facility, and

“(II) interest (to the withdrawal date) on amounts described in subclause (I).

“(3) For purposes of paragraph (2)—

“(A) actuarial assumptions shall be those used in the last actuarial report completed before December 13, 1979,

“(B) the term ‘withdrawal date’ means the date on which the employer ceased work at the facility of the type for which contributions were previously required, and

“(C) the term ‘facility’ means the facility referred to in paragraph (1).”

§ 1386. Adjustment for partial withdrawal; determination of amount; reduction for partial withdrawal liability; procedures applicable

(a) The amount of an employer’s liability for a partial withdrawal, before the application of sections 1399(c)(1) and 1405 of this title, is equal to the product of—

(1) the amount determined under section 1391 of this title, and adjusted under section 1389 of this title if appropriate, determined as if the employer had withdrawn from the plan in a complete withdrawal—

(A) on the date of the partial withdrawal, or

(B) in the case of a partial withdrawal described in section 1385(a)(1) of this title (relating to 70-percent contribution decline), on the last day of the first plan year in the 3-year testing period,

multiplied by

(2) a fraction which is 1 minus a fraction—

(A) the numerator of which is the employer’s contribution base units for the plan year following the plan year in which the partial withdrawal occurs, and

(B) the denominator of which is the average of the employer’s contribution base units for—

(i) except as provided in clause (ii), the 5 plan years immediately preceding the plan year in which the partial withdrawal occurs, or

(ii) in the case of a partial withdrawal described in section 1385(a)(1) of this title (relating to 70-percent contribution decline), the 5 plan years immediately pre-

ceding the beginning of the 3-year testing period.

(b)(1) In the case of an employer that has withdrawal liability for a partial withdrawal from a plan, any withdrawal liability of that employer for a partial or complete withdrawal from that plan in a subsequent plan year shall be reduced by the amount of any partial withdrawal liability (reduced by any abatement or reduction of such liability) of the employer with respect to the plan for a previous plan year.

(2) The corporation shall prescribe such regulations as may be necessary to provide for proper adjustments in the reduction provided by paragraph (1) for—

(A) changes in unfunded vested benefits arising after the close of the prior year for which partial withdrawal liability was determined,

(B) changes in contribution base units occurring after the close of the prior year for which partial withdrawal liability was determined, and

(C) any other factors for which it determines adjustment to be appropriate,

so that the liability for any complete or partial withdrawal in any subsequent year (after the application of the reduction) properly reflects the employer's share of liability with respect to the plan.

(Pub. L. 93-406, title IV, §4206, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1222.)

§ 1387. Reduction or waiver of complete withdrawal liability; procedures and standards applicable

(a) The corporation shall provide by regulation for the reduction or waiver of liability for a complete withdrawal in the event that an employer who has withdrawn from a plan subsequently resumes covered operations under the plan or renews an obligation to contribute under the plan, to the extent that the corporation determines that reduction or waiver of withdrawal liability is consistent with the purposes of this chapter.

(b) The corporation shall prescribe by regulation a procedure and standards for the amendment of plans to provide alternative rules for the reduction or waiver of liability for a complete withdrawal in the event that an employer who has withdrawn from the plan subsequently resumes covered operations or renews an obligation to contribute under the plan. The rules may apply only to the extent that the rules are consistent with the purposes of this chapter.

(Pub. L. 93-406, title IV, §4207, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1223.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code see Short Title note set out under section 1001 of this title and Tables.

§ 1388. Reduction of partial withdrawal liability

(a) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year following the partial withdrawal year; criteria applicable; furnishing of bond in lieu of payment of partial withdrawal liability

(1) If, for any 2 consecutive plan years following the plan year in which an employer has partially withdrawn from a plan under section 1385(a)(1) of this title (referred to elsewhere in this section as the "partial withdrawal year"), the number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each such year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (within the meaning of section 1385(b)(1)(B)(ii) of this title), then the employer shall have no obligation to make payments with respect to such partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year following the partial withdrawal year.

(2)(A) For any plan year for which the number of contribution base units with respect to which an employer who has partially withdrawn under section 1385(a)(1) of this title has an obligation to contribute under the plan equals or exceeds the number of units for the highest year determined under paragraph (1) without regard to "90 percent of", the employer may furnish (in lieu of payment of the partial withdrawal liability determined under section 1386 of this title) a bond to the plan in the amount determined by the plan sponsor (not exceeding 50 percent of the annual payment otherwise required).

(B) If the plan sponsor determines under paragraph (1) that the employer has no further liability to the plan for the partial withdrawal, then the bond shall be cancelled.

(C) If the plan sponsor determines under paragraph (1) that the employer continues to have liability to the plan for the partial withdrawal, then—

(i) the bond shall be paid to the plan,

(ii) the employer shall immediately be liable for the outstanding amount of liability due with respect to the plan year for which the bond was posted, and

(iii) the employer shall continue to make the partial withdrawal liability payments as they are due.

(b) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year; other criteria applicable

If—

(1) for any 2 consecutive plan years following a partial withdrawal under section 1385(a)(1) of this title, the number of contribution base units with respect to which the employer has an obligation to contribute for each such year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for