

§ 1371. Penalty for failure to timely provide required information

The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle, subtitle A, B, or C of this subchapter, or section 1083(k)(4) of this title,¹ or any regulations prescribed under any such subtitle or such section, within the applicable time limit specified therein. Such penalty shall not exceed \$1,000 for each day for which such failure continues.

(Pub. L. 93-406, title IV, § 4071, as added Pub. L. 100-203, title IX, § 9314(c)(1), Dec. 22, 1987, 101 Stat. 1330-367; amended Pub. L. 101-239, title VII, § 7881(g)(8), (i)(3)(B), Dec. 19, 1989, 103 Stat. 2442; Pub. L. 109-280, title I, § 108(b)(5), formerly § 107(b)(5), Aug. 17, 2006, 120 Stat. 820, renumbered Pub. L. 111-192, title II, § 202(a), June 25, 2010, 124 Stat. 1297; Pub. L. 110-458, title I, § 101(d)(1)(B), Dec. 23, 2008, 122 Stat. 5099.)

AMENDMENTS

2008—Pub. L. 110-458 substituted “or section 1083(k)(4) of this title,” for “as section 1083(k)(4) or 1085b(e) of this title”.

2006—Pub. L. 109-280 substituted “1083(k)(4)” for “1082(f)(4)”.

1989—Pub. L. 101-239, § 7881(i)(3)(B), substituted “, subtitle A, B, or C of this subchapter, as section 1082(f)(4) or 1085b(e) of this title” for “or subtitle A, B, or C” and inserted “or such section” after “such subtitle”.

Pub. L. 101-239, § 7881(g)(8), made clarifying amendment to directory language of Pub. L. 100-203, § 9314(c)(1), resulting in no change in text.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to plan years beginning after 2007, see section 108(e) of Pub. L. 109-280, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§ 9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§ 101-108) and B (§§ 111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

SUBTITLE E—SPECIAL PROVISIONS FOR
MULTIEMPLOYER PLANS

AMENDMENTS

1980—Pub. L. 96-364, title I, § 104, Sept. 26, 1980, 94 Stat. 1217, added subtitle heading. Former subtitle E

heading “Effective Date; Special Rules” was struck out. See subtitle F of this subchapter.

PART 1—EMPLOYER WITHDRAWALS

§ 1381. Withdrawal liability established; criteria and definitions

(a) If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability.

(b) For purposes of subsection (a) of this section—

(1) The withdrawal liability of an employer to a plan is the amount determined under section 1391 of this title to be the allocable amount of unfunded vested benefits, adjusted—

(A) first, by any de minimis reduction applicable under section 1389 of this title,

(B) next, in the case of a partial withdrawal, in accordance with section 1386 of this title,

(C) then, to the extent necessary to reflect the limitation on annual payments under section 1399(c)(1)(B) of this title, and

(D) finally, in accordance with section 1405 of this title.

(2) The term “complete withdrawal” means a complete withdrawal described in section 1383 of this title.

(3) The term “partial withdrawal” means a partial withdrawal described in section 1385 of this title.

(Pub. L. 93-406, title IV, § 4201, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1217.)

PRIOR PROVISIONS

A prior section 1381, Pub. L. 93-406, title IV, § 4402, formerly § 4082, Sept. 2, 1974, 88 Stat. 1034; S.Res. 4, Feb. 4, 1977; Pub. L. 95-214, § 1, Dec. 19, 1977, 91 Stat. 1501; S.Res. 30, Mar. 7, 1979; Pub. L. 96-24, June 19, 1979, 93 Stat. 70; Pub. L. 96-239, § 1, Apr. 30, 1980, 94 Stat. 341; Pub. L. 96-293, § 1, June 30, 1980, 94 Stat. 610, renumbered § 4402 and amended Pub. L. 96-364, title I, § 108(a)-(c)(1), Sept. 26, 1980, 94 Stat. 1267, relating to the effective dates and special rules for this subchapter, was transferred to section 1461 of this title.

EFFECTIVE DATE

Part effective Sept. 26, 1980, see section 1461(e)(2) of this title.

ELIMINATION OF RETROACTIVE APPLICATION OF AMENDMENTS MADE BY MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980, PUB. L. 96-364

Pub. L. 98-369, div. A, title V, § 558(a), (c), (d), July 18, 1984, 98 Stat. 899, provided that:

“(a) IN GENERAL.—

“(1) LIABILITY.—Any withdrawal liability incurred by an employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.) as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980, shall be void.

“(2) REFUNDS.—Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the employer with interest (in accordance with section 401(a)(2) [26 U.S.C. 401(a)(2)]), less a reasonable

¹ So in original.

amount for administrative expenses incurred by the plan sponsor (other than legal expenses incurred with respect to the plan) in calculating, assessing, and refunding such amounts.

“(c) NO INCREASE IN LIABILITY.—The amendments made by this section [amending sections 1391, 1397, 1399, 1415 and 1461 of this title and provisions set out as a note under section 1385 of this title] shall not be construed to increase the liability incurred by any employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), as in effect immediately before the amendments made by subsection (b) [amending sections 1391, 1397, 1399, 1415, and 1461 of this title and provisions set out as a note under section 1385 of this title], as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980.

“(d) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS.—In the case of an employer who, on September 26, 1980, has a binding agreement to withdraw from a multiemployer plan, subsection (a)(1) shall be applied by substituting ‘December 31, 1980’ for ‘September 26, 1980.’”

APPLICABILITY TO CERTAIN EMPLOYERS WITHDRAWN BEFORE SEPT. 26, 1980, FROM MULTIEMPLOYER PLAN COVERING EMPLOYEES IN SEAGOING INDUSTRY; EFFECTIVE DATE, COVERAGE, ETC.

Pub. L. 96-364, title I, §108(c)(4), Sept. 26, 1980, 94 Stat. 1269, provided that: “In the case of an employer who withdrew before the date of enactment of this Act [Sept. 26, 1980] from a multiemployer plan covering employees in the seagoing industry (as determined by the corporation), sections 4201 through 4219 of the Employee Retirement Income Security Act of 1974, as added by this Act, [section 1381 through 1399 of this title], are effective as of May 3, 1979. For the purpose of applying section 4217 [section 1397 of this title] for purposes of the preceding sentence, the date ‘May 2, 1979,’ shall be substituted for ‘April 28, 1980,’ and the date ‘May 3, 1979’ shall be substituted for ‘April 29, 1980’. For purposes of this paragraph, terms which are used in title IV of the Employee Retirement Income Security Act of 1974 [this subchapter], or in regulations prescribed under that title, and which are used in the preceding sentence have the same meaning as when used in that Act [see Short Title note set out under sections 1001 of this title] or those regulations. For purposes of this paragraph, the term ‘employer’ includes only a substantial employer covering employees in the seagoing industry (as so determined) in connection with ports on the West Coast of the United States, but does not include an employer who withdrew from a plan because of a change in the collective bargaining representative.”

§ 1382. Determination and collection of liability; notification of employer

When an employer withdraws from a multiemployer plan, the plan sponsor, in accordance with this part, shall—

- (1) determine the amount of the employer’s withdrawal liability,
- (2) notify the employer of the amount of the withdrawal liability, and
- (3) collect the amount of the withdrawal liability from the employer.

(Pub. L. 93-406, title IV, §4202, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1218.)

§ 1383. Complete withdrawal

(a) Determinative factors

For purposes of this part, a complete withdrawal from a multiemployer plan occurs when an employer—

(1) permanently ceases to have an obligation to contribute under the plan, or

(2) permanently ceases all covered operations under the plan.

(b) Building and construction industry

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the building and construction industry, a complete withdrawal occurs only as described in paragraph (2), if—

(A) substantially all the employees with respect to whom the employer has an obligation to contribute under the plan perform work in the building and construction industry, and

(B) the plan—

(i) primarily covers employees in the building and construction industry, or

(ii) is amended to provide that this subsection applies to employers described in this paragraph.

(2) A withdrawal occurs under this paragraph if—

(A) an employer ceases to have an obligation to contribute under the plan, and

(B) the employer—

(i) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or

(ii) resumes such work within 5 years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of the resumption.

(3) In the case of a plan terminated by mass withdrawal (within the meaning of section 1341a(a)(2) of this title), paragraph (2) shall be applied by substituting “3 years” for “5 years” in subparagraph (B)(ii).

(c) Entertainment industry

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the entertainment industry, primarily on a temporary or project-by-project basis, if the plan primarily covers employees in the entertainment industry, a complete withdrawal occurs only as described in subsection (b)(2) of this section applied by substituting “plan” for “collective bargaining agreement” in subparagraph (B)(i) thereof.

(2) For purposes of this subsection, the term “entertainment industry” means—

(A) theater, motion picture (except to the extent provided in regulations prescribed by the corporation), radio, television, sound or visual recording, music, and dance, and

(B) such other entertainment activities as the corporation may determine to be appropriate.

(3) The corporation may by regulation exclude a group or class of employers described in the preceding sentence from the application of this subsection if the corporation determines that such exclusion is necessary—

(A) to protect the interest of the plan’s participants and beneficiaries, or