pires, without regard to extensions agreed to after such date, or 3 years after Sept. 26, 1980, see section 210 of Pub. L. 96–364, set out as a note under section 194A of this title.

SUBPART D—TREATMENT OF WELFARE BENEFIT FUNDS

§ 419. Treatment of funded welfare benefit plans

(a) General rule

Contributions paid or accrued by an employer to a welfare benefit fund—

(1) shall not be deductible under this chapter, but

(2) if they would otherwise be deductible, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

(b) Limitation

The amount of the deduction allowable under subsection (a)(2) for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year.

(c) Qualified cost

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified cost'' means, with respect to any taxable year, the sum of—

(A) the qualified direct cost for such taxable year, and

(B) subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year.

(2) Reduction for funds after-tax income

In the case of any welfare benefit fund, the qualified cost for any taxable year shall be reduced by such fund's after-tax income for such taxable year.

(3) Qualified direct cost

(A) In general

The term ''qualified direct cost'' means, with respect to any taxable year, the aggregate amount (including administrative expenses) which would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

(B) Time when benefits provided

For purposes of subparagraph (A), a benefit shall be treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of this chapter excluding such benefit from gross income).

(C) 60-month amortization of child care facilities

(i) In general

In determining qualified direct costs with respect to any child care facility for purposes of subparagraph (A), in lieu of depreciation the adjusted basis of such facility shall be allowable as a deduction ratably over a period of 60 months beginning with the month in which the facility is placed in service.

(ii) Child care facility

The term ''child care facility'' means any tangible property which qualifies under regulations prescribed by the Secretary as a child care center primarily for children of employees of the employer; except that such term shall not include any property—

(I) not of a character subject to depreciation; or

(II) located outside the United States.

(4) After-tax income

(A) In general

The term ''after-tax income'' means, with respect to any taxable year, the gross income of the welfare benefit fund reduced by the sum of—

(i) the deductions allowed by this chapter which are directly connected with the production of such gross income, and

(ii) the tax imposed by this chapter on the fund for the taxable year.

(B) Treatment of certain amounts

In determining the gross income of any welfare benefit fund—

(i) contributions and other amounts received from employees shall be taken into account, but

(ii) contributions from the employer shall not be taken into account.

(5) Item only taken into account once

No item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

(d) Carryover of excess contributions

If—

(1) the amount of the contributions paid (or deemed paid under this subsection) by the employer during any taxable year to a welfare benefit fund, exceeds

(2) the limitation of subsection (b),

such excess shall be treated as an amount paid by the employer to such fund during the succeeding taxable year.

(e) Welfare benefit fund

For purposes of this section—

(1) In general

The term ''welfare benefit fund'' means any fund—

(A) which is part of a plan of an employer, and

(B) through which the employer provides welfare benefits to employees or their beneficiaries.

(2) Welfare benefit

The term ''welfare benefit'' means any benefit other than a benefit with respect to which—

(A) section 83(h) applies,

(B) section 404 applies (determined without regard to section 404(b)(2)), or

(C) section 404A applies.

(3) Fund

The term ''fund'' means—

(A) any organization described in paragraph (7), (9), (17), or (20)[1] of section 501(c),

(B) any trust, corporation, or other organization not exempt from the tax imposed by this chapter, and

(C) to the extent provided in regulations, any account held for an employer by any person.

(4) Treatment of amounts held pursuant to certain insurance contracts

(A) In general

Notwithstanding paragraph (3)(C), the term ''fund'' shall not include amounts held by an insurance company pursuant to an insurance contract if—

(i) such contract is a life insurance contract described in section 264(a)(1), or

(ii) such contract is a qualified nonguaranteed contract.

(B) Qualified nonguaranteed contract

(i) In general

For purposes of this paragraph, the term ''qualified nonguaranteed contract'' means any insurance contract (including a reasonable premium stabilization reserve held thereunder) if—

(I) there is no guarantee of a renewal of such contract, and

(II) other than insurance protection, the only payments to which the employer or employees are entitled are experience rated refunds or policy dividends which are not guaranteed and which are determined by factors other than the amount of welfare benefits paid to (or on behalf of) the employees of the employer or their beneficiaries.

(ii) Limitation

In the case of any qualified nonguaranteed contract, subparagraph (A) shall not apply unless the amount of any experience rated refund or policy dividend payable to an employer with respect to a policy year is treated by the employer as received or accrued in the taxable year in which the policy year ends.

(f) Method of contributions, etc., having the effect of a plan

If—

(1) there is no plan, but

(2) there is a method or arrangement of employer contributions or benefits which has the effect of a plan,

this section shall apply as if there were a plan.

(g) Extension to plans for independent contractors

If any fund would be a welfare benefit fund (as modified by subsection (f)) but for the fact that there is no employee-employer relationship—

(1) this section shall apply as if there were such a relationship, and

(2) any reference in this section to the employer shall be treated as a reference to the person for whom services are provided, and any reference in this section to an employee shall be treated as a reference to the person providing the services.

(Added Pub. L. 98–369, div. A, title V, § 511(a), July 18, 1984, 98 Stat. 854; amended Pub. L. 99–514, title XVIII, § 1851(a)(1), (8)(A), (b)(2)(C)(iv), Oct. 22, 1986, 100 Stat. 2858, 2860, 2863; Pub. L. 100–203, title IX, § 10201(b)(4), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, § 1018(t)(2)(C), Nov. 10, 1988, 102 Stat. 3587.)

REFERENCES IN TEXT

Section 501(c)(20), referred to in subsec. (e)(3)(A), was repealed by Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(iii), Dec. 19, 2014, 128 Stat. 4040.

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 substituted ''chapter'' for ''subchapter''.

1987—Subsec. (e)(2)(D). Pub. L. 100–203 struck out subpar. (D) which related to a benefit with respect to which an election under section 463 applies.

1986—Subsec. (a)(1). Pub. L. 99–514, § 1851(b)(2)(C)(iv)(I), substituted ''under this subchapter'' for ''under section 162 or 212''.

Subsec. (a)(2). Pub. L. 99–514, § 1851(b)(2)(C)(iv)(II), substituted ''they would otherwise be deductible'' for ''they satisfy the requirements of either of such sections''.

Subsec. (e)(4). Pub. L. 99–514, § 1851(a)(8)(A), added par. (4).

Subsec. (g)(1). Pub. L. 99–514, § 1851(a)(1), substituted ''such a relationship'' for ''such a plan''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 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 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, § 511(e), July 18, 1984, 98 Stat. 862, as amended by Pub. L. 99–514, title XVIII, § 1851(a)(12), (14), Oct. 22, 1986, 100 Stat. 2862, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this subpart] shall apply to contributions paid or accrued after December 31, 1985, in taxable years ending after such date.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of plan maintained pursuant to 1 or more collective bargaining agreements—

''(A) between employee representatives and 1 or more employers, and

''(B) in effect on July 1, 1985 (or ratified on or before such date),

[1] See References in Text note below.

the amendments made by this section shall not apply to years beginning before the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after July 1, 1985).

''(3) SPECIAL RULE FOR PARAGRAPH (2).—For purposes of paragraph (2), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

''(4) SPECIAL EFFECTIVE DATE FOR CONTRIBUTIONS OF FACILITIES.—Notwithstanding paragraphs (1) and (2), the amendments made by this section shall apply in the case of—

''(A) any contribution after June 22, 1984, of a facility to a welfare benefit fund, and

''(B) any other contribution after June 22, 1984, to a welfare benefit fund to be used to acquire or improve a facility.

''(5) BINDING CONTRACT EXCEPTIONS TO PARAGRAPH (4).—Paragraph (4) shall not apply to any facility placed in service before January 1, 1987—

''(A) which is acquired or improved by the fund (or contributed to the fund) pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter, or

''(B) the construction of which by or for the fund began before June 22, 1984.

''(6) AMENDMENTS RELATED TO TAX ON UNRELATED BUSINESS INCOME.—The amendments made by subsection (b) [amending section 512 of this title] shall apply with respect to taxable years ending after December 31, 1985. For purposes of section 15 of the Internal Revenue Code of 1954 [now 1986], such amendments shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

''(7) AMENDMENTS RELATED TO EXCISE TAXES ON CERTAIN WELFARE BENEFIT PLANS.—The amendments made by subsection (c) [enacting section 4976 of this title] shall apply to benefits provided after December 31, 1985.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

EFFECTIVE DATE OF REGULATIONS

Pub. L. 99–514, title XVIII, § 1851(a)(8)(B), Oct. 22, 1986, 100 Stat. 2860, provided that: ''Except in the case of a reserve for post-retirement medical or life insurance benefits and any other arrangement between an insurance company and an employer under which the employer has a contractual right to a refund or dividend based solely on the experience of such employer, any account held for an employer by any person and defined as a fund in regulations issued pursuant to section 419(e)(3)(C) of the Internal Revenue Code of 1954 [now 1986] shall be considered a 'fund' no earlier than 6 months following the date such regulations are published in final form.''

§ 419A. Qualified asset account; limitation on additions to account

(a) General rule

For purposes of this subpart and section 512, the term ''qualified asset account'' means any account consisting of assets set aside to provide for the payment of—

(1) disability benefits,

(2) medical benefits,

(3) SUB or severance pay benefits, or

(4) life insurance benefits.

(b) Limitation on additions to account

No addition to any qualified asset account may be taken into account under section 419(c)(1)(B) to the extent such addition results in the amount in such account exceeding the account limit.

(c) Account limit

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund—

(A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a), and

(B) administrative costs with respect to such claims.

(2) Additional reserve for post-retirement medical and life insurance benefits

The account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for—

(A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or

(B) post-retirement life insurance benefits to be provided to covered employees.

(3) Amount taken into account for SUB or severance pay benefits

(A) In general

The account limit for any taxable year with respect to SUB or severance pay benefits is 75 percent of the average annual qualified direct costs for SUB or severance pay benefits for any 2 of the immediately preceding 7 taxable years (as selected by the fund).

(B) Special rule for certain new plans

In the case of any new plan for which SUB or severance pay benefits are not available to any key employee, the Secretary shall, by regulations, provide for an interim amount to be taken into account under paragraph (1).

(4) Limitation on amounts to be taken into account

(A) Disability benefits

For purposes of paragraph (1), disability benefits payable to any individual shall not be taken into account to the extent such benefits are payable at an annual rate in excess of the lower of—

(i) 75 percent of such individual's average compensation for his high 3 years (within the meaning of section 415(b)(3)), or

(ii) the limitation in effect under section 415(b)(1)(A).

(B) Limitation on SUB or severance pay benefits

For purposes of paragraph (3), any SUB or severance pay benefit payable to any indi-