

return and such other information as the Secretary of the Treasury or his delegate may require, and agrees to the assessment of a deficiency for any closed year falling within the open period, to the extent such deficiency is attributable to the operation of such election.”

[Pub. L. 97-448, title III, §311(c)(1), Jan. 12, 1983, 96 Stat. 2411, provided that: “The amendment made by subsection (a) of section 305 [amending par. (2)(E) of this note] shall take effect on December 28, 1980.”]

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

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.

[§ 405. Repealed. Pub. L. 98-369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848]

Section, added Pub. L. 87-792, §5(a), Oct. 10, 1962, 76 Stat. 826; amended Pub. L. 89-97, title I, §106(d)(5), July 30, 1965, 79 Stat. 337; Pub. L. 91-172, title V, §515(c)(1), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93-406, title II, §2004(c)(2), 2005(c)(11), Sept. 2, 1974, 88 Stat. 986, 992; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-34, title III, §313(a), (b)(1), Aug. 13, 1981, 95 Stat. 285, 286; Pub. L. 97-452, §2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98-369, div. A, title I, §42(a)(6), July 18, 1984, 98 Stat. 557, related to qualified bond purchase plans.

EFFECTIVE DATE OF REPEAL

Repeal applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 62 of this title.

ROLLOVER OF EXISTING BONDS INTO QUALIFIED EMPLOYER PLANS

Pub. L. 98-369, div. A, title IV, §491(c)(1), (f)(2), July 18, 1984, 98 Stat. 848, 853, provided that, applicable to redemptions after July 18, 1984, in taxable years ending after such date, subsec. (d)(3)(A) of this section, as in effect before its repeal, is amended to read as follows:

“(A) IN GENERAL.—If—

“(i) any qualified bond is redeemed,

“(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and

“(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated as a rollover contribution described in section 408(d)(3).”

BONDS UNDER QUALIFIED BOND PURCHASE PLANS REDEEMABLE AT ANY TIME AFTER JULY 18, 1984

Pub. L. 98-369, div. A, title IV, §491(f)(4), July 18, 1984, 98 Stat. 853, provided that: “Notwithstanding—

“(A) subparagraph (D) of section 405(b)(1) of the Internal Revenue Code of 1954 (as in effect before its repeal by this section) [see above], and

“(B) the terms of any bond described in subsection (b) of such section 405,

such a bond may be redeemed at any time after the date of the enactment of this Act [July 18, 1984] in the same manner as if the individual redeeming the bond had attained age 59½.”

§ 406. Employees of foreign affiliates covered by section 3121(l) agreements

(a) Treatment as employees of American employer

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of an American employer (as defined in section 3121(h)), an individual who is a citizen or resident of the United States and who is an employee of a foreign affiliate (as defined in section 3121(l)(6)) of such American employer shall be treated as an employee of such American employer, if—

(1) such American employer has entered into an agreement under section 3121(l) which applies to the foreign affiliate of which such individual is an employee;

(2) the plan of such American employer expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its foreign affiliates to which an agreement entered into by such American employer under section 3121(l) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign affiliate.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such American employer; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such American employer and by determining such individual's status with regard to such American employer.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign affiliate which would constitute his total compensation if his services had been performed for such American employer, and the basic or regular

rate of compensation of such individual shall be determined under regulations prescribed by the Secretary; and

(B) such individual shall be treated as having paid the amount paid by such American employer which is equivalent to the tax imposed by section 3101.

[(c) Repealed. Pub. L. 104-188, title I, § 1401(b)(7), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by an American employer, or by another taxpayer which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such American employer under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such American employer or to any other taxpayer which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign affiliate of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the American employer if he were an employee of the American employer, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign affiliate under this subsection shall be deductible for its taxable year with or within which the taxable year of such American employer ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of an American employer under subsection (a) shall also be treated as an employee of such American employer, with respect to the plan described in subsection (a)(2), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88-272, title II, § 220(a), Feb. 26, 1964, 78 Stat. 58; amended Pub. L. 91-172, title V, § 515(c)(2), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93-406, title II, §§ 1016(a)(4), 2005(c)(12), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-21, title III, § 321(c), (e)(2)(A)-(D)(i), Apr. 20, 1983, 97 Stat. 119, 120; Pub. L. 98-369, div. A, title IV, § 491(d)(13)-(15), July 18, 1984, 98 Stat. 849; Pub. L. 99-514, title XI, §§ 1112(d)(3), 1114(b)(9)(A), (C), title XVIII, § 1852(e)(2)(C), Oct. 22, 1986, 100 Stat. 2445, 2451, 2868; Pub. L. 100-647, title I, § 1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101-239, title VII, §§ 7811(g)(3), 7831(f), title X, § 10201(b)(1), (2), Dec. 19, 1989, 103 Stat. 2409, 2427, 2472; Pub. L. 102-318, title V, § 521(b)(14), July 3, 1992, 106 Stat. 311; Pub. L. 104-188, title I, §§ 1401(b)(7), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-188, § 1401(b)(7), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104-188, § 1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "Section 101(b) (relating to employees' death benefits)."

1992—Subsec. (c). Pub. L. 102-318 substituted "402(d)" for "402(e)".

1989—Subsec. (a). Pub. L. 101-239, § 10201(b)(1), substituted "3121(l)(6)" for "3121(l)(8)".

Subsec. (b)(1)(A). Pub. L. 101-239, § 7831(f), made technical correction to Pub. L. 99-514, § 1114(b)(9)(A), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101-239, § 7811(g)(3), substituted "purposes of limitation" for "purposes limitation" in heading.

Subsec. (c)(3). Pub. L. 101-239, § 10201(b)(2), substituted "3121(l)(6)(B)" for "3121(l)(8)(B)".

1988—Subsec. (c). Pub. L. 100-647, § 1011A(b)(16), struck out "of capital gain provisions and" after "service for purposes" in heading and substituted "applying section 402(e)" for "applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)" in text.

Subsec. (e). Pub. L. 100-647, § 1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: "Section 72(d) (relating to employees' annuities)."

1986—Subsec. (b)(1). Pub. L. 99-514, § 1112(d)(3), struck out "(without regard to paragraph (1)(A) thereof)" after "section 410(b)" in introductory text.

Subsec. (b)(1)(A). Pub. L. 99-514, § 1114(b)(9)(A), as amended by Pub. L. 101-239, § 7831(f), substituted "a highly compensated employee (within the meaning of section 414(q))" for "an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign affiliate of such American employer".

Subsec. (b)(1)(B). Pub. L. 99-514, § 1114(b)(9)(C), inserted "(as so defined)" after "employee".

Subsec. (e)(5). Pub. L. 99-514, § 1852(e)(2)(C), struck out par. (5) which read as follows: "Section 2517 (relating to certain annuities under qualified plans)."

1984—Subsec. (a). Pub. L. 98-369, § 491(d)(13), substituted in introductory provision "or an annuity plan described in section 403(a)" for "an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)".

Subsec. (a)(3). Pub. L. 98-369, § 491(d)(14), substituted "or 403(a)" for "403(a), or 405(a)".

Subsec. (d). Pub. L. 98-369, § 491(d)(15)(A), (B), substituted in introductory provision "section 404" for "sections 404 and 405(c)", and "or annuity" for "annuity, or bond purchase".

Subsec. (d)(2). Pub. L. 98-369, § 491(d)(15)(C), struck out "(or section 405(c))" after "section 404".

1983—Pub. L. 98-21, § 321(e)(2)(D)(i), substituted "Employees of foreign affiliates covered by section 3121(l) agreements" for "Certain employees of foreign subsidiaries" in section catchline.

Subsec. (a). Pub. L. 98-21, § 321(c), amended subsec. (a) generally, substituting "American employer" for "domestic corporation" in heading and in text wherever appearing, inserting reference to section 3121(h) of this title, inserting "or resident" after "citizen" wherever appearing, substituting "foreign affiliate" for "foreign subsidiary" wherever appearing, and "foreign affiliates" for "foreign subsidiaries".

Subsec. (b). Pub. L. 98-21, § 321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing.

Subsec. (c). Pub. L. 98-21, § 321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing in provisions preceding par. (1) and in pars. (1) and (2).

Subsec. (c)(3). Pub. L. 98-21, § 321(e)(2)(A), (B), substituted "foreign affiliate by reason of which he is

treated as an employee of such American employer, if he becomes an employee of another entity in which such American employer has not less than a 10-percent interest (within the meaning of section 3121(f)(8)(B)) for “foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation”.

Subsec. (d). Pub. L. 98-21, §321(e)(2)(A), (C), substituted references to an American employer for references to a domestic corporation and reference to an affiliate for a reference to a subsidiary wherever appearing, substituted “another taxpayer” for “another corporation” in provisions preceding par. (1), and substituted “any other taxpayer” for “any other corporation” in par. (1).

Subsec. (e). Pub. L. 98-21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation wherever appearing in provisions preceding par. (1).

1976—Subsec. (b)(2)(A). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1974—Subsec. (b)(1). Pub. L. 93-406, §1016(a)(4), substituted “section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)” for “paragraphs (3)(B) and (4) of section 401(a)”.

Subsec. (c). Pub. L. 93-406, §2005(c)(12), substituted “subsections (a)(2) and (e) of section 402” for “section 72(n), section 402(a)(2)”.

1969—Subsec. (c). Pub. L. 91-172 substituted “provisions and limitation of tax” for “provisions” in heading, and substituted “section 72(n), section 402(a)(2),” for “section 402(a)(2)” in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(7) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104-188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104-188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104-188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101-239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7831(g) of Pub. L. 101-239, set out as a note under section 1 of this title.

Pub. L. 101-239, title X, §10201(c), Dec. 19, 1989, 103 Stat. 2472, provided that: “The amendments made by this section [amending this section, section 3121 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to any agreement in effect under section 3121(f) of the Internal Revenue Code of 1986 on or after June 15, 1989, with respect to which no notice of termination is in effect on such date.”

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 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99-514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99-514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(A), (C) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99-514, set out as a note under section 414 of this title.

Pub. L. 99-514, title XVIII, §1852(e)(2)(E), Oct. 22, 1986, 100 Stat. 2868, provided that: “The amendments made by this paragraph [amending this section and section 407 of this title and repealing section 2517 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 1986].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-21, title III, §321(f), Apr. 20, 1983, 97 Stat. 120, provided that:

“(1)(A) The amendments made by this section [amending this section and sections 407, 1402, 3121, and 6413 of this title and section 410 of Title 42, The Public Health and Welfare] (other than subsection (d) [amending section 407 of this title]) shall apply to agreements entered into after the date of the enactment of this Act [Apr. 20, 1983].

“(B) At the election of any American employer, the amendments made by this section (other than subsection (d)) shall also apply to any agreement entered into on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

“(2)(A) The amendments made by subsection (d) [amending section 407 of this title] shall apply to plans established after the date of the enactment of this Act [Apr. 20, 1983].

“(B) At the election of any domestic parent corporation the amendments made by subsection (d) shall also apply to any plan established on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.”

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(4) of Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transition of Rules note under section 410 of this title.

Amendment by section 2005(c)(12) of Pub. L. 93-406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91-172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Pub. L. 88-272, title II, §220(d), Feb. 26, 1964, 78 Stat. 63, provided that: “The amendments made by subsections (a) [enacting this section], (b) [enacting sec-

tion 407 of this title], and (c)(1) [amending the analysis preceding section 401 of this title] shall apply to taxable years ending after December 31, 1963. The amendments made by subsections (c)(2) [amending section 3121 of this title] and (3) [amending section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1962.”

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 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, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

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.

§ 407. Certain employees of domestic subsidiaries engaged in business outside the United States

(a) Treatment as employees of domestic parent corporation

(1) In general

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of a domestic parent corporation, an individual who is a citizen or resident of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions

For purposes of this section—

(A) Domestic subsidiary

A corporation shall be treated as a domestic subsidiary for any taxable year only if—

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence), was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation

The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such domestic parent corporation.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent