

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 corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary.

[(c) Repealed. Pub. L. 104-188, title I, § 1401(b)(8), 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 a domestic parent corporation, or by another corporation 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 domestic corporation under subsection (a)—

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

(2) there shall be allowed as a deduction to the domestic subsidiary 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 domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total com-

pensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a)(1)(A), 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(b), Feb. 26, 1964, 78 Stat. 60; amended Pub. L. 91-172, title V, §515(c)(3), Dec. 30, 1969, 83 Stat. 646; Pub. L. 93-406, title II, §§1016(a)(5), 2005(c)(13), 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(d), Apr. 20, 1983, 97 Stat. 119; Pub. L. 98-369, div. A, title IV, §491(d)(16)-(18), July 18, 1984, 98 Stat. 850; Pub. L. 99-514, title XI, §§1112(d)(3), 1114(b)(9)(B), (C), title XVIII, §1852(e)(2)(D), 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), Dec. 19, 1989, 103 Stat. 2409, 2427; Pub. L. 102-318, title V, §521(b)(15), July 3, 1992, 106 Stat. 311; Pub. L. 104-188, title I, §§1401(b)(8), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-188, §1401(b)(8), 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. (b)(1)(A). Pub. L. 101-239, §7831(f), made technical correction to Pub. L. 99-514, §1114(b)(9)(B), see 1986 Amendment note below.

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

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)(B), 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 domestic subsidiary".

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)(D), struck out par. (5) which read as follows: "Section 2517 (relating to certain annuities under qualified plans)."

1984—Subsec. (a)(1). Pub. L. 98-369, §491(d)(16), substituted "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)(1)(B). Pub. L. 98-369, §491(d)(17), substituted "or 403(a)" for "403(a), or 405(a)".

Subsec. (d). Pub. L. 98-369, §491(d)(18)(A), (B), substituted in introductory provision "section 404" for "sections 404 and 405(a)", and "or annuity" for "annuity, or bond purchase".

Subsec. (d)(2). Pub. L. 98-369, §491(d)(18)(C), struck out "(or section 405(c))" after "section 404".

1983—Subsec. (a)(1). Pub. L. 98-21 inserted "or resident" after "citizen", and inserted "or residents" after "citizens" in subpar. (A).

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

1974—Subsec. (b)(1). Pub. L. 93-406, §1016(a)(5), 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)(13), 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)(8) 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.

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)(B), (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.

Amendment by section 1852(e)(2)(D) of Pub. L. 99-514 applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99-514, set out as a note under section 406 of this title.

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

Amendment by Pub. L. 98-21 applicable to plans established after Apr. 20, 1983, except that at the election of any domestic parent corporation such amendment shall also apply to any plan established on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21 set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(5) 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; Transitional Rules note under section 410 of this title.

Amendment by section 2005(c)(13) 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

Section applicable to taxable years ending after Dec. 31, 1963, see section 220(d) of Pub. L. 88-272, set out as a note under section 406 of this title.

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.

§ 408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term “individual retirement account” means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) or in section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(b) Individual retirement annuity

For purposes of this section, the term “individual retirement annuity” means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A), and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.