

**PART I—PENSION, PROFIT-SHARING,
STOCK BONUS PLANS, ETC.**

Subpart

- A. General rule.
- B. Special rules.
- C. Insolvent plans.
- D. Treatment of welfare benefit funds.
- E. Treatment of transfers to retiree health accounts.¹

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-141, div. U, title IV, § 401(a)(95), Mar. 23, 2018, 132 Stat. 1188, substituted “Insolvent plans” for “Special rules for multiemployer plans” in heading for subpart C.

2014—Pub. L. 113-235, div. O, title I, § 108(b)(3)(D), Dec. 16, 2014, 128 Stat. 2789, which directed amendment of the table of subparts for part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 by striking the heading and inserting “INSOLVENT PLANS”, could not be executed as it did not specify the subpart to be amended.

1984—Pub. L. 98-369, div. A, title V, § 511(d), July 18, 1984, 98 Stat. 862, added heading for subpart D.

1980—Pub. L. 96-364, title II, § 202(b), Sept. 26, 1980, 94 Stat. 1285, added heading for subpart C.

SUBPART A—GENERAL RULE

Sec.

- 401. Qualified pension, profit-sharing, and stock bonus plans.
- 402. Taxability of beneficiary of employees’ trust.
- 402A. Optional treatment of elective deferrals as Roth contributions.
- 403. Taxation of employee annuities.
- 404. Deduction for contributions of an employer to an employees’ trust or annuity plan and compensation under a deferred-payment plan.
- 404A. Deduction for certain foreign deferred compensation plans.
- [405. Repealed.]
- 406. Employees of foreign affiliates covered by section 3121(l) agreements.
- 407. Certain employees of domestic subsidiaries engaged in business outside the United States.
- 408. Individual retirement accounts.
- 408A. Roth IRAs.
- 409. Qualifications for tax credit employee stock ownership plans.
- 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.

Editorial Notes

AMENDMENTS

2004—Pub. L. 108-357, title VIII, § 885(c), Oct. 22, 2004, 118 Stat. 1640, added item 409A.

2001—Pub. L. 107-16, title VI, § 617(e)(2), June 7, 2001, 115 Stat. 106, added item 402A.

1997—Pub. L. 105-34, title III, § 302(e), Aug. 5, 1997, 111 Stat. 829, added item 408A.

1986—Pub. L. 99-514, title XVIII, § 1899A(70), Oct. 22, 1986, 100 Stat. 2963, substituted “Qualifications” for “Qualification” in item 409.

1984—Pub. L. 98-369, div. A, title IV, § 491(d)(54), (e)(10), July 18, 1984, 98 Stat. 852, 853, struck out items 405 and 409, which read “Qualified bond purchase plans” and “Retirement bonds”, respectively, and redesignated item 409A as 409.

¹ Editorially supplied. Subpart E of part I added by Pub. L. 101-508 without corresponding amendment of part analysis.

1983—Pub. L. 98-21, title III, § 321(e)(2)(D)(ii), Apr. 20, 1983, 97 Stat. 120, substituted “Employees of foreign affiliates covered by section 3121(l) agreements” for “Certain employees of foreign subsidiaries” in item 406.

1980—Pub. L. 96-603, § 2(d)(1), Dec. 28, 1980, 94 Stat. 3510, added item 404A.

Pub. L. 96-222, title I, § 101(a)(7)(L)(v)(VIII), Apr. 1, 1980, 94 Stat. 200, substituted “tax credit employee stock ownership plans” for “ESOPS” in item 409A.

1978—Pub. L. 95-600, title I, § 141(f)(8), Nov. 6, 1978, 92 Stat. 2795, added item 409A.

1974—Pub. L. 93-406, title II, § 1016(b)(1), Sept. 2, 1974, 88 Stat. 932, inserted heading “Subpart A—General Rule” and added analysis of subparts.

Pub. L. 93-406, title II, § 2002(h)(2), Sept. 2, 1974, 88 Stat. 970, added items 408 and 409.

1964—Pub. L. 88-272, title II, § 220(c)(1), Feb. 26, 1964, 78 Stat. 62, added items 406 and 407.

1962—Pub. L. 87-792, § 5(b), Oct. 10, 1962, 76 Stat. 827, added item 405.

§ 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination));

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) SPECIAL RULES RELATING TO NON-DISCRIMINATION REQUIREMENTS.—