**Chapter 3 Deductibility**

**Q. 3.01: What is the general rule for the timing of the tax deductibility of a qualified plan contribution made by an employer?**

 The general rule of employer tax deductibility for a qualified plan contribution requires that the contribution be made by the due date of the plan sponsor’s (the employer’s) tax return, including extensions. Consider the following example:

|  |  |
| --- | --- |
| Tax year ends | 12/31/2014 |
| Due date of tax return | 3/15/2015 |
| Extended due date of tax return | 9/15/2015 |

In this case, the contribution would be considered timely if deposited on or before September 15, 2015, even when the tax return is filed before the contribution is made if the employer is on the accrual method.[[1]](#footnote-1) This assumes that the employer has a valid extension to file the return and designates that the contribution was made with respect to the prior year. In one case, the employer mailed the contribution to the trustee of the plan. Because the postmark on the envelope was before the extended due date of the tax return, the Internal Revenue Service (IRS) ruled that the contribution was timely.[[2]](#footnote-2)

However, these rules apply for deductibility; they *do not* apply for minimum funding standards. *Minimum funding standards* define the minimum contribution required to satisfy benefits provided for in defined benefit plans or contributions to a money purchase or target benefit plan . If the minimum funding standards are not satisfied, the IRS may levy a 10 percent excise tax. If the deficiency is not corrected, an excise tax of 100 percent may be levied.

All pension plans—money purchase, target benefit, and defined benefit—are subject to minimum funding standards. To satisfy the minimum funding standards in these plans, the contribution must be made by eight and one-half months after the end of the plan year.[[3]](#footnote-3) The safest choice is to establish a plan year to be the same twelve-month period as the employer’s tax year.

Here is another situation that supports that opinion:

|  |  |
| --- | --- |
| Employer’s tax year ends | 12/31/2014 |
| Tax return due date | 3/15/2015 |
| Extended tax return due date | 9/15/2015 |
| Pension plan year ends | 6/30/2014 |
| Minimum funding standards due date | 3/15/2015 |

Even though, for deduction purposes, the contribution can be made as late as September 15, 2015, the employer must fund the plan no later than March 15, 2015, to satisfy the minimum funding standards. If the minimum funding standards are not satisfied by the due date, a 10 percent excise tax is imposed.[[4]](#footnote-4) If the deficiency is not corrected by the earlier of the date of mailing of a notice of deficiency by the IRS or the date on which the 10 percent tax is assessed, an additional excise tax of 100 percent may be imposed on the employer.[[5]](#footnote-5)

One tax court case held that contributions made with respect to compensation earned after the end of the employer’s tax year are not deductible in that prior tax year.[[6]](#footnote-6) This issue is of particular importance in 401(k) plans, in which the plan year ends December 31 but the employer’s tax year ends on a month other than December 31, e.g., September 30. If the employer makes a matching contribution for the plan year ending December 31, 2014 the portion attributable to employee compensation earned after September 30, 2014, would not be deductible until the tax year ending September 30, 2015.

In a 2003 case, the US Court of Claims agreed with the IRS holding that a contribution is not for a given year if it is made due to work performed in a later tax year.[[7]](#footnote-7)

Moreover, the deductibility rule *does not* apply for purposes of the required timeliness of employer deposits of employee contributions to a 401(k) plan. Employee deposits must be made by the employer on a much more accelerated basis.

**Q. 3.02: What are the special tax deduction limitations on a profit-sharing plan?**

The limit on deductions to a profit sharing plan is 25 percent of compensation.[[8]](#footnote-8) Two questions have to be asked and answered to calculate this limit:

* Over what period is compensation measured?
* Whose compensation should be included?

The answer to the first question is based on the employer’s tax year. The 25 percent limit is applied to compensation earned and paid during the employer’s tax year ending with or within the plan year. The effect of different periods being used for the employer’s tax year and the plan year is as follows:

|  |  |
| --- | --- |
| Employer’s tax year-end | 12/31/2014 |
| Compensation for 12 months ending 12/31/14 | $260,000 |
| Plan year-end | 6/30/2015 |
| Compensation for 12 months ending 6/30/15 |  $300,000 |

For the plan year ending June 30, 2015, the maximum deduction would be $65,000, i.e., 25 percent of the employer’s tax year (December 31, 2014) compensation ending within the plan year (June 30, 2015), or $260,000. If a contribution is made in error based on the plan year compensation of $300,000, there would be a nondeductible contribution of $10,000 ([$300,000 × 25%] – [$260,000 × 25%]). This nondeductible contribution would be subject to a 10 percent excise tax[[9]](#footnote-9) but could be carried over and deducted in the next tax year. This assumes that the contributions made *during* the 2014 tax year plus any prior nondeductible contributions are in excess of the maximum deduction of $65,000.[[10]](#footnote-10)

Although the Employee Retirement Income Security Act of 1974 (ERISA) requires that plan contributions may not inure to the benefit of the employer, a contribution to a defined benefit plan made as a result of a mistake of fact may be returned to the employer.[[11]](#footnote-11) If a contribution is conditioned upon the deductibility of the contribution under Code Section 404, then to the extent the deduction is disallowed, the contribution may be returned to the employer within one year after the disallowance of the deduction.[[12]](#footnote-12) For ease of processing, the IRS has established a rule allowing for the return of *de minimis* contributions of up to $25,000 without an IRS ruling if the plan specifically provides that contributions, to the extent not deductible, may be returned to the employer.[[13]](#footnote-13)

Treasury regulations provide, in determining whose compensation to include, that “the limitation shall be based on the compensation otherwise paid or accrued by the employer during such taxable year of the employer to the employees who, in such taxable year of the employer, are beneficiaries of the trust funds accumulated under the plan.”[[14]](#footnote-14) This implies that the compensation for all participants who share in the contribution or have an existing account balance in the plan (“trust funds accumulated under the plan”) is considered in determining the total compensation on which the 25 percent limit is based; however, additional research proves this conclusion wrong.

Revenue Ruling 65-295[[15]](#footnote-15) deals with a profit sharing plan that required the employee to be employed on the last day of the plan year to be eligible to share in the employer’s contribution. The IRS position in this revenue ruling is that the terminated employee’s compensation is not included in the total plan compensation for purposes of determining the 25 percent deduction limit. The revenue ruling refers to Treasury Regulation Section 1.404(a)-9(g), which shows an example of the calculation of the 15 percent limit (pre-2002 limit). There is a footnote on the line listing compensation that reads, “Compensation otherwise paid or accrued during the year to the employees who are beneficiaries of trust funds accumulated under the plan in the year.” The plan in question does not accumulate funds in the year (contributions) for employees terminated during the year and therefore compensation attributable to those employees is not included in the 15 percent limit in the example.

This guideline on the calculation of the limit on deductions is mandatory under Treasury Regulations Section 1.404(a)-9(g) in all profit sharing plans. Furthermore, the 25 percent limit is still based on total compensation[[16]](#footnote-16) if it is defined, for purposes of allocating contributions, to be less than total compensation. If, for example, the plan defines compensation to exclude bonuses for purposes of allocating the contribution, total compensation including bonuses is the basis for the 25 percent deduction limit, not compensation excluding bonuses.

A profit sharing plan contribution may also be made and deducted on behalf of permanently and totally disabled employees for a participant in any defined contribution plan who is permanently and totally disabled (as defined in Code Section 22(e)(3)) and who is not a highly compensated employee (HCE) (within the meaning of Code Section 414(q)). The term *participant’s compensation* means the compensation the participant would have received for the year if the participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled. Amounts contributed must be nonforfeitable when made.[[17]](#footnote-17)

Although the contribution to a profit sharing plan is discretionary, some plans may require profits to make a contribution. Employees may not receive a contribution when a profit sharing plan is adopted by two or more affiliated employers[[18]](#footnote-18) and one of the employers has a loss. The remaining employer, may, if profitable, make the contribution and deduct it on behalf of the affiliated employer having no profits.[[19]](#footnote-19)

In addition to the preceding limitations, an individual’s compensation is further limited to $251,000 in 2014 for purposes of determining contributions and benefits in all qualified plans.[[20]](#footnote-20) The limit is adjusted for cost-of-living increases in increments of no less than $5,000, i.e., a numerical increase of $4,999 has no effect, and a numerical increase of $9,999 increases the limit by only $5,000. The definition of compensation that would be subject to this limit, including optional additions or reductions that may be provided for in the plan, is addressed.

**Q. 3.03: What are the special tax deduction limitations on a money purchase plan?**

The tax deduction limit for money purchase plans and target benefit plans is the amount necessary to meet *minimum funding standards*.[[21]](#footnote-21) This is the amount required by the plan document to be contributed on behalf of each participant. For example, a money purchase plan provides for a contribution of 10 percent of compensation. The total of each participant’s contribution (10 percent times compensation) would be the minimum funding standard. In addition, the amount that can be *allocated* to each participant is limited to the annual additions limitation, i.e., the lesser of 100 percent of compensation or $51,000 in 2014, including employer contributions, employee contributions, and forfeitures. The deduction limit is 25 percent of compensation, i.e., the same as for profit sharing plans.

The funding for target benefit plans is based on theoretical future retirement benefits, not a percentage of compensation . The deduction rules that apply to target benefit plans apply to all pension plans, including money purchase plans and defined benefit plans, i.e., the deduction is equal to the required contribution necessary to satisfy the minimum funding standard.

The deduction for a pension plan (money purchase, target benefit, and defined benefit plans), unlike the deduction for profit sharing plans, is not attached to only one tax year. The funding for a pension plan may be deducted in accordance with any one of three methods:

1. Deduct the contribution in the tax year in which the plan year begins.

2. Deduct the contribution in the tax year in which the plan year ends.

3. Deduct a pro-rata portion of the contribution in each tax year that the plan year overlaps.

**Example 1.** The three pension plan deduction methods are illustrated here. Suppose the following is true for Company A:

|  |  |
| --- | --- |
| Tax year  | 1/1/14 to 12/31/14 |
| Plan year | 5/1/13 to 4/30/14 |
| Plan contribution | $75,000 |
| Plan year | 5/1/14 to 4/30/15 |
| Plan contribution  | $100,000 |

Under method 1, Company A would take a $100,000 deduction in its tax year ending December 31, 2014. Under method 2, Company A would take a deduction of $100,000 in its tax year ending December 31, 2015. Method 3 would have the company take the following deductions for the December 31, 2014 tax year:

4/30/14 contribution × [4 months (1/14 to 4/14) / 12 months (5/13 to 4/14)]

$75,000 × (4/12) = $25,000

PLUS

4/30/15 contribution × [8 months (5/14 to 12/14) / 12 months (5/14 to 4/15)]

$100,000 × (8/12) = $66,667.67

Total deduction for Company A for the tax year ending 12/31/14 $91,667.67

As a practical matter, both the prior year’s contribution and the current year’s contribution must be known before the deduction can be determined via method 3, which may not be possible, depending on the relationship between the tax year and the plan year. For example, if the plan year ends November 30, 2014, it would be too late to calculate the contribution in time for the employer’s deadline of September 15, 2014, for the filing of the 2013 tax return. For a defined benefit plan the funding calculations are done as of the first day of each plan year, i.e. December 1although this would not apply to a money purchase or target benefit plan in which the funding calculations are done as of the end of the plan year.

**Q. 3.04: Are there additional deduction limitations if the employer maintains both a defined contribution plan (e.g., a 401(k) plan) and a defined benefit plan?**

Yes. For an employer maintaining both a defined contribution and a defined benefit plan covering some or all of the same employees, there is an additional rule limiting deductions for the combined plans. That deduction limit is:[[22]](#footnote-22)

1. *the greater of 25 percent of the total compensation* (limited to $251,000 per employee for 2014) of all participants, or

2. the contribution necessary to satisfy the minimum funding standard for the defined benefit plan.

Nondeductible contributions during the tax year are subject to a 10 percent excise tax, although those contributions may be carried over and deducted in a subsequent year.

The Pension Protection Act of 2006 changed this limit, allowing contributions of up to 6 percent of compensation to the defined contribution plan in addition to contributions into the defined benefit plan without triggering the combined limits above. This change was effective for plan years beginning on or after January 1, 2006. In addition, for plan years beginning on or after January 1, 2007, there is no combined plan limit if an employer sponsors a defined benefit plan and a defined contribution plan if the defined benefit plan is subject to regulation by the Pension Benefit Guaranty Corporation (PBGC).

 As a result the deductible contribution would be 25 percent of includable compensation for the defined contribution plan plus deductible contributions into the defined benefit plan.

If the defined benefit plan is not subject to PBGC regulation (e.g., a professional service corporation with fewer than twenty-five participants), the 6 percent rule applies. To the extent the contribution to the defined contribution plan is in excess of 6 percent of includable compensation the two-plan limit only applies to the extent of the deposit to the defined contribution plan that is in excess of 6 percent of compensation.

**Example 1. Multiple Plan Deduction Limits**

|  |  |
| --- | --- |
| Total Includable Compensation | $2,000,000 |
| Defined Benefit Plan Minimum Funding Requirement | $ 425,000 |
| Maximum deduction for 2006 and thereafter([$2,000,000 x 6%] + $425,000) | $ 545,000 |
| Maximum deduction for 2007 and thereafter with PBGC plan([$2,000,000 x 25%] + $425,000) | $ 925,000 |

**Q. 3.05:** **Does the sponsor have the flexibility to forgo a contribution to a qualified pension plan?**

 Yes, there are a number of alternatives available to alter the plan sponsor’s contribution requirements for a pension plan, depending upon the type of plan.

The general rule is that once benefits are earned they cannot be taken away.However, in the case of a money purchase or target benefit plan future benefits can be reduced by reducing the rate of contribution. In the case of a defined benefit plan the employer can reduce future benefit accruals. Depending on the language in the plan document, benefits may be earned at different times during the plan year. For example, if a defined contribution plan requires employment on the last day of the plan year, an employee does not earn the right to a benefit or contribution until the last day of the plan year during which that employee was still employed by the sponsor of the plan. If the plan requires a year of service, generally defined as a plan year during which the employee has completed 1,000 hours of service, the employee does not earn the right to additional contributions until completing a year of service. Based on these provisions, the plan could be amended before the time the employees earned the right to a benefit or contribution ( i.e., before completing a year of service or before the last day of the plan year). If the plan document does not impose either of these requirements, the plan should be amended before the plan year in which the amendment is effective.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Practice Point:** Any action that reduces future benefit accruals under a pension plan must be communicated to all participants at least fifteen days before the effective date of the amendment (forty-five days for “large” plans), using an ERISA Section 204(h) notice. This notice must be provided far enough in advance to allow the plan sponsor to amend its plan before the employees have earned the right to additional accruals of benefits or contributions based on the pre-amendment provisions. The notice must explain the amendment and its effective date. This may seem redundant, but the notice is designed to clarify the effect of the amendment ( i.e., that it reduces benefit accruals and the effective date of that reduction), in more basic language.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

A second alternative, in a defined contribution pension plan, would be to amend the plan to provide that the contribution for the owners is 0 percent. Usually, in small companies, the contribution for the owners represents the majority of the total plan costs. This would allow the company to reduce its contribution substantially. In 2014, the IRS issued new rules governing the elimination of “safe harbor” employer contributions in 401(k) plans mid-plan-year. Proper advance notice to employees using an ERISA Section 204(h) notice is also required in this case as well.

Another alternative is to apply to the IRS for a *waiver* of the minimum funding standards for the period, when applicable. This application must be filed no later than two and one-half months after the close of the plan year for which the waiver is requested and no earlier than 180 days before the end of that plan year. Although this may be a tedious and costly process, it is less costly than potential penalties for failing to satisfy the minimum funding standards.

The general rule allows for a waiver of the minimum funding standards if the plan sponsor cannot make the contribution without temporary substantial business hardship and if meeting the funding standards would harm the interests of the plan participants.[[23]](#footnote-23) While evaluating the application, the IRS will consider several issues, including:

1. Is the employer operating at a loss?

2. Is the employer’s industry experiencing a serious downtrend?

3. Are overall sales in the industry in a downtrend?

4. Will the plan be continued if the waiver is granted?

Although these are not necessarily all the issues the IRS will review, the main concern is whether the business hardship is temporary. If so, the waiver will likely be granted; however, before a waiver is granted, several other guidelines must be satisfied, including the following:[[24]](#footnote-24)

1. Has the employer applied for waivers in the past? (Only three waivers may be allowed within any fifteen-year period.)

2. If the employer applying for the waiver is a member of a controlled group of employers , each member of the controlled group must satisfy the requirements for a waiver as listed previously.

3. The waived contribution must be amortized over no more than five years (under some conditions this period may be extended).

4. The interest rate used in calculating the amortization payments must be the greater of (a) 150 percent of the federal midterm rate or (b) the plan interest rate.

5. The IRS may require security if the outstanding waived amounts are $1 million or more.

.

As part of the waiver process, a defined contribution plan must also adopt an amendment specifying the way the waived contributions will be made up and allocated to participants.[[25]](#footnote-25) When the waiver request is filed, all participants, beneficiaries, alternate payees and employee organizations representing the plan must be notified. This notice must be provided at least fourteen days before the date of the waiver application and must describe the extent to which the plan is funded. In addition, the IRS charges a user fee to review and rule on the application for a waiver.

If all else fails, the plan sponsor always has the right to terminate the plan. This drastic but available option is discussed in Chapter 20.

**Q. 3.06:** **What is the special deduction limitation on contributions to a qualified pension plan in a short tax year?**

In the case of a short tax year, when the employer has chosen to determine the deductible limit for each taxable year on the basis of the pension plan year beginning in the taxable year and when the plan year begins in the short taxable year, the employer can determine the deductible limit by either of two methods:[[26]](#footnote-26) the *weighted average method*, or the *special allowance method*. After a method is selected, the employer must consistently apply that method in determining the deductible limit.

1. *Weighted Average Method:* Under the weighted average method, when the deduction is being claimed in the short taxable year, the deductible limit in the short taxable year is the product of the deductible limit otherwise applicable under Code Section 404 and the tax year ratio, i.e., the number of months in the short taxable year divided by twelve. For subsequent taxable years, the deductible limit is the weighted average of the deductible limits for the plan year ending within the taxable year and for the plan year commencing in that taxable year. This amount is computed by adding the deductible limit for the plan year ending within the taxable year multiplied by the difference between one and the tax year ratio, and the deductible limit for the plan year beginning within the taxable year multiplied by the tax year ratio.

**Example 1.**For the taxable year beginning January 1, 2014, Employer Y has changed its annual accounting period from the taxable year ending December 31, creating a short taxable year ending May 31. Employer Y has consistently deducted amounts contributed in a taxable year for the cost *attributable to the plan year beginning in that taxable year*. For the short period of January 1, 2014, to May 31, 2014, Employer Y intends to contribute the amount necessary to satisfy the minimum funding standard for the plan year beginning April 1, 2014. The minimum required contribution for the plan year beginning April 1, 2014, is $100,000.

The deductible limit for the short taxable year of January 1, 2014, to May 31, 2014, is $41,667 ($100,000 ×5/12). If Employer Y contributes $100,000, the amount contributed in excess of the deductible limit in the short taxable year ($58,333) is considered a contribution carryover for a future taxable year. For the plan year beginning April 1, 2015, the minimum required contribution is $110,000 and the deductible limit for the taxable year June 1, 2014, to May 31, 2015, is determined as follows:

[($100,000 × 7/12) + ($110,000 × 5/12)] = $104,167

1. *Special Allowance Method:* Under the special allowance method the deductible limit for a short taxable year is the same as under the weighted average method. However, under the special allowance method, the deductible limit in all the taxable years following the short taxable year equals the sum of the deductible limit for the plan year beginning in that taxable year plus a special allowance (if the contribution for the short year exceeded the deductible limit for such year). The special allowance is 10 percent of the special allowance amount.

To compute the special allowance amount, subtract the deductible limit determined under the special allowance method for the short taxable year from the lesser of:

1. the amount necessary to satisfy the minimum funding requirement for the plan year beginning in the short taxable year, or

2. the employer contribution made for the short taxable year.

*Note:* This special allowance can be used only for the first ten taxable years after the short taxable year.

**Example 2.**The following information applies to Employer Z:

|  |  |
| --- | --- |
| Deductible limit for short tax year | $ 41,667 |
| Deductible limit for subsequent tax year: |
| Deductible limit for 4/1/15 plan year | 110,000 |
| Minimum funding for 4/1/14 plan year | 100,000 |
| Deductible limit for short tax year |  41,667 |
| Special allowance amount | $ 58,333 |
| 10 percent of special allowance amount |  5,833 |
| Deductible limit for subsequent tax year | $115,833 |

With the approval of the Secretary of the Treasury, Employer Z may determine the deductible limit under the end-of-plan-year method. Under this method, Employer Z:

1. takes no deduction for plan costs in the short taxable year, and

2. changes the method for determining the deductible limit so the limit is determined for the plan year ending within the taxable year.

**Q. 3.07:** **Are there special deduction limitations on contributions to a qualified pension plan on behalf of a self-employed individual?**

Yes. Deduction limits for self-employed individuals have further restrictions. Because a self-employed individual is the employee and the employer both the employer’s and the employee’s share of Social Security taxes are paid by the sole proprietor. For purposes of earned income in determining contributions and deductions to a qualified plan, half of the Social Security taxes are deducted from the net Schedule C income, assuming that half is the responsibility of the “employer” and should not be included in the “employee’s” compensation.

The application of this view requires the sole proprietor’s net schedule C income to be adjusted by half of the Social Security tax before the contribution and deduction for the qualified plan is calculated. After this adjustment is made, what remains is the sole proprietor’s profits that represent both taxable income and a qualified plan deduction.

**Example 1. Self-Employed Individual Calculation of Deduction Limit**

|  |  |
| --- | --- |
| Net Schedule C Income | $100,000 |
| Self-Employment Tax Rate | 15.30% |
| Self-Employment Tax | $15,300 |

Calculation of maximum deduction to profit sharing plan:

|  |  |
| --- | --- |
| Net Schedule C Income | $100,000 |
| Half of self-employment tax | 7,650 |
| Sole Proprietor Profit | $ 93,350 |

Although the maximum contribution to a profit sharing plan is 25 percent, that percentage cannot be applied to the sole proprietor’s profits since that sum represents both the contribution and the remaining taxable income after the contribution is made. The applicable percentage is 20 percent.

|  |  |
| --- | --- |
| Profit Sharing Contribution | $93,350 x 20% = $18,670 |
| Confirmation of 25% limit | ([$93,350 – $18,670] x 25% = $18,670 |

A further restriction on the sole proprietor’s deduction limits prevents deducting any contribution that would create a negative Schedule C.[[27]](#footnote-27) If, for example, the sole proprietor adopted a defined benefit plan with a contribution of $75,000 and in the second year had a net Schedule C of $50,000, only $50,000 could be deducted even though a contribution of $75,000 is required. In addition, under current rules, the nondeductible contribution of $25,000 cannot be carried over to a subsequent tax year. On the positive side it would not be subject to the 10 percent excise tax on nondeductible contributions.[[28]](#footnote-28)

1. IRC Sec. 6081(b); Treas. Reg. § 1.6081-3; and Rev. Rul 66-144, 1966-1 C.B. 91. [↑](#footnote-ref-1)
2. Ltr. Rul. 8536085. [↑](#footnote-ref-2)
3. IRC Sec. 412(c)(10)(A); Rev. Rul. 77-82, 1977-1 CB. 121. [↑](#footnote-ref-3)
4. IRC Sec. 4971(a). [↑](#footnote-ref-4)
5. IRC Sec. 4971(b). [↑](#footnote-ref-5)
6. *See Lucky Stores, Inc.*, (1995) 105 TC 420, *later proceeding* (1996) 107 TC 1, 20 EBC 1825, *later proceeding* (1997) TC Memo 1997-70, RIA TC Memo ¶97070, 73 CCH TCM 1956, *aff’d* (1998, CA9) 82 AFTR 2d 98-5815, 153 F.3d 964, 98-2 USTC ¶50662, *cert. denied* S. Ct., 119 S. Ct 1755 (1999). [↑](#footnote-ref-6)
7. *Vons Companies, Inc.*, Fed. Cl. Ct., AFTR 2d 2003-1573 (2003). [↑](#footnote-ref-7)
8. IRC Sec. 404(a)(3)(A); Treas. Reg. § 1.404(a)-9(c). [↑](#footnote-ref-8)
9. IRC Sec. 4972. [↑](#footnote-ref-9)
10. IRC Sec. 4972(c)(3). [↑](#footnote-ref-10)
11. *See* Letter Ruling 200639003. [↑](#footnote-ref-11)
12. ERISA Sec. 403(c)(2)(C). [↑](#footnote-ref-12)
13. Rev. Proc. 90-49, 1990-2 C.B. 620. [↑](#footnote-ref-13)
14. Treas. Reg. § 1.404(a)-9(b)(1). [↑](#footnote-ref-14)
15. 1965-2 C.B. 148. [↑](#footnote-ref-15)
16. Treas. Reg. 1.404(a)-9(b); Rev. Rul. 80-145, 1980-1 C.B. 89. [↑](#footnote-ref-16)
17. IRC Sec. 415(c)(3)(C) [↑](#footnote-ref-17)
18. See Chapter 7 for a discussion of affiliated and controlled employers. [↑](#footnote-ref-18)
19. IRC Sec. 404(a)(3)(B), Sec. 1504; Treas. Reg. § 1.404(a)-10(a)(1). [↑](#footnote-ref-19)
20. IRC Sec. 414(l), as provided in Omnibus Budget Reconciliation Act (OBRA) 1993. [↑](#footnote-ref-20)
21. IRC Sec. 404(a)(1)(A); Prop. Treas. Reg. § 1.412(b)-1(a). [↑](#footnote-ref-21)
22. IRC Sec. 404(a)(7). [↑](#footnote-ref-22)
23. IRC Sec. 412(d)(1). [↑](#footnote-ref-23)
24. ERISA Sec. 303(a); IRC Sec. 412(b) and Sec. 412(f). [↑](#footnote-ref-24)
25. Rev. Rul. 78-223, 1978-1 C.B. 125. [↑](#footnote-ref-25)
26. Rev. Rul. 80-267, 1980-2 C.B. 139. [↑](#footnote-ref-26)
27. IRC Sec. 404(a)(8)(C). [↑](#footnote-ref-27)
28. IRC Sec. 4972(c)(4). [↑](#footnote-ref-28)