

Rev. Proc. 87-27

SECTION 1. PURPOSE

The purpose of this Revenue Procedure is to provide guidelines for changing the plan year of an employee retirement plan and the trust year of a tax-exempt employees' trust. It provides certain automatic approvals of changes without requesting prior approval from the Internal Revenue Service. The procedure prescribed are applicable to changes in plan years for any retirement plan to which section 412 of the Internal Revenue Code applies; also they apply to changes in the trust year of any employees' trust forming a part of a qualified plan whether or not the trust is part of a plan subject to section 412. Service approval is not required to change the plan year of a plan that is not subject to section 412. This Revenue Procedure supersedes Rev. Proc. 77-44, 1977-2 C.B. 578.

SEC. 2. BACKGROUND

.01 Section 412(c)(5) of the Internal Revenue Code provides that, if the plan year of an employee retirement plan subject to section 412 of the Code is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of Treasury. Section 442 of the Code provides that, if the taxpayer changes the annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary.

.02 Rev. Proc. 77-44 required the mandatory filing of Form 1128 (Application for Change in Accounting Period) by employers or plan administrators desiring to change a plan and/or trust year unless certain conditions allowing for automatic approval (which expired on January 1, 1979) were met. Form 5308 (Request for Change in Plan/Trust Year), released in February 1979, has replaced Form 1128 as the form to be used to obtain approval from the Internal Revenue Service to change the plan year of an employee retirement plan or the trust year of an employees' trust (See Announcement 79-43, 1979-12 I.R.B. 25).

.03 Section 301.6058-1 of the Regulations on Procedure and Administration requires that the employer or plan administrator of each plan subject to section

6058 of the Code must file the appropriate Annual Return/Report of Employee Benefit Plan (Form 5500 series) at the time and in the manner required by the forms and related instructions applicable to the period. Item 1d of the Form 5500 series return for the short period should be completed to reflect a change in the plan year of an employee retirement plan.

.04 Section 1.404(a)-14(c) of the Income Tax Regulations provides that although the deductible limit for a defined benefit plan applies for an employer's taxable year, the deductible limit is determined on the basis of a plan year. If the employer's taxable year coincides with the plan year, the deductible limit for the taxable year is the deductible limit for the plan year that coincides with the year. If the employer's taxable year does not coincide with the plan year, the deductible limit for a given taxable year of the employer is one of the following alternatives: (1) the deductible limit determined for the plan year commencing within the taxable year; (2) the deductible limit determined for the plan year ending within the taxable year; or (3) a weighted average of alternatives (1) and (2). The method used must be consistently applied.

SEC. 3. DEFINITIONS

.01 For purposes of this revenue procedure, the term "plan year" refers to a plan, calendar, policy, or fiscal year on which records of the plan are kept.

.02 For purposes of this revenue procedure, the term "trust year" refers to any 12-consecutive month period corresponding to the trust's taxable year.

.03 The term "short period" is the period that begins on the day after the close of the present plan or trust year and ends at the close of the day before the day designated as the first day of the new plan year or trust year.

SEC. 4. INSTRUCTIONS TO TAXPAYERS

.01 Automatic Approval

1. A plan or trust year that ends after the effective date of this revenue procedure may be changed without obtaining prior approval from the Internal Revenue Service if the conditions set forth in paragraphs 2 through 8 are satisfied.

2. No plan year is more than 12 months long.

3. The change will not delay the time when the plan would otherwise have been required to conform to the requirements of any statute, regulation, or published position of the Service.

4. The trust, if any, retains its exempt status for the short period required to effect the change as well as for the taxable year immediately preceding the short period.

5. The trust, if any, has no unrelated business taxable income under section 511 of the Code for the short period.

6. All actions necessary to implement the change of plan year, including plan amendment and a resolution of the Board of Directors (if applicable), have been taken on or before the last day of the short period.

7. No change of plan year has been made for any of the four preceding plan years.

8. In the case of a defined benefit plan, the deductible limit under section 404(a)(1) of the Code is limited by the requirements of section 5 of this Revenue Procedure.

.02 Form 5308 Filing Requirements.

The employer or the plan administrator must file a Form 5308 to obtain approval to change a plan and/or trust year when the automatic approval requirements of section 4.01 are not met. The employer or plan administrator must attach a statement to the Form 5308 explaining which of the automatic approval criteria stated in section 4.01 above has not been met and the reasons for noncompliance with said criteria. All approvals by the Service are conditioned upon the employer complying with the applicable provisions of sections 4.015 and 4.018 of this Revenue Procedure. Form 5308 is to be filed in duplicate with the Commissioner of the Internal Revenue, Washington, D.C., 20224, Attention: OP:E:EP:R, on or before the last day of the end of the short period.

SEC. 5. DEDUCTIBLE LIMITS FOR DEFINED BENEFIT PLANS

.01 If, as a consequence of a change in plan year, more than one plan year is associated with the taxable year of the employer, or the sum of the number of months of each plan year associated with an employer's taxable year is different from the number of months in the employer's taxable year, then the deductible limit for the employer's taxable year must be appropriately adjusted as described within this section.

.02 The appropriate adjustment as described in subsection .01 above is obtained by multiplying the sum of the deductible limits for the associated plan years by a fraction, where the numerator

"t" equals the number of months in the taxable year of the employer and the denominator "p" is the aggregate number of months in plan years associated with such taxable year. The deductible limit for a short plan year is determined by ratably reducing the deductible limit for a 12-month plan year in proportion to the number of months of the short plan year.

.03 If the requirements of this section 5 are followed, then the taxpayer will have met the requirements of section 1.404(a)-14(c) of the regulations regarding approval for changing the plan year that is used as the basis for determining the deductible limit.

.04 The requirements of this section are illustrated by the following examples.

Example 1. A calendar year employer computed the deductible limit for a defined benefit plan on the basis of the plan year commencing October 1 within such calendar year. In 1987, the employer, pursuant to section 4 of this Revenue Procedure, changed the plan year to a calendar year basis. This resulted in a short plan year commencing on October 1, 1987, and ending on December 31, 1987. The plan uses an aggregate funding method and the normal cost for the 12-month plan year commencing October 1, 1987, is \$24,000. The deductible limit is not reduced by the full funding limit and is not increased by the provisions of section 404(a)(1)(A)(i) of the Code.

The plan year associated with the 1987 calendar year of the employer (taxable year) is the plan year commencing October 1, 1987, and ending December 31, 1987. The deductible limit determined on the basis of this short plan year is \$6,000 (\$24,000 times 3/12). The deductible limit applicable to the employer's 1987 taxable year is \$24,000, the product of the deductible limit for the short plan year, \$6,000, multiplied by the fraction t/p (12/3). For 1988 and succeeding taxable years, the deductible limit is the limit for the plan year coincident with the taxable year and is determined with regard to section 1.404(a)-14 of the regulations, particularly section 1.404(a)-14(d) of the regulations.

Example 2. The facts are the same as in Example 1, except the taxpayer creates a short plan year beginning October 1, 1987, and ending November 30, 1987, and subsequent plan years commence December 1. Further assume that the normal cost for the 12-month plan year commencing December 1, 1987, is \$38,000.

For the 1987 calendar year of the employer (taxable year), the plan year commencing October 1, 1987, and ending November 30, 1987, and the plan year commencing December 1, 1987, and ending November 30, 1988, are associated with that taxable year. The number of months of plan years associated with the taxable year equals 14.

The deductible limit determined on the basis of the short plan year commencing October 1, 1987, is \$4,000 (\$24,000 times 2/12). The deductible limit for the 12-month plan year commencing December 1, 1987, is \$38,000. The deductible limit for the taxable year (calendar year 1987) is \$36,000, obtained by multiplying the sum of the deductible limits, \$42,000 (\$4,000 plus \$38,000), by 12/14. For 1988 and succeeding taxable years, the deductible limit is determined on the basis of the deductible limit for the 12-month plan year commencing on December 1 within the taxable year (calendar year) of the employer as computed under section 1.404(a)-14 of the regulations, particularly section 1.404(a)-14(d) of such regulations. Thus, for the 1988 taxable year the deductible limit is determined by reference to the deductible limit for the plan year beginning on December 1, 1988.

SEC. 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 77-44, 1977-2 C.B. 578, is superseded.

SEC. 7. EFFECTIVE DATE

This Revenue Procedure applies to changes in plan and/or trust years when the last day of the short period required to effect the change ends after June 22, 1987, (the date of the publication of this Revenue Procedure).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 87-28

SECTION 1. PURPOSE

The purpose of this Revenue Procedure is to set forth procedures for the submission of requests for rulings to the Internal Revenue Service under section 162(k) of the Internal Revenue Code.

SEC. 2. BACKGROUND

.01 Section 162(k) of the Code provides, in general, that no deduction will be allowed for expenses paid or incurred

by an employer for a group health plan unless each "qualified beneficiary" who would lose coverage under the plan as a result of a "qualifying event" is entitled to elect, within a specified period, continuation coverage under the plan. In addition, sections 601 through 609 of the Employee Retirement Income Security Act of 1974 ("ERISA") require that continuation coverage be provided under group health plans to certain individuals.

.02 Proposed regulations under section 162(k) were published on June 15, 1987. Those proposed regulations addressed issues other than those concerning the cost of providing continuation coverage.

.03 The Service expects to issue additional guidance under section 162(k). Such guidance may include the following:

(1) additional proposed regulations, relating to the computation of the cost of providing continuation coverage;

(2) model plan language applicable to several statutory provisions, including section 162(k)(2)(B)(iii), relating to failure to pay premium; section 162(k)(5)(A), relating to election period; section 162(k)(5)(B), relating to effect of election on other beneficiaries; and section 162(k)(7), relating to various definitions; and

(3) revenue rulings under other provisions of section 162(k).

SEC. 3. RULINGS ISSUED BY THE NATIONAL OFFICE

.01 In general, the National Office will issue rulings under section 162(k) only to sponsors of group health plans.

.02 The National Office will not issue a ruling with respect to an issue that is clearly and adequately addressed by statute, regulations, revenue rulings or revenue procedures.

.03 In cases described in subsection .02, and in the case of requests submitted by persons other than plan sponsors, the National Office will respond to the ruling request with a general information letter which either indicates the Service's position with respect to the issue addressed in the ruling request or directs the taxpayer to published guidance relevant to the issue.

.04 Requests for rulings relating to the computation of the cost of providing continuation coverage will not be accepted at this time. Guidance on such rulings will be provided after proposed regulations on the subject have been published.