

Part III.---Administrative, Procedural and Miscellaneous

Rev. Proc. 98-42

26 CFR 601.601: Rules and regulations.

(Also, Part I, §§ 404 and 412.)

Section 1. Purpose

This revenue procedure provides guidance regarding the application of the minimum funding standards under § 412 of the Internal Revenue Code and the limitations on deductions under § 404 to qualified money purchase pension plans. If the requirements described in this revenue procedure are satisfied, a future plan amendment related to recent changes in the law that is made retroactively effective will be deemed to have been adopted and put into effect as of the amendment's retroactive effective date for purposes of applying §§ 412 and 404 to a money purchase pension plan.

Part I. Background

Section 2. The § 401(b) Remedial Amendment Period

.01 The Uruguay Round Agreements Act, Pub. L. 103-465 (GATT), the Small Business Job Protection Act of 1996, Pub. L. 104-188 (SBJPA) (including § 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 (USERRA)), and the Taxpayer Relief Act of 1997, Pub. L. 105-34 (TRA '97) made a number of changes to the plan qualification requirements. Some of these changes require plans to be amended to retain qualified status. Other changes are optional; that is, employers may choose, but are not required, to amend their plans as a result of these changes.

.02 In Rev. Proc. 97-41, 1997-33 I.R.B. 51, the Service provided a remedial amendment period under § 401(b) that permits plan amendments to be made retroactively effective if they are adopted on or before the last day of the first plan year beginning on or after January 1, 1999, and they amend plan provisions related to GATT and SBJPA qualification changes that are effective before the first day of that plan year ("disqualifying provisions"). (A later date applies in the case of governmental plans, as defined in § 414(d).) Those amendments of disqualifying provisions that are required to be made to retain qualified status as a result of GATT and SBJPA qualification changes must be made retroactively effective as of the date on which the qualification change became effective with respect to the plan. Operational compliance prior to actual amendment is required if the qualification change is effective

before the first day of the first plan year beginning on or after January 1, 1998. Those amendments of disqualifying provisions that are not required but that amend plan provisions that are integrally related to SBJPA qualification changes may be made retroactively effective as of the first day on which the plan was operated in accordance with the amended plan provision.

.03 Rev. Proc. 98-14, 1998-4 I.R.B. 22, provides that the remedial amendment period for GATT and SBJPA qualification changes also will apply to plan amendments of disqualifying provisions that relate to TRA '97, conditioned on a plan's operational compliance with the TRA '97 plan amendments throughout the remedial amendment period.

Section 3. Application of the Minimum Funding Standards Under § 412 and the Limitations on Deductions Under § 404 to Money Purchase Pension Plans

.01 Section 412 provides minimum funding standards applicable to pension plans that are or were qualified plans under § 401. The requirements of § 412 apply both to defined contribution pension plans (that is, money purchase pension plans, including target benefit plans) and defined benefit plans, but they do not apply to profit-sharing or stock bonus plans.

.02 Under § 412(b), a plan that is subject to § 412 is required to establish and maintain a funding standard account. The minimum required contribution for a plan under § 412 for a plan year is determined with reference to this account. For a plan year, the funding standard account must reflect charges for the normal cost of the plan for the plan year, credits for amounts considered contributed by the employer to or under the plan for the plan year, and charges and credits for certain amortization bases.

.03 Section 404 limits deductible contributions to qualified plans. Under § 404, contributions paid by an employer under a qualified plan are deductible only under § 404(a), subject to the limits of § 404(a), and only if they would otherwise be deductible under Chapter 1 of Subtitle A of the Code. Section 404(a)(1)(A) sets forth the general limit on deductions for contributions to a qualified pension plan. Under § 404(a)(1)(A), the deductible limit for a qualified money purchase pension plan is, generally, the normal cost of the plan, or, if greater, the minimum required contribution under § 412.

Part II. Guidance

Section 4. Treatment of Retroactive Plan Amendments Adopted Pursuant to Rev. Proc. 97-41 and Rev. Proc. 98-14 for Purposes of Applying §§ 412 and 404 to Money Purchase Pension Plans

.01 If, pursuant to Rev. Proc. 97-41 (and, if applicable, Rev. Proc. 98-14), an amendment of a disqualifying provision under a money purchase pension plan which is related to SBJPA, GATT, or TRA '97 is made retroactively effective, then the amendment will be deemed to have been adopted and put into effect as of the amendment's retroactive effective date for purposes of applying the minimum funding standards under § 412 and the limitations on deductions under § 404. The preceding sentence shall apply with respect to a plan year of a money purchase pension plan only if: a) the contribution required under § 412 (taking into account the preceding sentence) is made to the plan within 8 1/2 months after the close of such plan year, b) the contribution is allocated to the accounts of participants in accordance with the plan, as amended, as of a date within such plan year, and c) all amendments described in the preceding sentence are in fact adopted by the end of the remedial amendment period provided under Rev. Proc. 97-41 and Rev. Proc. 98-14 for GATT, SBJPA, and TRA '97 changes.

.02 Section 4.01 of this revenue procedure applies to money purchase pension plans and not to defined benefit plans. Thus, as noted in section 8 of Rev. Proc. 97-41, except to the extent required by § 412(c)(12) or as otherwise provided by the Commissioner, future amendments may not be anticipated in determining the minimum funding standards under § 412 or the limitations on deductions under § 404 for a defined benefit plan, even though the amendments are adopted before the end of the remedial amendment period.

Section 5. Example

Employer O maintains Plan X, a qualified money purchase pension plan that is maintained on a calendar plan year basis. Plan X benefits three employees: A and B, who are husband and wife and are each highly compensated, and C, who is unrelated to A and B. Plan X provides that the employer will contribute annually 10% of each employee's compensation for the plan year, with compensation limited to the amount that may be taken into account under § 401(a)(17). Plan X also contains the family aggregation rules, as in effect prior to their repeal by SBJPA. As a result, under Plan X, the amount that may be contributed on behalf of A and B may not, in total, exceed 10% of the § 401(a)(17) limit. Plan X does not have a funding deficiency or provide past service credit; the normal cost of Plan X for a year is the 10% required contribution.

A and B each receive \$90,000 of compensation for the 1997 plan year, and C receives \$70,000. The § 401(a)(17) limit for the 1997 plan year is \$160,000. Taking Plan X's family aggregation provisions into account, the normal cost of Plan X for 1997 would be \$23,000 (that is, \$16,000, or 10% of \$160,000, plus \$7,000). However, Employer O expects to amend Plan X within

the remedial amendment period to eliminate the plan's family aggregation provisions effective as of the first day of the 1997 plan year. Employer O therefore disregards the plan's family aggregation provisions and contributes \$25,000 for the 1997 plan year on August 15, 1998. This amount is allocated, as of December 31, 1997, as follows: \$9,000 each for A and B and \$7,000 for C. Employer O amends Plan X by December 31, 1999, to eliminate Plan X's family aggregation provisions, effective as of the first day of the 1997 plan year. Pursuant to this notice, this plan amendment is deemed to have been adopted and put into effect as of the first day of the 1997 plan year for purposes of applying §§ 412 and 404 to Plan X. Accordingly, the normal cost under § 412 of Plan X for 1997 is \$25,000. This is also the normal cost of Plan X for purposes of § 404.

Section 6. Effective Date

This revenue procedure is effective July 13, 1998, but may be relied upon as provided in section 4.

Drafting Information

The principal author of this revenue procedure is James Flannery of the Employee Plans Division. For further information regarding this revenue procedure, contact the Employee Plans Division's telephone assistance service between the hours of 1:30 and 3:30 p.m. Eastern time, Monday through Thursday, on (202) 622-6074/75. (These telephone numbers are not toll-free.)