

Part III. Administrative, Procedural, and Miscellaneous

Deduction for Contributions of an Employer to an Employees' Trust or Annuity Plan and Compensation Under a Deferred-Payment Plan

Notice 2002-48

Questions have arisen about certain variations on the fact pattern described in Rev. Rul. 90-105, 1990-2 C.B. 69, and their effect on the timing of an employer's deduction for contributions to a cash or deferred arrangement within the meaning of § 401(k) or to a defined contribution plan as matching contributions within the meaning of § 401(m). Rev. Rul. 2002-46, page 118 of this Bulletin, addresses a fact pattern that is substantially similar to the fact pattern in Rev. Rul. 90-105. This notice addresses two other variations on this fact pattern. The facts in Rev. Rul. 90-105 involve contributions that are attributable to compensation earned after the end of an employer's taxable year and are made after the end of that year but during the § 404(a)(6) grace period. Rev. Rul. 90-105 holds that such contributions are not deductible for the taxable year.

In Rev. Rul. 2002-46, the plan is amended to provide for a board resolution setting a minimum contribution for a plan year (to be allocated first toward elective deferrals and matching contributions, with any excess to be allocated to participants as of the end of the plan year in proportion to compensation earned during the plan year), and a board resolution is adopted before the end of the taxable year pursuant to that amendment. Rev. Rul. 2002-46 reaches the same result as Rev. Rul. 90-105.

This notice addresses two other variations on the Rev. Rul. 90-105 fact pattern, neither of which involves grace period contributions. One variation involves an actual payment to the plan before the end of the taxable year, in anticipation of § 401(k) deferrals and § 401(m) matches to occur after the end of the tax year (but before the end of the

overlapping plan year). The other variation involves such a prepayment, combined with a guaranteed minimum contribution as described in Rev. Rul. 2002-46. Because these variations involve actual payments before the end of the taxable year, § 404(a)(6) and Rev. Rul. 90-105, 1990-2 C.B. 69, do not affect the deductibility of the contributions.

Rev. Rul. 90-105 based its holding in part upon § 1.404(a)-1(b) of the Income Tax Regulations. Specifically, Rev. Rul. 90-105 relied upon language in the regulation requiring that contributions be compensation for services actually rendered. Upon further consideration, the Service has concluded that this language is relevant only where the reasonableness of an employee's compensation is in question, and thus is not an appropriate basis upon which to determine the timing of deductions for the contributions described in Rev. Rul. 90-105, Rev. Rul. 2002-46, and this notice.

The Service is reviewing other issues that may be raised by the two factual patterns addressed in this notice. Any additional guidance concerning the matters addressed in this notice will be prospective in application. Pending such additional guidance, the Service will not challenge the deductibility of contributions described in this notice, provided actual payment is made during the taxable year and the amount deducted does not exceed the applicable limitation under § 404(a)(3)(A)(i).

The transactions described in this notice are not "reportable transactions" for purposes of § 1.6011-4T(b)(1) of the Temporary Income Tax Regulations and are not "listed transactions" for purposes of § 301.6111-2T(b)(2) of the Temporary Procedure and Administration Regulations.

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Weighted Average Interest Rate Update

Notice 2002-49

Sections 412(b)(5)(B) and 412(l)(7)(C)(i) of the Internal Revenue Code provide that the interest rates used to calculate current liability for purposes of determining the full funding limitation under § 412(c)(7) and the required contribution under § 412(l) must be within a permissible range around the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year.

Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Code.

Section 417(e)(3)(A)(ii)(II) of the Code defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury Securities for June 2002 is 5.52 percent. Pursuant to Notice 2002-26, 2002-15 I.R.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

Section 405 of the Job Creation and Worker Assistance Act of 2002 amended § 412(l)(7)(C) of the Code to provide that