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Internal Revenue Code Section 408(k)

Individual retirement accounts

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(k) Simplified employee pension defined.

(1) In general.

For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity-

(A) with respect to which the requirements of paragraphs (2) , (3) , (4) , and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) Participation requirements.

This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who-

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $450 in compensation (within the meaning of section 414(q)(4)) from the employer for the year.

For purposes of this paragraph , there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3) . For purposes of any arrangement described in subsection (k)(6) , any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general. The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).

(B) Special rules. For purposes of subparagraph (A) , there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3) .

(C) Contributions must bear uniform relationship to total compensation. For purposes of subparagraph (A) , and except as provided in subparagraph (D) , employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity. For purposes of subparagraph (C) , the rules of section 401(1)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) Withdrawals must be permitted.

A simplified employee pension meets the requirements of this paragraph only if-

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula.

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies-

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Employee may elect salary reduction arrangement.

(A) Arrangements which qualify.

(i) In general. A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments-

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect. Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage. Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of-

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals. Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) Exception where more than 25 employees. This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions.

(i) In general. Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph . Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979 .

(ii) Excess contribution. For purposes of clause (i) , the term "excess contribution" means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii) .

(D) Deferral percentage. For purposes of this paragraph , the deferral percentage for an employee for a year shall be the ratio of-

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000) for the year.

(E) Exception for State and local and tax-exempt pensions. This paragraph shall not apply to a simplified employee pension maintained by-

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions. This paragraph shall not apply with respect to

any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C) , including-

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4) , provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee. For purposes of this paragraph , the term "highly compensated employee" has the meaning given such term by section 414(q) .

(H) Termination. This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A) .

(7) Roth contribution election.

An individual retirement plan which is designated as a Roth IRA shall not be treated as a simplified employee pension under this subsection unless the employee elects for such plan to be so treated (at such time and in such manner as the Secretary may provide).

(8) Definitions.

For purposes of this subsection and subsection (1) -

(A) Employee, employer, or owner-employee. The terms "employee", "employer", and "owner-employee" shall have the respective meanings given such terms by section 401(c) .

(B) Compensation. Except as provided in paragraph (2)(C) , the term "compensation" has the meaning given such term by section 414(s) .

(C) Year. The term "year" means-

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

(9) Cost-of-living adjustment.

The Secretary shall adjust the $450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B) ; except that any increase in the $450 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

(10) Cross reference.

For excise tax on certain excess contributions, see section 4979.

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