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Internal Revenue Code Section 415(c)(3)(D)

Limitation for defined contribution plans

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(c) Limitation for defined contribution plans.

(1) In general.

Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of-

- (A) \$40,000, or
- (B) 100 percent of the participant's compensation.

(2) Annual addition.

For purposes of paragraph (1), the term "annual addition" means the sum of any year of-

- (A) employer contributions,
- (B) the employee contributions, and
- (C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6). Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.

(3) Participant's compensation.

For purposes of paragraph (1)-

(A) In general.

The term "participant's compensation" means the compensation of the participant from the employer for the year.

(B) Special rule for self-employed individuals.

In the case of an employee within the meaning of section 401(c)(1), subparagraph (A) shall be applied by substituting "the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)" for "compensation of the participant from the employer".

(C) Special rules for permanent and total disability.

In the case of a participant in any defined contribution plan-

- (i) who is permanently and totally disabled (as defined in section 22(e)(3)),
- (ii) who is not a highly compensated employee (within the meaning of section 414(q)), and
- (iii) with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply,

the term "participant's compensation" means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made. If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).

 (D) Certain deferrals included.

The term "participant's compensation" shall include-

- (i) any elective deferral (as defined in section 402(g)(3)), and
- (ii) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(E) Annuity contracts.

In the case of an annuity contract described in section 403(b), the term "participant's compensation" means the participant's includible compensation determined under section 403(b)(3).

[(4) Repealed. Pub. L. 107-16, title VI, §632(a)(3)(E), June 7, 2001, 115 Stat. 114]

[(5) Repealed. Pub. L. 97-248, title II, §238(d)(5), Sept. 3, 1982, 96 Stat. 513]

(6) Special rule for employee stock ownership plans.

If no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7)) for a year which are deductible under paragraph (9) of section 404(a) are allocated to highly compensated employees (within the meaning of section 414(q)), the limitations imposed by this section shall not apply to-

- (A) forfeitures of employer securities (within the meaning of section 409) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)), or
- (B) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.

(7) Special rules relating to church plans.

- (A) Alternative contribution limitation.

(i) In general.

Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of \$10,000.

(ii) \$40,000 aggregate limitation.

The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed \$40,000.

(B) Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees.

For purposes of this paragraph-

(i) all years of service by-

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

(C) Foreign missionaries.

In the case of any individual described in subparagraph (B) performing services outside the United States, contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such employee, when expressed as an annual addition to such employee's account, shall not be treated as exceeding the limitation of paragraph (1) if such annual addition is not in excess of \$3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds \$17,000.

(D) Annual addition.

For purposes of this paragraph, the term "annual addition" has the meaning given such term by paragraph (2).

(E) Church, convention or association of churches.

For purposes of this paragraph, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

(8) Special rule for difficulty of care payments excluded from gross income.

(A) In general.

For purposes of paragraph (1)(B), in the case of an individual who for a taxable year excludes from gross income under section 131 a qualified foster care payment which is a

difficulty of care payment, the participant's compensation, or earned income, as the case may be, shall be increased by the amount so excluded.

(B) Contributions allocable to difficulty of care payments treated as after-tax.

Any contribution by the participant which is allowable due to such increase-

- (i) shall be treated for purposes of this title as investment in the contract, and
- (ii) shall not cause a plan (and any arrangement which is part of such plan) to be treated as failing to meet any requirements of this chapter solely by reason of allowing any such contributions.

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