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Internal Revenue Code Section 4972(d)

Tax on nondeductible contributions to qualified employer plans

(a) Tax imposed.

In the case of any qualified employer plan, there is hereby imposed a tax equal to 10 percent of the nondeductible contributions under the plan (determined as of the close of the taxable year of the employer).

(b) Employer liable for tax.

The tax imposed by this section shall be paid by the employer making the contributions.

(c) Nondeductible contributions.

For purposes of this section -

(1) In general.

The term "nondeductible contributions" means, with respect to any qualified employer plan, the sum of-

(A) the excess (if any) of-

(i) the amount contributed for the taxable year by the employer to or under such plan, over

(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

(B) the amount determined under this subsection for the preceding taxable year reduced by the sum of-

(i) the portion of the amount so determined returned to the employer during the taxable year, and

(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

(2) Ordering rule for section 404 .

For purposes of paragraph (1) , the amount allowable as a deduction under section 404 for any taxable year shall be treated as-

(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

(B) then from contributions made during such taxable year.

(3) Contributions which may be returned to employer.

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account any contribution for such taxable year which is distributed

to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6) .

(4) Special rule for self-employed individuals.

For purposes of paragraph (1) , if-

(A) the amount which is required to be contributed to a plan under section 412 on behalf of an individual who is an employee (within the meaning of section 401(c)(1)) , exceeds

(B) the earned income (within the meaning of section 404(a)(8)) of such individual derived from the trade or business with respect to which such plan is established,

such excess shall be treated as an amount allowable as a deduction under section 404 .

(5) Pre-1987 contributions.

The term "nondeductible contribution" shall not include any contribution made for a taxable year beginning before January 1, 1987.

(6) Exceptions.

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account-

(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A) , or

(B) so much of the contributions to a simple retirement account (within the meaning of 408(p)) , a simple plan (within the meaning of section 401(k)(11)) , or a simplified employee pension (within the meaning of section 408(k)) which are not deductible when contributed solely because such contributions are not made in connection with a trade or business of the employer.

For purposes of subparagraph (A) , the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (A) . Subparagraph (B) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)) .

(7) Defined benefit plan exception.

In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6)) . For purposes of this paragraph , the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph . If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.



(d) Definitions.

For purposes of this section -

(1) Qualified employer plan.

(A) In general. The term "qualified employer plan" means-

(i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a) ,

(ii) an annuity plan described in section 403(a) ,

(iii) any simplified employee pension (within the meaning of section 408(k)), and

(iv) any simple retirement account (within the meaning of section 408(p)).

(B) Exemption for governmental and tax exempt plans. The term "qualified employer plan" does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1) .

(2) Employer.

In the case of a plan which provides contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1) , the term "employer" means the person treated as the employer under section 401(c)(4) .