

Public Law 94-267
94th Congress

An Act

To amend the Internal Revenue Code of 1954 to permit tax-free rollovers of distributions from employee retirement plans in the event of plan termination.

Apr. 15, 1976
[H.R. 12725]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(a) TERMINATION OF EMPLOYEE TRUST, ETC.—Section 402(a) of the Internal Revenue Code of 1954 (relating to taxability of beneficiaries of exempt trusts) is amended—

Internal Revenue
Code of 1954,
amendments.
26 USC 402.

(1) by striking out paragraph (5) (A) and inserting in lieu thereof the following:

“(A) the balance to the credit of an employee is paid to him—

“(i) within one taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan, or

“(ii) in one or more distributions which constitute a lump-sum distribution within the meaning of subsection (e) (4) (A) (determined without reference to subsection (e) (4) (B)),”

(2) by striking out “the lump-sum distribution” in the last sentence of paragraph (5) and inserting in lieu thereof “a payment”, and

(3) by adding at the end thereof the following paragraph:

“(6) SPECIAL ROLLOVER RULES.—For purposes of paragraph (5) (A) (i) —

“(A) TIME OF TERMINATION.—A complete discontinuance of contributions under a profit-sharing or stock bonus plan shall be deemed to occur on the day the plan administrator notifies the Secretary or his delegate (in accordance with regulations prescribed by the Secretary or his delegate) that all contributions to the plan have been completely discontinued. For purposes of section 411(d) (3), the plan shall be considered to be terminated no later than the day such notice is filed with the Secretary or his delegate.

26 USC 411.

“(B) SALE OF SUBSIDIARY OR ASSETS.—

“(i) A payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the employer corporation) which is a subsidiary corporation (within the meaning of section 425(f)) or which is a member of a controlled group of corporations (within the meaning of section 1563(a), determined by substituting ‘50 percent’ for ‘80 percent’ each place it appears therein) in connection with the liquidation, sale, or other means of terminating the parent-subsidary or controlled group relationship of the employer corporation with the parent corporation or controlled group, or

26 USC 425.

26 USC 1563.

“(ii) a payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the acquiring corporation) in connection with the sale or

other transfer to the acquiring corporation of all or substantially all of the assets used by the previous employer of the employee (hereinafter referred to as the selling corporation) in a trade or business conducted by the selling corporation,

shall be treated as a payment or distribution on account of the termination of the plan with respect to such employee if the employees of the employer corporation or the acquiring corporation (whichever applies) are not active participants in such plan at the time of such payment or distribution. For purposes of this subparagraph, in no event shall a payment or distribution be deemed to be in connection with a sale or other transfer of assets, or a liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship, if such payment or distribution is made later than the end of the second calendar year after the calendar year in which occurs such sale or other transfer of assets, or such liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship.”

26 USC 403.

(b) TERMINATION OF ANNUITY PLAN.—Section 403(a) (relating to rollover amounts) is amended—

(1) by striking out subparagraph (4) (A) and inserting in lieu thereof the following:

“(A) the balance to the credit of an employee is paid to him—

“(i) within one taxable year of the employee on account of a termination of the plan of which such trust is a part or, in the case of a profit-sharing plan, a complete discontinuance of contributions under such plan, or

“(ii) in one or more distributions which constitutes a lump-sum distribution within the meaning of section 402 (e) (4) (A) (determined without reference to section 402 (e) (4) (B)),”

26 USC 402.

(2) by striking out “the lump-sum distribution” in the last sentence of paragraph (4) and inserting in lieu thereof “a payment”, and

(3) by adding at the end thereof the following paragraph:

“(5) SPECIAL ROLLOVER RULES.—For purposes of paragraph (4) (A) (i)—

“(A) TIME OF TERMINATION.—A complete discontinuance of contributions under a profit-sharing plan shall be deemed to occur on the day the plan administrator notifies the Secretary or his delegate (in accordance with regulations prescribed by the Secretary or his delegate) that all contributions to the plan have been completely discontinued. For purposes of section 411(d) (3), the plan shall be considered to be terminated no later than the day such notice is filed with the Secretary or his delegate.

26 USC 411.

“(B) SALE OF SUBSIDIARY OR ASSETS.—

“(i) A payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the employer corporation) which is a subsidiary corporation (within the meaning of section 425(f)) or which is a member of a controlled group of corporations (within the meaning of section 1563(a), determined by substituting ‘50 percent’ for ‘80 percent’ each place it appears therein) in connection with the liquidation, sale, or other

26 USC 425.

26 USC 1563.

means of terminating the parent-subsidiary or controlled group relationship of the employer corporation with the parent corporation or controlled group, or

“(ii) A payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the acquiring corporation) in connection with the sale or other transfer to the acquiring corporation of all or substantially all of the assets used by the previous employer of the employee (hereinafter referred to as the selling corporation) in a trade or business conducted by the selling corporation,

shall be treated as a payment or distribution on account of the the termination of the plan with respect to such employee if the employees of the employer corporation or the acquiring corporation (whichever applies) are not active participants in such plan at the time of such payment or distribution. For purposes of this subparagraph, in no event shall a payment or distribution be deemed to be in accordance with a sale or other transfer of assets, or a liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship, if such payment or distribution is made later than the end of the second calendar year after the calendar year in which occurs such sale or other transfer of assets, or such liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship.”

(c) CONFORMING AMENDMENTS.—

(1) Section 401(a) of such Code (relating to requirements for qualification) is amended by adding after paragraph (19) the following:

Qualification requirements.
26 USC 401.

“(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes a payment or distribution described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i). This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution.”

Ante, p. 365.
Ante, p. 366.

(2) The last sentence of section 401(a) of such Code is amended by striking out “and (19)” and inserting in lieu thereof “(19), and (20)”.

(3) Section 404(a)(2) of such Code (relating to employee annuities) is amended by striking out “and (19)” and inserting in lieu thereof “, (19), and (20)”.

26 USC 404.

(4) Section 805(d)(1)(C) of such Code (relating to pension plan reserves) is amended by striking out “and (19)” and inserting in lieu thereof “(19), and (20)”.

26 USC 805.

(d) TRANSITIONAL RULES.—

26 USC 402 note.

(1) IN GENERAL.—

(A) PERIOD FOR ROLLOVER CONTRIBUTION.—In the case of a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) or section 403(a)(4)(A) (other than a payment described in

26 USC 403. section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) of the Internal Revenue Code of 1954 (relating to distributions of the balance to the credit of the employee) which is contributed by an employee after the date of the enactment of this Act to a trust, plan, account, annuity, or bond described in section 402(a)(5)(B) or 403(a)(4)(B) of such Code, the applicable period specified in section 402(a)(5)(B) or 403(a)(4)(B) of such Code (relating to rollover distributions to another plan or retirement account) shall not expire before December 31, 1976.

(B) TIME OF CONTRIBUTION.—

26 USC 6402. (i) GENERAL RULE.—If the initial portion of a payment the applicable period for which is determined under subparagraph (A) is contributed before December 31, 1976, by an individual to a trust, plan, account, annuity, or bond described in subparagraph (A) and the remaining portion of such payment is contributed by such individual to such a trust, plan, account, annuity, or bond not later than 30 days after the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 of the Internal Revenue Code of 1954 with respect to the contribution, then, for purposes of subparagraph (A) and sections 402(a)(5) and 403(a)(4) of such Code, at the election of the individual (made in accordance with regulations prescribed by the Secretary or his delegate), such remaining portion shall be considered to have been contributed on the date the initial portion of the payment was contributed. For purposes of this subparagraph, the initial portion of a payment is the amount by which such payment exceeds the amount of the tax imposed on such payment by chapter 1 of such Code (determined without regard to this subparagraph).

26 USC 1. (ii) REGULATIONS.—For purposes of this subparagraph, the tax imposed on a payment by chapter 1 of the Internal Revenue Code of 1954, and the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 with respect to a contribution, shall be determined under regulations prescribed by the Secretary of the Treasury or his delegate.

(C) PERIOD OF LIMITATIONS.—If an individual has made the election provided by subparagraph (B), then—

26 USC 1 et seq. (i) the period provided by the Internal Revenue Code of 1954 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Secretary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) of such Code or the provisions of any other law or rule of law which would otherwise prevent such assessment.

26 USC 6212.

(2) **ROLLOVER CONTRIBUTION FOR CERTAIN PROPERTY SOLD.**—Sections 402(a)(5)(C) and 403(a)(4)(C) of the Internal Revenue Code of 1954 (relating to the requirement that rollover amount must consist of property received in a distribution) shall not apply with respect to that portion of the property received in a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) or 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) of such Code which is sold or exchanged by the employee on or before the date of the enactment of this Act, if the employee transfers an amount of cash equal to the proceeds received from the sale or exchange of such property in excess of the amount considered contributed by the employee (within the meaning of section 402(a)(4)(D)(i) of such Code).

26 USC 402,
403.*Ante*, p. 366.

(3) **NONRECOGNITION OF GAIN OR LOSS.**—For purposes of the Internal Revenue Code of 1954, no gain or loss shall be recognized with respect to the sale or exchange of property described in paragraph (2) if the proceeds of such sale or exchange are transferred by an employee in accordance with this subsection and the applicable provisions of section 402(a)(5) or 403(a)(4) of such Code.

(e) **EFFECTIVE DATE.**—The amendments made by this Act shall apply with respect to payments made to an employee on or after July 4, 1974.

26 USC 401 note.

Approved April 15, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1020 (Comm. on Ways and Means).
CONGRESSIONAL RECORD, Vol. 122 (1976):

Apr. 13, considered and passed House.
Apr. 14, considered and passed Senate.