

of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).
Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: January 13, 1981.
Donald C. Lubick,
Assistant Secretary of the Treasury.
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26 CFR Part 1

[T.D. 7764]

Income Tax; Amortization of Experience Gains by Certain Pension Plans Funded by Group Deferred Annuity Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the determination of actuarial cost under the minimum funding standards. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. The regulations provide the public with guidance needed to comply with that Act and apply only to defined benefit pension plans described in the regulations.

DATE: These regulations are generally effective for plan years beginning after May 22, 1981.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Marget of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3651) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978, the Internal Revenue Service published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 412(b)(3) of the Internal Revenue Code of 1954, 43 FR 60964. The amendments were proposed to conform the regulations to section 1013 of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 914) and would also apply for purposes of section 302 of ERISA (88 Stat. 869).

A public hearing on the proposed amendments was held on February 21, 1980. After consideration of all the comments, both oral and written, regarding the proposed amendments, those amendments are adopted, as revised, by the Treasury decision.

General Explanation

Section 412 of the Internal Revenue Code of 1954 provides minimum funding requirements with respect to certain pension plans. These requirements include the maintenance of a minimum funding standard account. Annually under the account the normal cost of the plan and certain amortization amounts are charged and contributions to the plan and certain other amortization amounts are credited.

In general, this regulation contains specific rules regarding certain plans funded solely through a group deferred annuity contract. The regulation treats dividends, rate credits, and credits for forfeitures as an actuarial or experience gain for these plans, to be amortized over subsequent plan years through credits to the funding standard account under section 412(b)(3)(B)(ii).

Scope of Regulation

This regulation applies only to plans described in the text of the regulation. It does not apply to all plans funded with group deferred annuity contracts. Specifically, it does not apply to plans described in regulations under section 412(i), to plans providing future service benefits only, or to split-funded plans using group deferred annuities.

Regulations relating to split-funded plans may be proposed in the future.

Effect of Pre-ERISA Law

A number of comments noted that under pre-ERISA regulations for purposes of section 404 the type of gains to which this regulation applies were not required to be amortized, but were used to reduce future employer contributions. These comments suggested that it would be proper to characterize these gains as "an amount considered contributed by the employer" for purposes of section 412. As such, the gains would not be required to be amortized, and increases in the cost of plan administration would be avoided.

The position of the final regulation is unchanged from that of the proposal. In all cases under pre-ERISA law plans were permitted to recognize gains immediately. The requirement that gains be amortized when generated by group deferred annuity contracts used in the manner described in the regulation is consistent with the general requirement with respect to the treatment of gains under ERISA.

The amortization of experience gains is explicitly provided for in section 412. It is expected that final regulations under section 404 will also provide for the amortization of such gains as the general rule; see § 1.404(a)-14(g).

proposed on May 19, 1978. Therefore, the impact of ERISA on the plans to which this regulation applies appears to be no greater than the impact of ERISA on other plans.

The regulations do not follow the suggestion of some comments that there be a *de minimis* rule permitting pre-ERISA treatment for small gains. There is no basis for prescribing a *de minimis* rule applicable only to plans described in this regulation. However, the regulation does not prohibit an actuary from minimizing plan costs by taking into account an interest assumption with respect to expected gains under the group deferred annuity contracts.

Prospective Effect

The comments indicated that misunderstandings of the impact of ERISA on existing practices have created significant compliance problems for certain plans. They suggested that, if the proposal is adopted, it be applied prospectively to ease the hardship caused by these problems. The regulation, as adopted, implements this suggestion.

Section Designation

This section of the regulations, as proposed, was designated as § 1.412(b)(3)-1. The regulation, as adopted, is designated as § 1.412(b)-2 to conform with the structure of regulations to be proposed under section 412(b) at a later date.

Drafting Information

The principal author of these regulations was Thomas F. Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

The Income Tax Regulations, 26 CFR Part 1, are amended by adding in the appropriate place the following new section:

§ 1.412(b)-2 Amortization of experience gains in connection with certain group deferred annuity contracts.

(a) Experience gain treatment.

Dividends, rate credits, and credits for forfeitures arising in a plan described in paragraph (b) of this section are experience gains described in section 412(b)(3)(B)(ii) (relating to the amortization of experience gains).

(b) *Plan.* A plan is described in this paragraph (b) if—

(1) The plan is funded solely through a group deferred annuity contract,

(2) The annual single premium required under the contract for the purchase of the benefits accruing during the plan year is treated as the normal cost of the plan for that year, and

(3) The amount necessary to pay in equal annual installments, over the appropriate amortization period, an amount equal to the single premium necessary to provide all past service benefits not initially funded, together with interest thereon, is treated as the annual amortization amount determined under section 412(b)(2)(B) (i), (ii) or (iii).

(c) *Effective date.* This section applies for the first plan year to which section 412 applies that begins after May 22, 1981.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)))

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: January 12, 1981.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[FR Doc. 81-2122 Filed 1-19-81; 10:51 am]

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26 CFR Parts 1 and 7

[T.D. 7758]

Income Tax; Taxable Years Beginning After December 31, 1953 and Temporary Income Tax Regulations Under the Tax Reform Act of 1976; Election to Treat Outdoor Advertising Displays as Real Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the involuntary conversion of real property. These final regulations provide rules relating to the making of an election to treat property that constitutes certain outdoor advertising displays as real property for income tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1976. The regulations provide the guidance needed to make the election allowed by law.

DATES: The new regulations are effective for taxable years beginning after December 31, 1970.

FOR FURTHER INFORMATION CONTACT: Douglas W. Charnas of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 (Attn: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1979, proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) under section 1033 of the Internal Revenue Code of 1954 were published in the *Federal Register* (44 FR 71429) and (42 FR 1469), respectively. Those amendments were proposed to conform the regulations to section 2127 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1920). A public hearing was held on April 22, 1980. After consideration of all comments regarding the proposed amendments those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 2127 of the Tax Reform Act of 1976 amended section 1033 to allow taxpayers an election to treat property that constitutes certain outdoor advertising displays as real property. In general, the election is available for taxable years beginning after December 31, 1970, including, in the case of an election made by July 21, 1981, taxable years which otherwise would be closed because the period for filing a claim for credit or refund has expired. No election may be made, however, with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election of additional first-year depreciation allowance for small businesses under section 179 (a) is in effect.

Under the proposed regulations, the election was to be made by attaching a statement to the return (or amended return) for the first taxable year to which the election is to apply. Once made it was to be irrevocable without the consent of the Commissioner and it applied to all outdoor advertising displays of the taxpayer which may be made the subject of an election under section 1033(g)(3), including all outdoor advertising displays acquired or constructed by the taxpayer in a taxable year after the taxable year for which the election was made.

These final regulations supersede certain temporary regulations (26 CFR 7.0 (c)(6)) relating to the election.

Comments

Two comments on the notice of proposed rulemaking were received from the public. One comment requests that the regulations provide that, in the absence of an election to treat outdoor advertising displays as real property, such property will constitute personal

property for purposes of chapter 1 of the Code. However, neither the statute nor its legislative history specifies that all outdoor advertising displays are to be treated as personal property in the absence of an election under section 1033 (g) (3). It appears that Congress enacted section 1033 (g) (3) merely to allow taxpayers to elect to continue to treat certain outdoor advertising displays as real property because the treatment of such displays became uncertain as a result of several court cases which held that billboards are tangible personal property (and not real property) for purposes of the investment credit. Accordingly, the regulations are silent on whether, in the absence of an election to treat outdoor advertising displays as real property, such property is considered tangible personal property for purposes of chapter 1 of the Code.

The other comment received from the public states that the notice of proposed rulemaking is incorrect in requiring a taxpayer to treat all currently owned outdoor advertising displays and all outdoor advertising displays acquired in the future as real property once the taxpayer elects to treat an involuntarily converted outdoor advertising display as real property. The comment states that the election should only apply to all qualifying outdoor advertising displays owned by the taxpayer at the time of the election. In the alternative, the comment requests that the regulations allow taxpayers to revoke elections made under the temporary regulations because taxpayers could not have reasonably anticipated that their elections would apply to all outdoor advertising displays acquired in the future.

There is no indication that section 1033(g)(3) was intended to allow taxpayers to treat qualifying outdoor advertising displays inconsistently. On the contrary, the committee reports make clear that an election, once made, applies to all qualifying outdoor advertising displays of the taxpayer. Accordingly, the final regulations do not modify the notice on this point.

However, because some taxpayers may have made elections erroneously believing that the election only applied to outdoor advertising displays owned by the taxpayer at the time of the election, the final regulations are modified to provide that taxpayers who made elections on or before December 11, 1979 (the date of publication of the notice), are allowed to revoke their election without the consent of the Commissioner provided certain requirements are met.

Drafting Information

The principal author of these regulations is Douglas W. Charnas of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the final regulations, both on matters of substance and style.

Adoption of amendments to the regulations.

Accordingly, the amendments to 26 CFR Part 1, published as a notice of proposed rulemaking in the *Federal Register* for December 11, 1979 (44 CFR 71429), and to 26 CFR Part 7, published as a temporary regulation in the *Federal Register* for January 7, 1977 (42 FR 1469), are hereby adopted as proposed, except that paragraph (b)(2) of § 1.1033(g)-1, as added by paragraph 4 of the notice of proposed rulemaking, is amended by revising the last two sentences of paragraph (b)(2)(i)(A), by adding a new sentence at the end of paragraph (b)(2)(i)(A), by revising the first sentence of paragraph (b)(2)(ii), and by adding at the end of paragraph (b)(2) a new subdivision (iii). These revised and added provisions read as set forth below:

§ 1.1033(g)-1 Condemnation of real property held for productive use in trade or business or for investment.

(b) *Election to treat outdoor advertising displays as real property.*

(2) *Election—(i) Time and manner of making election—(A) In general.* If a taxpayer makes an election (or revokes an election under subdivision (ii) or (iii) of this subparagraph (b)(2)) for a taxable year for which he or she has previously filed a return, the return for that taxable year and all other taxable years affected by the election (or revocation) must be amended to reflect any tax consequences of the election (or revocation). However, no return for a taxable year for which the period for filing a claim for credit or refund under section 6511 has expired may be amended to make any changes other than those resulting from the election (or revocation). In order for the election (or revocation) to be effective, the taxpayer must remit with the amended return any additional tax due resulting from the election (or revocation), notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or

rule of law which would prevent assessment or collection of such tax.

(ii) *Revocation of election by Commissioner's consent.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, an election under section 1033(g)(3) shall be irrevocable unless consent to revoke is obtained from the Commissioner.

(iii) *Revocation where election was made on or before December 11, 1980.* In the case of an election made on or before December 11, 1979, the taxpayer may revoke such election provided such revocation is made not later than March 23, 1981. The request for revocation shall be made in conformity with the requirements of paragraph (b)(2)(ii); except that, in lieu of the information required by paragraph (b)(2)(ii)(E), the taxpayer shall state that the revocation is being made pursuant to this paragraph. In addition, the taxpayer must forward, with the statement of revocation, copies of his or her tax returns, including both the original return and any amended returns, for the taxable year in which the original election was made and for all subsequent years and must remit any additional tax due as a result of the revocation.

This Treasury decision is issued under the authority contained in sections 1033 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1920, 26 U.S.C. 1033; 68 Stat. 917, 26 U.S.C. 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 9, 1981.

Donald C. Lubick,

Assistant Secretary of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

The amendments to 26 CFR Parts 1 and 7 are as follows:

§ 1.1033(a)-1 [Amended]

Paragraph 1. Paragraph (b) of § 1.1033(a)-1 is amended by removing "§ 1.1033(f)-1" and adding in lieu thereof "§ 1.1033(g)-1".

§ 1.1033(a)-2 [Amended]

Par. 2. Paragraph (c)(3) of § 1.1033(a)-2 is amended by removing "section 1033(F)(4)" and adding in lieu thereof "section 1033(G)(4)", and by removing "§ 1.1033(f)-1" and adding in lieu thereof "§ 1.1033(g)-1".

§ 1.1033(g)-1 Redesignated as

§ 1.1033(h)-1.

Par. 3. Section 1.1033(g)-1 is redesignated as § 1.1033(h)-1 and is amended by removing "§ 1.1033(f)-1" and adding in lieu thereof "§ 1.1033(g)-1".

Par. 4. Section 1.1033(f)-1 is redesignated as § 1.1033(g)-1 and is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and by adding a new paragraph (b) to read as set forth below:

§ 1.1033(g)-1 Condemnation of real property held for productive use in trade or business or for investment.

(b) *Election to treat outdoor advertising displays as real property—(1) In general.* Under section 1033(g)(3) of the Code, a taxpayer may elect to treat property which constitutes an outdoor advertising display as real property for purposes of chapter 1 of the Code. The election is available for taxable years beginning after December 31, 1970. In the case of an election made on or before the 180th day after the date of publication of this notice of proposed rulemaking as a Treasury decision, the election is available whether or not the period for filing a claim for credit or refund under section 6511 has expired. No election may be made with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election of additional first-year depreciation allowance for small business under section 179(a) is in effect. The election once made applies to all outdoor advertising displays of the taxpayer which may be made the subject of an election under this paragraph, including all outdoor advertising displays acquired or constructed by the taxpayer in a taxable year after the taxable year for which the election is made. The election applies with respect to dispositions during the taxable year for which made and all subsequent taxable years (unless an effective revocation is made pursuant to paragraph (b)(2)(ii)).

(2) *Election—(i) Time and manner of making election—(A) In general.* Unless otherwise provided in the return or in the instructions for a return for a taxable year, any election made under section 1033(g)(3) shall be made by attaching a statement to the return (or amended return if filed on or before the 180th day after the date of publication of this notice as a Treasury decision) for the first taxable year to which the election is to apply. Any election made under this paragraph must be made not later than the time, including extensions

thereof, prescribed by law for filing the income tax return for such taxable year or 180 days after the date of publication of this notice as a Treasury decision, whichever occurs last. If a taxpayer makes an election (or revokes an election under subdivision (ii) or (iii) of this subparagraph (b) (2)) for a taxable year for which he or she has previously filed a return, the return for that taxable year and all other taxable years affected by the election (or revocation) must be amended to reflect any tax consequences of the election (or revocation). However, no return for a taxable year for which the period for filing a claim for credit or refund under section 6511 has expired may be amended to make any changes other than those resulting from the election (or revocation). In order for the election (or revocation) to be effective, the taxpayer must remit with the amended return any additional tax due resulting from the election (or revocation), notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law which would prevent assessment or collection of such tax.

(b) *Statement required when making election.* The statement required when making the election must clearly indicate that the election to treat outdoor advertising displays as real property is being made.

(ii) *Revocation of election by Commissioner's consent.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, an election under section 1033(g)(3) shall be irrevocable unless consent to revoke is obtained from the Commissioner. In order to secure the Commissioner's consent to revoke an election, the taxpayer must file a request for revocation of election with the Commissioner of Internal Revenue, Washington, D.C. 20224. The request for revocation shall include—

(A) The taxpayer's name, address, and taxpayer identification number.

(B) The date on which and taxable year for which the election was made and the Internal Revenue Service office with which it was filed.

(C) Identification of all outdoor advertising displays of the taxpayer to which the revocation would apply (including the location, date of purchase, and adjusted basis in such property).

(D) The effective date desired for the revocation, and

(E) The reasons for requesting the revocation.

The Commissioner may require such other information as may be necessary in order to determine whether the requested revocation will be permitted.

The Commissioner may prescribe administrative procedures (subject to such limitations, terms and conditions as he deems necessary) to obtain his consent to permit the taxpayer to revoke the election. The taxpayer may submit a request for revocation for any taxable year for which the period of limitations for filing a claim for credit or refund or overpayment of tax has not expired.

(iii) *Revocation where election was made on or before December 11, 1980.* In the case of an election made on or before December 11, 1979, the taxpayer may revoke such election provided such revocation is made not later than March 23, 1981. The request for revocation shall be made in conformity with the requirements of paragraph (b)(2)(ii), except that, in lieu of the information required by paragraph (b)(2)(ii)(E), the taxpayer shall state that the revocation is being made pursuant to this paragraph. In addition, the taxpayer must forward, with the statement of revocation, copies of his or her tax returns, including both the original return and any amended returns, for the taxable year in which the original election was made and for all subsequent years and must remit any additional tax due as a result of the revocation.

(3) *Definition of outdoor advertising display.* The term "outdoor advertising display" means a rigidly assembled sign, display, or device that constitutes, or is used to display, a commercial or other advertisement to the public and is permanently affixed to the ground or permanently attached to a building or other inherently permanent structure. The term includes highway billboards affixed to the ground with wood or metal poles, pipes, or beams, with or without concrete footings.

(4) *Character of replacement property.* For purposes of section 1033(g), an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display (with respect to which an election under this section is in effect) shall be considered property of a like kind as the property converted even though a taxpayer's interest in the replacement property is different from the interest held in the property converted. Thus, for example, a fee simple interest in real estate acquired to replace a converted billboard and a 5-year leasehold interest in the real property on which the billboard was located qualifies as property of a like kind under this section.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 5. Paragraph (c)(6) of § 7.0 is hereby removed.

[FR Doc. 81-2305 Filed 1-16-81; 4:51 pm]
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26 CFR Parts 25 and 301

[T.D. 7757]

Gift Taxes; Gifts Made After December 31, 1954 and Procedure and Administration—Filing of Gift Tax Returns; Furnishing Statement Explaining Estate or Gift Valuation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time for filing gift tax returns and for requesting a statement explaining valuation for estate, gift or generation-skipping transfer tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1976 and the Act of December 29, 1979. The regulations would provide the public with the guidance needed to comply with those acts. In addition, this document contains an amendment to a regulation relating to the exercise of a general power of appointment.

DATES: The amendments are generally effective for gifts made after December 31, 1976.

FOR FURTHER INFORMATION CONTACT: Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1979, the Federal Register published proposed amendments to the Gift Tax Regulations (26 CFR Part 25) under sections 2514 and 6075(b) and to the Procedure and Administration Regulations (26 CFR Part 301) under section 7517 of the Internal Revenue Code of 1954 (Code) (44 FR 75185). These amendments were proposed to conform the regulations to section 2008(a)(2) and (b) of the Tax Reform Act of 1976 (90 Stat. 1891 and 1892) relating to the special rule for filing returns where gifts in a calendar quarter total \$25,000 or less. In addition, the final regulations conform the regulations to section 8 of the Act of