**The original documents are located in Box 43, folder "4/15/76 HR12725 Tax-free Rollover for Terminated Retirement Plans" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.**

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at the Gerald R. Ford Presidential Library

4/15/76

Mr. Linder –

We received the signed bill at 7:40 p.m., 4/15/76.

Katie

Called Mr. Friedensdorf's
office upon receipt of
signed bill — No answer.

APPROVED
APR 15 1976

ACTION

THE WHITE HOUSE

WASHINGTON

April 15, 1976

Last Day: April 26

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 12725 - Tax-free rollover for terminated retirement plans

Attached for your consideration is H.R. 12725, sponsored by Representative Ullman, which would amend the Internal Revenue Code of 1954 to permit tax-free "rollovers" of distributions from employee retirement plans in the event of the termination of those plans.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB recommends that you sign the enrolled bill as soon as possible. Treasury believes that some taxpayers who would be affected by this legislation have not yet filed their 1975 returns in the hope that this bill will be signed before midnight, April 15. Bill Seidman, Alan Greenspan, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 12725 at Tab B.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 14 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12725 - Tax-free rollover for terminated retirement plans
Sponsor - Rep. Ullman (D) Oregon and 4 others

Last Day for Action

As soon as possible.

Purpose

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

Agency Recommendations

| | |
|---|---|
| Office of Management and Budget | Approval |
| Department of the Treasury | Approval |

Discussion

The enrolled bill would permit an employee of a company that prematurely terminates its retirement plan to rollover his distribution from that plan, tax free, into another qualified plan or into an individual retirement account (IRA).

H.R. 12725 is intended to correct an unforeseen inequity in the 1974 pension reform legislation. Under that legislation, an employee who receives a lump-sum "payout" from a pension, profit-sharing, stock-bonus, or annuity plan can avoid tax on this distribution if he contributes the money to another qualified retirement plan or to an IRA account within 60 days. However, this tax-free rollover is available only when an employee dies, is fired, reaches 59 1/2 years of age or becomes disabled.

Thus, amounts distributed to an employee because the employer terminates the plan do not meet the test for tax-free rollover treatment, even though the employee did not request or desire such premature distribution.

To remedy this inequity and put these disadvantaged beneficiaries in the same position they would have been in if they had been included in the 1974 pension act, H.R. 12725 would apply to distributions made on or after July 4, 1974 -- the effective date for tax-free rollovers under that legislation. Employees who have received distributions since then would have until December 31, 1976 to put their money into a new plan.

The urgency of this proposed measure arises from Congress' expressed intent to assist affected employees who otherwise would have to pay, by April 15, 1976, a tax on distributions made in 1975 from terminated retirement plans. While these taxpayers can, of course, file amended returns after that date to reclaim taxes paid for this purpose, it would be more burdensome for them to do so. We understand from Treasury that some taxpayers who would be affected by this legislation have not yet filed their 1975 returns in the hope that this bill will be signed into law before midnight April 15, 1976. Accordingly, we recommend that you sign the enrolled measure as soon as possible.

James M. Frey
Assistant Director
for Legislative Reference

Enclosures

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 4-28-76

TO: Bob Linder

FROM: Jim Frey

Attached is the Labor views letter on H.R. 12725. Please have it included in the enrolled bill file. Thanks.

OMB FORM 38
REV AUG 73

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

APR 23 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

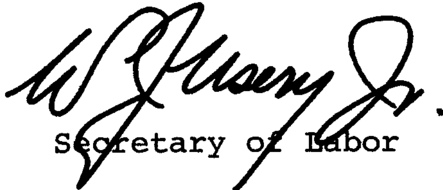
Dear Mr. Lynn:

This is in response to your request for a report from this Department on the enrolled enactment of H.R. 12725, which amends the Internal Revenue Code of 1954 to permit the tax-free rollover of distributions from employee retirement plans on account of plan terminations.

The Employee Retirement Income Security Act of 1974 already permits certain tax-free rollovers to facilitate transfer of employees' retirement funds from one pension plan to another. H.R. 12725 would extend the tax-free rollover treatment to funds distributed from pension plans which have been terminated, partially terminated or "frozen" (that is, where the employer has ceased contributing to the plan).

This Department recommends that the President approve this bill because it would provide for greater portability of pension funds.

Sincerely,



Secretary of Labor

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

APR 14 1976

Dear Sir:

This is in response to your request for the views of the Treasury Department on H.R. 12725 (94th Congress, 2d Session), an enrolled bill entitled "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" (the "Act"). The Act adopts a rule which we believe would have been included as part of the Employee Retirement Income Security Act of 1974 ("ERISA") had the problem been specifically considered in connection with that legislation.

Under current law, if an employee receives a lump-sum distribution from his employer's pension plan when he ceases to be an employee or after he has attained the age of 59-1/2, he can defer taxation on the amount received by transferring it to another qualified pension plan or to an individual retirement account within 60 days after receipt. This provision was designed to facilitate the portability of pension funds. These tax-deferred rollover provisions, however, do not presently apply when an employee receives a lump-sum distribution from his employer's pension plan and continues to work for the same company.

The Act extends tax-deferred rollover treatment to funds distributed from a pension plan on account of its termination, partial termination, or the complete discontinuance of employer contributions, even though the recipient continues to work for the same company. The Act applies the same rule when a lump-sum distribution occurs in connection with the termination of a parent-subsidiary or controlled group relationship or in connection with the sale of substantially all the assets used by a corporation in a trade or business.

In these situations, the receipt of pension funds occurs not because of the employee's own volition, but because of a decision made by his employer, or other

circumstances, requiring termination or discontinuance of the plan. Accordingly, it is appropriate to provide tax-deferred rollover treatment so that the employee may preserve the character of the amounts received as funds that have been set aside for retirement.

The Act takes effect on July 4, 1974, to cover the initial 60-day rollover period afforded protection under ERISA. As a result, employees may use the extended rollover provisions for the calendar year 1975, and, in some cases, the calendar year 1974. In addition, the Act extends the normal 60-day rollover period until December 31, 1976, to facilitate the transfer of previously ineligible amounts.

It is anticipated that the Act will result in a revenue loss of $50 million for the calendar 1976 and $70 million a year for the calendar year 1977 and thereafter.

For the reasons set forth above, the Treasury Department recommends that the Act be signed into law.

Sincerely yours,

Charles M. Walker
Assistant Secretary

Director, Office of Management and Budget
Attention: Assistant Director for
Legislative Reference, Legislative
Reference Division
Washington, D.C. 20503

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 14 Time: 700pm

FOR ACTION: Dick Parsons ok
Bill Seidman ok
Ken Lazarus ok
Max Friedersdorf ok
Alan Greenspan (Malcolm) ok

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

---

DUE: Date: April 15 Time: 930am

---

SUBJECT:

H.R. 12785 - Tax-free rollover for terminated retirement plans

ACTION REQUESTED:

___ For Necessary Action ___ For Your Recommendations

___ Prepare Agenda and Brief ___ Draft Reply

X For Your Comments ___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

OMB recommends this be signed by the President asap.

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

WASHINGTON

ACTION MEMORANDUM

LOG NO.:

Date: April 14

Time: 700pm

FOR ACTION: Dick Parsons
Bill Seidman
Ken Lazarus
Max Friedersdorf M.G.
Alan Greenspan

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

---

DUE: Date: April 15

Time: 930am

---

SUBJECT:

H.R. 12725 - Tax-free rollover for terminated retirement plans

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

_x_ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

OMB recommends this be signed by the President asap.

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM — WASHINGTON — LOG NO.:

Date: April 14 — Time: 700pm

FOR ACTION: Dick Parsons
Bill Seidman ✓
Ken Lazarus
Max Friedersdorf
Alan Greenspan

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

---

DUE: Date: April 15 — Time: 930am

---

SUBJECT:

H.R. 12725 - Tax-free rollover for terminated retirement plans

ACTION REQUESTED:

____ For Necessary Action

____ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

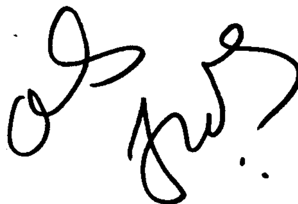
__x__ For Your Comments

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

OMB recommends this be signed by the President asap.



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

ACTION MEMORANDUM

LOG NO.:

Date: April 14

Time: 700pm

FOR ACTION: Dick Parsons
Bill Seidman
Ken Lazarus ✓
Max Friedersdorf
Alan Greenspan

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

---

DUE: Date: April 15

Time: 930am

---

SUBJECT:

H.R. 12725 - Tax-free rollover for terminated retirement plans

ACTION REQUESTED:

____ For Necessary Action

____ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

x For Your Comments

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

OMB recommends this be signed by the President asap.

No objection -- Ken Lazarus 4/15/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM    WASHINGTON    LOG NO.:

Date: April 14    Time: 700pm

FOR ACTION: Dick Parsons ✓
Bill Seidman
Ken Lazarus
Max Friedersdorf
Alan Greenspan

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

---

DUE: Date: April 15    Time: 930am

---

SUBJECT:

H.R. 12725 - Tax-free rollover for terminated retirement plans

ACTION REQUESTED:

___ For Necessary Action    ___ For Your Recommendations

___ Prepare Agenda and Brief    ___ Draft Reply

_x_ For Your Comments    ___ Draft Remarks

REMARKS: Recommend Approval. RP—

Please return to Judy Johnston, Ground Floor West Wing

OMB recommends this be signed by the President asap.

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

**Union Calendar No. 499**

94TH CONGRESS
2D SESSION

# H. R. 12725

**[Report No. 94–1020]**

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IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1976

Mr. ULLMAN (for himself, Mr. KARTH, Mr. SCHNEEBELI, Mr. CONABLE, and Mr. STEIGER of Wisconsin) introduced the following bill; which was referred to the Committee on Ways and Means

APRIL 8, 1976

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

---

# A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That—
4 (a) TERMINATION OF EMPLOYEE TRUST, ETC.—Sec-
5 tion 402 (a) of the Internal Revenue Code of 1954 (relating
6 to taxability of beneficiaries of exempt trusts) is amended—
7 (1) by striking out paragraph (5) (A) and insert-
8 ing in lieu thereof the following:
9 "(A) the balance to the credit of an employee
10 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.

"(B) SALE OF SUBSIDIARY OR ASSETS.—

"(i) A ~~statement~~ *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))~~ *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-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 ~~an active business (within the meaning of section 355 (b) (2) (A)) conducted by the selling corporation.~~ *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.".

(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)),",

(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.

"(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))~~ *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-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 ~~an active business (within the meaning of section 355 (b) (2) (A)) conducted by the selling corporation,~~ *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 accordance with a sale or other ~~transfers~~ *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:

"(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.".

(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)~~ *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)".

(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)".

(d) ~~Technical~~ *Transitional* Rules.—

(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 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.—

(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).

(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—

(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 ~~of the individual for which his taxable income~~ *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, an-

nuity, or bond described in subparagraph (A) ~~shall not expire~~ *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) ~~of the contribution of the remaining portion of the payment, and~~ *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.

(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 re-



ceived 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).

(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.

~~(d)~~ *(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.

Union Calendar No. 499

94TH CONGRESS
2D SESSION

# H. R. 12725

[Report No. 94–1020]

## A BILL

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.

By Mr. ULLMAN, Mr. KARTH, Mr. SCHNEEBELI, Mr. CONABLE, and Mr. STEIGER of Wisconsin

MARCH 23, 1976

Referred to the Committee on Ways and Means

APRIL 8, 1976

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

94TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 94-1020

# PENSION PLAN TAX-FREE ROLLOVERS

APRIL 8, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

# REPORT

together with

## SUPPLEMENTAL VIEWS

[To accompany H.R. 12725]

The Committee on Ways and Means, to whom was referred the bill (H.R. 12725), 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, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 3, line 7, strike out "statement" and insert "payment".

Page 3, line 13, strike out "1563(a))" and insert "1563(a), determined by substituting '50 percent' for '80 percent' each place it appears therein)".

Page 4, beginning in line 2, strike out "an active" and all that follows down through line 4 and insert "a trade or business conducted by the selling corporation,".

Page 6, line 13, strike out "1563(a))" and insert "1563(a), determined by substituting '50 percent' for '80 percent' each place it appears therein)".

Page 7, beginning in line 1, strike out "an active" and all that follows down through line 3 and insert "a trade or business conducted by the selling corporation,".

Page 7, line 12, strike out "transfers" and insert "transfer".

Page 8, line 18, strike out "404(a)" and insert "404(a)(2)".

Page 8, line 25, strike out "TECHNICAL" and insert "TRANSITIONAL".

Page 11, beginning in line 13, strike out "of the individual for which his taxable income" and insert "for which tax".

Page 11, line 18, strike out "shall not expire" and insert "shall, to the extent attributable to such treatment, not expire".

57-006

Page 11, beginning in line 23, strike out "of the contribution of the remaining portion of the payment, and" and insert in lieu thereof "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".

Page 13, line 9, strike out "(d)" and insert "(e)".

## I. SUMMARY

Under the bill, tax-free rollover treatment is to be available to an employee who receives a payment on account of a termination of his employer's retirement plan or on account of a complete discontinuance of contributions under such a plan. This treatment is also to be made available in certain situations involving sales of subsidiaries and divisions of corporations. The payment from the plan generally must be reinvested by the employee in a qualified plan or individual retirement account within 60 days.

This provision is to apply with respect to payments made to an employee on or after July 4, 1974.

## II. EXPLANATION OF THE BILL

*Present law*

Under present law,[1] an employee who receives a lump sum distribution from a qualified pension, profit-sharing, stock bonus, or annuity plan may generally contribute (roll over), on a tax-free basis, the portion of the distribution not consisting of employee contributions, to another such plan or to an individual retirement account, individual retirement annuity, or individual retirement bond (referred to collectively as an "IRA"). If the contribution satisfies certain requirements, the plan distribution will generally not be taxed to the employee until a subsequent distribution by the other plan or IRA. Tax-free rollovers are also permitted from an IRA to a plan under these rules if the IRA assets were derived solely from a qualified plan.

To qualify as a tax-free rollover, the same property (other than money) distributed by the plan or IRA must be contributed to the other plan or IRA within 60 days after it is received.

A distribution from a qualified plan is not accorded tax-free rollover treatment unless it is a lump sum distribution. Thus, for example, it must be made within one taxable year of the recipient, it must consist of the balance to the credit of the employee under the plan, the employee must have been a planned participant for 5 or more taxable years, and the distribution must be made on account of the employee's separation from service[2] or death, or after the employee has attained age 59½ or (in the case of a self-employed individual) became disabled.

[1] Sections 402(a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C) of the Internal Revenue Code of 1954.

[2] The "separation-from-service" alternative does not apply to self-employed individuals.



*General reasons for change*

It has been brought to your committee's attention that in a significant number of cases employers terminate plans and distribute their assets even though the employees continue to work for the same employers. This may happen, for example, when an employer is acquired by another corporation and becomes a subsidiary of that other corporation. Your committee has concluded that, in such a case, an employee who wishes to recommit those funds to some sort of tax-qualified retirement vehicle (e.g., tax-qualified pension plan or IRA) or to a profit-sharing or stock bonus plan should be permitted to do so on the same basis as an employee under present law whose distribution qualifies as a lump sum distribution. This tax-free rollover treatment is to apply to a distribution which would be a lump sum distribution but for the fact that it is made on account of a termination of the plan or a complete discontinuance of contributions under the plan. This treatment is also to be made available in certain situations involving sales of subsidiaries and divisions of corporations.

Your committee has concluded that such a rule would have been included in the Employee Retirement Income Security Act of 1974 (ERISA) if the issue had been presented during the legislative consideration of that Act. As a result, this bill makes the rule retroactive so as to achieve as nearly as practical the results that would have been achieved had the rule been enacted as part of ERISA.

*Explanation of provision*

Under the bill, a distribution of the balance to the credit of an employee under a pension, etc., plan which is paid to the employee within one taxable year, on account of the termination of the plan or the complete discontinuance of contributions under the plan, is to be eligible for tax-free rollover treatment.

Because in some cases it may be difficult to fix the date when a complete discontinuance of contributions occurs, the bill provides that for this purpose a complete discontinuance of contributions is deemed to occur at the time the administrator of the plan notifies the Internal Revenue Service that all contributions under the plan have been completely discontinued.[3]

For this purpose, if an employee of a subsidiary corporation or a corporation which is a member of a controlled group of corporations receives a distribution from the plan of the parent corporation or another member of the controlled group in connection with the liquidation, sale, or other means of terminating the parent-subsidiary or controlled group relationship, the distribution could be treated as if it were made on account of the termination of the plan and could be eligible for tax-free rollover treatment.

Similarly, under the bill, if a corporation sells to another corporation the assets it uses in a trade or business (e.g., what is usually described as a branch or division) and the employees of the seller become

[3] Further, the plan is to be considered as having been terminated no later than the date that notice is sent, for purposes of section 411(d)(3), which reequires the vesting of all funded benefits when there has been a complete discontinuance of contributions under a plan that does not come under the new ERISA funding rules of section 412.

employees of the buyer, then a distribution from the seller's plan to those employees could be eligible for tax-free rollover treatment.

Your committee understands that there may be some circumstances to which this bill literally applies, where under present law the employee is already entitled to lump sum distribution (the 10-year "separate basket" treatment provided under ERISA (sec. 402(e) of the Code)) or rollover treatment. This bill is not intended to withdraw lump sum distribution treatment in any case where it is provided under present law.

*Effective date*

The new rules are to apply to distributions made to employees on or after July 4, 1974 (60 days before the date of the enactment of ERISA, under which tax-free rollover treatment became available).

Special rules are provided for termination distributions which have taken place or will take place before enactment of this bill, in order to make it possible for such a distribution to qualify for tax-free rollover treatment. Under these special rules, the 60-day period within which a qualified distribution under the new rules must be rolled over is not to expire before December 31, 1976.[4] This is done in order to provide sufficient time for the Internal Revenue Service to publish the necessary instructions and for the Service and others to publicize for the tax-free rollover treatment provided by the bill.

An employee who received a plan termination distribution of property (other than money) in this transition period may have recognized that the distribution did not qualify for tax-free rollover treatment under present law and may have sold or exchanged the property. In such a case, (1) the sale or exchange itself generally would have been a taxable event and (2) the same-property rule described above (under *Present law*) would prevent this relief provision of the bill from applying. In order to avoid such frustration of the purposes of this retroactive element of this provision, the bill provides that where the property distributed was sold or exchanged during the period ending with the date of the enactment of this bill), the rules are satisfied if the proceeds of the sale (less any employee contributions) are rolled over. Further, the bill provides for non-recognition of gain or loss on the sale or exchange if such proceeds are rolled over.

Under the bill, the time for rolling over a distribution does not expire before December 31, 1976. To accommodate taxpayers who have already paid tax on distributions, the bill permits the rollover to be made in two stages. Under this two-stage approach, the amount required to be rolled over by December 31, 1976, would be reduced by the tax imposed on the distribution. At the election of the taxpayer, the remaining portion of the distribution would be considered to be rolled over by December 31, 1976, if, within 30 days after the Internal Revenue Service allows a credit or a refund on account of the rollover, the taxpayer rolls over the amount of that refund or credit.

In order to protect against situations where a taxpayer improperly fails to make the second-stage contribution, the bill provides that the period of limitations on assessment of a deficiency (e.g., of income tax or of chapter 43 excise tax) on account of that failure is not to expire

[4] This extension of the 60-day rule also applies to distributions made after the bill's enactment and before November 2, 1976.



before 3 years from the date the taxpayer notifies the Internal Revenue Service whether the second-stage contribution has been timely made. The bill also authorizes the assessment of a deficiency before the expiration of such 3-year period.

In the usual case, where the Service sends the taxpayer a tax refund check, the refund would be considered allowed when the check is sent. For this purpose, under Treasury regulations, the tax imposed on a taxpayer's distribution is to be the excess of the tax imposed on his or her income, including the distribution, over the tax imposed on his or her income excluding the distribution.

## III. EFFECT ON THE REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on the revenues of this bill. Your committee estimates that this provision will result in a decrease in tax liability of $50 million for calendar year 1976 and $70 million a year for calendar year 1977 and subsequent years.

In compliance with clause 27(b) of Rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee on reporting the bill. This bill was by voice vote unanimously ordered favorably reported by the Committee.

## IV. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, the following statements are made:

With respect to subdivision (A), relating to oversight findings, it was as a result of your committee's oversight activity concerning the effects of the Employee Retirement Income Security Act of 1974 that it concluded that the provisions of this bill are appropriate to modify the unnecessarily restrictive limitations on the tax-free rollover rights of an employee who receives a distribution of his or her entire account from a tax-qualified retirement, etc., plan.

With respect to subdivision (B), your committee states that the changes made to existing law by this bill involved no new budget authority. These changes involve an insubstantial increase in tax expenditures for the fiscal year 1976.

With respect to subdivisions (C) and (D), your committee advises that no estimate or comparison has been submitted to your committee by the Director of the Congressional Budget Office relative to the changes made by your committee, nor have any oversight findings or recommendations been submitted to your committee by the Committee on Government Operations.

## V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as re-

ported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## INTERNAL REVENUE CODE OF 1954

* * * * * * *

## SUBTITLE A—INCOME TAXES

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## CHAPTER 1—NORMAL TAXES AND SURTAXES

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### Subchapter D—Deferred Compensation, Etc.

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#### PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

#### Subpart A—General Rule

* * * * * * *

**SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.**

(a) Requirements for Qualification.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of employees who are—

(A) officers,

(B) shareholders, or

(C) highly compensated.



For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(2)(A) and (C).

(5) A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b) (without regard to paragraph (1)(A) thereof) merely because it excludes employees the whole of whose remuneration constitutes "wages" under section 3121 (a)(1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions are benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 3121(a)(1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under the State or Federal law. For purposes of this paragraph and paragraph (10), the total compensation of an individual who is an employee within the meaning of subsection (c)(1) means such individual's earned income (as defined in subsection (c)(2)), and the basic or regular rate of compensation of such an individual shall be determined, under regulations prescribed by the Secretary or his delegate, with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan bears to the total compensation of such employees. For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become non forfeitable at the same rate. For the purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considerd as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the re-

quirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a pension plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), a trust forming part of such plan shall not constitute a qualified trust under this section unless, under the plan, the entire interest of each employee—

(A) either will be distributed to him not later than his taxable year in which he attains the age of 70½ years, or, in the case of an employee other than an owner-employee (as defined in subsection (c)(3)), in which he retires, whichever is the later, or

(B) will be distributed, commencing not later than such taxable year, (i) in accordance with regulations prescribed by the Secretary or his delegate, over the life of such employee or over the lives of such employee and his spouse, or (ii) in accordance with such regulations, over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and his spouse.

A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.

(10) In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3))—

(A) paragraph (3), the first and second sentences of paragraph (5), and section 410 shall not apply, but—

(i) such plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of or on behalf of employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, and

(ii) such plan shall not be considered discriminatory within the meaning of paragraph (4) solely because under the plan contributions described in subsection (e) which are in excess of the amounts which may be deducted under section 404 for the taxable year may be made on behalf of any owner-employee; and

(B) a trust forming a part of such plan shall constitute a qualified trust under this section only if the requirements in subsection (d) are also met.

(11)(A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity unless such plan provides for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.



(B) Notwithstanding the provisions of subparagraph (A), in the case of a plan which provides for the payment of benefits before the normal retirement age (as defined in section 411(a)(8)), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(i) the date the employee reaches the earliest retirement age under the plan, or

(ii) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(C) A plan described in subparagraph (B) does not meet the requirements of subparagraph (A) unless, under the plan, a participant has a reasonable period during which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subparagraph (B) ends and ending on the date on which he reaches normal retirement age (as defined in section 411(a)(8)) if he continues his employment during that period. A plan does not meet the requirements of this subparagraph unless, in the case of such an election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he made an election described in this subparagraph immediately prior to his retirement and if his retirement had occurred on the day before his death and within the period within which an election can be made.

(D) A plan shall not be treated as not satisfying the requirements of this paragraph solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election described in subparagraph (C) has been made under subparagraph (C)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participants death.

(E) A plan shall not be treated as satisfying the requirements of this paragraph unless, under the plan, each participant has a reasonable period (as described by the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph) not to take such joint and survivor annuity.

(F) A plan shall not be treated as not satisfying the requirements of this paragraph solely because under the plan there is a provision that any election described in subparagraph (C) or (E), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preced-

ing sentence also provides that such an election or revocation will be given effect in any case in which—

(i) the participant dies from accidental causes,

(ii) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(iii) such election or revocation is made before such accident occurred.

(G) For purposes of this paragraph—

(i) the term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability),

(ii) the term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and

(iii) the term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the participant.

For purposes of this paragraph, a plan may take into account in any equitable manner (as determined by the Secretary or his delegate) any increased costs resulting from providing joint and survivor annuity benefits.

(H) This paragraph shall apply only if—

(i) the annuity starting date did not occur before the effective date of this paragraph, and

(ii) the participant was an active participant in the plan on or after such effective date.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.

(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976, and shall not apply to assignments which were irrevocable on the date of the enactment [September 2, 1974] of the Employee Retirement Income Security Act of 1974.



(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary or his delegate.

(15) A trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after the date of the enactment [September 2, 1974] of the Employer Retirement Income Security Act of 1974 or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if the annual compensation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation.

(18) In the case of a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if such plan satisfies the requirements of subsection (j).

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before enactment [September 2, 1974] of the Employee Retirement Income Security Act of 1974, in the event of withdrawal of certain mandatory contributions).

*(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.*

Paragraphs (11), (12), (13), (14), (15), [and (19)] *(19), and (20)* shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

* * * * * * *

**SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.**

(a) Taxability of Beneficiary of Exempt Trust.—

(1) General rule.—Except as provided in paragraphs (2) and (4), the amount actually distributed or made available to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities). The amount actually distributed or made available to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall be determined in accordance with regulations prescribed by the Secretary or his delegate.



(2) Capital gains treatment for portion of lump sum distribution.—In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4) of a lump sum distribution as is equal to the product of such total taxable amount multipled by a fraction—

(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

(B) the denominator of which is the number of calendar years of active participation by the employee in such plan, shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual estate, or trust may be treated as a lump sum distribution under this paragraph.

(3) Definitions.—For purposes of this subsection—

(A) The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(B) The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the employer corporation.

(4) Distribution by United States to nonresident aliens.—The amount includible under paragraph (1) or (2) of this subsection in the gross income of a nonresident alien individual with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic salary paid by the United States to such employee for such services, reduced by the amount of such basic salary which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic salary paid by the United States to such employee for such services.

In the case of distributions under the Civil Service Retirement Act (5 U.S.C. 2251), the term "basic salary" shall have the meaning provided in section 1(d) of such Act.

(5) Rollover amounts.—In the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if—

[(A) the balance of the credit of an employee is paid to him on 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)),]

*(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)),*

(B)(i) the employee transfers all the property he receives in such distribution to an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(i), or

(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in section 403(a) on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(i), and

(C) the amount so transferred consists of the property (other than money) distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distributions are not includible in gross income for the year in which paid. The purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution as described in section 408(d)(3). Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of [the lump sum distribution] *a payment* described in subparagraph (A) is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

* * * * * * *

*(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.*

*(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-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 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.*

* * * * * * *

**SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.**

(a) Taxability of Beneficiary Under a Qualified Annuity Plan.

(1) General rule.—Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

(2) Capital gains treatment for certain distributions.—

(A) General rule.—If—

(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distributon as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

(B) CROSS REFERENCE.—

For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).

(3) SELF-EMPLOYED INDIVIDUALS.—For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) ROLLOVER AMOUNTS.—In the case of an employee annuity described in 403(a), if—

[(A) the balance to the credit of an employee is paid to him in one or more distributions which constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without reference to section 402(e)(4)(B)),]

*(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)),*

(B)(i) the employee transfers all the property he receives in such distribution to an individual account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), or

(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in subsection (a) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), and

(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B).

then such distribution is not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3). Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of [the lump sum distribution] *a payment* described in subparagraph (A) is attributable to an annuity plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

*(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.*

*(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-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 termination of the plan with respect to such employee if the employees of the empolyer 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.*

* * * * * * *

**SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.**

(a) GENERAL RULE.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) PENSION TRUSTS.

(A) IN GENERAL.—In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan).

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years,



(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary or his delegate.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 412, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 412.

(B) SPECIAL RULE IN CASE OF CERTAIN AMENDMENTS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary or his delegate), if the full funding limitation determined under section 412(c)(7) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 412(c)(7)(B) exceeds the amount determined under section 412(c)(7)(A), and if the funding method and the actuarial assumptions used are those used for such year under section 412, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying section 412(c)(7) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary or his delegate to carry out the purposes of this subparagraph.

(C) CERTAIN COLLECTIVELY-BARGAINED PLANS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 167(l)(3)(A)(iii), with respect to which the rates have been established or approved by a State or political sub-

division thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words "plan amendment" the words "plan amendment or increase in benefits payable under title II of the Social Security Act". For purposes of this subparagraph, the term "controlled group" has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

(D) CARRYOVER.—Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.

(2) EMPLOYEE'S ANNUITIES.—In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is a part of a plan which meets the requirements of section 401(a) (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), [and (19)] *(19) and (20)*, and, if applicable, the requirements of section 401(a) (9), (10), (17), and (18) and of section 401(d) (other than paragraph (1)), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year towards the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) STOCK BONUS AND PROFIT-SHARING TRUSTS.—

(A) LIMITS ON DEDUCTIBLE CONTRIBUTIONS.—In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the stock bonus or profit-sharing plan. If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. In addition, any amount paid into the trust in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this subparagraph shall not exceed 15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. The term "stock bonus or profit-sharing trust", as used in this subparagraph, shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1). If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.



(B) PROFIT-SHARING PLAN OF AFFILIATED GROUP.—In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) TRUSTS CREATED OR ORGANIZED OUTSIDE THE UNITED STATES.—If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501(a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corpo-

ration, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) OTHER PLANS.—If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee.

(6) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) LIMIT ON DEDUCTIONS.—If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan.

(8) SELF-EMPLOYED INDIVIDUALS.—In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

(A) the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

(B) the term "earned income" has the meaning assigned to it by section 401(c)(2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance; and



(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) PLANS BENEFITING SELF-EMPLOYED INDIVIDUALS.—In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1)—

(A) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees (other than employees within the meaning of section 401(c)(1)), as if such employees were the only employees for whom contributions and benefits are provided under the plan;

(B) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees within the meaning of section 401(c)(1)—

(i) as if such employees were the only employees for whom contributions and benefits are provided under the plan, and

(ii) without regard to the second sentence of paragraph (3); and

(C) the amounts deductible under paragraphs (1), (2), (3), and (7), with respect to contributions on behalf of any employee within the meaning of section 401(c)(1), shall not exceed the applicable limitation provided in subsection (e).

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## Subchapter L—Insurance Companies

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### Subpart B—Investment Income

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**SEC. 805. POLICY AND OTHER CONTRACT LIABILITY REQUIREMENTS.**

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(d) PENSION PLAN RESERVES.—

(1) PENSION PLAN RESERVES DEFINED.—For purposes of this part, the term "pension plan reserves" means that portion of the life insurance reserves which is allocable to contracts—

(A) purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be (i) trusts described in section 401(a) and ex-

empt from tax under section 501(a), or (ii) trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws;

(B) purchased under contracts entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939;

(C) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), [and (19)] *(19), and (20)*;

(D) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws, or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing; or

(E) purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b).

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## VI. SUPPLEMENTAL VIEWS OF HON. CHARLES A. VANIK

Following and expanding upon Section 1501 of H.R. 10612, this bill appropriately amends Section 402(a) of the Internal Revenue Code of 1954 to enable the unforeseeably large number of victims of plans which terminate (or to which contributions are discontinued) who remain with their employers to rollover their distributions on a tax-free basis into an Individual Retirement Account (IRA) or another qualified plan. The bill is a sound one and a timely one which deserves immediate consideration. Without detracting from my support of this bill, I would like to point out that additional actions need to be taken to eliminate other problems with IRAs.

Under the definition in Section 402(e)(4)(A), a "lump sum distribution" is defined to include distributions from a qualified trust, "(I) on account of the employee's death, (II) after the employee attains age 59½, (III) on account of the employee's separation from the service, or (IV) after the employee has become disabled . . .". The further limitation that an employee must have been a plan participant for 5 preceding taxable years in order to receive a "lump sum distribution" eligible for rollover treatment (hereinafter, "5 year requirement") is buried in Section 402(e)(4)(H).

To my knowledge, neither the voluminous ERISA Conference Report, Committee Reports nor even IRS Publication 590, which provides tax information on IRAs, make any mention of the 5 year requirement. Further, the requirement was originally intended only to limit the availability of special 10-year income averaging, but the latter is already limited to portions of a distribution attributable to calendar years of plan participation beginning after December 31, 1973. Moreover, both favorable capital gains treatment under Section 402(a)(2) and 10-year averaging are no longer available where a rollover is made into an IRA and benefits are subsequently distributed therefrom.

The effect of the continued 5 year requirement in the present bill is to prevent an employee who happens to have been a plan participant for less than 5 years (and employed less than 6 or even 8 years where the plan has a minimum service requirement for participation) and who otherwise qualifies for a "lump sum distribution" as defined in section 402(e)(4)(A) from transferring the full amount of his distribution into an IRA or other qualified plan, and to remove the tax incentive for him to do so.

It is argued that a tax-free rollover is unnecessary because the hardship of having an unusually large taxable income in a single year may usually be alleviated through regular 5 year income averaging. This may be true, but the result would nevertheless defeat our original intent and basic purpose of providing through the ERISA rollover a widely available mechanism for portability of vested benefits. Moreover, the continuation of the 5 year requirement is completely contrary to our fundamental purpose of providing effective incentives and vehicles for the accumulation of adequate retirement savings during working years.

CHARLES A. VANIK.



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# Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six*

# 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.

*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—

(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.

"(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-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 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.".

(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)),",

(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.

"(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-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:

"(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.".

(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)".

(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)".

(d) TRANSITIONAL RULES.—

(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

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.—

(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).

(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—

(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.

(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).

(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.

*Speaker of the House of Representatives.*

*Vice President of the United States and*
*President of the Senate.*