

Checkpoint Contents

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Revenue Rulings & Procedures, Notices, Announcements, Executive & Delegation Orders, News Releases & Other IRS Documents

Revenue Rulings (1954 to Present)

1981

Rev. Rul. 81-161 through Rev. Rul. 81-112

[Rev. Rul. 81-140, 1981-1 CB 180 -- IRC Sec\(s\). 401](#)

Revenue Rulings

Rev. Rul. 81-140, 1981-1 CB 180, IRC Sec(s). 401

Headnote:

Rev. Rul. 81-140, 1981-1 CB 180 -- IRC Sec. 401 (Also Section  411;  1.411(a)-4.)

Reference(s): [Code Sec. 401](#); [Reg § 1.401\(a\)-14](#)

Suspension of benefits due to reemployment.

Four examples illustrate whether the requirements of   sections 401(a)(14) and 411(a)(3)(B) of the Code are satisfied under defined benefit plan provisions that suspend benefits due to reemployment of the participant.

Full Text:

Advice has been requested as to whether a defined benefit plan in each of the situations described below satisfies  sections 401(a)(14) and  411(a) of the Internal Revenue Code. In the absence of special circumstances, these sections require the commencement and uninterrupted continuation of payment of pension benefits to a participant of a pension plan who has attained normal retirement age and terminated service with the employer. This ruling clarifies the circumstances under which these sections would permit a plan to withhold pension payments from such a participant due to the

participant's employment.

Situation 1:

Employer M maintains a defined benefit pension plan with a normal retirement age of 65. The plan provides for a life annuity benefit of \$ x per month payable at attainment of age 65, except in the case of a participant who continues in or returns to employment with M. During any month that a participant works for M after normal retirement age, regardless of whether there is section 203(a)(3)(B) service during that month, the \$ x will not be paid. When employment ceases, benefits of \$ x per month will resume without any actuarial adjustment for either the unpaid amounts or later payments. For purposes of this ruling, the term "section 203(a)(3)(B) service" has the same meaning as that term is defined in section 2530.203-3(c) of the Department of Labor regulations, promulgated under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), [Pub. L. 93-406](#), 1974-3 C.B. 1. In general, the term is used to describe an employee's service on account of which an employee benefit plan may suspend the payment of pension benefits without resulting in a prohibited forfeiture under the minimum vesting standards.

Situation 2:

Employer N maintains a defined benefit pension plan with a normal retirement age of 65. The plan provides for a life annuity benefit of \$ y per month payable at attainment of age 65, but also provides for a five-year suspension of benefit payments in the event that a participant is employed for one month in section 203(a)(3)(B) service regardless of the period for which such service continues. The plan also provides that all missed payments will be returned to the participant with interest (or to the participant's beneficiaries in the event of death of the participant) at the end of the five-year period, and that benefits of \$ y per month will resume at that time.

Situation 3:

Assume the same facts as in Situation 2, except that benefit payments are only suspended during months when the participant is employed in section 203(a)(3)(B) service (whether or not such service is with an employer who maintains the plan).

Situation 4:

Employer O maintains a defined benefit pension plan with a normal retirement age of 65. The plan provides for a life annuity benefit of \$ z per month payable at attainment of age 65, but also provides for the suspension of benefit payments for any month that a participant is employed with an employer not maintaining the plan, regardless of whether there is section 203(a)(3)(B) service during that month.

 Section 401(a)(14) of the Code <Page 181> and  section 1.401(a)-14(a) of the Income Tax Regulations provide that, unless the participant otherwise elects, the payment of benefits under a plan to the participant must begin not later than the 60th day after the latest of the close of the plan year in which-

(A) occurs 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.

Although  section 401(a)(14) authorizes, in some cases, a delay in the commencement of benefits beyond the time a participant attains normal retirement age, that section does not authorize the forfeiture of such delayed benefits.

 Section 411(a) of the Code and  sections 1.411(a)-1 and  1.411(a)-4(a) of the regulations require that certain rights in an employee's accrued benefit be nonforfeitable. Once such an employee's right becomes nonforfeitable (i.e., it is an unconditional right), then, generally, it may not be forfeited.

 Section 411(a)(3) of the Code provides for limited exceptions to the requirement of nonforfeitability. One such exception is provided for under  section 411(a)(3)(B) (section 203(a)(3)(B) is the comparable Department of Labor provision under Title 1 of ERISA) and  section 1.411(a)-4(b)(2) of the regulations. The exception in  section 411(a)(3)(B) provides that, even though benefits that must otherwise be nonforfeitable are not paid to an employee, this failure to pay will not violate  section 411(a) if it occurs during a period that the employee is employed as described in  section 411(a)(3)(B).

 Section 1.411(a)-4(b)(2) of the regulations provides that the regulations prescribed by the Secretary of Labor under 29 CFR Part 2530 apply to  section 411(a)(3)(B). That Department of Labor regulation is found at 29 CFR section 2530.203-3. In general, these Department of Labor regulations provide that a participant's benefit may be forfeited during any month of section 203(a)(3)(B) service.

 Section 1.411(a)-4(a) of the regulations provides that certain adjustments to plan benefits, such as adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable in violation of the minimum vesting requirements of  section 411(a) of the Code.

 Section 411(c)(3) of the Code and  section 1.411(c)-1(e) of the regulations provide that if an employee's accrued benefit in a defined benefit plan is to be determined as an amount other than an annual benefit commencing at normal retirement age, such benefit shall be the actuarial equivalent of the annual benefit at normal retirement age.

 Section 1.411(c)-1(f)(1) of the regulations provides that no actuarial adjustment of an employee's accrued benefit is required on account of a suspension of benefits permissible under section 203(a)(3)(B) of ERISA.  Section 1.411(c)-1(f)(2) of the regulations provides that no actuarial adjustment of an employee's accrued benefit is required on account of an employee's working after normal retirement age. The effect of these two provisions is that, when an individual is employed after retirement age in section 203(a)(3)(B) service, the nonforfeitability requirements are not violated even though actuarial adjustments to the employee's accrued benefit in a defined benefit plan are not made.

The statutory requirement of  section 401(a)(14) of the Code that payments commence includes an implicit requirement that such payment, once begun, must continue (absent receipt by the participant of a total distribution of accrued benefits) unless the individual is reemployed with an employer maintaining the plan. Thus, except where the individual is reemployed with such an employer, the suspension of a benefit required to be nonforfeitable violates  section 401(a)(14). This is true regardless of whether a forfeiture occurs under  section 411(a) because of such suspension. However, a suspension of benefits will not violate  section 401(a)(14) to the extent a benefit could be forfeited in accordance with  section 411(a)(3)(B) of the Code (203(a)(3)(B) of ERISA) (even though the suspension occurs while the individual is not employed by an employer maintaining the plan).

In Situation 1 above, the benefit of \$x is not paid during any month when a participant is employed with M, an employer maintaining the plan, after normal retirement age. Accordingly, this provision does not violate  section 401(a)(14). However, because the benefits that commence after separation are not adjusted to reflect the value of the unpaid benefits, there is a forfeiture of benefits. Because the forfeited benefit must be nonforfeitable in order to satisfy  section 411(a) of the Code, and the forfeiture is not permitted by  section 411(a)(3)(B), this plan does not satisfy  section 411(a). To the extent that a forfeiture is not permitted under  section 411(a)(3)(B) with respect to section 203(a)(3)(B) service, the provisions of  section 1.411(c)-1(f) of the regulations permitting a plan not to make actuarial adjustments in certain situations without violating the nonforfeitability rules do not apply.

In Situation 2, the benefits not paid during continued employment or reemployment are used to provide an extra single sum payment at the end of the suspension period. This amount reflects the value of the unpaid benefits. Thus, the benefits are not forfeited, and this plan provision does not cause a violation of  section 411(a) of the Code. <Page 182>

However, when a participant has been reemployed after age 65 and later terminates service with the employer, benefit payments will not recommence until the 5-year suspension period has ended. This time of resumption of benefits may be later than the time required by  section 401(a)(14) of the Code. Therefore, because the suspended benefits cannot be forfeited under  section 411(a)(3)(B) (that is, such suspension occurs regardless of whether the individual is actually employed in section 203(a)(3)(B) service), this plan provision fails to satisfy  section 401(a)(14).

In Situation 3, as in Situation 2, there is no forfeiture of benefits. Also, the plan does provide for the commencement of and continuation of benefits as required by  section 401(a)(14) of the Code except for the instances where the participant is employed with an employer (whether or not that employer maintains the plan), but where the service is still considered section 203(a)(3)(B) service. However, because the suspended benefits could be forfeited under  section 411(a)(3)(B), the mere suspension of these benefits will not cause a violation of  section 401(a)(14).

In Situation 4, the plan provides that benefits will be suspended during any month of employment with an employer which does not maintain the plan, whether or not that service is section 203(a)(3)(B) service. This provision fails to satisfy  section 401(a)(14) of the Code because it permits benefits which would have commenced (or continued) to cease during a period of service which is neither service with an employer maintaining the plan nor section 203(a)(3)(B) service. If a forfeiture of benefits may occur during this period of suspension, the provision also fails to satisfy  section 411(a).