made on the basis of the facts and circumstances of each case, allowing a reasonable difference between the percentage of such employees benefited by the plan to all employees benefited by the plan and the percentage of all such employees of the employer to all employees of the employer. A showing that a specified percentage of employees covered by a plan are not officers, shareholders, or highly compensated, without a showing that the difference (if any) between such percentage and the percentage of all employees who are not officers, shareholders, or highly compensated is reasonable, is not sufficient to establish that the plan does not discriminate in favor of employees who are officers, shareholders, or highly compensated.

(Sec. 410, Internal Revenue Code of 1954 (88 Stat. 898; 26 U.S.C. 410))

[T.D. 7380, 40 FR 45816, Oct. 3, 1975, as amended by T.D. 7508, 42 FR 47197, Sept. 20, 1977]

§ 11.412(c)–7 Election to treat certain retroactive plan amendments as made on the first day of the plan year.

(a) *General rule.* Under section 412(c)(8), a plan administrator may elect to have any amendment which is adopted after the close of the plan year to which it applies deemed to have been made on the first day of such plan year if the amendment—

(1) Is adopted no later than 2 and one-half months after the close of such plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(2) Does not reduce the accrued benefit of any participant determined as of the beginning of such plan year, and

(3) Does not reduce the accrued benefit of any participant determined as of the time of adoption of the amendment, or, if it does so reduce such accrued benefit, it is shown that the plan administrator filed a notice with the Secretary of Labor notifying him of the amendment, and—

(i) The Secretary of Labor approved the amendment, or

(ii) The Secretary of Labor failed to disapprove the amendment within 90 days after the date on which the notice was filed.

(b) *Time and manner of making election.* (1) The election under section 412(c)(8) shall be made by the plan administrator by a statement of election described in subparagraph (3) of this paragraph, attached to the annual return relating to minimum funding standards required to be filed under section 6058 with respect to the plan year to which the election relates.

(2) In the event that an amendment to which paragraph (a) of this section applies is adopted after the filing of the annual return required under section 6058, the plan administrator may make the election under section 412(c)(8) by attaching a statement of election, described in paragraph (b)(3) of this section, to a copy of such annual return, and filing such copy no later than the time allowed for the filing of such returns under section 6058. (In the case of multiemployer plans, such copy may be filed within a 24 month period beginning with the date prescribed for the filing of such returns.)

(3) The statement of election filed by or on behalf of the plan administrator shall—

(i) State the date of the close of the first plan year to which the amendment applies and the date on which the amendment was adopted;

(ii) Contain a statement that the amendment does not reduce the accrued benefit of any participant determined as of the beginning of the plan year preceding the plan year in which the amendment is adopted; and

(iii) Contain either—

(A) A statement that the amendment does not reduce the accrued benefit of any participant determined as of the time of adoption of such amendment, or

(B) A copy of the notice filed with the Secretary of Labor under section 412(c)(8) and a statement that either the Secretary of Labor has approved the amendment or he has failed to act within 90 days after notification of the amendment.

[T.D. 7338, 39 FR 44751, Dec. 27, 1974]

§ 11.412(c)–11 Election with respect to bonds.

(a) *In general.* Section 412(c)(2)(B) provides that, at the election of the administrator of a plan which includes a

trust qualified under section 401(a) or of a plan which satisfies the requirements of section 403(a) or section 405(a), the value of a bond or other evidence of indebtedness which is held by the plan and which is not in default as to principal or interest may be determined on an amortized basis running from initial cost at purchase to the amount payable at maturity (or, in the case of a bond which is callable prior to maturity, the earliest call date). So long as this election is in effect, the value of any such evidence of indebtedness shall, for purposes of section 412, be determined on such an amortized basis rather than on a method taking into account fair market value as described in section 412(c)(2)(A).

(b) *Manner of making election.* The election to value evidences of indebtedness in accordance with paragraph (a) of this section shall be made by a statement to that effect attached to and filed as a part of the annual return of the plan required under section 6058 of the Code.

(c) *Effect of election.* The election provided by section 412(c)(2)(B), once made, will affect the valuation of all evidences of indebtedness, not in default as to principal or interest, which are held by the plan for the plan year for which the election is made and any evidences of indebtedness which are subsequently acquired by the plan. The value of any evidence of indebtedness which is in default as of the valuation date for the plan year must be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value in accordance with section 412(c)(2)(A) and must continue to be so valued until the indebtedness is no longer in default.

(d) *Consent to revoke required*—(1) *In general.* An election made in accordance with paragraph (a) of this section may be revoked only if consent to revoke the election is obtained from the Secretary or his delegate.

(2) *Manner of obtaining permission for revocation.* [Reserved]

(Secs. 302(c)(2)(B), 412(c)(2)(B) of the Internal Revenue Code of 1954 (88 Stat. 871, 914))

[T.D. 7335, 39 FR 44009, Dec. 20, 1974]

§ 11.412(c)–12 Extension of time to make contributions to satisfy requirements of section 412.

(a) *In general.* Section 412(c)(10) of the Internal Revenue Code of 1954 provides that for purposes of section 412 a contribution for a plan year made after the end of such plan year but not later than two and one-half months after the last day of such plan year shall be deemed to have been made on such last day. Section 412(c) (10) further provides that the two and one-half month period may be extended for not more than six months under regulations.

(b) *Six month extension of two and one-half month period.* (1) For purposes of section 412 a contribution for a plan year to which section 412 applies that is made not more than eight and one-half months after the end of such plan year shall be deemed to have been made on the last day of such year.

(2) The rules of this section relating to the time a contribution to a plan is deemed made for purposes of the minimum funding standard under section 412 are independent from the rules contained in section 404(a) (6) relating to the time a contribution to a plan is deemed made for purposes of claiming a deduction for such contribution under section 404.

(Sec. 412(c)(10), Internal Revenue Code of 1954 (88 Stat. 917; 26 U.S.C. 412(c)(10)))

[T.D. 7439, 41 FR 46597, Oct. 22, 1976]

PART 12—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1971

AUTHORITY: 26 U.S.C. 167, 263, and 7805.

§ 12.3 Investment credit, public utility property elections.

(a) *Elections*—(1) *In general.* Under section 46(e), three elections may be made on or before March 9, 1972, with