

§ 1.401(f)-1

26 CFR Ch. I (4-1-10 Edition)

in excess of \$2,500 on behalf of any shareholder-employee for such year.

(b) [Reserved]

[T.D. 7636, 44 FR 47056, Aug. 10, 1979]

§ 1.401(f)-1 Certain custodial accounts and annuity contracts.

(a) *Treatment of a custodial account or an annuity contract as a qualified trust.* Beginning on January 1, 1974, a custodial account or an annuity contract may be used, in lieu of a trust, under any qualified pension, profitsharing, or stock bonus plan if the requirements of paragraph (b) of this section are met. A custodial account or an annuity contract may be used under such a plan, whether the plan covers common-law employees, self-employed individuals who are treated as employees by reason of section 401(c), or both. The use of a custodial account or annuity contract as part of a plan does not preclude the use of a trust or another custodial account or another annuity contract as part of the same plan. A plan under which a custodial account or an annuity contract is used may be considered in connection with other plans of the employer in determining whether the requirements of section 401 are satisfied. For regulations relating to the period before January 1, 1974, see § 1.401-8.

(b) *Rules applicable to custodial accounts and annuity contracts.* (1) Beginning on January 1, 1974, a custodial account or an annuity contract is treated as a qualified trust under section 401 if the following requirements are met:

(i) The custodial account or annuity contract would, except for that fact that it is not a trust, constitute a qualified trust under section 401; and

(ii) In the case of a custodial account, the custodian either is a bank or is another person who demonstrates, to the satisfaction of the Commissioner, that the manner in which he will hold the assets will be consistent with the requirements of section 401. This demonstration must be made in the same manner as the demonstration required by § 1.408-2(e).

(2) If a custodial account would, except for the fact that it is not a trust, constitute a qualified trust under section 401, it must, for example, be created pursuant to a written agreement which constitutes a valid contract

under local law. In addition, the terms of the contract must make it impossible, prior to the satisfaction of all liabilities with respect to the employees and their beneficiaries covered by the plan. For any part of the funds of the custodial account to be used for, or diverted to, purposes other than for the exclusive benefit of the employees or their beneficiaries as provided for in the plan (see paragraph (a) of § 1.401-2).

(3) An annuity contract would, except for the fact that it is not a trust, constitute a qualified trust under section 401 if it is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) and the regulations thereunder, except that the plan may be either a pension or a profit-sharing plan.

(c) *Effect of this section.* (1)(i) Any custodial account or annuity contract which satisfies the requirements of paragraph (b) of this section is treated as a qualified trust for all purposes of the Internal Revenue Code of 1954. Such a custodial account or annuity contract is treated as a separate legal person which is exempt from the income tax under section 501(a). In addition, the person holding the assets of such account or holding such contract is treated as the trustee thereof. Accordingly, such person is required to file the returns described in sections 6033 and 6047 and to supply any other information which the trustee of a qualified trust is required to furnish.

(ii) Any procedure which has the effect of merely substituting one custodian for another shall not be considered as terminating or interrupting the legal existence of a custodial account which otherwise satisfies the requirements of paragraph (b) of this section.

(2)(i) The beneficiary of a custodial account which satisfies the requirements of paragraph (b) of this section is taxed in accordance with section 402. In determining whether the funds of a custodial account are distributed or made available to an employee or his beneficiary, the rules which under section 402(a) are applicable to trusts will also apply to the custodial account as though it were a separate legal person and not an agent of the employee.

(ii) If a custodial account which has qualified under section 401 fails to

qualify under such section for any taxable year, such custodial account will not thereafter be treated as a separate legal person, and the funds in such account shall be treated as made available within the meaning of section 402(a)(1) to the employees for whom they are held.

(3) The beneficiary of an annuity contract which satisfies the requirements of paragraph (b) of this section is taxed as if he were the beneficiary of an annuity contract described in section 403(a).

(d) *Definitions.* For purposes of this section—

(1) The term *bank* means a bank as defined in section 408(n).

(2) The term *annuity* means an annuity as defined in section 401(g). Thus, any contract or certificate issued after December 31, 1962, which is transferable is not treated as a qualified trust under this section.

(e) *Other contracts.* For purposes of this section, other than the non-transferability restriction of paragraph (d)(2), a contract issued by an insurance company qualified to do business in a state shall be treated as an annuity contract. For purposes of the preceding sentence, the contract does not include a life, health or accident, property, casualty or liability insurance contract. For purposes of this paragraph, a contract which is issued by an insurance company will not be considered a life insurance contract merely because the contract provides incidental life insurance protection. The provisions of this paragraph are effective for taxable years beginning after December 31, 1975.

(f) *Cross reference.* For the requirement that the assets of an employee benefit plan be placed in trust, and exceptions thereto, see section 403 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1103, and the regulations prescribed thereunder by the Secretary of Labor.

(Secs. 401(f)(2), 7805, Internal Revenue Code of 1954 (88 Stat. 939 and 68A Stat. 917; 26 U.S.C. 401(f)(2), 7805))

[43 FR 41204, Sept. 15, 1978. Redesignated and amended by T.D. 7748, 46 FR 1695-1696, Jan. 7, 1981; T.D. 8635, 60 FR 65549, Dec. 20, 1995]

§ 1.401(k)-0 Table of contents.

This section contains first a list of section headings and then a list of the paragraphs in each section in §§ 1.401(k)-1 through 1.401(k)-6.

List of Sections

- § 1.401(k)-1 Certain cash or deferred arrangements.
- § 1.401(k)-2 ADP test.
- § 1.401(k)-3 Safe harbor requirements.
- § 1.401(k)-4 SIMPLE 401(k) plan requirements.
- § 1.401(k)-5 Special rules for mergers, acquisitions and similar events. [Reserved]
- § 1.401(k)-6 *Definitions.*

List of Paragraphs

- § 1.401(k)-1 *Certain cash or deferred arrangements.*
 - (a) General rules.
 - (1) Certain plans permitted to include cash or deferred arrangements.
 - (2) Rules applicable to cash or deferred arrangements generally.
 - (i) Definition of cash or deferred arrangement.
 - (ii) Treatment of after-tax employee contributions.
 - (iii) Treatment of ESOP dividend election.
 - (iv) Treatment of elective contributions as plan assets.
 - (3) Rules applicable to cash or deferred elections generally.
 - (i) Definition of cash or deferred election.
 - (ii) Automatic enrollment.
 - (iii) Rules related to timing.
 - (A) Requirement that amounts not be currently available.
 - (B) Contribution may not precede election.
 - (C) Contribution may not precede services.
 - (iv) Current availability defined.
 - (v) Certain one-time elections not treated as cash or deferred elections.
 - (vi) Tax treatment of employees.
 - (vii) Examples.
 - (4) Rules applicable to qualified cash or deferred arrangements.
 - (i) Definition of qualified cash or deferred arrangement.
 - (ii) Treatment of elective contributions as employer contributions.
 - (iii) Tax treatment of employees.
 - (iv) Application of nondiscrimination requirements to plan that includes a qualified cash or deferred arrangement.
 - (A) Exclusive means of amounts testing.
 - (B) Testing benefits, rights and features.
 - (C) Minimum coverage requirement.
 - (5) Rules applicable to nonqualified cash or deferred arrangements.
 - (i) Definition of nonqualified cash or deferred arrangement.
 - (ii) Treatment of elective contributions as nonelective contributions.