§ 1.404(g)–1 Deduction of employer liability payments.

(a) General rule. Employer liability payments shall be treated as contributions to a stock bonus, pension, profit-sharing, or annuity plan to which section 404 applies. Such payments that satisfy the limitations of this section shall be deductible under section 404 when paid without regard to any other limitations in section 404.

(b) Employer liability payments. For purposes of this section, employer liability payments mean:

(1) Any payment to the Pension Benefit Guaranty Corporation (PBGC) for termination or withdrawal liability imposed under section 4062 (without regard to section 4062(b)(2)), 4063, or 4064 of the Employee Retirement Income Security Act of 1974 (ERISA). Any bond or escrow payment furnished under section 4063 of ERISA shall not be considered as a payment of liability until applied against the liability of the employer.

(2) Any payment to a non-multiemployer plan pursuant to a commitment to the PBGC made in accordance with PBGC Determination of Plan Sufficiency and Termination of Sufficient Plans. See PBGC regulations, 29 CFR 2617.13(b) for rules concerning these commitments. Such payments shall not exceed an amount necessary to provide for, and used to fund, the benefits guaranteed under section 4022 of ERISA.

(3) Any payment to a multiemployer plan for withdrawal liability imposed under part 1 of subtitle E of title IV of ERISA. Any bond or escrow payment furnished under such part shall not be considered as a payment of liability until applied against the liability of the employer.

(c) Limitations, etc.—(1) Permissible expenses. A payment shall be deductible under section 404(g) and this section only if the payment is made in a taxable year of the employer ending
(5) Example. The provisions of this paragraph may be illustrated by the following example:

Example. In the 1983 taxable year, Employer A makes a withdrawal liability payment of $700,000 to multiemployer Plan X to which Employer A and Employer B are required to contribute. Employer A’s allocable share of the deduction allowable under sections 404(a) and 413(b)(7) in the 1983 taxable year is $600,000. Employer B’s allocable share of the deduction allowable under section 404(a) and 413(b)(7) in the 1983 taxable year is $400,000.

The full funding limitation for the 1983 taxable year is $1,000,000. Based on paragraph (c)(4) of this section, Employer A may deduct $700,000, the amount of the withdrawal liability payment. However, the deduction of Employer B is limited to $300,000, the difference between the full funding limitation and the amount deductible under section 404(g).

(d) Effective date etc.—(1) General rule. This section is effective for employer payments made after September 25, 1980.

(2) Transitional rule. For employer payments made before September 26, 1980, for purposes of section 404, any amount paid by an employer under section 4062, 4063, or 4064 of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to or under a stock bonus, pension, profit-sharing, or annuity plan.

[T.D. 8085, 51 FR 16297, May 2, 1986]

§1.404(k)–1T Questions and answers relating to the deductibility of certain dividend distributions. (Temporary)

Q–1: What does section 404(k) provide?
A–1: Section 404(k) allows a corporation a deduction for dividends actually paid in accordance with section 404(k)(2) with respect to stock of such corporation held by an employee stock ownership plan (as defined in section 4975(e)(7)) maintained by the corporation or by any other corporation that is a member of a “controlled group of corporations” within the meaning of section 409(1)(4) that includes the corporation, but only if such dividends may be immediately distributed under the terms of the plan and all of the applicable qualification and distribution.