

(c) Variances or exemptions from continuation of liability of seller; procedures applicable

The corporation may by regulation vary the standards in subparagraphs (B) and (C) of subsection (a)(1) if the variance would more effectively or equitably carry out the purposes of this subchapter. Before it promulgates such regulations, the corporation may grant individual or class variances or exemptions from the requirements of such subparagraphs if the particular case warrants it. Before granting such an individual or class variance or exemption, the corporation—

(1) shall publish notice in the Federal Register of the pendency of the variance or exemption,

(2) shall require that adequate notice be given to interested persons, and

(3) shall afford interested persons an opportunity to present their views.

(d) “Unrelated party” defined

For purposes of this section, the term “unrelated party” means a purchaser or seller who does not bear a relationship to the seller or purchaser, as the case may be, that is described in section 267(b) of title 26, or that is described in regulations prescribed by the corporation applying principles similar to the principles of such section.

(Pub. L. 93-406, title IV, §4204, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1220; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

Editorial Notes

AMENDMENTS

1989—Subsec. (d). Pub. L. 101-239 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

§ 1385. Partial withdrawals

(a) Determinative factors

Except as otherwise provided in this section, there is a partial withdrawal by an employer from a plan on the last day of a plan year if for such plan year—

(1) there is a 70-percent contribution decline, or

(2) there is a partial cessation of the employer’s contribution obligation.

(b) Criteria applicable

For purposes of subsection (a)—

(1)(A) There is a 70-percent contribution decline for any plan year if during each plan year in the 3-year testing period the employer’s contribution base units do not exceed 30 percent of the employer’s contribution base units for the high base year.

(B) For purposes of subparagraph (A)—

(i) The term “3-year testing period” means the period consisting of the plan year and the immediately preceding 2 plan years.

(ii) The number of contribution base units for the high base year is the average number of such units for the 2 plan years for which the employer’s contribution base units were the highest within the 5 plan years immediately preceding the beginning of the 3-year testing period.

(2)(A) There is a partial cessation of the employer’s contribution obligation for the plan year if, during such year—

(i) the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location or to an entity or entities owned or controlled by the employer, or

(ii) an employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased.

(B) For purposes of subparagraph (A), a cessation of obligations under a collective bargaining agreement shall not be considered to have occurred solely because, with respect to the same plan, one agreement that requires contributions to the plan has been substituted for another agreement.

(c) Retail food industry

(1) In the case of a plan in which a majority of the covered employees are employed in the retail food industry, the plan may be amended to provide that this section shall be applied with respect to such plan—

(A) by substituting “35 percent” for “70 percent” in subsections (a) and (b), and

(B) by substituting “65 percent” for “30 percent” in subsection (b).

(2) Any amendment adopted under paragraph (1) shall provide rules for the equitable reduction of withdrawal liability in any case in which the number of the plan’s contribution base units, in the 2 plan years following the plan year of withdrawal of the employer, is higher than such number immediately after the withdrawal.

(3) Section 1388 of this title shall not apply to a plan which has been amended under paragraph (1).

(d) Continuation of liability of employer for partial withdrawal under amended plan

In the case of a plan described in section 404(c) of title 26, or a continuation thereof, the plan may be amended to provide rules setting forth other conditions consistent with the purposes of this chapter under which an employer has liability for partial withdrawal.

(Pub. L. 93-406, title IV, § 4205, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1221; amended Pub. L. 101-239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 109-280, title II, § 204(b)(1), Aug. 17, 2006, 120 Stat. 887.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

2006—Subsec. (b)(2)(A)(i). Pub. L. 109-280 inserted "or to an entity or entities owned or controlled by the employer" after "to another location".

1989—Subsec. (d). Pub. L. 101-239 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title II, § 204(b)(2), Aug. 17, 2006, 120 Stat. 887, provided that: "The amendment made by this subsection [amending this section] shall apply with respect to work transferred on or after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

APPLICABILITY TO CERTAIN EMPLOYERS ENGAGED IN TRADE OR BUSINESS OF SHIPPING BULK CARGOES IN GREAT LAKES MARITIME INDUSTRY

Pub. L. 96-364, title I, § 108(c)(2), Sept. 26, 1980, 94 Stat. 1268, provided that:

"(A) For the purpose of applying section 4205 of the Employee Retirement Income Security Act of 1974 [this section] in the case of an employer described in subparagraph (B)—

"(i) 'more than 75 percent' shall be substituted for '70 percent' in subsections (a) and (b) of such section.

"(ii) '25 percent or less' shall be substituted for '30 percent' in subsection (b) of such section, and

"(iii) the number of contribution units for the high base year shall be the average annual number of such units for calendar years 1970 and 1971.

"(B) An employer is described in this subparagraph if—

"(i) the employer is engaged in the trade or business of shipping bulk cargoes in the Great Lakes Maritime Industry, and whose fleet consists of vessels the gross registered tonnage of which was at least 7,800, as stated in the American Bureau of Shipping Record, and

"(ii) whose fleet during any 5 years from the period 1970 through and including 1979 has experienced a 33 percent or more increase in the contribution units as measured from the average annual contribution units for the calendar years 1970 and 1971."

APPLICABILITY TO SPECIFIED PLAN YEAR, CESSATION OF CONTRIBUTION OBLIGATIONS, AND CONTRIBUTION BASE UNITS OF EMPLOYER

Pub. L. 96-364, title I, § 108(d), Sept. 26, 1980, 94 Stat. 1269, as amended by Pub. L. 98-369, div. A, title V,

§ 558(b)(2), July 18, 1984, 98 Stat. 899, provided that: "For purposes of section 4205 of the Employee Retirement Income Security Act of 1974 [this section]—

"(1) subsection (a)(1) of such section shall not apply to any plan year beginning before September 26, 1982,

"(2) subsection (a)(2) of such section shall not apply with respect to any cessation of contribution obligations occurring before September 26, 1980, and

"(3) in applying subsection (b) of such section, the employer's contribution base units for any plan year ending before September 26, 1980, shall be deemed to be equal to the employer's contribution base units for the last plan year ending before such date."

LIABILITY OF CERTAIN EMPLOYERS ANNOUNCING PUBLICLY BEFORE DECEMBER 13, 1979, TOTAL CESSATION OF COVERED OPERATIONS AT A FACILITY IN A STATE; AMOUNT, COVERAGE, DETERMINATIVE FACTORS, ETC.

Pub. L. 96-364, title I, § 108(e), Sept. 26, 1980, 94 Stat. 1269, provided that:

"(1) In the case of a partial withdrawal under section 4205 of the Employee Retirement Income Security Act of 1974 [this section], an employer who—

"(A) before December 13, 1979, had publicly announced the total cessation of covered operations at a facility in a State (and such cessation occurred within 12 months after the announcement),

"(B) had not been obligated to make contributions to the plan on behalf of the employees at such facility for more than 8 years before the discontinuance of contributions, and

"(C) after the discontinuance of contributions does not within 1 year after the date of the partial withdrawal perform work in the same State of the type for which contributions were previously required, shall be liable under such section with respect to such partial withdrawal in an amount not greater than the amount determined under paragraph (2).

"(2) The amount determined under this paragraph is the excess (if any) of—

"(A) the present value (on the withdrawal date) of the benefits under the plan which—

"(i) were vested on the withdrawal date (or, if earlier, at the time of separation from service with the employer at the facility),

"(ii) were accrued by employees who on December 13, 1979 (or, if earlier, at the time of separation from service with the employer at the facility), were employed at the facility, and

"(iii) are attributable to service with the withdrawing employer, over

"(B)(i) the sum of—

"(I) all employer contributions to the plan on behalf of employees at the facility before the withdrawal date,

"(II) interest (to the withdrawal date) on amounts described in subclause (I), and

"(III) \$100,000, reduced by

"(ii) the sum of—

"(I) the benefits paid under the plan on or before the withdrawal date with respect to former employees who separated from employment at the facility, and

"(II) interest (to the withdrawal date) on amounts described in subclause (I).

"(3) For purposes of paragraph (2)—

"(A) actuarial assumptions shall be those used in the last actuarial report completed before December 13, 1979,

"(B) the term 'withdrawal date' means the date on which the employer ceased work at the facility of the type for which contributions were previously required, and

"(C) the term 'facility' means the facility referred to in paragraph (1)."

§ 1386. Adjustment for partial withdrawal; determination of amount; reduction for partial withdrawal liability; procedures applicable

(a) The amount of an employer's liability for a partial withdrawal, before the application of