

## Drafting Information

The principal author of these regulations is Vernon S. Carter of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

## List of Subjects in 26 CFR Parts 1

Income taxes, Reporting and recordkeeping requirements.

## Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**Paragraph 1.** The authority citation for part 1 is amended to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.411(d)-4, Q&A-2(e) also issued under 26 U.S.C. 411(d)(6)(E).  
\* \* \*

**Par. 2.** Section 1.411(d)-4, Q&A-2(e) is revised to read as follows:

### § 1.411(d)-4 Section 411(d)(6) protected benefits.

\* \* \* \* \*

A-2: \* \* \*

(e) *Permitted plan amendments affecting alternative forms of payment under defined contribution plans—(1) General rule.* A defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit if, after the plan amendment is effective with respect to the participant, the alternative forms of payment available to the participant include payment in a single-sum distribution form that is otherwise identical to the optional form of benefit that is being eliminated or restricted.

(2) *Otherwise identical single-sum distribution.* For purposes of this paragraph (e), a single-sum distribution form is otherwise identical to an optional form of benefit that is eliminated or restricted pursuant to paragraph (e)(1) of this Q&A-2 only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not otherwise identical to a specified installment form of benefit if the single-sum distribution form is not available for distribution on the date on which the installment form

would have been available for commencement, is not available in the same medium of distribution as the installment form, or imposes any condition of eligibility that did not apply to the installment form. However, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features would not be protected from elimination or restriction under section 411(d)(6) or this section.

(3) *Example.* The following example illustrates the application of this paragraph (e):

*Example.* (i) P is a participant in Plan M, a qualified profit-sharing plan with a calendar plan year that is invested in mutual funds. The distribution forms available to P under Plan M include a distribution of P's vested account balance under Plan M in the form of distribution of various annuity contract forms (including a single life annuity and a joint and survivor annuity). The annuity payments under the annuity contract forms begin as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). P has not previously elected payment of benefits in the form of a life annuity, and Plan M is not a direct or indirect transferee of any plan that is a defined benefit plan or a defined contribution plan that is subject to section 412. Distributions on the death of a participant are made in accordance with plan provisions that comply with section 401(a)(11)(B)(iii)(I). On May 2, 2004, Plan M is amended so that, after the amendment is effective, P is no longer entitled to any distribution in the form of the distribution of an annuity contract. However, after the amendment is effective, P is entitled to receive a single-sum cash distribution of P's vested account balance under Plan M payable as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). The amendment does not apply to P if P elects to have annuity payments begin before July 1, 2004.

(ii) Plan M does not violate the requirements of section 411(d)(6) (or section 401(a)(11)) merely because, as of July 1, 2004, the plan amendment has eliminated P's option to receive a distribution in any of the various annuity contract forms previously available.

(4) *Effective date.* This paragraph (e) is applicable on the date of publication of final regulations in the **Federal Register**.

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 03-17089 Filed 7-7-03; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[REG-209377-89]

**RIN 1545-BA69**

### At-Risk Limitations; Interest Other Than That of a Creditor

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the treatment, for purposes of the at-risk limitations, of amounts borrowed from a person who has an interest in an activity other than that of a creditor or from a person related to a person (other than the borrower) with such an interest. Proposed regulations published in 1979 provide that amounts borrowed from a person who has an interest in an activity other than that of a creditor do not increase the amount at risk in certain enumerated activities. These proposed regulations extend this rule to all activities subject to the at-risk limitations. In addition, the rule is conformed to the current statutory language providing for its application to amounts borrowed from persons related to a person (other than the borrower) with an interest other than that of a creditor. These proposed regulations affect taxpayers subject to the at-risk limitations and provide them with guidance necessary to comply with the law.

**DATES:** Written or electronic comments and requests for a public hearing must be received no later than October 6, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG-209377-89), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG-209377-89), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: <http://www.irs.gov/regs>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Tara P. Volungis or Christopher L. Trump, 202-622-3080; concerning submissions and requests for a public hearing, [INSERT NAME], 202-622-7180 (not toll-free numbers).