

sections 1366, 1367, and 1368, during that 2-year period. After the 2-year period, the S election terminates and the trust continues as a shareholder of a C corporation. If the termination is inadvertent, Corporation Q may request relief under section 1362(f). However, the S election would not terminate if the trustee distributed all Corporation Q shares to L, J, or both on or before October 31, 2005, (the last day of the 2-year period) assuming that neither L nor J becomes the 76th shareholder of Corporation Q as a result of the distribution.

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(2) * * * (i) *In general.* Paragraph (a) of this section, and paragraphs (c) through (k) of this section (as contained in the 26 CFR edition revised April 1, 2003) apply to taxable years of a corporation beginning after July 21, 1995. For taxable years beginning on or before July 21, 1995, to which paragraph (a) of this section and paragraphs (c) through (k) of this section (as contained in the 26 CFR edition revised April 1, 2003) do not apply, see § 18.1361-1 of this chapter (as contained in the 26 CFR edition revised April 1, 1995). However, paragraphs (h)(1)(vi), (h)(3)(i)(F), (h)(3)(ii), and (j)(12) of this section (as contained in the 26 CFR edition revised April 1, 2003) are applicable for taxable years beginning on and after May 14, 2002. Otherwise, paragraphs (b)(1)(ii), (f), (h)(1)(ii), (h)(1)(iv), (h)(3)(i)(B), (h)(3)(i)(D), (h)(3)(ii)(A), (h)(3)(ii)(B), (j)(6)(iii)(C), (j)(6)(iii)(D), (j)(7)(ii), and (k)(1) *Example 2*(ii) fourth and last sentences, *Example 3*, and *Example 4*(iii) of this section apply on and after July 17, 2003.

(ii) *Transition rules.* Taxpayers may apply paragraph (h)(1)(iv)(B) of this section on and after December 24, 2002, and before July 17, 2003, to treat a trust as a testamentary trust, but not during any period for which a QSST or ESBT election was in effect for the trust. In addition, the Internal Revenue Service will not challenge the treatment of a trust described in paragraph (h)(1)(iv)(B) of this section as a permitted shareholder of an S corporation for periods after August 5, 1997, and before the earlier of July 17, 2003, or the effective date of any QSST or ESBT election for that trust.

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Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 9, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9079]

RIN 1545-BA47

10 or More Employer Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations that provide rules regarding the requirements for a welfare benefit fund that is part of a 10 or more employer plan. The regulations affect certain employers that provide welfare benefits to employees through a plan to which more than one employer contributes.

DATES: *Effective Date:* These regulations are effective July 17, 2003.

Applicability Date: For dates of applicability, see § 1.419A(f)(6)-1(g).

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1795. Responses to these collections of information are required to obtain a benefit (to be treated as a 10 or more employer plan excepted from the deduction limits for employer contributions to a welfare benefit fund).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent and/or recordkeeper varies, depending on individual circumstances, with an estimated average of 25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations under section 419A of the Internal Revenue Code (Code). Sections 419 and 419A, which were added to the Code by section 511 of the Deficit Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 494) set forth special rules limiting the deduction of employer contributions to a welfare benefit fund. Pursuant to section 419A(f)(6), the rules of sections 419 and 419A do not apply in the case of a welfare benefit fund that is part of a plan to which more than one employer contributes and to which no employer normally contributes more than 10 percent of the contributions of all employers under the plan, but only if the plan does not maintain experience-rating arrangements with respect to individual employers.

Section 419A(i) of the Code provides that the Secretary shall prescribe regulations as may be appropriate to carry out the purposes of sections 419 and 419A. Section 419A(i) further provides that the regulations may provide that the plan administrator of any welfare benefit fund to which more than one employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of section 419A.

The legislative history of sections 419 and 419A of the Code explains that the principal purpose of the deduction limits for contributions to welfare benefit funds “is to prevent employers from taking premature deductions, for expenses which have not yet been incurred, by interposing an intermediary organization which holds assets which are used to provide benefits to the employees of the employer.” H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1155 (1984), 1984-3 C.B. (Vol. 2) 1, 409.

The legislative history of section 419A(f)(6) of the Code explains that the reason the deduction limits of sections 419 and 419A do not generally apply to a fund that is part of a 10 or more employer plan is that “the relationship of a participating employer to [such a] plan often is similar to the relationship of an insured to an insurer.” H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1159