

Part IV.--- Items of General Interest

Election of Alternative Deficit Reduction Contribution

Announcement 2004-38

This announcement sets forth the procedures for electing an alternative deficit reduction contribution under § 412(l)(12) of the Internal Revenue Code (the Code) as added by section 102 of the Pension Funding Equity Act of 2004, Pub. L. 108-___.

I. Background

Section 102 of the Pension Funding Equity Act of 2004 added § 412(l)(12) to the Code and section 302(d)(12) to the Employee Retirement Income Security Act of 1974 (ERISA). Section 412(l)(12) of the Code permits certain employers who are required to make additional contributions under § 412(l) to elect a reduced amount of those contributions (“alternative deficit reduction contributions”) for certain plan years. An employer is eligible to make such an election if it is (1) a commercial passenger airline, (2) primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets, or (3) an organization described in § 501(c)(5) and which established a plan on June 30, 1955, to which § 412 now applies. Section 302(d)(12) of ERISA permits an identical election and provides identical requirements with respect to the minimum funding standard of section 302.

The election can be made for any plan year beginning after December 27, 2003, and before December 28, 2005. An election for a plan of an eligible employer must be made annually and cannot be made for more than two plan years for each plan. An election of an alternative deficit reduction contribution may only be made with respect to a plan for which the additional contributions under § 412(l) of the Code and section 302(d) of ERISA for the plan year beginning in 2000 did not apply (determined without regard to the special rule for small plans under § 412(l)(6) of the Code and section 302(d)(6) of ERISA). Section 412(l)(12)(B) of the Code and section 302(d)(12)(B) of ERISA contain restrictions on the plan amendments that may be made during a year for which an alternative deficit reduction contribution is elected.

Section II of this announcement sets forth the information that must be contained in the election and the address to which the election must be sent. If an employer elects an alternative deficit reduction contribution for any plan year, the employer must provide written notice of the election to the plan’s participants and beneficiaries and to the Pension Benefit Guaranty Corporation within 30 days of filing the election.

II. Election of Alternative Deficit Reduction Contribution

A. As an officer of the employer maintaining the plan, I hereby elect an alternative deficit reduction contribution under § 412(l)(12) of the Code and section 302(d)(12) of ERISA and include the following information:

1. The employer is:

_____ (a) a commercial passenger airline,

_____ (b) primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets, or

_____ (c) an organization described in § 501(c)(5) of the Code and which established a plan on June 30, 1955, to which § 412 now applies.

2. The name and EIN of the employer: _____

3. The name and plan number of the plan: _____

4. The plan year to which the election relates: _____

5. Specify the plan year beginning in 2000 for which the additional contributions under § 412(l) did not apply: _____

6. If any of the information in items 2 or 3 was different from the name of the employer or the plan, etc., than in the plan year for which the election is being made, enter the plan name, plan number, and name and EIN of the employer for the 2000 plan year:

7. Signature of employer _____ Date _____

The election must be signed by an officer of the employer maintaining the plan. An authorized representative of the employer, plan administrator, or enrolled actuary may not sign this election on behalf of the employer.

B. This election must be filed at the following address:

Internal Revenue Service
Commissioner, Tax Exempt and Government Entities Division
Attention: SE:T:EP:RA:T
Alternative DRC Election
P.O. Box 27063
McPherson Station
Washington, D.C. 20224

III. Paperwork Reduction Act

The collection of information contained in this announcement has 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 1545-1883.

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.

The collection of information in this announcement is in section II. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service to monitor and make valid determinations with respect to employers that elect an alternative deficit reduction contribution for certain plans. As a result of such elections, an employer's deficit reduction contribution for certain plans will be based on amounts specified under § 412(l)(12) of the Code. Such an election may cause the excise tax for failure to meet the minimum funding standards not to be incurred. The likely respondents are businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting and/or recordkeeping burden is 800 hours.

The estimated annual burden per respondent/recordkeeper varies from 3 to 5 hours, depending on individual circumstances, with an estimated average of 4 hours. The estimated number of respondents and/or recordkeepers is 200.

The estimated frequency of responses is occasional.

Books or records relating to a collection 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.