

RETROACTIVE QUALIFICATION OF CERTAIN UNION-
NEGOTIATED PENSION PLANS

DECEMBER 30 (legislative day, DECEMBER 28), 1970—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 17917]

The Committee on Finance to which was referred the bill (H.R. 17917) to amend the Tax Reform Act of 1969, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

The bill, as amended, authorizes the Treasury Department to treat as qualified pension plans for tax purposes union negotiated pension plans entered into between union representatives and a single employer if the Treasury Department determines that the plans presently meet all requirements of law, that no disbursements in past years were made contrary to the provisions of law, and that contributions to such plans were not used in a manner which would jeopardize the interests of the beneficiaries. (This treatment is presently available for multiemployer plans; the amendment extends this to single-employer pension plans.)

The bill, as passed by the House, contained provisions relating to a transitional rule for the moving expense modifications made by the Tax Reform Act of 1969. The committee deleted those provisions in view of the fact that substantially the same provisions were included in H.R. 17473, which has been passed by the Congress and has been sent to the President.

The Treasury Department indicated it had no objection to this bill as amended.

II. REASONS FOR THE BILL

Under present law, a pension trust is qualified for income tax exemption only if it meets certain requirements relating to coverage of employees and nondiscrimination of contributions or benefits. Where the pension trust is properly qualified, in addition to it being exempt from

Federal taxation with respect to its income, contributions paid to it by an employer on behalf of his employees also are deductible for Federal income tax purposes.

In 1964 Congress added to the tax law a provision (sec. 401(i)) which provides that a trust which is a part of a pension plan which the Treasury Department has found to be a "qualified trust" exempt from taxation is, if certain conditions are met, to be considered a trust which was "qualified" and one which was exempt from taxation for the period beginning with the date when the contributions were first made to the trust rather than beginning with the date of the trust otherwise first constituted a "qualified trust." For this retroactive qualification to be made available to a pension trust, it must establish to the satisfaction of the Treasury Department that three conditions have been met. First, the Treasury Department must be satisfied that the trust was created under a collective bargaining agreement with two or more employers who are not related. Second, it must be shown to the satisfaction of the Treasury Department that the disbursements made from the trust prior to actual qualification substantially meet the tests under which the pension plan subsequently qualifies. Third, the Treasury Department must be satisfied that prior to the time the trust constituted a qualified plan the contributions made to the trust were not used in a manner which jeopardized the interests of the beneficiaries.

A case has been called to the attention of the committee which would qualify under the provision described above but for the fact that it involves a single employer rather than multiple employers. This case involves the pension trust set up by the National Tea Co. for its employees. The committee has been informed that other cases also have arisen which would qualify but for the fact of a single employer. The principal difficulty experienced in the past was that of having a "definite written program and arrangement which is communicated to the employee" prior to the time the program is begun. Because of the difficulties in collective-bargaining agreements in presenting a complete schedule of benefits before contributions were made to the trust, it has proved difficult to qualify union-negotiated pension plans where more than one employer was involved. Moreover, the employers are required by the collective bargaining agreement entered into to begin making contribution when the agreement is signed. In the absence of a qualified plan, the required contributions, where they are not vested, cannot be deducted by the employers. The problem presented by the National Tea Co. and its union-negotiated plan indicates that similar difficulties arise with single employers as well.

In view of these considerations, the committee believes that it is desirable to extend the application of the provision in existing law to cover union-negotiated single-employer pension plans. As was true in the case of the multiemployer plans, safeguards are provided against any abuse as to disbursements made by the trust prior to actual qualification and as to the use of the contributions while held by the trust.

III. EXPLANATION OF PROVISIONS

The committee has amended the provision of present law (sec. 401(i) of the code) by striking out the references to multiple employers and providing instead that the trusts must be created pursuant to a collective bargaining agreement between employee representatives and one or more employers.

This provision is to apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, with respect to contributions made after December 31, 1954. This is the same effective date made applicable to the earlier provision.

IV. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

INTERNAL REVENUE CODE OF 1954

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SEC. 401. QUALIFIED PENSION, PROFITMAKING, AND STOCK BONUS PLANS

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(i) **CERTAIN UNION-NEGOTIATED [MULTIEMPLOYER] PENSION PLANS.**—In the case of a trust forming part of a pension plan which has been determined by the Secretary or his delegate to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary or his delegate that—

(1) such trust was created pursuant to a collective-bargaining agreement between employee representatives and [two] one or more employers [who are not related (determined under regulations prescribed by the Secretary or his delegate)],

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary or his delegate determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary or his delegate determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries.

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

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