

Part I

Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

Section 501.—Exemption from Tax on Corporations, Certain Trusts, Etc.

(Also 26 CFR 1.414(l)-1, 1.933-1, 1.501(a)-1, and 301.7805-1)

Notice 2012-6

I. PURPOSE

This notice extends and expands the transition relief provided under Rev. Rul. 2011-1, 2011-2 I.R.B. 251, and Rev. Rul. 2008-40, 2008-2 C.B. 166, for certain group trusts, certain retirement trusts that qualify under the Puerto Rico Internal Revenue Code (Puerto Rico Code) and that participate in group trusts, and certain qualified retirement plans that benefit Puerto Rico residents. This notice also provides additional time for governmental retiree benefit plans described in § 401(a)(24) of the Internal Revenue Code (Code) (§ 401(a)(24) plans) to be amended to satisfy the applicable requirements of Rev. Rul. 2011-1.

II. BACKGROUND

Rev. Rul. 81-100, 1981-1 C.B. 326, provides that qualified retirement plans and individual retirement accounts are permitted to pool their assets for investment purposes in a group trust (“81-100 group trusts”) if certain specified requirements are satisfied. Rev. Rul. 81-100 was clarified and modified by Rev. Rul. 2004-67, 2004-2 C.B. 28. Rev. Rul. 2011-1 revises and restates the generally applicable rules for group trusts described in Rev. Rul. 81-100, 1981-1 C.B. 326, as clarified and modified by Rev. Rul. 2004-67. Rev. Rul. 2011-1 permits the participation in 81-100 group trusts of

certain retiree benefit plans, such as governmental retiree benefit plans under § 401(a)(24), in addition to § 401(a) qualified retirement plans, if certain requirements are met.

Section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (ERISA) provides a tax exemption under § 501(a) of the Code for certain plans that satisfy the qualification requirements under the Puerto Rico Code (“section 1022(i)(1) plans”).

Rev. Rul. 2008-40 holds that a transfer of amounts from a trust under a plan qualified under § 401(a) to a nonqualified foreign trust is treated as a distribution from the transferor plan. Rev. Rul. 2008-40 holds further that a transfer of assets and liabilities from a qualified plan to a plan that satisfies the plan qualification requirements under section 1165 of the Puerto Rico Code is also treated as a distribution from the transferor plan, even if the plan is a section 1022(i)(1) plan. Rev. Rul. 2008-40 provided transition relief for a transfer from a qualified plan to a section 1022(i)(1) plan that occurred before January 1, 2011.

Rev. Rul. 2011-1 provides temporary relief relating to investments of the assets of certain section 1022(i)(1) plans in 81-100 group trusts, and modifies the transition relief provided in Rev. Rul. 2008-40 relating to transfers from qualified plans to section 1022(i)(1) plans. Specifically, under the heading “Plans Described in Section 1022(i)(1) of ERISA,” Rev. Rul. 2011-1 provides that:

The Service anticipates issuing guidance as to whether a plan described in section 1022(i)(1) of ERISA may participate in an 81-100 group trust. Until such guidance is issued, the Service will not treat a group trust as failing to satisfy the requirements of this revenue ruling merely because the group trust includes the assets of a section 1022(i)(1) plan as long as the section 1022(i)(1) plan (1) was participating in the group trust as of January 10, 2011, or (2) holds assets that had been held by a qualified plan immediately prior to the transfer of

those assets to the section 1022(i)(1) plan pursuant to the transition relief in Rev. Rul. 2008-40, as modified by this revenue ruling. In addition, Rev. Rul. 2008-40 is hereby modified to extend the transition relief for transfers from a qualified plan to a section 1022(i)(1) transferee plan for an additional year. Thus, “January 1, 2012” is substituted for “January 1, 2011” each place it appears in the Transition Relief section of Rev. Rul. 2008-40.

When Rev Rul. 2011-1 and 2008-40 were issued, the qualification provisions for retirement plans were contained in section 1165 of the Puerto Rico Code. On January 31, 2011, the retirement plan qualification provisions of the Puerto Rico Code were extensively amended.¹ These provisions, which now appear at section 1081.01 of the Puerto Rico Code, apply to plans qualified under both U.S. and Puerto Rico law (sometimes referred to as “dual-qualified plans”), as well as to section 1022(i)(1) plans.

III. EXTENSION AND EXPANSION OF RELIEF

The Service anticipates issuing guidance responding to comments received in connection with Rev. Rul. 2011-1. Accordingly, the following relief is provided.

A. ERISA Section 1022(i)(1) Plans

1. Expansion of relief under Rev. Rul. 2011-1 relating to 81-100 group trust status of certain trusts containing section 1022(i)(1) plan investments

The relief provided in Rev. Rul. 2011-1 under the heading “Plans Described in Section 1022(i)(1) of ERISA” continues to apply. In addition, that relief is expanded to cover an 81-100 group trust with respect to an investment by a section 1022(i)(1) plan that is the recipient of a transfer of assets from a qualified retirement plan pursuant to the transition relief under Rev. Rul. 2008-40, as modified by Rev. Rul. 2011-1 and this notice, if assets of the transferor plan were held in the 81-100 group trust on January 10, 2011.

¹ See Código de Rentas Internas para un Nuevo Puerto Rico de la Ley Núm. 1 de 31 de enero de 2011.

2. Extension of transition relief under Rev. Rul. 2008-40 relating to tax consequences of certain transfers to section 1022(i)(1) plans

(i) Extension of transfer deadline until further guidance for certain qualified plans invested in group trusts

The relief provided in paragraphs 2, 3, and 4(b) under the Transition Relief heading in Rev. Rul. 2008-40 is extended for transfers to a section 1022(i)(1) transferee plan from a qualified retirement plan that participated in an 81-100 group trust on January 10, 2011, until a deadline to be set forth in future published guidance. It is expected that, when further guidance relating to participation of section 1022(i)(1) plans in group trusts is published, that guidance will set a future deadline for transfers covered by this extension.

(ii) One-year general extension of transfer deadline

The Service recognizes that a sponsor of a qualified retirement plan that benefits Puerto Rico residents may need additional time to evaluate whether to spin off the portion of the plan benefiting Puerto Rico residents to a section 1022(i)(1) plan in order to consider the effect of the changes to the Puerto Rico Code enacted earlier this year. Accordingly, Rev. Rul. 2008-40 is hereby further modified to extend the relief provided in paragraphs 2, 3, and 4(b) under the Transition Relief heading in Rev. Rul. 2008-40 for transfers to a section 1022(i)(1) transferee plan from any qualified retirement plan until December 31, 2012, regardless of whether the qualified retirement plan participates in a group trust.

B. Governmental Retiree Benefit Plans

In order to ensure that the governing documents of § 401(a)(24) plans may be timely amended to satisfy the requirements of Rev. Rul. 2011-1, the ruling is modified to

provide that, in the case of a § 401(a)(24) plan for which the authority to amend the plan is held by a legislative body that meets in legislative session, the plan will not fail to satisfy the requirements of Rev. Rul. 2011-1 if the governing document is modified to satisfy the applicable requirements of Rev. Rul. 2011-1 by the earlier of:

1. The close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after January 1, 2012; or
2. January 1, 2015.

IV. COMMENTS REQUESTED

In general, if an entity that is not a group trust retiree benefit plan as defined in the holding of Rev. Rul. 2011-1 (an “ineligible entity”) participates in a group trust, the consequences described in the holdings of Rev. Rul. 2011-1, including the tax status of the group trust being derived from the tax status of the participating entities to the extent of their equitable interest in the group trust, would not apply to the group trust or to any of the entities that are invested in the trust. Comments are requested on whether the rule stating that the tax status of the group trust is derived from the tax status of the participating entities to the extent of their equitable interest in the group trust should be extended to cases where the equitable interest in the group trust is held by an ineligible entity that is an employee benefit plan if (a) the plan is tax exempt under § 501 or a similar rule and (b) in all other respects the requirements in paragraphs (1) through (8) of the holding of Rev. Rul. 2011-1 (including the exclusive benefit requirement in (5) and the separate account requirement in (6)) are satisfied. Comments should be submitted by April 16, 2012 (Notice 2012-6), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR

(Notice 2012-6), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. Alternatively, comments may be submitted via the Internet at Notice.comments@irs.counsel.treas.gov. Please include "Notice 2012-6" in the subject line of any electronic communication. All materials submitted will be available for public inspection and copying.

V. EFFECT ON OTHER DOCUMENTS

Rev. Ruls. 2011-1 and 2008-40 are modified.

DRAFTING INFORMATION

The principal authors of this notice are Diane Bloom and Robert Walsh of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please call the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, or at RetirementPlanQuestions@irs.gov.