

**§ 11.402(e)(4)(B)-1**

**26 CFR Ch. I (4-1-13 Edition)**

**§ 11.402(e)(4)(B)-1 Election to treat an amount as a lump sum distribution.**

(a) *In general.* For purposes of sections 402, 403, and this section, an amount which is described in section 402(e)(4)(A) and which is not an annuity contract may be treated as a lump sum distribution under section 402(e)(4)(A) only if the taxpayer elects for the taxable year to have all such amounts received during such year so treated. Not more than one election may be made under this section with respect to an employee after such employee has attained age 59½.

(b) *Taxpayers eligible to make the election.* Individuals, estates, and trusts are the only taxpayers eligible to make the election provided by this section. In the case of a lump sum distribution made with respect to an employee to 2 or more trusts, the election provided by this section shall be made by the employee or by the personal representative of a deceased employee.

(c) *Procedure for making election—(1) Time and scope of election.* An election under this section shall be made for each taxable year to which such election is to apply. The election shall be made before the expiration of the period (including extension thereof) prescribed in section 6511 for making a claim for credit or refund of the assessed tax imposed by Chapter I of Subtitle A of the Code for such taxable year.

(2) *Manner of making election.* An election by the taxpayer with respect to a taxable year shall be made by filing Form 4972 as a part of the taxpayer's income tax return or amended return for the taxable year.

(3) *Revocation of election.* An election made pursuant to this section may be revoked within the time prescribed in subparagraph (1) of this paragraph for making an election, only if there is filed, within such time, an amended income tax return for such taxable year, which includes a statement revoking the election and is accompanied by payment of any tax attributable to the revocation. If an election for a taxable year is revoked, another election may be made for that taxable year under

subparagraphs (1) and (2) of this paragraph.

(Sec. 402(e)(4)(B) of the Internal Revenue Code of 1954 (88 Stat. 989, 26 U.S.C. 402(e)(4)(B)))

[T.D. 7339, 40 FR 1016, Jan. 6, 1975]

**§ 11.404(a)(6)-1 Time when contributions to "H.R. 10" plans considered made.**

(a) *In general.* Section 404(a)(6), as amended by section 1013(c)(2) of the Employee Retirement Income Security Act of 1974, provides that for purposes of paragraphs (1), (2), and (3) of section 404(a), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Under section 1017(b) of the Employee Retirement Income Security Act of 1974 (prior to its amendment by the Tax Reduction Act of 1975), in the case of a plan which was in existence on January 1, 1974, the foregoing provision generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after December 31, 1975. In the case of a plan not in existence on January 1, 1974, the foregoing provision generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after September 2, 1974. See § 11.410(a)-2(c) for time a plan is considered in existence. See also § 11.410(a)-2(d), which provides that a plan in existence on January 1, 1974 may elect to have certain provisions, including the amendment to section 404(a)(6) contained in section 1013 of the Employee Retirement Income Security Act of 1974, apply to a plan year beginning after September 2, 1974, and before the otherwise applicable effective date contained in that section.

(b) *"H.R. 10" plans may elect new provision.* Under section 402 of the Tax Reduction Act of 1975 (89 Stat. 47), in the case of a plan which was in existence on January 1, 1974, and which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1)