

desires to defer the maximum amount possible in 1979. The maximum amount that A may defer under the plan is the lesser of \$7,500, or 33 $\frac{1}{3}$ % of A's includible compensation (generally the equivalent of 25 percent of gross compensation). Accordingly, the maximum that A may defer for 1979 is \$5,000 [$\$5,000 = \$20,000 \times .25$]. Although A's taxable year 1979 is one of A's last 3 taxable years before the year in which A attains normal retirement age under the plan, A is not able to utilize the catch-up provisions of § 1.457-2(f) in 1979 because only taxable years beginning after December 31, 1978, may be taken into account under those provisions.

Example 2. Assume the same facts as in example 1. In A's taxable year 1980, A receives a salary of \$20,000, and elects to defer only \$1,000 under the plan. In A's taxable year 1981, A again receives a salary of \$20,000 and elects to defer the maximum amount permissible under the plan's catch-up provisions prescribed under § 1.457-2(f). The applicable limit on deferrals under the catch-up provision is the lesser of \$15,000 or the sum of the normal plan ceiling for 1981, plus any under-utilized deferrals for any taxable year before 1981. Thus, the maximum amount that A may defer in 1981 is \$9,000, the normal plan ceiling for 1981, \$5,000, plus the under-utilized deferrals for 1980, \$4,000.

Example 3. Assume the same facts as in examples 1 and 2. In A's taxable year 1982, the year in which A will attain age 65, normal retirement age under the plan, A desires to defer the maximum amount possible under the plan. For 1982 the normal limitations of § 1.457-2(e) are applicable, and the maximum amount that A may defer is \$5,000, assuming that A's salary for 1982 was again \$20,000. The plan's catch-up provisions prescribed under § 1.457-2(f) are not applicable because 1982 is not a year ending before the year in which A attains normal retirement age.

[T.D. 7836, 47 FR 42338, Sept. 27, 1982]

§ 1.457-3 Tax treatment of participants where plan is not an eligible plan.

(a) *In general.* If a State (within the meaning of § 1.457-2(c)) provides for a deferral of compensation (after the effective date described in paragraph (c)) under any agreement or arrangement described in § 1.457-2(b) that is not an eligible plan within the meaning of § 1.457-2—

(1) Compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture (within the meaning of section 457(e)(3)) of the rights to such compensation,

(2) Earnings credited on the compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant or beneficiary only when paid or made available, provided that the interest of the participant or beneficiary in the assets (including amounts deferred under the plan) of the entity sponsoring the plan is not senior to the entity's general creditors, and

(3) Amounts paid or made available under the plan to a participant or beneficiary shall be taxable to the participant or beneficiary under section 72, relating to annuities.

(b) *Exceptions.* Paragraph (a) does not apply with respect to—

(1) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) An annuity plan or contract described in section 403,

(3) A qualified bond purchase plan described in section 405(a),

(4) That portion of any plan which consists of a transfer of property described in section 83, and

(5) That portion of any plan which consists of a trust to which section 402(b) applies.

(c) *Effective date.* This section is effective for taxable years beginning after December 31, 1981. For rules applicable in taxable years beginning after December 31, 1978, and before January 1, 1982, see § 1.457-4.

[T.D. 7836, 47 FR 42341, Sept. 27, 1982; 47 FR 46497, Oct. 19, 1982]

§ 1.457-4 Transitional rules.

(a) *In general.* Subject to the limitations described in paragraphs (b) and (c) of this section, amounts deferred (within the meaning of § 1.457-1(d)(3)) in taxable years beginning after December 31, 1978, and before January 1, 1982 under a plan described in § 1.457-2(b) (including an eligible plan within the meaning of § 1.457-2, but not including a plan described in section 457(e)(2) and § 1.457-3(b)) shall be includible in gross income only for the taxable year in which paid or otherwise made available to the participant or other beneficiary.

(b) *General limitation.* Except as described in paragraph (c) of this section, and excluding amounts deferred in taxable years beginning before January 1,