

avoidance and partly from the related necessity of dealing promptly with an avalanche of new pension and profit-sharing plans. It formalized tax rules that had been used with relatively little controversy when tax rates were low and added important details with the *objective of minimizing both controversy and tax avoidance. It was distinctly restrictive legislation.*¹⁰ [Emphasis added.]

If the 1942 legislation, defining "qualified" plans and by the same token defining "nonqualified plans," were repealed and not replaced, would general principles of taxation permit most of the present practices? In a carefully reasoned article, Raymond Goetz (partner of Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Ill.) presents a persuasive case that this would be true. This is his concluding statement:

CONCLUSION.—If the special Code provisions applicable to qualified pension plans were repealed (along with the accompanying special rules on nonqualified plans), Federal income tax results under most such plans probably would not be materially altered:

(1) Employer irrevocable contributions to a separate and independent trust fund, or to an insurance company, to provide pension benefits for employees, would be deductible from gross income of the employer in the year paid, as an ordinary and necessary business expense.

(2) Employees would be taxable only on amounts distributed or made available to them from such funds, in the year in which so distributed or made available (but any current death benefit would be taxable currently as life insurance).

The only real question of current employee taxation might be with respect to an employer contribution which is fully vested in the employee and guaranteed by an insurance contract. Even here, the contingency of survival to retirement age ought to be sufficient to defer tax on the employee.

Some fund investment income probably would be subject to income tax:

(1) In the case of trustee pension funds, at individual tax rates applicable to personal trusts, but only after deduction of benefit distributions for the year.

(2) In the case of insured pension funds, at the corporate rates applicable to insurance company investment income generally.

Such taxation of fund income would create obvious inequities between various pension trusts, between insured pension funds and pension trusts, and between various types of insurance company investment income.

Thus, the tax rules under discussion do not appear to involve any substantial departure from sound fundamentals of income taxation. Instead, these rules merely codify certain logical tax consequences under qualified pension plans as to

¹⁰ "Impact of Taxes on Industrial Pension Plans," Rainard B. Robbins, Industrial Relations Counselors, Inc., 1949, pp. 52-55.