



# TaxNewsFlash

## United States

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### **Tax Court: Excise taxes under section 4972, nondeductible contributions to defined benefit plan**

The U.S. Tax Court today issued an opinion concerning a defined benefit plan and the taxpayer's failure to report and pay excise taxes under section 4972 for nondeductible contributions to the plan. The Tax Court found that the taxpayer neglected to apply the correct method to reduce the maximum benefits under section 415(b)(2)(C) for a retirement age before age 62 under its plan, when the plan did not provide for forfeiture of the participant's benefits at death. Because of this error, portions of the taxpayer's contributions to the plan during tax years 2002 through 2006 were nondeductible, resulting in liability for section 4972 excise taxes.

The case is: *Pizza Pro Equipment Leasing, Inc. v. Commissioner*, 147 T.C. No. 14 (November 17, 2016). Read text of the [Tax Court's opinion](#) [PDF 194 KB]

#### **Summary**

A defined benefit pension plan, as adopted effective January 1, 1995, was a qualified plan under section 401(a) throughout the years at issue. At all relevant times, the plan had a single participant (the company's president). The plan's normal retirement age was set at age 45 years. The plan provided that the participant's accrued benefits vested fully at death and were payable as a death benefit to the participant's designated beneficiary.

The plan filed Forms 5500, *Annual Return/Report of Employee Benefit Plan*, for each of the plan years 2002 through 2006, which coincided with the calendar year and the plan's and the company's tax years. However, no Forms 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, were ever filed. The IRS filed substitute Form 5330 returns on behalf of the taxpayer / company for the years at issue and subsequently determined deficiencies and additions to tax related to nonpayment of the section 4972 excise taxes. The IRS asserted that portions of the taxpayer's

contributions to the plan were nondeductible because the plan's funding did not fully account for the proper reductions imposed by section 415(b)(2)(C) for benefits beginning before age 62.

The issues addressed by the Tax Court, and the court's findings) are summarized by the court as follows:

- Did the taxpayer apply the correct method to reduce the maximum benefits under section 415(b)(2)(C) for a retirement age before to age 62, when the plan does not provide for forfeiture of the participant's benefits at death? The Tax Court held that it did not.
- Was the taxpayer was liable for excise taxes under section 4972 for nondeductible contributions made to the plan for calendar years 2002 through 2006 because the contributions were in excess of the limitations imposed by section 404? The Tax Court found the taxpayer was liable.
- Was the taxpayer liable for additions to tax pursuant to section 6651(a)(1) and (2) for failure to timely file Forms 5330 and failure to timely pay the excise taxes for calendar years 2002 through 2006? The Tax Court held that the taxpayer was liable and did not have reasonable cause for not filing Forms 5330 or not paying excise taxes for the years at issue.
- Did the statute of limitations bar the assessment and collection of excise taxes pursuant to section 4972 for nondeductible contributions to the plan for calendar years 2002 through 2006? The Tax Court held that the limitations period did not bar assessment and collection.

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