

section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**[§ 4978A. Repealed. Pub. L. 101-239, title VII, § 7304(a)(2)(C)(i), Dec. 19, 1989, 103 Stat. 2353]**

Section, added Pub. L. 100-203, title X, §10413(a), Dec. 22, 1987, 101 Stat. 1330-436; amended Pub. L. 100-647, title VI, §6060(a), Nov. 10, 1988, 102 Stat. 3699, related to tax on certain dispositions of employer securities to which section 2057 applied.

**EFFECTIVE DATE OF REPEAL**

Repeal applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101-239, set out as an Effective Date of 1989 Amendment note under section 409 of this title.

**[§ 4978B. Repealed. Pub. L. 104-188, title I, § 1602(b)(5)(A), Aug. 20, 1996, 110 Stat. 1834]**

Section, added Pub. L. 101-239, title VII, §7301(d)(1), Dec. 19, 1989, 103 Stat. 2347; amended Pub. L. 101-508, title XI, §11701(e), Nov. 5, 1990, 104 Stat. 1388-507, related to tax on disposition of employer securities to which former section 133 of this title applied.

**EFFECTIVE DATE OF REPEAL**

Repeal applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104-188, set out as a note under former section 133 of this title.

**§ 4979. Tax on certain excess contributions**

**(a) General rule**

In the case of any plan, there is hereby imposed a tax for the taxable year equal to 10 percent of the sum of—

- (1) any excess contributions under such plan for the plan year ending in such taxable year, and
- (2) any excess aggregate contributions under the plan for the plan year ending in such taxable year.

**(b) Liability for tax**

The tax imposed by subsection (a) shall be paid by the employer.

**(c) Excess contributions**

For purposes of this section, the term “excess contributions” has the meaning given such term by sections 401(k)(8)(B), 408(k)(6)(C), and 501(c)(18).

**(d) Excess aggregate contribution**

For purposes of this section, the term “excess aggregate contribution” has the meaning given to such term by section 401(m)(6)(B). For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), such contract shall be treated as a plan described in subsection (e)(1).

**(e) Plan**

For purposes of this section, the term “plan” means—

- (1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),
- (2) any annuity plan described in section 403(a),
- (3) any annuity contract described in section 403(b),
- (4) a simplified employee pension of an employer which satisfies the requirements of section 408(k), and

- (5) a plan described in section 501(c)(18).

Such term includes any plan which, at any time, has been determined by the Secretary to be such a plan.

**(f) No tax where excess distributed within specified period after close of year**

**(1) In general**

No tax shall be imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent such contribution (together with any income allocable thereto through the end of the plan year for which the contribution was made) is distributed (or, if forfeitable, is forfeited) before the close of the first 2½ months (6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3))) of the following plan year.

**(2) Year of inclusion**

Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in the recipient's taxable year in which such distributions were made.

(Added Pub. L. 99-514, title XI, §1117(b)(1), Oct. 22, 1986, 100 Stat. 2461; amended Pub. L. 100-647, title I, §1011(l)(8)-(11), Nov. 10, 1988, 102 Stat. 3470, 3471; Pub. L. 109-280, title IX, §902(e)(1)-(3)(A), Aug. 17, 2006, 120 Stat. 1038.)

**AMENDMENTS**

2006—Subsec. (f). Pub. L. 109-280, §902(e)(1)(B), substituted “specified period after” for “2½ months of” in heading.

Subsec. (f)(1). Pub. L. 109-280, §902(e)(1)(A), (3)(A), inserted “through the end of the plan year for which the contribution was made” after “thereto” and “(6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3)))” after “2½ months”.

Subsec. (f)(2). Pub. L. 109-280, §902(e)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—Except as provided in subparagraph (B), any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.

“(B) DE MINIMIS DISTRIBUTIONS.—If the total excess contributions and excess aggregate contributions distributed to a recipient under a plan for any plan year are less than \$100, such distributions (and any income allocable thereto) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made.”

1988—Subsec. (a)(1). Pub. L. 100-647, §1011(l)(8), struck out “a cash or deferred arrangement which is part of” after “contributions under”.

Subsec. (c). Pub. L. 100-647, §1011(l)(9), struck out “403(b),” and substituted “408(k)(6)(C)” for “408(k)(8)(B)”.

Subsec. (d). Pub. L. 100-647, §1011(l)(10), inserted sentence at end relating to determination of excess aggregate contributions under certain annuity contracts.

Subsec. (f)(2). Pub. L. 100-647, §1011(l)(11), substituted “Year of inclusion” for “Included in prior year” as heading, and amended text generally. Prior to amendment, text read as follows: “Any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.”