

in a qualified gratuitous transfer to which section 664(g) applied” after “section 1042 applied” in introductory provisions.

Subsec. (a)(2). Pub. L. 105-34, §1530(c)(11)(B), inserted before comma at end “60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied”.

Subsec. (b)(2). Pub. L. 105-34, §1530(c)(12)(A), inserted “or acquired in the qualified gratuitous transfer to which section 664(g) applied” after “section 1042 applied” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 105-34, §1530(c)(12)(B), inserted “or to which section 664(g) applied” after “section 1042 applied”.

Subsec. (c). Pub. L. 105-34, §1530(c)(13), substituted “written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be)” for “written statement described in section 1042(b)(3)”.

Subsec. (e)(2). Pub. L. 105-34, §1530(c)(14), inserted before period at end “; except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1))”.

1996—Subsec. (b)(2). Pub. L. 104-188 added subpars. (A) and (B) and closing provisions and struck out former subpars. (A) to (D) and closing provisions which read as follows:

“(A) first, from section 133 securities (as defined in section 4978B(e)(2)) acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

“(B) second, from section 133 securities (as so defined) acquired before such 3-year period unless such securities (or proceeds from the disposition) have been allocated to accounts of participants or beneficiaries.

“(C) third, from qualified securities to which section 1042 applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

“(D) then from any other employer securities.

If subsection (d) or section 4978B(d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.”

1989—Subsec. (b)(2). Pub. L. 101-239 substituted “determined as if such securities were disposed of—”, subpars. (A) to (D), and concluding provision for “(determined as if such securities were disposed of in the order described in section 4978A(e))”.

1988—Subsec. (d)(4). Pub. L. 100-647 added par. (4).

1987—Subsec. (b)(2). Pub. L. 100-203 substituted “(determined as if such securities were disposed of in the order described in section 4978A(e))” for “(determined as if such securities were disposed of before any other securities)”.

1986—Subsec. (a)(1). Pub. L. 99-514, §1854(e)(1), substituted “than” for “then”.

Subsec. (b)(1). Pub. L. 99-514, §1854(e)(2), substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 99-514, §1854(e)(3), substituted “section 1042(b)(3)” for “section 1042(a)(2)(B)”.

Subsec. (d)(1)(C). Pub. L. 99-514, §1854(e)(4), substituted “section 72(m)(7)” for “section 72(m)(5)”.

Subsec. (d)(3). Pub. L. 99-514, §1854(e)(7), added par. (3).

Subsec. (e)(2). Pub. L. 99-514, §1854(e)(5), substituted “section 1042(c)(1)” for “section 1042(b)(1)”.

Subsec. (e)(3). Pub. L. 99-514, §1854(e)(6), substituted “section 1042(c)(2)” for “section 1042(b)(1)”.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104-188 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 an Effective Date of Repeal note under former section 133 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

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

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10413(c), Dec. 22, 1987, 101 Stat. 1330-438, provided that: “The amendments made by this section [enacting section 4978A of this title and amending this section] shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE

Pub. L. 98-369, div. A, title V, §545(c), July 18, 1984, 98 Stat. 896, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984].”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see 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 re-

ceived 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.”

## EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109-280, set out as a note under section 401 of this title.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## EFFECTIVE DATE

Section applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 401 of this title.

## REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out this sec-