

tion [amending this section] shall apply to taxable years beginning after December 31, 2001.”

Amendment by section 652(b) of Pub. L. 107-16 applicable to plan years beginning after Dec. 31, 2001, see section 652(c) of Pub. L. 107-16, set out as a note under section 404 of this title.

Pub. L. 107-16, title VI, § 653(b), June 7, 2001, 115 Stat. 130, provided that: “The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XV, § 1507(b), Aug. 5, 1997, 111 Stat. 1067, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title VII, § 755(b), Dec. 8, 1994, 108 Stat. 5024, provided that:

“(1) SECTION 4972(C)(6)(A).—Section 4972(c)(6)(A) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years ending on or after the date of enactment of this Act [Dec. 8, 1994].

“(2) SECTION 4972(C)(6)(B).—Section 4972(c)(6)(B) of such Code (as added by this section) shall apply to taxable years ending on or after December 31, 1992.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(e)(1), (2) of 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.

Amendment by section 2005(a)(1) of Pub. L. 100-647 effective as if included in the amendment made by section 1131(c) of Pub. L. 99-514, see section 2005(e) of Pub. L. 100-647, as amended, set out as a note under section 404 of this title.

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with special rules in case of plans maintained pursuant to collective bargaining agreements, see section 1131(d) of Pub. L. 99-514, as amended, set out as an Effective Date of 1986 Amendment note under section 404 of this title.

#### CONSTRUCTION OF 2001 AMENDMENT

Pub. L. 107-16, title VI, § 637(c), June 7, 2001, 115 Stat. 118, provided that: “Nothing in the amendments made by this section [amending this section] shall be construed to infer the proper treatment of nondeductible contributions under the laws in effect before such amendments.”

#### APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§ 101-108) and B (§§ 111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of this title.

#### INCREASE IN AMOUNT FOR PLAN TERMINATION INSURANCE UNDER EMPLOYEE RETIREMENT INSURANCE SECURITY ACT OF 1974

Pub. L. 100-647, title I, § 1011A(e)(5), Nov. 10, 1988, 102 Stat. 3478, provided that: “In the case of any taxable year beginning in 1987, the amount under section

4972(c)(1)(A)(ii) of the 1986 Code for a plan to which title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] applies shall be increased by the amount (if any) by which, as of the close of the plan year with or within which such taxable year begins—

- “(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed
- “(B) the assets of such plan.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

#### 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.

### § 4973. Tax on excess contributions to certain tax-favored accounts and annuities

#### (a) Tax imposed

In the case of—

- (1) an individual retirement account (within the meaning of section 408(a)),
- (2) an Archer MSA (within the meaning of section 220(d)),
- (3) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock),
- (4) a Coverdell education savings account (as defined in section 530),
- (5) a health savings account (within the meaning of section 223(d)), or
- (6) an ABLE account (within the meaning of section 529A),

there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account or annuity (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

#### (b) Excess contributions

For purposes of this section, in the case of individual retirement accounts or individual retirement annuities, the term “excess contributions” means the sum of—

- (1) the excess (if any) of—
  - (A) the amount contributed for the taxable year to the accounts or for the annuities

(other than a contribution to a Roth IRA or a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16)), over

(B) the amount allowable as a deduction under section 219 for such contributions, and

(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

(C) the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed (determined without regard to section 219(f)(6)) to the accounts or for the annuities (including the amount contributed to a Roth IRA) for the taxable year.

For purposes of this subsection, any contribution which is distributed from the individual retirement account or the individual retirement annuity in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed. For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

**(c) Section 403(b) contracts**

For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term “excess contributions” means the sum of—

(1) the excess (if any) of the amount contributed for the taxable year to such account (other than a rollover contribution described in section 403(b)(8) or 408(d)(3)(A)(iii)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by—

(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e).

**(d) Excess contributions to Archer MSAs**

For purposes of this section, in the case of Archer MSAs (within the meaning of section 220(d)), the term “excess contributions” means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than rol-

over contributions described in section 220(f)(5)) which is neither excludable from gross income under section 106(b) nor allowable as a deduction under section 220 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 220(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 220(b)(1) (determined without regard to section 106(b)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the Archer MSA in a distribution to which section 220(f)(3) or section 138(c)(3) applies shall be treated as an amount not contributed.

**(e) Excess contributions to Coverdell education savings accounts**

For purposes of this section—

**(1) In general**

In the case of Coverdell education savings accounts maintained for the benefit of any one beneficiary, the term “excess contributions” means the sum of—

(A) the amount by which the amount contributed for the taxable year to such accounts exceeds \$2,000 (or, if less, the sum of the maximum amounts permitted to be contributed under section 530(c) by the contributors to such accounts for such year); and

(B) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(i) the distributions out of the accounts for the taxable year (other than rollover distributions); and

(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year.

**(2) Special rules**

For purposes of paragraph (1), the following contributions shall not be taken into account:

(A) Any contribution which is distributed out of the Coverdell education savings account in a distribution to which section 530(d)(4)(C) applies.

(B) Any rollover contribution.

**(f) Excess contributions to Roth IRAs**

For purposes of this section, in the case of contributions to a Roth IRA (within the meaning of section 408A(b)), the term “excess contributions” means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to Roth IRAs (other than a qualified rollover contribution described in section 408A(e)), over

(B) the amount allowable as a contribution under sections 408A(c)(2) and (c)(3), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts for the taxable year, and

(B) the excess (if any) of the maximum amount allowable as a contribution under sections 408A(c)(2) and (c)(3) for the taxable year over the amount contributed by the individual to all individual retirement plans for the taxable year.

For purposes of this subsection, any contribution which is distributed from a Roth IRA in a distribution described in section 408(d)(4) shall be treated as an amount not contributed.

**(g) Excess contributions to health savings accounts**

For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term “excess contributions” means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution described in section 220(f)(5) or 223(f)(5)) which is neither excludable from gross income under section 106(d) nor allowable as a deduction under section 223 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 223(b) (determined without regard to section 106(d)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.

**(h) Excess contributions to ABLE account**

For purposes of this section—

**(1) In general**

In the case of an ABLE account (within the meaning of section 529A), the term “excess contributions” means the amount by which the amount contributed for the taxable year to such account (other than contributions under section 529A(c)(1)(C)) exceeds the contribution limit under section 529A(b)(2)(B).

**(2) Special rule**

For purposes of this subsection, any contribution which is distributed out of the ABLE account in a distribution to which the last sentence of section 529A(b)(2) applies shall be treated as an amount not contributed.

(Added Pub. L. 93-406, title II, §2002(d), Sept. 2, 1974, 88 Stat. 966; amended Pub. L. 94-455, title XV, §1501(b)(8), title XIX, §1904(a)(22), Oct. 4, 1976, 90 Stat. 1736, 1814; Pub. L. 95-600, title I, §§156(c)(3), (5), 157(b)(3), (j)(1), title VII,

§701(aa)(1), Nov. 6, 1978, 92 Stat. 2803, 2804, 2809, 2921; Pub. L. 96-222, title I, §101(a)(13)(C), (14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97-34, title III, §§311(h)(7), (9), (10), 313(b)(2), Aug. 13, 1981, 95 Stat. 282, 286; Pub. L. 98-369, div. A, title IV, §491(d)(41)-(44), (55), July 18, 1984, 98 Stat. 851, 852; Pub. L. 99-514, title XI, §1102(b)(1), title XVIII, §1848(f), Oct. 22, 1986, 100 Stat. 2415, 2858; Pub. L. 100-647, title I, §1011(b)(3), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 102-318, title V, §521(b)(41), July 3, 1992, 106 Stat. 313; Pub. L. 104-188, title I, §1704(t)(70), (72), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 104-191, title III, §301(e), Aug. 21, 1996, 110 Stat. 2051; Pub. L. 105-33, title IV, §4006(b)(1), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105-34, title II, §213(d), title III, §302(b), Aug. 5, 1997, 111 Stat. 817, 828; Pub. L. 105-206, title VI, §§6004(d)(10), 6005(b)(8), 6023(18)(A), July 22, 1998, 112 Stat. 795, 799, 825; Pub. L. 106-554, §1(a)(7) [title II, §202(a)(6), (b)(2)(C), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, 2763A-629; Pub. L. 107-16, title IV, §§401(a)(2), (g)(2)(D), 402(a)(4)(A), title VI, §641(e)(11), June 7, 2001, 115 Stat. 57, 60, 121; Pub. L. 107-22, §1(b)(1)(C), (2)(B), (4), July 26, 2001, 115 Stat. 197; Pub. L. 108-173, title XII, §1201(e), Dec. 8, 2003, 117 Stat. 2478; Pub. L. 108-311, title IV, §408(a)(22), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 113-295, div. B, title I, §102(b), Dec. 19, 2014, 128 Stat. 4061.)

AMENDMENTS

2014—Subsec. (a)(6). Pub. L. 113-295, §102(b)(1), added par. (6).

Subsec. (h). Pub. L. 113-295, §102(b)(2), added subsec. (h).

2004—Subsec. (c). Pub. L. 108-311 substituted “subsection (a)(3)” for “subsection (a)(2)” in introductory provisions.

2003—Subsec. (a)(5). Pub. L. 108-173, §1201(e)(1), added par. (5).

Subsec. (g). Pub. L. 108-173, §1201(e)(2), added subsec. (g).

2001—Subsec. (a)(4). Pub. L. 107-22, §1(b)(1)(C), substituted “a Coverdell education savings” for “an education individual retirement”.

Subsec. (b)(1)(A). Pub. L. 107-16, §641(e)(11), substituted “408(d)(3), or 457(e)(16)” for “or 408(d)(3)”.

Subsec. (e). Pub. L. 107-22, §1(b)(4), substituted “Coverdell education savings” for “education individual retirement” in heading.

Pub. L. 107-16, §402(a)(4)(A), which directed the substitution of “qualified tuition” for “qualified State tuition” wherever appearing in subsec. (e), could not be executed because the term “qualified State tuition” did not appear subsequent to amendment by section 401(g)(2)(D) of Pub. L. 107-16, which struck out par. (1)(B). See below.

Subsec. (e)(1). Pub. L. 107-22, §1(b)(2)(B), substituted “Coverdell education savings” for “education individual retirement” in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 107-16, §401(a)(2), (g)(2)(D), substituted “\$2,000” for “\$500” and inserted “and” at end.

Subsec. (e)(1)(B), (C). Pub. L. 107-16, §401(g)(2)(D), re-designated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “if any amount is contributed (other than a contribution described in section 530(b)(2)(B)) during such year to a qualified State tuition program for the benefit of such beneficiary, any amount contributed to such accounts for such taxable year; and”.

Subsec. (e)(2)(A). Pub. L. 107-22, §1(b)(2)(B), substituted “Coverdell education savings” for “education individual retirement”.

2000—Subsec. (a)(2). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer” for “a Archer”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(6)], substituted “Archer MSA” for “medical savings account”.

Subsec. (d). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(6), (b)(2)(C), (6)], substituted “Archer MSAs” for “medical savings accounts” in heading, “Archer MSAs” for “medical savings accounts” in introductory provisions, and “Archer MSA” for “medical savings account” in concluding provisions.

1998—Pub. L. 105-206, §6023(18)(A), amended section catchline generally. Prior to amendment, catchline read as follows: “Tax on excess contributions to individual retirement accounts, medical savings accounts, certain section 403(b) contracts, and certain individual retirement annuities”.

Subsec. (b)(1)(A). Pub. L. 105-206, §6005(b)(8)(B)(i), inserted “a contribution to a Roth IRA or” after “other than”.

Subsec. (b)(2)(C). Pub. L. 105-206, §6005(b)(8)(B)(ii), inserted “(including the amount contributed to a Roth IRA)” after “annuities”.

Subsec. (e)(1). Pub. L. 105-206, §6004(d)(10)(A), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: “In the case of education individual retirement accounts maintained for the benefit of any 1 beneficiary, the term ‘excess contributions’ means—

“(A) the amount by which the amount contributed for the taxable year to such accounts exceeds \$500, and

“(B) any amount contributed to such accounts for any taxable year if any amount is contributed during such year to a qualified State tuition program for the benefit of such beneficiary.”

Subsec. (e)(2)(B), (C). Pub. L. 105-206, §6004(d)(10)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “Any contribution described in section 530(b)(2)(B) to a qualified State tuition program.”

Subsec. (f). Pub. L. 105-206, §6005(b)(8)(C), made technical amendment to directory language of Pub. L. 105-34, §302(b). See 1997 Amendment note below.

Subsec. (f)(1)(A). Pub. L. 105-206, §6005(b)(8)(A)(i), substituted “Roth IRAs” for “such accounts”.

Subsec. (f)(2)(B). Pub. L. 105-206, §6005(b)(8)(A)(ii), substituted “by the individual to all individual retirement plans” for “to the accounts”.

1997—Subsec. (a)(4). Pub. L. 105-34, §213(d)(1), added par. (4).

Subsec. (d). Pub. L. 105-33 inserted “or section 138(c)(3)” after “section 220(f)(3)” in concluding provisions.

Subsec. (e). Pub. L. 105-34, §213(d)(2), added subsec. (e).

Subsec. (f). Pub. L. 105-34, §302(b), as amended by Pub. L. 105-206, §6005(b)(8)(C), added subsec. (f).

1996—Pub. L. 104-191, §301(e)(1), inserted “medical savings accounts,” after “accounts,” in section catchline.

Subsec. (a). Pub. L. 104-191, §301(e)(1)-(3), struck out “or” at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

Subsec. (b)(1)(A). Pub. L. 104-188, §1704(t)(72), provided that section 521(b)(41) of Pub. L. 102-318 shall be applied as if “section” appeared instead of “sections” in the material proposed to be stricken. See 1992 Amendment note below.

Pub. L. 104-188, §1704(t)(70), substituted “section” for “sections”.

Subsec. (d). Pub. L. 104-191, §301(e)(4), added subsec. (d).

1992—Subsec. (b)(1)(A). Pub. L. 102-318, which directed the substitution of “sections 402(c)” for “sections 402(a)(5), 402(a)(7)”, was executed by substituting “sections 402(c)” for “section 402(a)(5), 402(a)(7)”. See 1996 Amendment note above.

1988—Subsec. (b). Pub. L. 100-647 substituted “shall be computed without regard to section 219(g)” for “(after application of section 408(o)(2)(B)(ii) shall be increased by the nondeductible limit under section 408(o)(2)(B))” in last sentence.

1986—Subsec. (b). Pub. L. 99-514, §1102(b)(1), inserted at end “For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 (after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B).”

Pub. L. 99-514, §1848(f), in introductory provisions, substituted “or individual retirement annuities” for “, individual retirement annuities, or bonds”, in par. (1)(A), substituted “(other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), or 408(d)(3)), over” for “or bonds (other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3), or 408(d)(3)), over”, and in par. (2)(A), struck out “or bonds” after “for the annuities”.

1984—Pub. L. 98-369, §491(d)(55), substituted “and certain individual retirement annuities” for “certain individual retirement annuities, and certain retirement bonds” in section catchline.

Subsec. (a). Pub. L. 98-369, §491(d)(41), inserted “or” at end of par. (1), struck out “or” at end of par. (2), struck out par. (3) which imposed a tax in the case of a retirement bond, within the meaning of section 409, established for the benefit of any individual, and in the concluding provision substituted “or annuity” for “, annuity, or bond” and “or annuities” for “, annuities, or bonds”.

Subsec. (b). Pub. L. 98-369, §491(d)(43), substituted in provision following par. (2)(C) “or the individual retirement annuity” for “, individual retirement annuity, or bond”.

Subsec. (b)(1)(A). Pub. L. 98-369, §491(d)(42), which directed the amendment of subpar. (A) by substituting “and 408(d)(3)” for “408(d)(3), and 409(b)(3)(C)” was executed, as the probable intent of Congress, by substituting “or 408(d)(3)” for “408(d)(3), or 409(b)(3)(C)”.

Subsec. (c)(1). Pub. L. 98-369, §491(d)(44), substituted “or 408(d)(3)(A)(iii)” for “, 408(d)(3)(A)(iii), or 409(b)(3)(C)”.

1981—Subsec. (a). Pub. L. 97-34, §311(h)(9), substituted “The tax imposed by this subsection shall be paid by such individual” for “The tax imposed by this subsection shall be paid by the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate”.

Subsec. (b)(1)(A). Pub. L. 97-34, §313(b)(2), inserted “405(d)(3),” after “403(b)(8),”.

Subsec. (b)(1)(B). Pub. L. 97-34, §311(h)(7), substituted “section 219” for “section 219 or 220”.

Subsec. (b)(2)(C). Pub. L. 97-34, §311(h)(7), (10), substituted “section 219” for “section 219 or 220”, and “section 219(f)(6)” for “sections 219(c)(5) and 220(c)(6)”.

1980—Subsec. (b)(1)(A). Pub. L. 96-222, §101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (c)(1). Pub. L. 96-222, §101(a)(13)(C), substituted “409(b)(3)(C)” for “409(d)(3)(C)”.

1978—Subsec. (b)(1)(A). Pub. L. 95-600, §156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95-600, §157(b)(3), substituted “reduced by the sum of—” for “reduced by the excess (if any) of”, struck out “the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable years and reduced by the sum of the distributions out of the account (for the taxable year and all prior taxable years) which were included in the gross income of the payee under section 408(d)(1)” in provision preceding par. (A), and added subpars. (A), (B), and (C).

Subsec. (b). Pub. L. 95-600, §§157(j)(1), 701(aa)(1), struck out in last sentence “if such distribution consists of an excess contribution solely because of employer contributions to a plan or contract described in section 219(b)(2) or by reason of the application of section 219(b)(1) (without regard to the \$1,500 limitation) or section 220(b)(1) (without regard to the \$1,750 limitation) and only if such distribution does not exceed the

excess of \$1,500 or \$1,750 if applicable, over the amount described in paragraph (1)(B)” after “as an amount not contributed”.

Subsec. (c)(1). Pub. L. 95-600, §156(c)(5), inserted “(other than a rollover contribution described in section 403(b)(8), 408(d)(3)(A)(iii), or 409(d)(3)(C))” after “account”.

1976—Subsec. (a)(3). Pub. L. 94-455, §§1501(b)(8)(A), 1904(a)(22)(A), substituted “the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate” for “such individual”, effective for taxable years beginning after December 31, 1976 and substituted “such individual” for “the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate”, effective for the first day of the first month which begins more than 90 days after Oct. 4, 1976.

Subsec. (b)(1)(B). Pub. L. 94-455, §1501(b)(8)(B), inserted “or 220” after “under section 219”.

Subsec. (b)(2). Pub. L. 94-455, §1501(b)(8)(C), inserted “or 220” after “under section 219” and “the taxable year and” before “all prior taxable years” and struck out provisions relating to the treatment of contributions out of individual retirement accounts, annuities or bonds to which section 408(d)(4) applied.

Subsec. (c). Pub. L. 94-455, §1904(a)(22)(B), substituted “subsection (a)(2)” for “subsection (a)(3)” in provisions preceding par. (1).

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1) of Pub. L. 113-295, set out as a note under section 552a of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107-22 effective July 26, 2001, see section 1(c) of Pub. L. 107-22, set out as a note under section 26 of this title.

Amendment by section 401(a)(2), (g)(2)(D) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107-16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107-16, set out as a note under section 72 of this title.

Amendment by section 641(e)(11) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(18)(A) of Pub. L. 105-206 effective July 22, 1998, see section 6023(32) of Pub. L. 105-206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(10) and 6005(b)(8) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 213(d) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105-34, set out as a note under section 26 of this title.

Amendment by section 302(b) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105-34, set out as a note under section 219 of this title.

Amendment by Pub. L. 105-33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of Pub. L. 105-33, set out as an Effective Date note under section 138 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as a note under section 62 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 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 1986 AMENDMENT

Amendment by section 1102(b)(1) of Pub. L. 99-514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99-514, set out as a note under section 219 of this title.

Amendment by section 1848(f) of 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 OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(7), (9), (10) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

Amendment by section 313(b)(2) of Pub. L. 97-34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97-34, set out as a note under section 219 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 22 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 156(c)(3), (5) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600, set out as a note under section 403 of this title.

Amendment by section 157(b)(3) of Pub. L. 95-600 applicable to determination of deductions for taxable years beginning after Dec. 31, 1975, see section 157(b)(4)(A) of Pub. L. 95-600, set out as a note under section 219 of this title.

Pub. L. 95-600, title I, §157(j)(2), Nov. 6, 1978, 92 Stat. 2809, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to contributions made for taxable years beginning after December 31, 1977.”

Pub. L. 95-600, title VII, §701(aa)(2), Nov. 6, 1978, 92 Stat. 2921, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in section 1501 of the Tax Reform Act of 1976 [section 1501 of Pub. L. 94-455] at the time of the enactment of such Act [Oct. 4, 1976]."

Pub. L. 95-600, title VII, §703(j)(13), Nov. 6, 1978, 92 Stat. 2942, provided that: "Notwithstanding section 1904(d) of the Tax Reform Act of 1976 [Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title], the amendment made by section 1904(a)(22)(A) of such Act [amending this section] shall take effect on the date of the enactment of such Act [Oct. 4, 1976]."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(8) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94-455, set out as a note under section 62 of this title.

Amendment by section 1904(a)(22) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE

Pub. L. 93-406, title II, §2002(i)(2), Sept. 2, 1974, 88 Stat. 971, provided that: "The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) [enacting this section and sections 4974 and 6693 of this title and amending sections 37, 46, 50, 56, 72, 801, 805, 901, 3401, and 6047 of this title] shall take effect on January 1, 1975."

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 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, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

#### 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.

### § 4974. Excise tax on certain accumulations in qualified retirement plans

#### (a) General rule

If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

#### (b) Minimum required distribution

For purposes of this section, the term "minimum required distribution" means the minimum amount required to be distributed during a taxable year under section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may

be, as determined under regulations prescribed by the Secretary.

#### (c) Qualified retirement plan

For purposes of this section, the term "qualified retirement plan" means—

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

(2) an annuity plan described in section 403(a),

(3) an annuity contract described in section 403(b),

(4) an individual retirement account described in section 408(a), or

(5) an individual retirement annuity described in section 408(b).

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

#### (d) Waiver of tax in certain cases

If the taxpayer establishes to the satisfaction of the Secretary that—

(1) the shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and

(2) reasonable steps are being taken to remedy the shortfall,

the Secretary may waive the tax imposed by subsection (a) for the taxable year.

(Added Pub. L. 93-406, title II, §2002(e), Sept. 2, 1974, 88 Stat. 967; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title I, §157(i)(1), Nov. 6, 1978, 92 Stat. 2808; Pub. L. 99-514, title XI, §1121(a)(1), title XVIII, §1852(a)(7)(B), (C), Oct. 22, 1986, 100 Stat. 2464, 2866.)

#### AMENDMENTS

1986—Pub. L. 99-514, §1121(a)(1), amended section generally, substituting provisions imposing an excise tax on certain accumulations in qualified retirement plans for provisions imposing an excise tax on certain accumulations in individual retirement accounts and annuities.

Subsec. (a). Pub. L. 99-514, §1852(a)(7)(B), substituted "section 408(a)(6) or 408(b)(3)" for "section 408(a)(6) or (7), or 408(b)(3) or (4)".

Subsec. (b). Pub. L. 99-514, §1852(a)(7)(C), substituted "section 408(a)(6) or 408(b)(3)" for "section 408(a)(6) or (7) or 408(b)(3) or (4)".

1978—Subsec. (c). Pub. L. 95-600 added subsec. (c).

1976—Subsec. (b). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1121(a)(1) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1988, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99-514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(7)(B), (C) of 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 OF 1978 AMENDMENT

Pub. L. 95-600, title I, §157(i)(2), Nov. 6, 1978, 92 Stat. 2809, provided that: "The amendment made by para-