

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-

graph (1) [amending this section] shall apply to taxable years beginning after December 31, 1975.”

EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 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.

**§ 4975. Tax on prohibited transactions**

**(a) Initial taxes on disqualified person**

There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

**(b) Additional taxes on disqualified person**

In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

**(c) Prohibited transaction**

**(1) General rule**

For purposes of this section, the term “prohibited transaction” means any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account; or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

**(2) Special exemption**

The Secretary shall establish an exemption procedure for purposes of this subsection. Pur-

suant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary may not grant an exemption under this paragraph unless he finds that such exemption is—

(A) administratively feasible,

(B) in the interests of the plan and of its participants and beneficiaries, and

(C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu of such hearing the Secretary may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

**(3) Special rule for individual retirement accounts**

An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

**(4) Special rule for Archer MSAs**

An individual for whose benefit an Archer MSA (within the meaning of section 220(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 220(e)(2) applies to such transaction.

**(5) Special rule for Coverdell education savings accounts**

An individual for whose benefit a Coverdell education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 530(d) applies with respect to such transaction.

**(6) Special rule for health savings accounts**

An individual for whose benefit a health savings account (within the meaning of section