retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

''(ii) takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolio of the account beneficiary, and

''(iii) allows the account beneficiary, in directing the investment of assets, sufficient flexibility in obtaining advice to evaluate and select investment options.

The Secretary of Labor shall report the results of such determination to the committees of Congress referred to in subparagraph (D)(ii) not later than December 31, 2007.

''(C) APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAM.—

''(i) CERTIFICATION REQUIRED FOR USE OF COMPUTER MODEL.—

''(I) RESTRICTION ON USE.—Subclause (II) of section 4975(f)(8)(B)(i) of the Internal Revenue Code of 1986 shall not apply to a plan described in subparagraph (A)(i).

''(II) RESTRICTION LIFTED IF MODEL CERTIFIED.—If the Secretary of Labor determines under subparagraph (B) or (D) that there is a computer model investment advice program described in subparagraph (B), subclause (I) shall cease to apply as of the date of such determination.

''(ii) CLASS EXEMPTION IF NO INITIAL CERTIFICATION BY SECRETARY.—If the Secretary of Labor determines under subparagraph (B) that there is no computer model investment advice program described in subparagraph (B), the Secretary of Labor shall grant a class exemption from treatment as a prohibited transaction under section 4975(c) of the Internal Revenue Code of 1986 to any transaction described in section 4975(d)(17)(A) of such Code with respect to plans described in subparagraph (A)(i), subject to such conditions as set forth in such exemption as are in the interests of the plan and its account beneficiary and protective of the rights of the account beneficiary and as are necessary to—

''(I) ensure the requirements of sections 4975(d)(17) and 4975(f)(8) (other than subparagraph (C) thereof) of the Internal Revenue Code of 1986 are met, and

''(II) ensure the investment advice provided under the investment advice program utilizes prescribed objective criteria to provide asset allocation portfolios comprised of securities or other property available as investments under the plan.

If the Secretary of Labor solicits any information under subparagraph (A) from a person and such person does not provide such information within 60 days after the solicitation, then, unless such failure was due to reasonable cause and not wilful neglect, such person shall not be entitled to utilize the class exemption under this clause.

''(D) SUBSEQUENT DETERMINATION.—

''(i) IN GENERAL.—If the Secretary of Labor initially makes a determination described in subparagraph (C)(ii), the Secretary may subsequently determine that there is a computer model investment advice program described in subparagraph (B). If the Secretary makes such subsequent determination, then the class exemption described in subparagraph (C)(ii) shall cease to apply after the later of—

''(I) the date which is 2 years after such subsequent determination, or

''(II) the date which is 3 years after the first date on which such exemption took effect.

''(ii) REQUESTS FOR DETERMINATION.—Any person may request the Secretary of Labor to make a determination under this subparagraph with respect to any computer model investment advice program, and the Secretary of Labor shall make a determination with respect to such request within 90 days. If the Secretary of Labor makes a determination that such program is not described in subparagraph (B), the Secretary shall, within 10 days of such determination, notify the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate of such determination and the reasons for such determination.

''(E) EFFECTIVE DATE.—The provisions of this paragraph shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

COORDINATION OF 2006 AMENDMENT WITH EXISTING EXEMPTIONS

Pub. L. 109–280, title VI, § 601(c), Aug. 17, 2006, 120 Stat. 966, provided that: ''Any exemption under section 408(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1108(b)] and section 4975(d) of the Internal Revenue Code of 1986 provided by the amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall not in any manner alter existing individual or class exemptions, provided by statute or administrative action.''

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.

INTENT OF CONGRESS CONCERNING EMPLOYEE STOCK OWNERSHIP PLANS

Pub. L. 94–455, title VIII, § 803(h), Oct. 4, 1976, 90 Stat. 1590, provided that: ''The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, and the Tax Reduction Act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. Because of the special purposes for which employee stock ownership plans are established, it is consistent with the intent of Congress to permit these plans (whether structured as pension, stock bonus, or profit-sharing plans) to distribute income on employer securities currently.''

§ 4976. Taxes with respect to funded welfare benefit plans

(a) General rule

If—

(1) an employer maintains a welfare benefit fund, and

(2) there is a disqualified benefit provided during any taxable year,

there is hereby imposed on such employer a tax equal to 100 percent of such disqualified benefit.

(b) Disqualified benefit

For purposes of subsection (a)—

(1) In general

The term ''disqualified benefit'' means—

(A) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for such employee under section 419A(d) and such payment is not from such account,

(B) any post-retirement medical benefit or life insurance benefit provided with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of section 505(b) with respect to such benefit (whether or not such requirements apply to such plan), and

(C) any portion of a welfare benefit fund reverting to the benefit of the employer.

(2) Exception for collective bargaining plans

Paragraph (1)(B) shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that the benefits referred to in paragraph (1)(B) were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Exception for nondeductible contributions

Paragraph (1)(C) shall not apply to any amount attributable to a contribution to the fund which is not allowable as a deduction under section 419 for the taxable year or any prior taxable year (and such contribution shall not be included in any carryover under section 419(d)).

(4) Exception for certain amounts charged against existing reserve

Subparagraphs (A) and (B) of paragraph (1) shall not apply to post-retirement benefits charged against an existing reserve for post-retirement medical or life insurance benefits (as defined in section 512(a)(3)(E)) or charged against the income on such reserve.

(c) Definitions

For purposes of this section, the terms used in this section shall have the same respective meanings as when used in subpart D of part I of subchapter D of chapter 1.

(Added Pub. L. 98–369, div. A, title V, §511(c)(1), July 18, 1984, 98 Stat. 861; amended Pub. L. 99–514, title XVIII, §1851(a)(11), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100–647, title I, §1011B(a)(27)(A), (B), title III, §3021(a)(1)(C), Nov. 10, 1988, 102 Stat. 3487, 3626; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830.)

CODIFICATION

Pub. L. 101–140 amended this section to read as if the amendments made by section 1011B(a)(27) of Pub. L. 100–647 (enacting subsec. (c)) had not been enacted. Subsequent to enactment by Pub. L. 100–647, subsec. (c) was amended by Pub. L. 100–647, §3021(a)(1)(C). See 1988 Amendment note below.

AMENDMENTS

1989—Subsec. (b)(5). Pub. L. 101–140 amended subsec. (b) to read as if amendments by Pub. L. 100–647, §1011B(a)(27)(B), had not been enacted, see 1988 Amendment note below.

Subsecs. (c), (d). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, §1011B(a)(27)(A), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b)(5). Pub. L. 100–647, §1011B(a)(27)(B), added par. (5) relating to limitation in case of benefits to which section 89 applies.

Subsec. (c). Pub. L. 100–647, §1011B(a)(27)(A), added subsec. (c) relating to tax on funded welfare benefit funds which include discriminatory employee benefit plan. Former subsec. (c) redesignated (d).

Subsec. (c)(1)(B). Pub. L. 100–647, §3021(a)(1)(C)(i), substituted ''any testing year (as defined in section 89(j)(13))'' for ''any plan year'', see Codification note above.

Subsec. (c)(2)(A). Pub. L. 100–647, §3021(a)(1)(C)(ii), substituted ''testing'' for ''plan'' in cls. (i) and (ii), see Codification note above.

Subsec. (d). Pub. L. 100–647, §1011B(a)(27)(A), redesignated former subsec. (c) as (d).

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of subsection (a), the term 'disqualified benefit' means—

''(1) any medical benefit or life insurance benefit provided with respect to a key employee other than from a separate account established for such owner under section 419A(d), and

''(2) any post-retirement medical or life insurance benefit unless the plan meets the requirements of section 505(b)(1) with respect to such benefit, and

''(3) any portion of such fund reverting to the benefit of the employer.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(27)(A), (B) 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 3021(a)(1)(C) of Pub. L. 100–647 effective as if included in the amendments by section 1151 of Pub. L. 99–514, see section 3021(d)(1) of Pub. L. 100–647, set out as a note under section 129 of this title.

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

Section applicable to benefits provided after Dec. 31, 1985, see section 511(e)(7) of Pub. L. 98–369, set out as a note under section 419 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.

§ 4977. Tax on certain fringe benefits provided by an employer

(a) Imposition of tax

In the case of an employer to whom an election under this section applies for any calendar year, there is hereby imposed a tax for such calendar year equal to 30 percent of the excess fringe benefits.

(b) Excess fringe benefits

For purposes of subsection (a), the term ''excess fringe benefits'' means, with respect to any calendar year—

(1) the aggregate value of the fringe benefits provided by the employer during the calendar year which were not includible in gross income under paragraphs (1) and (2) of section 132(a), over

(2) 1 percent of the aggregate amount of compensation—

(A) which was paid by the employer during such calendar year to employees, and

(B) was includible in gross income for purposes of chapter 1.

(c) Effect of election on section 132(a)

If—

(1) an election under this section is in effect with respect to an employer for any calendar year, and

(2) at all times on or after January 1, 1984, and before the close of the calendar year involved, substantially all of the employees of the employer were entitled to employee discounts on goods or services provided by the employer in 1 line of business,

for purposes of paragraphs (1) and (2) of section 132(a) (but not for purposes of section 132(h)), all employees of any line of business of the employer which was in existence on January 1, 1984, shall be treated as employees of the line of business referred to in paragraph (2).

(d) Period of election

An election under this section shall apply to the calendar year for which made and all subsequent calendar years unless revoked by the employer.

(e) Treatment of controlled groups

All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(f) Section to apply only to employment within the United States

Except as otherwise provided in regulations, this section shall apply only with respect to employment within the United States.

(Added Pub. L. 98–369, div. A, title V, § 531(e)(1), July 18, 1984, 98 Stat. 885; amended Pub. L. 99–514, title XVIII, § 1853(c)(1), (2), Oct. 22, 1986, 100 Stat. 2871; Pub. L. 103–66, title XIII, § 13213(d)(3)(D), Aug. 10, 1993, 107 Stat. 474; Pub. L. 104–188, title I, § 1704(t)(66), Aug. 20, 1996, 110 Stat. 1890.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188 substituted ''section 132(h)'' for ''section 132(i)(2)'' in closing provisions.

1993—Subsec. (c). Pub. L. 103–66 substituted ''section 132(i)(2)'' for ''section 132(g)(2)'' in closing provisions.

1986—Subsec. (c)(2). Pub. L. 99–514, § 1853(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''as of January 1, 1984, substantially all of the employees of the employer were entitled to employee discounts or services provided by the employer in 1 line of business,''.

Subsec. (f). Pub. L. 99–514, § 1853(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

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

Section effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as a note under section 132 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.

APPLICATION OF SUBSECTION (c) OF THIS SECTION TO AGRICULTURAL COOPERATIVES INCORPORATED IN 1964

Pub. L. 99–514, title XVIII, § 1853(c)(3), Oct. 22, 1986, 100 Stat. 2871, provided that: ''For purposes of determining whether the requirements of section 4977(c) of the Internal Revenue Code of 1954 [now 1986] are met in the case of an agricultural cooperative incorporated in 1964, there shall not be taken into account employees of a member of the same controlled group as such cooperative which became a member during July 1980.''

§ 4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives

(a) Tax on dispositions of securities to which section 1042 applies before close of minimum holding period

If, during the 3-year period after the date on which the employee stock ownership plan or eligible worker-owned cooperative acquired any qualified securities in a sale to which section 1042 applied or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied, such plan or cooperative disposes of any qualified securities and—

(1) the total number of shares held by such plan or cooperative after such disposition is less than the total number of employer securities held immediately after such sale, or

(2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition