financings, 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.''

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 section, see section 1141 of Pub. L. 99–514, 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.

§ 4979A. Tax on certain prohibited allocations of qualified securities

(a) Imposition of tax

If—

(1) there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative,

(2) there is an allocation described in section 664(g)(5)(A),

(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.

(b) Prohibited allocation

For purposes of this section, the term ''prohibited allocation'' means—

(1) any allocation of qualified securities acquired in a sale to which section 1042 applies which violates the provisions of section 409(n), and

(2) any benefit which accrues to any person in violation of the provisions of section 409(n).

(c) Liability for tax

The tax imposed by this section shall be paid—

(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

(A) the employer sponsoring such plan, or

(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.

(d) Special statute of limitations for tax attributable to certain allocations

The statutory period for the assessment of any tax imposed by this section on an allocation described in subsection (a)(2) of qualified employer securities shall not expire before the date which is 3 years from the later of—

(1) the 1st allocation of such securities in connection with a qualified gratuitous transfer (as defined in section 664(g)(1)), or

(2) the date on which the Secretary is notified of the allocation described in subsection (a)(2).

(e) Definitions and special rules

For purposes of this section—

(1) Definitions

Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

(2) Special rules relating to tax imposed by reason of paragraph (3) or (4) of subsection (a)

(A) Prohibited allocations

The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

(B) Synthetic equity

The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

(C) Special rule during first nonallocation year

For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

(D) Statute of limitations

The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

(ii) the date on which the Secretary is notified of such allocation or ownership.

(Added and amended Pub. L. 99–514, title XI, § 1172(b)(2), title XVIII, § 1854(a)(9)(A), Oct. 22, 1986, 100 Stat. 2514, 2877; Pub. L. 101–239, title VII, § 7304(a)(2)(D), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, § 1704(t)(22), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title XV, § 1530(c)(15)–(17), Aug. 5, 1997, 111 Stat. 1079, 1080; Pub. L. 107–16, title VI, § 656(c), June 7, 2001, 115 Stat. 134.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–16, § 656(c)(1), added pars. (3) and (4) and, in concluding provisions, substituted ''there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.'' for ''there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.''

Subsec. (c). Pub. L. 107–16, § 656(c)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The tax imposed by this section shall be paid by—

''(1) the employer sponsoring such plan, or

''(2) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be).''

Subsec. (e). Pub. L. 107–16, § 656(c)(3), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''Terms used in this section have the same respective meaning as when used in section 4978.''