

**§ 4971. Taxes on failure to meet minimum funding standards**

**(a) Initial tax**

If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—

(1) in the case of a single-employer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year,

(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year, and

(3) in the case of a CSEC plan, 10 percent of the CSEC accumulated funding deficiency as of the end of the plan year ending with or within the taxable year.

**(b) Additional tax**

If—

(1) a tax is imposed under subsection (a)(1) on any unpaid minimum required contribution and such amount remains unpaid as of the close of the taxable period,

(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period, or

(3) a tax is imposed under subsection (a)(3) on any CSEC accumulated funding deficiency and the CSEC accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution, accumulated funding deficiency, or CSEC accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.

**(c) Definitions**

For purposes of this section—

**(1) Accumulated funding deficiency**

The term “accumulated funding deficiency” has the meaning given to such term by section 431.

**(2) Correct**

The term “correct” means, with respect to an accumulated funding deficiency or CSEC accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency or CSEC accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

**(3) Taxable period**

The term “taxable period” means, with respect to an accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable, the period beginning with the end of the plan year in which there is an accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable, and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a), or

(B) the date on which the tax imposed by subsection (a) is assessed.

**(4) Unpaid minimum required contribution**

**(A) In general**

The term “unpaid minimum required contribution” means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

**(B) Ordering rule**

Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.

**(5) CSEC accumulated funding deficiency**

The term “CSEC accumulated funding deficiency” means the accumulated funding deficiency determined under section 433.

**(d) Notification of the Secretary of Labor**

Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable, or

(2) to comment on the imposition of such tax.

**(e) Liability for tax**

**(1) In general**

Except as provided in paragraph (2), the tax imposed by subsection (a), (b), or (f) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(a)(2).

**(2) Joint and several liability where employer member of controlled group**

**(A) In general**

If an employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a), (b), (f), or (g).

**(B) Controlled group**

For purposes of subparagraph (A), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

**(f) Failure to pay liquidity shortfall**

**(1) In general**

In the case of a plan to which section 430(j)(4) or 433(f) applies, there is hereby im-

posed a tax of 10 percent of the excess (if any) of—

(A) the amount of the liquidity shortfall for any quarter, over

(B) the amount of such shortfall which is paid by the required installment under section 430(j) or 433(f), whichever is applicable, for such quarter (but only if such installment is paid on or before the due date for such installment).

**(2) Additional tax**

If the plan has a liquidity shortfall as of the close of any quarter and as of the close of each of the following 4 quarters, there is hereby imposed a tax equal to 100 percent of the amount on which tax was imposed by paragraph (1) for such first quarter.

**(3) Definitions and special rule**

**(A) Liquidity shortfall; quarter**

For purposes of this subsection, the terms “liquidity shortfall” and “quarter” have the respective meanings given such terms by section 430(j) or 433(f), whichever is applicable.

**(B) Special rule**

If the tax imposed by paragraph (2) is paid with respect to any liquidity shortfall for any quarter, no further tax shall be imposed by this subsection on such shortfall for such quarter.

**(4) Waiver by Secretary**

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

(A) the liquidity shortfall described in paragraph (1) was due to reasonable cause and not willful neglect, and

(B) reasonable steps have been taken to remedy such liquidity shortfall,

the Secretary may waive all or part of the tax imposed by this subsection.

**(g) Multiemployer plans in endangered or critical status**

**(1) In general**

Except as provided in this subsection—

(A) no tax shall be imposed under this section for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 432, and

(B) any tax imposed under this subsection for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in endangered status pursuant to section 432 shall be in addition to any other tax imposed by this section.

**(2) Failure to comply with funding improvement or rehabilitation plan**

**(A) In general**

If any funding improvement plan or rehabilitation plan in effect under section 432 with respect to a multiemployer plan requires an employer to make a contribution to the plan, there is hereby imposed a tax on each failure of the employer to make the re-

quired contribution within the time required under such plan.

**(B) Amount of tax**

The amount of the tax imposed by subparagraph (A) shall be equal to the amount of the required contribution the employer failed to make in a timely manner.

**(C) Liability for tax**

The tax imposed by subparagraph (A) shall be paid by the employer responsible for contributing to or under the rehabilitation plan which fails to make the contribution.

**(3) Failure to meet requirements for plans in endangered or critical status**

If—

(A) a plan which is in seriously endangered status fails to meet the applicable benchmarks by the end of the funding improvement period, or

(B) a plan which is in critical status either—

(i) fails to meet the requirements of section 432(e) by the end of the rehabilitation period, or

(ii) has received a certification under section 432(b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of this section for the last plan year in such funding improvement, rehabilitation, or 3-consecutive year period (and each succeeding plan year until such benchmarks or requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such benchmarks or requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

**(4) Failure to adopt rehabilitation plan**

**(A) In general**

In the case of a multiemployer plan which is in critical status, there is hereby imposed a tax on the failure of such plan to adopt a rehabilitation plan within the time prescribed under section 432.

**(B) Amount of tax**

The amount of the tax imposed under subparagraph (A) with respect to any plan sponsor for any taxable year shall be the greater of—

(i) the amount of tax imposed under subsection (a) for the taxable year (determined without regard to this subsection), or

(ii) the amount equal to \$1,100 multiplied by the number of days during the taxable year which are included in the period beginning on the day following the close of the 240-day period described in section 432(e)(1)(A) and ending on the day on which the rehabilitation plan is adopted.

**(C) Liability for tax**

**(i) In general**

The tax imposed by subparagraph (A) shall be paid by each plan sponsor.

**(ii) Plan sponsor**

For purposes of clause (i), the term “plan sponsor” has the meaning given such term by section 432(j)(9).

**(5) Waiver**

In the case of a failure described in paragraph (2) or (3) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by this subsection. For purposes of this paragraph, reasonable cause includes unanticipated and material market fluctuations, the loss of a significant contributing employer, or other factors to the extent that the payment of tax under this subsection with respect to the failure would be excessive or otherwise inequitable relative to the failure involved.

**(6) Terms used in section 432**

For purposes of this subsection, any term used in this subsection which is also used in section 432 shall have the meaning given such term by section 432.

**(h) Failure of a CSEC plan sponsor to adopt funding restoration plan****(1) In general**

In the case of a CSEC plan that is in funding restoration status (within the meaning of section 433(j)(5)(A)), there is hereby imposed a tax on the failure of such plan to adopt a funding restoration plan within the time prescribed under section 433(j)(3).

**(2) Amount of tax**

The amount of the tax imposed under paragraph (1) with respect to any plan sponsor for any taxable year shall be the amount equal to \$100 multiplied by the number of days during the taxable year which are included in the period beginning on the day following the close of the 180-day period described in section 433(j)(3) and ending on the day on which the funding restoration plan is adopted.

**(3) Waiver by Secretary**

In the case of a failure described in paragraph (1) which the Secretary determines is due to reasonable cause and not to willful neglect, the Secretary may waive a portion or all of the tax imposed by such paragraph.

**(4) Liability for tax**

The tax imposed by paragraph (1) shall be paid by the plan sponsor (within the meaning of section 433(j)(5)(E)).

**(i) Cross references**

**For disallowance of deduction for taxes paid under this section, see section 275.**

**For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).**

**For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.**

(Added Pub. L. 93-406, title II, §1013(b), Sept. 2, 1974, 88 Stat. 920; amended Pub. L. 94-455, title

XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-364, title II, §204, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 96-596, §2(a)(1)(J), (2)(H), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 100-203, title IX, §§9304(c)(1), 9305(a), Dec. 22, 1987, 101 Stat. 1330-348, 1330-351; Pub. L. 103-465, title VII, §751(a)(9)(B), Dec. 8, 1994, 108 Stat. 5020; Pub. L. 104-188, title I, §1464(a), Aug. 20, 1996, 110 Stat. 1824; Pub. L. 109-280, title I, §114(e)(1)-(4), title II, §212(b), Aug. 17, 2006, 120 Stat. 854, 855, 915; Pub. L. 110-458, title I, §§101(d)(2)(F), 102(b)(2)(I), (3)(A), Dec. 23, 2008, 122 Stat. 5099, 5103; Pub. L. 113-97, title II, §202(c)(8), (9), Apr. 7, 2014, 128 Stat. 1137, 1138; Pub. L. 115-141, div. U, title IV, §401(a)(225)-(228), (b)(44), Mar. 23, 2018, 132 Stat. 1195, 1204.)

## REFERENCES IN TEXT

Section 3002(b) of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (i), is classified to section 1202(b) of Title 29, Labor.

## AMENDMENTS

2018—Subsec. (b). Pub. L. 115-141, §401(a)(225), which directed substitution of “minimum required contribution, accumulated funding deficiency, or CSEC accumulated funding deficiency, whichever is applicable” for “minimum required contribution,” and all that followed through “whichever is applicable”, resulted in no change in text of concluding provisions after the probable intent execution of Pub. L. 113-97, §202(c)(8)(B)(ii). See 2014 Amendment note below. Had the amendment by Pub. L. 113-97 not been executed, amendment by Pub. L. 115-141 would still require execution as the probable intent of Congress because the original text directed to be stricken would have read “minimum required contribution or accumulated funding deficiency, whichever is applicable”, with no comma following “contribution”.

Subsec. (c)(3). Pub. L. 115-141, §401(a)(226), substituted “applicable, and ending” for “applicable and ending” in introductory provisions.

Subsec. (d). Pub. L. 115-141, §401(b)(44), struck out concluding provisions which read as follows: “In the case of a multiemployer plan which is in reorganization under section 418, the same notice and opportunity shall be provided to the Pension Benefit Guaranty Corporation.”

Subsec. (f)(1)(B). Pub. L. 115-141, §401(a)(227), substituted “applicable, for” for “applicable for”.

Subsec. (g)(4)(C)(ii). Pub. L. 115-141, §401(a)(228), substituted “section 432(j)(9)” for “section 432(i)(9)”.

2014—Subsec. (a)(3). Pub. L. 113-97, §202(c)(8)(A), added par. (3).

Subsec. (b). Pub. L. 113-97, §202(c)(8)(B)(ii), which directed substitution of “minimum required contribution, accumulated funding deficiency, or CSEC accumulated funding deficiency” for “minimum required contributions or accumulated funding deficiency”, was executed by making the substitution for “minimum required contribution or accumulated funding deficiency” in concluding provisions, to reflect the probable intent of Congress.

Subsec. (b)(3). Pub. L. 113-97, §202(c)(8)(B)(i), added par. (3).

Subsec. (c)(2). Pub. L. 113-97, §202(c)(8)(C)(i), substituted “accumulated funding deficiency or CSEC accumulated funding deficiency” for “accumulated funding deficiency” in two places.

Subsec. (c)(3). Pub. L. 113-97, §202(c)(8)(C)(ii), substituted “accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution” for “accumulated funding deficiency or unpaid minimum required contribution” in two places in introductory provisions.

Subsec. (c)(5). Pub. L. 113-97, §202(c)(8)(C)(iii), added par. (5).

Subsec. (d)(1). Pub. L. 113-97, § 202(c)(8)(D), substituted “accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution” for “accumulated funding deficiency or unpaid minimum required contribution”.

Subsec. (f)(1). Pub. L. 113-97, § 202(c)(8)(E)(i), substituted “430(j)(4) or 433(f)” for “430(j)(4)” in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 113-97, § 202(c)(8)(E)(ii), substituted “430(j) or 433(f), whichever is applicable” for “430(j)”.

Subsec. (f)(3)(A). Pub. L. 113-97, § 202(c)(8)(E)(iii), substituted “430(j) or 433(f), whichever is applicable” for “412(m)(5)”.

Subsecs. (h), (i). Pub. L. 113-97, § 202(c)(9), added subsec. (h) and redesignated former subsec. (h) as (i).

2008—Subsec. (b)(1). Pub. L. 110-458, § 101(d)(2)(F)(i), substituted “minimum required” for “required minimum”.

Subsec. (c)(3). Pub. L. 110-458, § 101(d)(2)(F)(ii), inserted “or unpaid minimum required contribution, whichever is applicable” after “accumulated funding deficiency” in two places in introductory provisions.

Subsec. (d)(1). Pub. L. 110-458, § 101(d)(2)(F)(ii), inserted “or unpaid minimum required contribution, whichever is applicable” after “accumulated funding deficiency”.

Subsec. (e)(1). Pub. L. 110-458, § 101(d)(2)(F)(iii), substituted “section 412(a)(2)” for “section 412(a)(1)(A)”.

Subsec. (e)(2)(A). Pub. L. 110-458, § 102(b)(3)(A), amended directory language of Pub. L. 109-280, § 212(b)(2). See 2006 Amendment note below.

Subsec. (g)(4)(B)(ii). Pub. L. 110-458, § 102(b)(2)(I)(i), substituted “day following the close of” for “first day of”.

Subsec. (g)(4)(C)(ii). Pub. L. 110-458, § 102(b)(2)(I)(ii), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: “For purposes of clause (i), the term ‘plan sponsor’ in the case of a multiemployer plan means the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.”

2006—Subsecs. (a), (b). Pub. L. 109-280, § 114(e)(1), amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

“(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 10 percent (5 percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year.

“(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected.”

Subsec. (c)(1). Pub. L. 109-280, § 114(e)(2)(A), substituted “section 431” for “the last two sentences of section 412(a)”.

Subsec. (c)(4). Pub. L. 109-280, § 114(e)(2)(B), added par. (4).

Subsec. (e)(1). Pub. L. 109-280, § 114(e)(3), substituted “section 412(a)(1)(A)” for “section 412(b)(3)(A)”.

Subsec. (e)(2)(A). Pub. L. 109-280, § 212(b)(2), as amended by Pub. L. 110-458, § 102(b)(3)(A), substituted “If an” for “In the case of a plan other than a multiemployer plan, if the” and “(f), or (g)” for “or (f)”.

Subsec. (f)(1). Pub. L. 109-280, § 114(e)(4), substituted “section 430(j)(4)” for “section 412(m)(5)” in introductory provisions and “section 430(j)” for “section 412(m)” in subpar. (B).

Subsecs. (g), (h). Pub. L. 109-280, § 212(b)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

1996—Subsec. (f)(4). Pub. L. 104-188 added par. (4).

1994—Subsec. (e)(1), (2)(A). Pub. L. 103-465, § 751(a)(9)(B)(i), substituted “(a), (b), or (f)” for “(a) or (b)”.

Subsecs. (f), (g). Pub. L. 103-465, § 751(a)(9)(B)(ii), added subsec. (f) and redesignated former subsec. (f) as (g).

1987—Subsec. (a). Pub. L. 100-203, § 9305(a)(2)(A), struck out at end “The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).”

Pub. L. 100-203, § 9304(c)(1), substituted “10 percent (5 percent in the case of a multiemployer plan)” for “5 percent”.

Subsec. (b). Pub. L. 100-203, § 9305(a)(2)(B), struck out at end “The tax imposed by this subsection shall be paid by the employer described in subsection (a).”

Subsecs. (e), (f). Pub. L. 100-203, § 9305(a)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (b). Pub. L. 96-596, § 2(a)(1)(J), substituted “taxable period” for “correction period”.

Subsec. (c)(1). Pub. L. 96-364, § 204(1), substituted “last two sentences” for “last sentence”.

Subsec. (c)(3). Pub. L. 96-596, § 2(a)(2)(H), substituted provision defining taxable period as the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section or the date on which the tax imposed by subsec. (a) of this section is assessed for provision defining correction period as the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b) of this section, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and by any other period which the Secretary determines reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero.

Subsec. (d). Pub. L. 96-364, § 204(2), inserted provisions relating to a multiemployer plan in reorganization.

1976—Subsecs. (c), (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(e)(1)–(4) of Pub. L. 109-280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109-280, as added by Pub. L. 110-458, set out as a note under section 401 of this title.

Amendment by section 212(b) of Pub. L. 109-280 applicable with respect to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within such taxable year, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109-280, set out as a note under section 412 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, § 1464(b), Aug. 20, 1996, 110 Stat. 1825, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendment made by clause (ii) of section 751(a)(9)(B) of the Retirement Protection Act of 1994 [Pub. L. 103-465] (108 Stat. 5020).”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to plan years beginning after Dec. 31, 1994, see section 751(b)(1)

of Pub. L. 103-465, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9304(c)(2), Dec. 22, 1987, 101 Stat. 1330-348, provided that: "The amendments made by this subsection [amending this section] shall apply to plan years beginning after 1988."

Amendment by section 9305(a) of Pub. L. 100-203 applicable with respect to plan years beginning after December 31, 1987, see section 9305(d) of Pub. L. 100-203, set out as a note under section 412 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96-364, set out as an Effective Date note under section 194A of this title.

#### EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by section 401(b)(44) of Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

#### 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.

#### SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of amendment by section 212(b) of Pub. L. 109-280 to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109-280, set out as a note under section 412 of this title.

#### EXEMPTION FROM EXCISE TAXES FOR CERTAIN MULTIEMPLOYER PENSION PLANS

Pub. L. 109-280, title II, §214, Aug. 17, 2006, 120 Stat. 918, provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of law, no tax shall be imposed under subsection (a) or (b) of section 4971 of the Internal Revenue Code of 1986 with respect to any accumulated funding deficiency of a plan described in subsection (b) of this section for any taxable year beginning before the earlier of—

"(1) the taxable year in which the plan sponsor adopts a rehabilitation plan under section 305(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(e)] and section 432(e) of such Code (as added by this Act); or

"(2) the taxable year that contains January 1, 2009.

"(b) PLAN DESCRIBED.—A plan described under this subsection is a multiemployer pension plan—

"(1) with less than 100 participants;

"(2) with respect to which the contributing employers participated in a Federal fishery capacity reduction program;

"(3) with respect to which employers under the plan participated in the Northeast Fisheries Assistance Program; and

"(4) with respect to which the annual normal cost is less than \$100,000 and the plan is experiencing a funding deficiency on the date of enactment of this Act [Aug. 17, 2006]."

#### 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.

### § 4972. Tax on nondeductible contributions to qualified employer plans

#### (a) Tax imposed

In the case of any qualified employer plan, there is hereby imposed a tax equal to 10 percent of the nondeductible contributions under the plan (determined as of the close of the taxable year of the employer).

#### (b) Employer liable for tax

The tax imposed by this section shall be paid by the employer making the contributions.

#### (c) Nondeductible contributions

For purposes of this section—

##### (1) In general

The term "nondeductible contributions" means, with respect to any qualified employer plan, the sum of—

(A) the excess (if any) of—

(i) the amount contributed for the taxable year by the employer to or under such plan, over

(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

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

(i) the portion of the amount so determined returned to the employer during the taxable year, and

(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

##### (2) Ordering rule for section 404

For purposes of paragraph (1), the amount allowable as a deduction under section 404 for any taxable year shall be treated as—

(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

(B) then from contributions made during such taxable year.

##### (3) Contributions which may be returned to employer

In determining the amount of nondeductible contributions for any taxable year, there shall