

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 is less than 30 percent of the total value of all employer securities as of such disposition (60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied),

there is hereby imposed a tax on the disposition equal to the amount determined under subsection (b).

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be equal to 10 percent of the amount realized on the disposition.

(2) Limitation

The amount realized taken into account under paragraph (1) shall not exceed that portion allocable to qualified securities acquired in the sale to which section 1042 applied or acquired in the qualified gratuitous transfer to which section 664(g) applied determined as if such securities were disposed of—

- (A) first from qualified securities to which section 1042 applied or to which section 664(g) applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and
- (B) then from any other employer securities.

If subsection (d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.

(3) Distributions to employees

The amount realized on any distribution to an employee for less than fair market value shall be determined as if the qualified security had been sold to the employee at fair market value.

(c) Liability for payment of taxes

The tax imposed by this subsection shall be paid by—

- (1) the employer, or
- (2) the eligible worker-owned cooperative,

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

(d) Section not to apply to certain dispositions

(1) Certain distributions to employees

This section shall not apply with respect to any distribution of qualified securities (or sale of such securities) which is made by reason of—

- (A) the death of the employee,
- (B) the retirement of the employee after the employee has attained 59½ years of age,
- (C) the disability of the employee (within the meaning of section 72(m)(7)), or
- (D) the separation of the employee from service for any period which results in a 1-