

ment 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 not be taken into account any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(i) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).

#### **(4) Special rule for self-employed individuals**

For purposes of paragraph (1), if—

(A) the amount which is required to be contributed to a plan under section 412 on behalf of an individual who is an employee (within the meaning of section 401(c)(1)), exceeds

(B) the earned income (within the meaning of section 404(a)(8)) of such individual derived from the trade or business with respect to which such plan is established,

such excess shall be treated as an amount allowable as a deduction under section 404.

#### **(5) Pre-1987 contributions**

The term “nondeductible contribution” shall not include any contribution made for a taxable year beginning before January 1, 1987.

#### **(6) Exceptions**

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or

(B) so much of the contributions to a simple retirement account (within the meaning of section 408(p)) or a simple plan (within the meaning of section 401(k)(11)) which are not deductible when contributed solely because such contributions are not made in connec-

tion with a trade or business of the employer.

For purposes of subparagraph (A), the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (A). Subparagraph (B) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).<sup>1</sup>

#### **(7) Defined benefit plan exception**

In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6)). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.

#### **(d) Definitions**

For purposes of this section—

##### **(1) Qualified employer plan**

###### **(A) In general**

The term “qualified employer plan” means—

(i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) an annuity plan described in section 403(a),

(iii) any simplified employee pension (within the meaning of section 408(k)), and

(iv) any simple retirement account (within the meaning of section 408(p)).

###### **(B) Exemption for governmental and tax exempt plans**

The term “qualified employer plan” does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1).

##### **(2) Employer**

In the case of a plan which provides contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1), the term “employer” means the person treated as the employer under section 401(c)(4).

(Added Pub. L. 99-514, title XI, §1131(c)(1), Oct. 22, 1986, 100 Stat. 2477; amended Pub. L. 100-647, title I, §1011A(e)(1), (2), title II, §2005(a)(1), Nov. 10, 1988, 102 Stat. 3477, 3610; Pub. L. 103-465, title VII, §755(a), Dec. 8, 1994, 108 Stat. 5023; Pub. L. 104-188, title I, §1421(b)(9)(D), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 105-34, title XV, §1507(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 107-16, title VI, §§616(b)(2)(B), 637(a), (b), 652(b), 653(a), June 7, 2001, 115 Stat. 103, 118, 130; Pub. L. 108-311, title

<sup>1</sup> See References in Text note below.

IV, §§ 404(c), 408(b)(9), Oct. 4, 2004, 118 Stat. 1188, 1193; Pub. L. 109-280, title I, § 114(e)(5), title VIII, § 803(c), Aug. 17, 2006, 120 Stat. 855, 996.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 447(e), referred to in subsec. (c)(6), was repealed and provisions were redesignated as section 447(e) which do not relate to members of the employer's family by Pub. L. 115-97, title I, § 13102(a)(5)(C), Dec. 22, 2017, 131 Stat. 2103.

#### PRIOR PROVISIONS

A prior section, added Pub. L. 93-406, title II, § 2001(f)(1), Sept. 2, 1974, 88 Stat. 955; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-34, title III, § 312(e)(3), Aug. 13, 1981, 95 Stat. 285; Pub. L. 97-448, title I, § 103(c)(10)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98-369, div. A, title IV, § 491(d)(40), July 18, 1984, 98 Stat. 851, related to tax on excess contributions for self-employed individuals, prior to repeal applicable to years beginning after Dec. 31, 1983, by Pub. L. 97-248, title II, § 237(c)(1), Sept. 3, 1982, 96 Stat. 511.

#### AMENDMENTS

2006—Subsec. (c)(6)(A). Pub. L. 109-280, § 803(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

“(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a) and as adjusted under section 404(a)(12)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

“(ii) the amount of contributions described in section 401(m)(4)(A), or”.

Subsec. (c)(7). Pub. L. 109-280, § 114(e)(5), substituted “except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))” for “except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)”.

2004—Subsec. (c)(6). Pub. L. 108-311, § 408(b)(9), amended directory language of Pub. L. 107-16, § 652(b)(3). See 2001 Amendment note below.

Subsec. (c)(6)(A)(ii). Pub. L. 108-311, § 404(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “the sum of—

“(I) the amount of contributions described in section 401(m)(4)(A), plus

“(II) the amount of contributions described in section 402(g)(3)(A), or”.

2001—Subsec. (c)(6). Pub. L. 107-16, § 652(b)(4), substituted “Subparagraph (B)” for “Subparagraph (C)” in concluding provisions.

Pub. L. 107-16, § 652(b)(3), as amended by Pub. L. 108-311, § 408(b)(9), substituted “subparagraph (A)” for “subparagraph (B)” in two places in concluding provisions.

Pub. L. 107-16, § 652(b)(2), in concluding provisions, struck out first sentence which read as follows: “If 1 or more defined benefit plans were taken into account in determining the amount allowable as a deduction under section 404 for contributions to any defined contribution plan, subparagraph (B) shall apply only if such defined benefit plans are described in section 404(a)(1)(D).”

Pub. L. 107-16, § 637(b), in concluding provisions, inserted at end “Subparagraph (C) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).”

Subsec. (c)(6)(A). Pub. L. 107-16, § 652(b)(1), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “contributions that would be deductible under section 404(a)(1)(D) if the plan had more than 100 participants if—

“(i) the plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, and

“(ii) the plan is terminated under section 4041(b) of such Act on or before the last day of the taxable year.”.

Pub. L. 107-16, § 637(a), struck out “and” at end.

Subsec. (c)(6)(B). Pub. L. 107-16, § 652(b)(1), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 107-16, § 637(a), substituted “, or” for period at end.

Subsec. (c)(6)(B)(i). Pub. L. 107-16, § 616(b)(2)(B), substituted “(within the meaning of section 404(a) and as adjusted under section 404(a)(12))” for “(within the meaning of section 404(a))”.

Subsec. (c)(6)(C). Pub. L. 107-16, § 652(b)(1), redesignated subpar. (C) as (B).

Pub. L. 107-16, § 637(a), added subpar. (C).

Subsec. (c)(7). Pub. L. 107-16, § 653(a), added par. (7).

1997—Subsec. (c)(6)(B). Pub. L. 105-34 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7), but only to the extent such contributions do not exceed 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans.”

1996—Subsec. (d)(1)(A)(iv). Pub. L. 104-188 added cl. (iv).

1994—Subsec. (c)(6). Pub. L. 103-465 added par. (6).

1988—Subsec. (c). Pub. L. 100-647, § 1011A(e)(1), amended subsec. (c) generally, revising and restating as pars. (1) to (4) provisions of former pars. (1) and (2).

Subsec. (c)(4), (5). Pub. L. 100-647, § 2005(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(1). Pub. L. 100-647, § 1011A(e)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘qualified employer plan’ means—

“(A) any plan meeting the requirements of section 401(a) which includes a trust exempt from the tax under section 501(a),

“(B) an annuity plan described in section 403(a), and

“(C) any simplified employee pension (within the meaning of section 408(k)).”

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(e)(5) 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 803(c) of Pub. L. 109-280 applicable to contributions for taxable years beginning after Dec. 31, 2005, see section 803(d) of Pub. L. 109-280, set out as a note under section 404 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(c) of Pub. L. 108-311 effective as if included in the provision of Pub. L. 107-16 to which such amendment relates, see section 404(f) of Pub. L. 108-311, set out as a note under section 45A of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 616(b)(2)(B) of Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see section 616(c) of Pub. L. 107-16, set out as a note under section 404 of this title.

Pub. L. 107-16, title VI, §637(d), June 7, 2001, 115 Stat. 118, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.”

Amendment by section 652(b) of Pub. L. 107-16 applicable to plan years beginning after Dec. 31, 2001, see section 652(c) of Pub. L. 107-16, set out as a note under section 404 of this title.

Pub. L. 107-16, title VI, §653(b), June 7, 2001, 115 Stat. 130, provided that: “The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XV, §1507(b), Aug. 5, 1997, 111 Stat. 1067, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title VII, §755(b), Dec. 8, 1994, 108 Stat. 5024, provided that:

“(1) SECTION 4972(C)(6)(A).—Section 4972(c)(6)(A) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years ending on or after the date of enactment of this Act [Dec. 8, 1994].

“(2) SECTION 4972(C)(6)(B).—Section 4972(c)(6)(B) of such Code (as added by this section) shall apply to taxable years ending on or after December 31, 1992.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(e)(1), (2) 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 2005(a)(1) of Pub. L. 100-647 effective as if included in the amendment made by section 1131(c) of Pub. L. 99-514, see section 2005(e) of Pub. L. 100-647, as amended, set out as a note under section 404 of this title.

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with special rules in case of plans maintained pursuant to collective bargaining agreements, see section 1131(d) of Pub. L. 99-514, as amended, set out as an Effective Date of 1986 Amendment note under section 404 of this title.

#### CONSTRUCTION OF 2001 AMENDMENT

Pub. L. 107-16, title VI, §637(c), June 7, 2001, 115 Stat. 118, provided that: “Nothing in the amendments made by this section [amending this section] shall be construed to infer the proper treatment of nondeductible contributions under the laws in effect before such amendments.”

#### 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.

#### INCREASE IN AMOUNT FOR PLAN TERMINATION INSURANCE UNDER EMPLOYEE RETIREMENT INSURANCE SECURITY ACT OF 1974

Pub. L. 100-647, title I, §1011A(e)(5), Nov. 10, 1988, 102 Stat. 3478, provided that: “In the case of any taxable

year beginning in 1987, the amount under section 4972(c)(1)(A)(ii) of the 1986 Code for a plan to which title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] applies shall be increased by the amount (if any) by which, as of the close of the plan year with or within which such taxable year begins—

- “(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed
- “(B) the assets of such plan.”

#### 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.

### § 4973. Tax on excess contributions to certain tax-favored accounts and annuities

#### (a) Tax imposed

In the case of—

- (1) an individual retirement account (within the meaning of section 408(a)),
- (2) an Archer MSA (within the meaning of section 220(d)),
- (3) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock),
- (4) a Coverdell education savings account (as defined in section 530),
- (5) a health savings account (within the meaning of section 223(d)), or
- (6) an ABLE account (within the meaning of section 529A),

there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account or annuity (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

#### (b) Excess contributions

For purposes of this section, in the case of individual retirement accounts or individual retirement annuities, the term “excess contributions” means the sum of—

- (1) the excess (if any) of—
  - (A) the amount contributed for the taxable year to the accounts or for the annuities