not recognized with respect to the disposition of the section 306 stock.

(4) Transactions not in avoidance

If it is established to the satisfaction of the Secretary—

(A) that the distribution, and the disposition or redemption, or

(B) in the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the section 306 stock disposed of (or redeemed) was issued, that the disposition (or redemption) of the section 306 stock,

was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(c) Section 306 stock defined

(1) In general

For purposes of this subchapter, the term ''section 306 stock'' means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) Distributed to seller

Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of section 305(a), any part of such distribution was not includible in the gross income of the shareholder.

(B) Received in a corporate reorganization or separation

Stock which is not common stock and—

(i) which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 368(a)), or in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applied, and

(ii) with respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of part III, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for section 306 stock.

For purposes of this section, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) Stock having transferred or substituted basis

Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) Exception where no earnings and profits

For purposes of this section, the term ''section 306 stock'' does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(3) Certain stock acquired in section 351 exchange

The term ''section 306 stock'' also includes any stock which is not common stock acquired in an exchange to which section 351 applied if receipt of money (in lieu of the stock) would have been treated as a dividend to any extent. Rules similar to the rules of section 304(b)(2) shall apply—

(A) for purposes of the preceding sentence, and

(B) for purposes of determining the application of this section to any subsequent disposition of stock which is section 306 stock by reason of an exchange described in the preceding sentence.

(4) Application of attribution rules for certain purposes

For purposes of paragraphs (1)(B)(ii) and (3), section 318(a) shall apply. For purposes of applying the preceding sentence to paragraph (3), the rules of section 304(c)(3)(B) shall apply.

(d) Stock rights

For purposes of this section—

(1) stock rights shall be treated as stock, and

(2) stock acquired through the exercise of stock rights shall be treated as stock distributed at the time of the distribution of the stock rights, to the extent of the fair market value of such rights at the time of the distribution.

(e) Convertible stock

For purposes of subsection (c)—

(1) if section 306 stock was issued with respect to common stock and later such section 306 stock is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in the section 306 stock), then (except as provided in paragraph (2)) the common stock so received shall not be treated as section 306 stock; and

(2) common stock with respect to which there is a privilege of converting into stock other than common stock (or into property), whether or not the conversion privilege is contained in such stock, shall not be treated as common stock.

(f) Source of gain

The amount treated under subsection (a)(1)(A) as ordinary income shall, for purposes of part I of subchapter N (sec. 861 and following, relating to determination of sources of income), be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If under the preceding sentence such amount is determined to be derived from sources within the United States, such amount shall be considered to be fixed or determinable annual or periodical gains, profits, and income within the meaning of section 871(a) or section 881(a), as the case may be.

(g) Change in terms and conditions of stock

If a substantial change is made in the terms and conditions of any stock, then, for purposes of this section—

(1) the fair market value of such stock shall be the fair market value at the time of the distribution or at the time of such change, whichever such value is higher;

(2) such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of stock shall be determined as of the time of distribution or as of the time of such change, whichever such ratable share is higher; and

(3) subsection (c)(2) shall not apply unless the stock meets the requirements of such subsection both at the time of such distribution and at the time of such change.

(Aug. 16, 1954, ch. 736, 68A Stat. 90; Pub. L. 94–455, title XIX, §§1901(b)(3)(J), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 95–600, title VII, §702(a)(1), (2), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–248, title II, §§222(e)(1)(A), (2), 226(b), 227(a), Sept. 3, 1982, 96 Stat. 480, 492; Pub. L. 98–369, div. A, title VII, §712(i)(2), (*l*)(5)(B), (6), July 18, 1984, 98 Stat. 948, 954; Pub. L. 101–508, title XI, §11801(a)(18), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 108–27, title III, §302(e)(3), May 28, 2003, 117 Stat. 763.)

AMENDMENTS

2003—Subsec. (a)(1)(D). Pub. L. 108–27 added subpar. (D).

1990—Subsec. (h). Pub. L. 101–508 struck out subsec. (h) which related to stock received in distributions and reorganizations to which 1939 Code applied.

1984—Subsec. (b)(1). Pub. L. 98–369, §712(i)(2), substituted ''interest, etc.'' for ''interest'' in heading.

Subsec. (c)(3). Pub. L. 98–369, §712(*l*)(6), incorporated existing second sentence in provision designated subpar. (A) and added subpar. (B).

Subsec. (c)(4). Pub. L. 98–369, §712(*l*)(5)(B), substituted ''the rules of section 304(c)(3)(B) shall apply'' for ''sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein''.

1982—Subsec. (b)(1)(B). Pub. L. 97–248, §222(e)(2), substituted ''paragraph (3) or (4) of section 302(b)'' for ''section 302(b)(3)''.

Subsec. (b)(2). Pub. L. 97–248, §222(e)(1)(A), struck out ''partial or'' before ''complete liquidation''.

Subsec. (c)(3). Pub. L. 97–248, §226(b), added par. (3).

Subsec. (c)(4). Pub. L. 97–248, §227(a), added par. (4).

1980—Subsecs. (a)(3), (b)(5). Pub. L. 96–223 repealed the amendments made by Pub. L. 95–600, §702(a)(1), (2). See 1978 Amendment notes below.

1978—Subsec. (a)(3). Pub. L. 95–600, §702(a)(1), added par. (3) which related to ordinary income from the sale or redemption of section 306 stock which was carryover basis property adjusted for 1976 value. See Repeals note below.

Subsec. (b)(5). Pub. L. 95–600, §702(a)(2), added par. (5) which provided that subsec. (a) of this section shall not apply to the extent that section 303 applies to a distribution in redemption of section 306 stock. See Repeals note below.

1976—Subsec. (a)(1)(A), (B)(i). Pub. L. 94–455, §1901(b)(3)(J), substituted ''ordinary income'' for ''gain from the sale of property which is not a capital asset''.

Subsec. (b)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1901(b)(3)(J), substituted ''ordinary income'' for ''gain from the sale of property which is not a capital asset''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 222(e)(1)(A), (2) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 226(b) of Pub. L. 97–248 applicable to transfers occurring after Aug. 31, 1982, except for certain transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97–248, set out as a note under section 304 of this title.

Pub. L. 97–248, title II, §227(c)(1), Sept. 3, 1982, 96 Stat. 492, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to stock received after August 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(a)(1), (2) of Pub. L. 95–600 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and, except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(a)(3), Nov. 6, 1978, 92 Stat. 2925, provided that the amendments made by section 702(a) of Pub. L. 95–600 would apply to the estates of decedents dying after Dec. 31, 1979, prior to repeal by Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(J) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

REPEALS

Pub. L. 95–600, §702(a)(1), (2), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(a)(1), (2). See Effective Date of 1980 Amendment and Revival of Prior Law note above.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 307. Basis of stock and stock rights acquired in distributions

(a) General rule

If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as ''new stock'') in a distribu-

tion to which section 305(a) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as ''old stock''), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock. Such allocation shall be made under regulations prescribed by the Secretary.

(b) Exception for certain stock rights

(1) In general

If—

(A) a corporation distributes rights to acquire its stock to a shareholder in a distribution to which section 305(a) applies, and

(B) the fair market value of such rights at the time of the distribution is less than 15 percent of the fair market value of the old stock at such time,

then subsection (a) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under paragraph (2) of this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in subsection (a).

(2) Election

The election referred to in paragraph (1) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the Secretary may by regulations prescribe, and shall be irrevocable when made.

(c) Cross reference

For basis of stock and stock rights distributed before June 22, 1954, see section 1052.

(Aug. 16, 1954, ch. 736, 68A Stat. 93; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b)(2). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

SUBPART B—EFFECTS ON CORPORATION

§ 311. Taxability of corporation on distribution

(a) General rule

Except as provided in subsection (b), no gain or loss shall be recognized to a corporation on the distribution (not in complete liquidation) with respect to its stock of—

(1) its stock (or rights to acquire its stock), or

(2) property.

(b) Distributions of appreciated property

(1) In general

If—

(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and

(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(2) Treatment of liabilities

Rules similar to the rules of section 336(b) shall apply for purposes of this subsection.

(3) Special rule for certain distributions of partnership or trust interests

If the property distributed consists of an interest in a partnership or trust, the Secretary may by regulations provide that the amount of the gain recognized under paragraph (1) shall be computed without regard to any loss attributable to property contributed to the partnership or trust for the principal purpose of recognizing such loss on the distribution.

(Aug. 16, 1954, ch. 736, 68A Stat. 94; Pub. L. 91–172, title IX, § 905(a), (b)(1), Dec. 30, 1969, 83 Stat. 713, 714; Pub. L. 94–452, § 2(b), Oct. 2, 1976, 90 Stat. 1511; Pub. L. 94–455, title XIX, § 1901(a)(42)(A), (B)(i), (C), Oct. 4, 1976, 90 Stat. 1771; Pub. L. 95–600, title VII, § 703(j)(2)(A), (B), Nov. 6, 1978, 92 Stat. 2941; Pub. L. 96–471, § 2(b)(1), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 97–248, title II, § 223(a), Sept. 3, 1982, 96 Stat. 483; Pub. L. 98–369, div. A, title I, § 54(a), title VII, § 712(j), July 18, 1984, 98 Stat. 568, 948; Pub. L. 99–514, title VI, § 631(c), Oct. 22, 1986, 100 Stat. 2272; Pub. L. 100–647, title I, §§ 1006(e)(8)(B), (21)(B), 1018(d)(5)(E), Nov. 10, 1988, 102 Stat. 3401, 3403, 3580.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 1018(d)(5)(E), substituted ''distribution (not in complete liquidation) with respect to its stock'' for ''distribution, with respect to its stock,''.

Subsec. (b)(2). Pub. L. 100–647, § 1006(e)(21)(B), substituted ''liabilities'' for ''liabilities in excess of basis'' in heading.

Subsec. (b)(3). Pub. L. 100–647, § 1006(e)(8)(B), added par. (3).

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to distributions of appreciated property for provisions relating to LIFO inventory, liability in excess of basis, and appreciated property used to redeem stock.

1984—Subsec. (d). Pub. L. 98–369, § 54(a)(3), substituted ''Distributions of appreciated property'' for ''Appreciated property used to redeem stock'' in heading.

Subsec. (d)(1). Pub. L. 98–369, § 54(a)(1), substituted ''This subsection shall be applied after the applications of subsections (b) and (c)'' for ''Subsections (b) and (c) shall not apply to any distribution to which this subsection applies'' in provisions following subpar. (B).

Subsec. (d)(1)(A). Pub. L. 98–369, § 54(a)(1), struck out ''of part or all of his stock in such corporation'' before ''and''.

Subsec. (d)(2)(A). Pub. L. 98–369, § 54(a)(2)(A), substituted provisions relating to a distribution which is made with respect to qualified stock if section 302(b)(4) applies to such distribution or such distribution is a qualified distribution for provisions which had related to a distribution to a corporate shareholder if the basis of the property distributed was determined under section 301(d)(2).

Subsec. (d)(2)(B) to (F). Pub. L. 98–369, § 54(a)(2)(A), (B), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which related to distributions to which section 302(b)(4) applied and which were made with respect to qualified stock.

Subsec. (e)(1)(C). Pub. L. 98–369, § 712(j), added subpar. (C).

Subsec. (e)(3). Pub. L. 98–369, § 54(a)(2)(C), added par. (3).

1982—Subsec. (d)(2)(A). Pub. L. 97–248, § 223(a)(1), substituted reference to a distribution to a corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) for reference to a distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution owned at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualified under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii)).

Subsec. (d)(2)(B). Pub. L. 97–248, § 223(a)(1), substituted reference to a distribution to which section 302(b)(4) applies and which is made with respect to qualified stock for reference to a distribution of stock or an obligation of a corporation, which was engaged in at least one trade or business, which had not received property constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of the distribution, and at least 50 percent in value of the outstanding stock of which was owned by the distributing corporation at any time within the 9-year period ending one year before the date of the distribution.

Subsec. (d)(2)(C). Pub. L. 97–248, § 223(a)(1), substituted reference to a distribution of stock or an obligation of a corporation if the requirements of subsec. (e)(2) of this section are met with respect to the distribution for reference to a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (15 U.S.C. 1–7) or the Clayton Act (15 U.S.C. 12–27), or both, to which the United States was a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock was in furtherance of the purposes of the judgment.

Subsec. (d)(2)(G). Pub. L. 97–248, § 223(a)(3), struck out subpar. (G) which provided that a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a) of this title, if with respect to such distributee, subsec. (a)(1) or (b)(1) of section 1101 of this title applied to such distribution.

Subsec. (e). Pub. L. 97–248, § 223(a)(2), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–471 substituted ''section 453B'' for ''Section 453(d)''.

1978—Subsec. (d)(2)(G), (H). Pub. L. 95–600 redesignated subpar. (H) as (G).

1976—Subsec. (d)(1)(B). Pub. L. 94–455, § 1901(a) (42)(A), substituted ''then a gain shall be recognized'' for ''then again shall be recognized''.

Subsec. (d)(2). Pub. L. 94–452 and Pub. L. 94–455 § 1901(a)(42)(B)(i), (C), struck out subpar. (C) relating to certain distributions before Dec. 1, 1974, struck out ''26 Stat. 209;'' before ''15 U.S.C. 1–7)'' and ''38 Stat. 730;'' before ''15 U.S.C. 12–27)'' in subpar. (D), added subpar. (H), and redesignated subpars. (D) to (G), as so amended, as subpars. (C) to (F), respectively.

1969—Subsec. (a). Pub. L. 91–172, § 905(b)(1), inserted reference to subsec. (d).

Subsec. (d). Pub. L. 91–172, § 905(a), added subsec. (d).

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 OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 54(d), July 18, 1984, 98 Stat. 569, as amended by Pub. L. 99–514, § 2, title XVIII, § 1804(b)(3), Oct. 22, 1986, 100 Stat. 2095, 2799; Pub. L. 100–647, title I, § 1018(d)(1)–(3), Nov. 10, 1988, 102 Stat. 3578, provided that:

''(1) SUBSECTION (a).—Except as otherwise provided in this subsection, the amendments made by subsection (a) [amending this section] shall apply to distributions declared on or after June 14, 1984, in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 301 of this title] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(3) EXCEPTION FOR DISTRIBUTIONS BEFORE JANUARY 1, 1985, TO 80-PERCENT CORPORATE SHAREHOLDERS.—

''(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution before January 1, 1985, to an 80-percent corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(B) 80-PERCENT CORPORATE SHAREHOLDER.—The term '80-percent corporate shareholder' means, with respect to any distribution, any corporation which owns—

''(i) stock in the corporation making the distribution possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and

''(ii) at least 80 percent of the total number of shares of all other classes of stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends).

''(C) SPECIAL RULE FOR AFFILIATED GROUP FILING CONSOLIDATED RETURN.—For purposes of this paragraph and paragraph (4), all members of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986) which file a consolidated return for the taxable year which includes the date of the distribution shall be treated as 1 corporation.

''(D) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1988.—

''(i) IN GENERAL.—In the case of a transaction to which this subparagraph applies, subparagraph (A) shall be applied by substituting '1988' for '1985' and the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 [sections 631 to 634 of Pub. L. 99–514, enacting sections 336 and 337 of this title, amending this section and sections 26, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, repealing sections 333, 336, and 337 of this title, and enacting provisions set out as a note under section 301 of this title] shall not apply.

''(ii) TRANSACTION TO WHICH SUBPARAGAPH [sic] APPLIES.—This subparagraph appies [applies] to a transaction in which a Delaware corporation which was incorporated on May 31, 1927, and which was acquired by the transferee on December 10, 1968, transfers to the transferee stock in a corporation—

''(I) with respect to which such Delaware corporation is a 100-percent corporate shareholder, and

''(II) which is a Tennessee corporation which was incorporated on March 2, 1978,, [sic] and which is a successor to an Indiana corporation which was incorporated on June 28, 1946, and acquired by the transferee on December 9 [10], 1968.

''(4) EXCEPTION FOR CERTAIN DISTRIBUTIONS WHERE TENDER OFFER COMMENCED ON MAY 23, 1984.—

''(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution made before September 1, 1986, if—

''(i) such distribution consists of qualified stock held (directly or indirectly) on June 15, 1984, by the distributing corporation,

''(ii) control of the distributing corporation (as defined in section 368(c) of the Internal Revenue Code of 1986) is acquired other than in a tax-free transaction after January 1, 1984, but before January 1, 1985,

''(iii) a tender offer for the shares of the distributing corporation was commenced on May 23, 1984, and was amended on May 24, 1984, and

''(iv) the distributing corporation and the distributee corporation are members of the same affiliated group (as defined in section 1504 of such Code) which filed a consolidated return for the taxable year which includes the date of the distribution.

If the common parent of any affiliated group filing a consolidated return meets the requirements of clauses (ii) and (iii), each other member of such group shall be treated as meeting such requirements.

''(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term 'qualified stock' means any stock in a corporation which on June 15, 1984, was a member of the same affiliated group as the distributing corporation and which filed a consolidated return with the distributing corporation for the taxable year which included June 15, 1984.

''(5) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—

''(A) IN GENERAL.—The amendments made by this section [amending this section and sections 301 and 1223 of this title] shall not apply to distributions before February 1, 1986, if—

''(i) the distribution consists of property held on March 7, 1984 (or property acquired thereafter in the ordinary course of a trade or business) by—

''(I) the controlled corporation, or

''(II) any subsidiary controlled corporation,

''(ii) a group of 1 or more shareholders (acting in concert)—

''(I) acquired, during the 1-year period ending on February 1, 1984, at least 10 percent of the outstanding stock of the controlled corporation,

''(II) held at least 10 percent of the outstanding stock of the common parent on February 1, 1984, and

''(III) submitted a proposal for distributions of interests in a royalty trust from the common parent or the controlled corporation, and

''(iii) the common parent acquired control of the controlled corporation during the 1-year period ending on February 1, 1984.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) The term 'common parent' has the meaning given such term by section 1504(a) of the Internal Revenue Code of 1986.

''(ii) The term 'controlled corporation' means a corporation with respect to which 50 percent or more of the outstanding stock of its common parent is tendered for pursuant to a tender offer outstanding on March 7, 1984.

''(iii) The term 'subsidiary controlled corporation' means any corporation with respect to which the controlled corporation has control (within the meaning of section 368(c) of such Code) on March 7, 1984.

''(6) EXCEPTION FOR CERTAIN DISTRIBUTION OF PARTNERSHIP INTERESTS.—The amendments made by this section shall not apply to any distribution before February 1, 1986, of an interest in a partnership the interests of which were being traded on a national securities exchange on March 7, 1984, if—

''(A) such interest was owned by the distributing corporation (or any member of an affiliated group within the meaning of section 1504(a) of such Code of which the distributing corporation was a member) on March 7, 1984,

''(B) the distributing corporation (or any such affiliated member) owned more than 80 percent of the interests in such partnership on March 7, 1984, and

''(C) more than 10 percent of the interests in such partnership was offered for sale to the public during the 1-year period ending on March 7, 1984.''

Amendment by section 712(j) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; EXCEPTIONS

Pub. L. 97–248, title II, § 223(b), Sept. 3, 1982, 96 Stat. 484, as amended by Pub. L. 97–448, title III, § 306(a)(7), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to distributions after August 31, 1982.

''(2) DISTRIBUTIONS PURSUANT TO RULING REQUESTS BEFORE JULY 23, 1982.—In the case of a ruling request under section 311(d)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the amendments made by this section) made before July 23, 1982, the amendments made by this section [amending this section] shall not apply to distributions made—

''(A) pursuant to a ruling granted pursuant to such request, and

''(B) either before October 21, 1982, or within 90 days after the date of such ruling.

''(3) DISTRIBUTIONS PURSUANT TO FINAL JUDGMENTS OF COURT.—In the case of a final judgment described in section 311(d)(2)(C) of such Code (as in effect before the amendments made by this section) rendered before July 23, 1982, the amendments made by this section [amending this section] shall not apply to distributions made before January 1, 1986, pursuant to such judgment.

''(4) CERTAIN DISTRIBUTIONS WITH RESPECT TO STOCK ACQUIRED BEFORE MAY 1982.—The amendments made by this section [amending this section] shall not apply to distributions—

''(A) which meet the requirements of section 311(d)(2)(A) of such Code (as in effect on the day before the date of the enactment of this Act [Sept. 3, 1982]),

''(B) which are made on or before August 31, 1983, and

''(C) which are made with respect to stock acquired after 1980 and before May 1982.

''(5) DISTRIBUTIONS OF TIMBERLAND WITH RESPECT TO STOCK OF FOREST PRODUCTS COMPANY.—If—

''(A) a forest products company distributes timberland to a shareholder in redemption of the common and preferred stock in such corporation held by such shareholder,

''(B) section 311(d)(2)(A) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) would have applied to such distributions, and

''(C) such distributions are made pursuant to 1 of 2 options contained in a contract between such company and such shareholder which is binding on August 31, 1982, and at all times thereafter,

then such distributions of timberland having an aggregate fair market value on August 31, 1982, not in excess of $10,000,000 shall be treated as distributions to which section 311(d)(2)(A) of such Code (as in effect before the date of the enactment of this Act [Sept. 3, 1982] applies.''

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §703(j)(2)(C), Nov. 6, 1978, 92 Stat. 2941, provided that: ''The amendments made by this paragraph [amending this section] shall take effect as if included in section 2(b) of the Bank Holding Company Tax Act of 1976 [amending this section].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(42)(A), (C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XIX, §1901(a)(42)(B)(ii), Oct. 4, 1976, 90 Stat. 1771, provided that: ''The amendments made by clause (i) [amending this section] shall apply only with respect to distributions after November 30, 1974.''

Pub. L. 94–452, §2(d)(4), Oct. 2, 1976, 90 Stat. 1512, provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1977, with respect to distributions after December 31, 1975, in taxable years ending after December 31, 1975.''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §905(c), Dec. 30, 1969, 83 Stat. 714, as amended by Pub. L. 91–675, Jan. 12, 1971, 84 Stat. 2059, provided that:

''(1) Except as provided in paragraphs (2), (3), (4), and (5), the amendments made by subsections (a) and (b) [amending this section and sections 301 and 312 of this title] shall apply with respect to distributions after November 30, 1969.

''(2) The amendments made by subsections (a) and (b) shall not apply to a distribution before April 1, 1970, pursuant to the terms of—

''(A) a written contract which was binding on the distributing corporation on November 30, 1969, and at all times thereafter before the distribution,

''(B) an offer made by the distributing corporation before December 1, 1969,

''(C) an offer made in accordance with a request for a ruling filed by the distributing corporation with the Internal Revenue Service before December 1, 1969, or

''(D) an offer made in accordance with a registration statement filed with the Securities and Exchange Commission before December 1, 1969.

For purposes of subparagraphs (B), (C), and (D), an offer shall be treated as an offer only if it was in writing and not revocable by its express terms.

''(3) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of specific property in redemption of stock outstanding on November 30, 1969, if—

''(A) every holder of such stock on such date had the right to demand redemption of his stock in such specific property, and

''(B) the corporation had such specific property on hand on such date in a quantity sufficient to redeem all of such stock.

For purposes of the preceding sentence, stock shall be considered to have been outstanding on November 30, 1969, if it could have been acquired on such date through the exercise of an existing right of conversion contained in other stock held on such date.

''(4) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of property (held on December 1, 1969, by the distributing corporation or a corporation which was a wholly owned subsidiary of the distributing corporation on such date) in redemption of stock outstanding on November 30, 1969, which is redeemed and canceled before July 31, 1971, if—

''(A) such redemption is pursuant to a resolution adopted before November 1, 1969, by the Board of Directors authorizing the redemption of a specific amount of stock constituting more than 10 percent of the outstanding stock of the corporation at the time of the adoption of such resolution; and

''(B) more than 40 percent of the stock authorized to be redeemed pursuant to such resolution was redeemed before December 30, 1969, and more than one-half of the stock so redeemed was redeemed with property other than money.

''(5) The amendments made by subsections (a) and (b) shall not apply to a distribution of stock, by a corporation organized prior to December 1, 1969, for the principal purpose of providing an equity participation plan for employees of the corporation whose stock is being distributed (hereinafter referred to as the 'employer corporation') if—

''(A) the stock being distributed was owned by the distributing corporation on November 30, 1969,

''(B) the stock being redeemed was acquired before January 1, 1973, pursuant to such equity participation plan by the shareholder presenting such stock for redemption (or by a predecessor of such shareholder),

''(C) the employment of the shareholder presenting the stock for redemption (or the predecessor of such shareholder) by the employer corporation commenced before January 1, 1971,

''(D) at least 90 percent in value of the assets of the distributing corporation on November 30, 1969, consisted of common stock of the employer corporation, and

''(E) at least 50 percent of the outstanding voting stock of the employer corporation is owned by the distributing corporation at any time within the nine-year period ending one year before the date of such distribution.''

§ 312. Effect on earnings and profits

(a) General rule

Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) the amount of money,

(2) the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and

(3) the adjusted basis of the other property, so distributed.

(b) Distributions of appreciated property

On the distribution by a corporation, with respect to its stock, of any property (other than an obligation of such corporation) the fair market value of which exceeds the adjusted basis thereof—

(1) the earnings and profits of the corporation shall be increased by the amount of such excess, and

(2) subsection (a)(3) shall be applied by substituting ''fair market value'' for ''adjusted basis''.

For purposes of this subsection and subsection (a), the adjusted basis of any property is its adjusted basis as determined for purposes of computing earnings and profits.

(c) Adjustments for liabilities

In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

(1) the amount of any liability to which the property distributed is subject, and

(2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution.

(d) Certain distributions of stock and securities

(1) In general

The distribution to a distributee by or on behalf of a corporation of its stock or securities,

of stock or securities in another corporation, or of property, in a distribution to which this title applies, shall not be considered a distribution of the earnings and profits of any corporation—

(A) if no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this title, or

(B) if the distribution was not subject to tax in the hands of such distributee by reason of section 305(a).

(2) Stock or securities

For purposes of this subsection, the term ''stock or securities'' includes rights to acquire stock or securities.

[(e) Repealed. Pub. L. 98–369, div. A, title I, § 61(a)(2)(B), July 18, 1984, 98 Stat. 581]

(f) Effect on earnings and profits of gain or loss and of receipt of tax-free distributions

(1) Effect on earnings and profits of gain or loss

The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(A) for the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in subparagraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(B) for purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this subsection, a loss with respect to which a deduction is disallowed under section 1091 (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) Effect on earnings and profits of receipt of tax-free distributions

Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(A) no such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

(B) no such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 307(b), be so allocated).

(g) Earnings and profits—increase in value accrued before March 1, 1913

(1) If any increase or decrease in the earnings and profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (f) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (f) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(h) Allocation in certain corporate separations and reorganizations

(1) Section 355

In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary.

(2) Section 368(a)(1)(C) or (D)

In the case of a reorganization described in subparagraph (C) or (D) of section 368(a)(1), proper allocation with respect to the earnings and profits of the acquired corporation shall, under regulations prescribed by the Secretary, be made between the acquiring corporation and the acquired corporation (or any corporation which had control of the acquired corporation before the reorganization).

(i) Distribution of proceeds of loan insured by the United States

If a corporation distributes property with respect to its stock and if, at the time of distribution—

(1) there is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(2) the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan,

then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of paragraph (2), the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 1016(a)(2) (relating to adjustment for depreciation, etc.). For purposes of this subsection, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

[(j) Repealed. Pub. L. 108–357, title IV, § 413(c)(4), Oct. 22, 2004, 118 Stat. 1507]

(k) Effect of depreciation on earnings and profits

(1) General rule

For purposes of computing the earnings and profits of a corporation for any taxable year beginning after June 30, 1972, the allowance for depreciation (and amortization, if any) shall be deemed to be the amount which would be allowable for such year if the straight line method of depreciation had been used for each taxable year beginning after June 30, 1972.

(2) Exception

If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a) and which is the unit-of-production method or other method not expressed in a term of years, then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of the straight line method).

(3) Exception for tangible property

(A) In general

Except as provided in subparagraph (B), in the case of tangible property to which section 168 applies, the adjustment to earnings and profits for depreciation for any taxable year shall be determined under the alternative depreciation system (within the meaning of section 168(g)(2)).

(B) Treatment of amounts deductible under section 179, 179B, 179C, 179D, or 179E

For purposes of computing the earnings and profits of a corporation, any amount deductible under section 179, 179B, 179C, 179D, or 179E shall be allowed as a deduction ratably over the period of 5 taxable years (beginning with the taxable year for which such amount is deductible under section 179, 179B, 179C, 179D, or 179E, as the case may be).

(4) Certain foreign corporations

The provisions of paragraph (1) shall not apply in computing the earnings and profits of a foreign corporation for any taxable year for which less than 20 percent of the gross income from all sources of such corporation is derived from sources within the United States.

(5) Basis adjustment not taken into account

In computing the earnings and profits of a corporation for any taxable year, the allowance for depreciation (and amortization, if any) shall be computed without regard to any basis adjustment under section 50(c).

***(l)* Discharge of indebtedness income**

(1) Does not increase earnings and profits if applied to reduce basis

The earnings and profits of a corporation shall not include income from the discharge of indebtedness to the extent of the amount applied to reduce basis under section 1017.

(2) Reduction of deficit in earnings and profits in certain cases

If—

(A) the interest of any shareholder of a corporation is terminated or extinguished in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and

(B) there is a deficit in the earnings and profits of the corporation,

then such deficit shall be reduced by an amount equal to the paid-in capital which is allocable to the interest of the shareholder which is so terminated or extinguished.

(m) No adjustment for interest paid on certain registration-required obligations not in registered form

The earnings and profits of any corporation shall not be decreased by any interest with respect to which a deduction is not or would not be allowable by reason of section 163(f), unless at the time of issuance the issuer is a foreign corporation that is not a controlled foreign corporation (within the meaning of section 957) and the issuance did not have as a purpose the avoidance of section 163(f) of this subsection [1]

(n) Adjustments to earnings and profits to more accurately reflect economic gain and loss

For purposes of computing the earnings and profits of a corporation, the following adjustments shall be made:

(1) Construction period carrying charges

(A) In general

In the case of any amount paid or incurred for construction period carrying charges—

(i) no deduction shall be allowed with respect to such amount, and

(ii) the basis of the property with respect to which such charges are allocable shall be increased by such amount.

(B) Construction period carrying charges defined

For purposes of this paragraph, the term ''construction period carrying charges'' means all—

[1] Subsec. (m) was enacted without a period at the end.

(i) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry property,

(ii) property taxes, and

(iii) similar carrying charges,

to the extent such interest, taxes, or charges are attributable to the construction period for such property and would be allowable as a deduction in determining taxable income under this chapter for the taxable year in which paid or incurred.

(C) Construction period

The term ''construction period'' has the meaning given the term production period under section 263A(f)(4)(B).[2]

(2) Intangible drilling costs and mineral exploration and development costs

(A) Intangible drilling costs

Any amount allowable as a deduction under section 263(c) in determining taxable income (other than costs incurred in connection with a nonproductive well)—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 60-month period beginning with the month in which such amount was paid or incurred.

(B) Mineral exploration and development costs

Any amount allowable as a deduction under section 616(a) or 617 in determining taxable income—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 120-month period beginning with the later of—

(I) the month in which production from the deposit begins, or

(II) the month in which such amount was paid or incurred.

(3) Certain amortization provisions not to apply

Sections 173 and 248 shall not apply.

(4) LIFO inventory adjustments

(A) In general

Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the 1st taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.

(B) LIFO recapture amount

For purposes of this paragraph, the term ''LIFO recapture amount'' means the amount (if any) by which—

(i) the inventory amount of the inventory assets under the first-in, first-out method authorized by section 471, exceeds

(ii) the inventory amount of such assets under the LIFO method.

(C) Definitions

For purposes of this paragraph—

(i) LIFO method

The term ''LIFO method'' means the method authorized by section 472 (relating to last-in, first-out inventories).

(ii) Inventory assets

The term ''inventory assets'' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(iii) Inventory amount

The inventory amount of assets under the first-in, first-out method authorized by section 471 shall be determined—

(I) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(II) if subclause (I) does not apply, by using cost or market, whichever is lower.

(5) Installment sales

In the case of any installment sale, earnings and profits shall be computed as if the corporation did not use the installment method.

(6) Completed contract method of accounting

In the case of a taxpayer who uses the completed contract method of accounting, earnings and profits shall be computed as if such taxpayer used the percentage of completion method of accounting.

(7) Redemptions

If a corporation distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of such corporation accumulated after February 28, 1913, attributable to the stock so redeemed.

(8) Special rule for certain foreign corporations

In the case of a foreign corporation described in subsection (k)(4)—

(A) paragraphs (4) and (6) shall apply only in the case of taxable years beginning after December 31, 1985, and

(B) paragraph (5) shall apply only in the case of taxable years beginning after December 31, 1987.

(*o*) Definition of original issue discount and issue price for purposes of subsection (a)(2)

For purposes of subsection (a)(2), the terms ''original issue discount'' and ''issue price'' have the same respective meanings as when used in subpart A of part V of subchapter P of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 95; Pub. L. 87–403, § 3(a), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87–834, §§ 13(f)(3), 14(b)(1), Oct. 16, 1962, 76 Stat. 1035, 1040; Pub. L. 88–272, title II, § 231(b)(3), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, § 1(b)(1), Aug. 22, 1964, 78 Stat. 597; Pub. L. 89–570, § 1(b)(3), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, § 211(b)(3), title

[2] See References in Text note below.

IV, § 442(a), title IX, § 905(b)(2), Dec. 30, 1969, 83 Stat. 570, 628, 714; Pub. L. 94–455, title II, § 205(c)(1)(D), title XIX, §§ 1901(a)(43), (b)(32)(B)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1771, 1800, 1834; Pub. L. 95–628, § 3(c), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 96–589, § 5(f), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–34, title II, § 206(a), (b), Aug. 13, 1981, 95 Stat. 224; Pub. L. 97–248, title II, §§ 205(a)(3), 222(e)(3), title III, § 310(b)(3), Sept. 3, 1982, 96 Stat. 429, 480, 597; Pub. L. 97–448, title III, § 306(a)(6)(B), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98–369, div. A, title I, §§ 61(a)–(c)(1), 63(b), 111(e)(5), July 18, 1984, 98 Stat. 579–581, 583, 633; Pub. L. 99–121, title I, § 103(b)(1)(C), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, §§ 201(b), (d)(6), 241(b)(1), title VI, § 631(e)(1), title VIII, § 803(b)(3), title XVIII, §§ 1804(f)(1)(A)–(E), 1809(a)(2)(C)(ii), Oct. 22, 1986, 100 Stat. 2137, 2141, 2181, 2273, 2355, 2804, 2805, 2819; Pub. L. 100–647, title I, §§ 1002(a)(3), 1018(d)(4), (u)(4), Nov. 10, 1988, 102 Stat. 3353, 3578, 3590; Pub. L. 101–239, title VII, §§ 7611(f)(5)(A), 7811(m)(2), Dec. 19, 1989, 103 Stat. 2373, 2412; Pub. L. 101–508, title XI, §§ 11812(b)(5), 11813(b)(14), Nov. 5, 1990, 104 Stat. 1388–535, 1388–555; Pub. L. 105–34, title XVI, § 1604(a)(2), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–357, title III, § 338(b)(3), title IV, § 413(c)(4), (5), Oct. 22, 2004, 118 Stat. 1481, 1507; Pub. L. 109–58, title XIII, §§ 1323(b)(3), 1331(b)(5), Aug. 8, 2005, 119 Stat. 1015, 1024; Pub. L. 109–432, div. A, title IV, § 404(b)(2), Dec. 20, 2006, 120 Stat. 2956; Pub. L. 113–295, div. A, title II, § 221(a)(34)(F), (49), Dec. 19, 2014, 128 Stat. 4042, 4045.)

REFERENCES IN TEXT

Section 263A(f)(4)(B), referred to in subsec. (n)(1)(C), was redesignated section 263A(f)(5)(B) by Pub. L. 115–97, title I, § 13801(a)(1), Dec. 22, 2017, 131 Stat. 2169.

AMENDMENTS

2014—Subsec. (d)(2), (3). Pub. L. 113–295, § 221(a)(49), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''In the case of a distribution of stock or securities, or property, to which section 115(h) of the Internal Revenue Code of 1939 (or the corresponding provision of prior law) applied, the effect on earnings and profits of such distribution shall be determined under such section 115(h), or the corresponding provision of prior law, as the case may be.''

Subsec. (k)(3)(B). Pub. L. 113–295, § 221(a)(34)(F), struck out ''179A,'' after ''section 179,'' in heading and in two places in text.

2006—Subsec. (k)(3)(B). Pub. L. 109–432 substituted ''179D, or 179E'' for ''or 179D'' in heading and two places in text.

2005—Subsec. (k)(3)(B). Pub. L. 109–58, § 1331(b)(5), substituted ''179, 179A, 179B, 179C, or 179D'' for ''179, 179A, 179B, or 179C'' in heading and two places in text.

Pub. L. 109–58, § 1323(b)(3), substituted ''179, 179A, 179B, or 179C'' for ''179 179A, or 179B'' in heading and two places in text.

2004—Subsec. (j). Pub. L. 108–357, § 413(c)(4), struck out subsec. (j) which related to earnings and profits of foreign investment companies.

Subsec. (k)(3)(B). Pub. L. 108–357, § 338(b)(3), substituted ''179A, or 179B'' for ''or 179A'' in heading and two places in text.

Subsec. (m). Pub. L. 108–357, § 413(c)(5), struck out '', a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)'' before ''and the issuance''.

1997—Subsec. (k)(3)(B). Pub. L. 105–34, in heading substituted ''179 or 179A'' for ''179'' and in text substituted ''section 179 or 179A shall'' for ''section 179 shall'' and ''section 179 or 179A, as the case may be)'' for ''section 179)''.

1990—Subsec. (k)(2). Pub. L. 101–508, § 11812(b)(5), substituted heading for one which read: ''Exceptions'' and amended text generally. Prior to amendment, text read as follows: ''If for any taxable year beginning after June 30, 1972, a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a), and which is not—

''(A) a declining balance method,

''(B) the sum of the years-digit method, or

''(C) any other method allowable solely by reason of the application of subsection (b)(4) or (j)(1)(C) of section 167,

then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of under the straight line method).''

Subsec. (k)(5). Pub. L. 101–508, § 11813(b)(14), substituted ''section 50(c)'' for ''section 48(q)''.

1989—Subsec. (b). Pub. L. 101–239, § 7811(m)(2), made clarifying amendment to directory language of Pub. L. 100–647, § 1018(d)(4), see 1988 Amendment note below.

Subsec. (n)(2)(A)(ii). Pub. L. 101–239, § 7611(f)(5)(A), substituted ''in which such amount was paid or incurred'' for ''in which the production from the well begins''.

1988—Subsec. (b). Pub. L. 100–647, § 1018(d)(4), as amended by Pub. L. 101–239, § 7811(m)(2), substituted ''of any property (other than an obligation of such corporation)'' for ''of any property'' in introductory provisions.

Subsec. (k)(4). Pub. L. 100–647, § 1002(a)(3), substituted ''paragraph (1)'' for ''paragraphs (1) and (3)''.

Subsec. (n)(1)(B). Pub. L. 100–647, § 1018(u)(4), made technical amendment to directory language of Pub. L. 99–514, § 803(b)(3)(A). See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–514, § 1804(f)(1)(A), amended subsec. (b) generally, substituting provisions relating to distributions of appreciated property for provisions relating to distribution of certain inventory assets.

Subsec. (c). Pub. L. 99–514, § 1804(f)(1)(B), (C), struck out '', etc.'' after ''liabilities'' in heading and struck out par. (3) which read as follows: ''any gain recognized to the corporation on the distribution.''

Subsec. (k)(3). Pub. L. 99–514, § 201(b), amended par. (3) generally, substituting provisions relating to tangible property to which section 168 applies and amounts deductible under section 179 for provisions relating to recovery property within the meaning of section 168, amounts deductible under section 179, and flexibility if a different recovery percentage is elected under section 168 based on a longer recovery period.

Subsec. (k)(3)(A). Pub. L. 99–514, § 1809(a)(2)(C)(ii), in subpar. (A), struck out ''and rules similar to the rules under the next to the last sentence of section 168(b)(2)(A) and section 168(b)(2)(B) shall apply'' after ''low-income housing)''.

Subsec. (k)(4). Pub. L. 99–514, § 201(d)(6), struck out last sentence ''In determining the earnings and profits of such corporation in the case of recovery property (within the meaning of section 168), the rules of section 168(f)(2) shall apply.''

Subsec. (n)(1)(B). Pub. L. 99–514, § 803(b)(3)(A), as amended by Pub. L. 100–647, § 1018(u)(4), struck out ''(determined without regard to section 189)'' after ''incurred''.

Subsec. (n)(1)(C). Pub. L. 99–514, § 803(b)(3)(B), added subpar. (C) and struck out former subpar. (C) which read as follows: ''The term 'construction period' has the meaning given such term by section 189(e)(2) (determined without regard to any real property limitation).''

Subsec. (n)(3). Pub. L. 99–514, § 241(b)(1), struck out '', 177,'' after ''sections 173''.

Subsec. (n)(4). Pub. L. 99–514, § 631(e)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Earnings and profits shall be increased or decreased by the amount of any increase or decrease in

the LIFO recapture amount (determined under section 336(b)(3)) as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the first taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.''

Pub. L. 99–514, § 1804(f)(1)(D), redesignated par. (5) as (4). Former par. (4), relating to certain untaxed appreciation of distributed property, was struck out.

Subsec. (n)(5) to (7). Pub. L. 99–514, § 1804(f)(1)(D), redesignated pars. (6) to (8) as (5) to (7), respectively. Former par. (5) redesignated (4).

Subsec. (n)(8), (9). Pub. L. 99–514, § 1804(f)(1)(D), (E), redesignated par. (9) as (8) and substituted provisions of subpars. (A) and (B) for ''paragraphs (5), (6), and (7) shall apply only in the case of taxable years beginning after December 31, 1985.'' Former par. (8) redesignated (7).

1985—Subsec. (k)(3)(A). Pub. L. 99–121 substituted ''19-year real property'' for ''18-year real property'' wherever appearing.

1984—Subsec. (a)(2). Pub. L. 98–369, § 61(c)(1)(A), inserted ''(or, in the case of obligations having original issue discount, the aggregate issue price of such obligations)''.

Subsec. (e). Pub. L. 98–369, § 61(a)(2)(B), struck out subsec. (e) which provided: ''In the case of amounts distributed in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.''

Subsec. (h). Pub. L. 98–369, § 63(b), amended subsec. (h) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (j)(3). Pub. L. 98–369, § 61(a)(2)(A), struck out par. (3) which provided: ''If a foreign investment company (as defined in section 1246) distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of the company accumulated after February 28, 1913, attributable to the stock so redeemed.''

Subsec. (k)(3)(A). Pub. L. 98–369, § 111(e)(5), substituted ''18-year real property and low-income housing'' for ''15-year real property'' in three places.

Pub. L. 98–369, § 61(b), substituted ''40 years'' for ''35 years'' in table item relating to 15-year real property. Directory language that table be amended by substituting ''40 years'' for ''35 years'' in item relating to 15-year real property and 20-year real property, was executed by making the substitution in item relating to 15-year real property. The table contained no item relating to 20-year real property.

Subsec. (n). Pub. L. 98–369, § 61(a)(1), added subsec. (n).

Subsec. (*o*). Pub. L. 98–369, § 61(c)(1)(B), added subsec. (*o*).

1983—Subsec. (j)(3). Pub. L. 97–448 substituted ''Redemptions'' for ''Partial liquidations and redemptions'' in heading, and in text struck out ''in partial liquidation or'' after ''distributes amounts''.

1982—Subsec. (e). Pub. L. 97–248, § 222(e)(3), struck out ''partial liquidations and'' in heading, and in text struck out ''in partial liquidation (whether before, on, or after June 22, 1954) or'' after ''amounts distributed''.

Subsec. (k)(5). Pub. L. 97–248, § 205(a)(3), added par. (5).

Subsec. (m). Pub. L. 97–248, § 310(b)(3), added subsec. (m).

1981—Subsec. (k)(3), (4). Pub. L. 97–34 added par. (3), redesignated former par. (3) as (4) substituted ''The provisions of paragraphs (1) and (3)'' for ''The provisions of paragraph (1)'', and inserted provision that the rules of section 168(f)(2) shall apply in determining the earnings and profits of the corporation in the case of recovery property (within the meaning of section 168).

1980—Subsec. (*l*). Pub. L. 96–589 added subsec. (*l*).

1978—Subsec. (c)(3). Pub. L. 95–628 substituted ''gain recognized to the corporation on the distribution'' for ''gain to the corporation recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)''.

1976—Subsec. (c)(3). Pub. L. 94–455, § 205(c)(1)(D), substituted ''1252(a), or 1254(a)'' for ''or 1252(a)''.

Subsec. (d)(1). Pub. L. 94–455, § 1901(a)(43)(A), substituted ''this title'' for ''this Code'' wherever appearing.

Subsec. (h). Pub. L. 94–455, §§ 1901(a)(43)(B), 1906(b)(13)(A), redesignated subsec. (i) as (h) and struck out ''or his delegate'' after ''Secretary''. Former subsec. (h), which related to earnings and profits of personal service corporations, was struck out.

Subsec. (i). Pub. L. 94–455, § 1901(a)(43)(B), (C), redesignated subsec. (j) as (i), and, among other changes, substituted ''paragraph (2)'' for ''subparagraph (B) of the preceding sentence'' and ''of this subsection'' for ''of this paragraph'', and struck out provisions relating to the effective date of this subsec. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94–455, §§ 1901(a)(43)(D), (b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (*l*) as (j), struck out ''or his delegate'' after ''Secretary'' in par. (1) and in par. (3) provision relating to the effective date of such paragraph. Former subsec. (j) redesignated (i).

Subsec. (k). Pub. L. 94–455, §§ 1901(b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (m) as (k) and struck out ''or his delegate'' after ''Secretary'' in par. (2). Former subsec. (k), relating to special adjustment on disposition of antitrust stock received as a dividend, was struck out.

Subsec. (*l*). Pub. L. 94–455, § 1901(b)(32)(B)(i), redesignated subsec. (*l*) as (j).

Subsec. (m). Pub. L. 94–455, § 1901(b)(32)(B)(i), redesignated subsec. (m) as (k).

1969—Subsec. (c)(3). Pub. L. 91–172, §§ 211(b)(3), 905(b)(2), substituted ''1250(a), 1251(c), or 1252(a)'', for ''or 1250(a)'' and inserted reference to section 311(d).

Subsec. (m). Pub. L. 91–172, § 442(a), added subsec. (m).

1966—Subsec. (c)(3). Pub. L. 89–570 inserted reference to section 617(d)(1).

1964—Subsec. (c)(3). Pub. L. 88–484 authorized adjustment for amount of gain recognized under section 341(f).

Pub. L. 88–272 inserted reference to section 1250(a).

1962—Subsec. (c)(3). Pub. L. 87–834, § 13(f)(3), included any gain recognized under section 1245(a).

Subsec. (k). Pub. L. 87–403 added subsec. (k).

Subsec. (*l*). Pub. L. 87–834, § 14(b)(1), added subsec. (*l*).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1323(b)(3) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(5) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(3) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

Amendment by section 413(c)(4), (5) of Pub. L. 108–357 applicable to taxable years of foreign corporations be-

ginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102–486, see section 1604(a)(4) of Pub. L. 105–34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(5) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(14) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(5)(A) of Pub. L. 101–239 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101–239, set out as a note under section 56 of this title.

Amendment by section 7811(m)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 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 OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(3) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 241(b)(1) of Pub. L. 99–514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 631(e)(1) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 803(b)(3) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1804(f)(1)(A)–(E) and 1809(a)(2)(C)(ii) of 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.

Pub. L. 99–514, title XVIII, §1804(f)(3), Oct. 22, 1986, 100 Stat. 2805, provided that: ''Paragraph (7) of section 312(n) of the Internal Revenue Code of 1954 [now 1986] (as redesignated by paragraph (1)(D) of this subsection), and the amendments made by section 61(a)(2) of the Tax Reform Act of 1984 [amending this section], shall apply to distributions in taxable years beginning after September 30, 1984.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99–121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §61(e)(1)–(3), July 18, 1984, 98 Stat. 582, 583, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) ADJUSTMENTS TO EARNINGS AND PROFITS.—

''(A) PARAGRAPHS (1), (2), AND (3) OF SECTION 312(n).—The provisions of paragraphs (1), (2), and (3) of section 312(n) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to amounts paid or incurred in taxable years beginning after September 30, 1984.

''(B) PARAGRAPH (4) OF SECTION 312(n).—The provisions of paragraph (4) of section 312(n) of such Code (as so added) shall apply to distributions after September 30, 1984; except that such provisions shall not apply to any distribution to which the amendments made by section 54(a) of this Act [amending section 311 of this title] do not apply.

''(C) LIFO INVENTORY.—The provisions of paragraph (5) of section 312(n) of such Code (as so added) shall apply to taxable years beginning after September 30, 1984.

''(D) INSTALLMENT SALES.—The provisions of paragraph (6) of section 312(n) of such Code (as so added) shall apply to sales after September 30, 1984, in taxable years ending after such date.

''(E) COMPLETED CONTRACT METHOD.—The provisions of paragraph (7) of section 312(n) of such Code (as so added) shall apply to contracts entered into after September 30, 1984, in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to property placed in service in taxable years beginning after September 30, 1984.

''(3) SUBSECTION (c).—The amendments made by subsection (c) [amending this section and section 1275 of

this title] shall apply with respect to distributions declared after March 15, 1984, in taxable years ending after such date.''

Amendment by section 61(a)(2) of Pub. L. 98–369 applicable to distributions in taxable years beginning after Sept. 30, 1984, see section 1804(f)(3) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note above.

Pub. L. 99–514, title XVIII, §1804(f)(1)(F), Oct. 22, 1986, 100 Stat. 2805, provided that: ''Any reference in subsection (e) of section 61 of the Tax Reform Act of 1984 [set out above] to a paragraph of section 312(n) of the Internal Revenue Code of 1954 [now 1986] shall be treated as a reference to such paragraph as in effect before its redesignation by subparagraph (D) [see 1986 Amendment note above].''

Pub. L. 98–369, div. A, title I, §63(c), July 18, 1984, 98 Stat. 584, provided that: ''The amendment made by this section [amending this section and section 368 of this title] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 111(e)(5) of Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 205(a)(3) of Pub. L. 97–248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

Amendment by section 222(e)(3) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 310(b)(3) of Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable to distributions made after Nov. 10, 1978, see section 3(d) of Pub. L. 95–628, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(D) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as a note under section 1254 of this title.

Amendment by section 1901(a)(43) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1901(b)(32) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 211(b)(3) of Pub. L. 91–172 applicable to taxable years beginning after December 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 301 of this title.

Amendment by section 905(b)(2) Pub. L. 91–172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91–172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–484 applicable with respect to transactions after Aug. 22, 1964 in taxable years ending after such date, see section 2 of Pub. L. 88–484, set out as a note under section 301 of this title.

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(3) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Pub. L. 87–834, §14(c), Oct. 16, 1962, 76 Stat. 1041, provided that: ''The amendments made by this section [enacting sections 1246 and 1247 of this title and amending this section and sections 751 and 1223 of this title] shall apply with respect to taxable years beginning after December 31, 1962.''

Pub. L. 87–403, §3(g), Feb. 2, 1962, 76 Stat. 8, provided that: ''The amendments made by this section [amending this section and sections 535, 543, 545, 556 and 561 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K 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.

SUBPART C—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

Sec.
316. Dividend defined.

§ 316. Dividend defined

(a) General rule

For purposes of this subtitle, the term ''dividend'' means any distribution of property made by a corporation to its shareholders—

(1) out of its earnings and profits accumulated after February 28, 1913, or

(2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Except as otherwise provided in this subtitle, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this subchapter, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

(b) Special rules

(1) Certain insurance company dividends

The definition in subsection (a) shall not apply to the term ''dividend'' as used in subchapter L in any case where the reference is to dividends of insurance companies paid to policyholders as such.

(2) Distributions by personal holding companies

(A) In the case of a corporation which—

(i) under the law applicable to the taxable year in which the distribution is made, is a personal holding company (as defined in section 542), or

(ii) for the taxable year in respect of which the distribution is made under section 563(b) (relating to dividends paid after the close of the taxable year), or section 547 (relating to deficiency dividends), or the corresponding provisions of prior law, is a personal holding company under the law applicable to such taxable year,

the term ''dividend'' also means any distribution of property (whether or not a dividend as defined in subsection (a)) made by the corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 without regard to distributions under this paragraph) for such year.

(B) For purposes of subparagraph (A), the term ''distribution of property'' includes a distribution in complete liquidation occurring within 24 months after the adoption of a plan of liquidation, but—

(i) only to the extent of the amounts distributed to distributees other than corporate shareholders, and

(ii) only to the extent that the corporation designates such amounts as a dividend distribution and duly notifies such distributees of such designation, under regulations prescribed by the Secretary, but

(iii) not in excess of the sum of such distributees' allocable share of the undistributed personal holding company income for such year, computed without regard to this subparagraph or section 562(b).

(3) Deficiency dividend distributions by a regulated investment company or real estate investment trust

The term ''dividend'' also means any distribution of property (whether or not a dividend as defined in subsection (a)) which constitutes a ''deficiency dividend'' as defined in section 860(f).

(4) Certain distributions by regulated investment companies in excess of earnings and profits

In the case of a regulated investment company that has a taxable year other than a calendar year, if the distributions by the company with respect to any class of stock of such company for the taxable year exceed the company's current and accumulated earnings and profits which may be used for the payment of dividends on such class of stock, the company's current earnings and profits shall, for purposes of subsection (a), be allocated first to distributions with respect to such class of stock made during the portion of the taxable year which precedes January 1.

(Aug. 16, 1954, ch. 736, 68A Stat. 98; Mar. 13, 1956, ch. 83, § 5(1), 70 Stat. 49; Pub. L. 88–272, title II, § 225(f)(1), Feb. 26, 1964, 78 Stat. 87; Pub. L. 94–455, title XVI, § 1601(d), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1834; Pub. L. 95–600, title III, § 362(d)(1), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 111–325, title III, § 305(a), Dec. 22, 2010, 124 Stat. 3549.)

AMENDMENTS

2010—Subsec. (b)(4). Pub. L. 111–325 added par. (4).

1978—Subsec. (b)(3). Pub. L. 95–600 inserted ''regulated investment company or'' after ''distributions by a'' in heading and substituted in text ''section 860(f)'' for ''section 859(d)''.

1976—Subsec. (b)(2)(B)(ii). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(3). Pub. L. 94–455, § 1601(d), added par. (3).

1964—Subsec. (b)(2). Pub. L. 88–272 inserted definition of ''distribution of property''.

1956—Subsec. (b)(1). Act Mar. 13, 1956, substituted ''subchapter L'' for ''sections 803(e), 821(a)(2), and 832(c)(11)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, § 305(b), Dec. 22, 2010, 124 Stat. 3549, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(d) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, § 225(*l*), Feb. 26, 1964, 78 Stat. 94, provided that:

''(1) The amendments made by this section [enacting section 1022, redesignating former section 1022 as 1023, amending this section and sections 331, 333, 381, 541, 542, 543, 544, 545, 551, 553, 554, 562, 856, 1016, 1361, 6501, and the analysis preceding section 1011, and enacting provisions set out as a note under section 333 of this title] (other than by subsections (c)(1), (f), (g), and (j) [enacting section 1022, redesignating former section 1022 as 1023, amending this section and sections 331, 333, 542, 551, 562, 1016, and the analysis preceding section 1011 of this title]) shall apply to taxable years beginning after December 31, 1963.

''(2) The amendment made by subsection (c)(1) [amending section 542 of this title] shall apply to taxable years beginning after October 16, 1962.

''(3) The amendments made by subsections (f) and (g) [amending this section and sections 331, 333, 551, and 562 of this title] shall apply to distributions made in any taxable year of the distributing corporation beginning after December 31, 1963.

''(4) The amendments made by subsection (j) [enacting section 1022, redesignating former section 1022 as 1023, and amending section 1016 and the analysis preceding section 1011 of this title] shall apply in respect of decedents dying after December 31, 1963.

''(5) Subsection (h) [set out as a note under section 333 of this title] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1956 AMENDMENT

Act Mar. 13, 1956, ch. 83, § 6, 70 Stat. 49, provided that: ''The amendments made by this Act [amending this section and sections 501, 594, 801 to 805, 811 to 813, 816 to 818, 821, 822, 832, 841, 842, 843, 891, 1201, 1504, and 4371 of this title] shall apply only to taxable years beginning after December 31, 1954.''

§ 317. Other definitions

(a) Property

For purposes of this part, the term ''property'' means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(b) Redemption of stock

For purposes of this part, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock.

(Aug. 16, 1954, ch. 736, 68A Stat. 99.)

§ 318. Constructive ownership of stock

(a) General rule

For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

(1) Members of family

(A) In general

An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(i) his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and

(ii) his children, grandchildren, and parents.

(B) Effect of adoption

For purposes of subparagraph (A)(ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) Attribution from partnerships, estates, trusts, and corporations

(A) From partnerships and estates

Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(B) From trusts

(i) Stock owned, directly or indirectly, by or for a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.

(ii) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) From corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned, directly or indirectly, by or for such corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(3) Attribution to partnerships, estates, trusts, and corporations

(A) To partnerships and estates

Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as owned by the partnership or estate.

(B) To trusts

(i) Stock owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of this clause, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property.

(ii) Stock owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by the trust.

(C) To corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

(4) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) Operating rules

(A) In general

Except as provided in subparagraphs (B) and (C), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), or (4), shall, for purposes of applying paragraphs (1), (2), (3), and (4), be considered as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be considered as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) Partnerships, estates, trusts, and corporations

Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraph (3) shall not be considered as owned by it for purposes of applying paragraph (2) in order to make another the constructive owner of such stock.

(D) Option rule in lieu of family rule

For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (4), it shall be considered as owned by him under paragraph (4).

(E) S corporation treated as partnership

For purposes of this subsection—

(i) an S corporation shall be treated as a partnership, and

(ii) any shareholder of the S corporation shall be treated as a partner of such partnership.

The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

(b) Cross references

For provisions to which the rules contained in subsection (a) apply, see—

(1) section 302 (relating to redemption of stock);

(2) section 304 (relating to redemption by related corporations);

(3) section 306(b)(1)(A) (relating to disposition of section 306 stock);

(4) section 338(h)(3) (defining purchase);

(5) section 382(*l*)(3) (relating to special limitations on net operating loss carryovers);

(6) section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts);

(7) section 958(b) (relating to constructive ownership rules with respect to controlled foreign corporations); and

(8) section 6038(e)(2) (relating to information with respect to certain foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 99; Pub. L. 86–779, §10(h), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 87–834, §20(d)(1), Oct. 16, 1962, 76 Stat. 1063; Pub. L. 88–554, §4(a), (b)(2), Aug. 31, 1964, 78 Stat. 762, 763; Pub. L. 97–248, title II, §224(c)(3), Sept. 3, 1982, 96 Stat. 489; Pub. L. 98–369, div. A, title VII, §§712(k)(5)(E), 721(j), July 18, 1984, 98 Stat. 950, 969; Pub. L. 99–514, title VI, §621(c)(1), Oct. 22, 1986, 100 Stat. 2266; Pub. L. 105–34, title XI, §1142(e)(3), Aug. 5, 1997, 111 Stat. 983; Pub. L. 109–135, title IV, §412(u), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (b)(8). Pub. L. 109–135 substituted ''section 6038(e)(2)'' for ''section 6038(d)(2)''.

1997—Subsec. (b)(8). Pub. L. 105–34 substituted ''6038(d)(2)'' for ''6038(d)(1)''.

1986—Subsec. (b)(5). Pub. L. 99–514 substituted ''382(*l*)(3)'' for ''382(a)(3)''.

1984—Subsec. (a)(5)(E). Pub. L. 98–369, §721(j), added subpar. (E).

Subsec. (b)(4). Pub. L. 98–369, §712(k)(5)(E), substituted ''section 338(h)(3) (defining purchase)'' for ''section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)''.

1982—Subsec. (b)(4). Pub. L. 97–248 substituted ''section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)'' for ''section 334(b)(3)(C) (relating to basis of property received in certain liquidations of subsidiaries)''.

1964—Subsec. (a). Pub. L. 88–554, §4(a), struck out sidewise attribution by providing that when stock is attributed to a partnership, estate, trust, or corporation from a partner, shareholder, or beneficiary, this stock is not to be attributed again to another partner, beneficiary, or shareholder.

Subsec. (b)(7), (8). Pub. L. 88–554, §4(b)(2), added par. (7) and redesignated former par. (7) as (8).

1962—Subsec. (b)(7). Pub. L. 87–834 added par. (7).

1960—Subsec. (b)(6). Pub. L. 86–779 added par. (6).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1142(f), Aug. 5, 1997, 111 Stat. 983, provided that: ''The amendments made by this section [amending this section and sections 901 and 6038 of this title] shall apply to annual accounting periods beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99–514, as amended, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 712(k)(5)(E) of Pub. L. 98–369 not applicable to any qualified stock purchase where the acquisition date is before Sept. 1, 1982, see section 712(k)(9)(A) of Pub. L. 98–369, set out as a note under section 338 of this title.

Amendment by section 712(k)(5)(E) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 721(j) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–554, § 4(c), Aug. 31, 1964, 78 Stat. 764, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 304, 382, 856, 958, and 6038 of this title] shall take effect on the date of the enactment of this Act, [Aug. 31, 1964], except that, for purposes of sections 302 and 304 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such amendments shall not apply with respect to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

PART II—CORPORATE LIQUIDATIONS

AMENDMENTS

2003—Pub. L. 108–27, title III, § 302(e)(4)(B)(iii), May 28, 2003, 117 Stat. 764, struck out item for subpart C ''Collapsible corporations''.

1982—Pub. L. 97–248, title II, § 222(e)(8)(B), Sept. 3, 1982, 96 Stat. 481, inserted ''and special rule'' in item for subpart D.

1976—Pub. L. 94–455, title XIX, § 1901(b)(12)(B), Oct. 4, 1976, 90 Stat. 1795, struck out in table of subparts for part II of subchapter C of chapter 1 in subpart (C) ''; foreign personal holding companies'' after ''corporations''.

SUBPART A—EFFECTS ON RECIPIENTS

AMENDMENTS

1986—Pub. L. 99–514, title VI, § 631(e)(16), Oct. 22, 1986, 100 Stat. 2275, struck out item 333 ''Election as to recognition of gain in certain liquidations''.

§ 331. Gain or loss to shareholders in corporate liquidations

(a) Distributions in complete liquidation treated as exchanges

Amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(b) Nonapplication of section 301

Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property (other than a distribution referred to in paragraph (2)(B) of section 316(b)) in complete liquidation.

(c) Cross reference

For general rule for determination of the amount of gain or loss recognized, see section 1001.

(Aug. 16, 1954, ch. 736, 68A Stat. 101; Pub. L. 88–272, title II, § 225(f)(2), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94–455, title XIX, § 1901(b)(28)(A), Oct. 4, 1976, 90 Stat. 1799; Pub. L. 97–248, title II, § 222(a), (e)(1)(B), Sept. 3, 1982, 96 Stat. 478, 480.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–248, § 222(a), substituted provisions that amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock for provisions that, in complete liquidations, amounts distributed shall be treated as in full payment in exchange for the stock, while amounts distributed in partial liquidation shall be treated as in part or full payment in exchange for the stock.

Subsec. (b). Pub. L. 97–248, § 222(e)(1)(B), struck out ''partial or'' before ''complete liquidation''.

1976—Subsec. (c). Pub. L. 94–455 substituted ''reference'' for ''references'' in heading and struck out cross reference relating to general rule for determination of the amount of gain or loss to the distributee and substituted ''section 1001'' for ''section 1002''.

1964—Subsec. (b). Pub. L. 88–272 inserted ''(other than a distribution referred to in paragraph (2)(B) of section 316(b))''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to distribution made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

LIQUIDATIONS BEFORE JANUARY 1, 1966

Pub. L. 88–272, title II, § 225(h), Feb. 26, 1964, 78 Stat. 90, provided that in the case of corporations referred to in former subsec. (g)(3) of this section the amendments made by section 225 of Pub. L. 88–272 do not apply if there is a complete liquidation of such corporation and if the distribution of all the property under such liquidation occurs before Jan. 1, 1966, except for certain liquidations to which section 332 of this title applies.

§ 332. Complete liquidations of subsidiaries

(a) General rule

No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies

For purposes of this section, a distribution shall be considered to be in complete liquidation only if—

(1) the corporation receiving such property was, on the date of the adoption of the plan of

[1] So in original. Does not conform to section catchline.

liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either

(2) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Secretary may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such 3-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 361, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 354, of the shares not owned by the taxpayer.

(c) Deductible liquidating distributions of regulated investment companies and real estate investment trusts

If a corporation receives a distribution from a regulated investment company or a real estate investment trust which is considered under subsection (b) as being in complete liquidation of such company or trust, then, notwithstanding any other provision of this chapter, such corporation shall recognize and treat as a dividend from such company or trust an amount equal to the deduction for dividends paid allowable to such company or trust by reason of such distribution.

(d) Recognition of gain on liquidation of certain holding companies

(1) In general

In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

(A) subsection (a) and section 331 shall not apply to such distribution, and

(B) such distribution shall be treated as a distribution of property to which section 301 applies.

(2) Applicable holding company

For purposes of this subsection:

(A) In general

The term ''applicable holding company'' means any domestic corporation—

(i) which is a common parent of an affiliated group,

(ii) stock of which is directly owned by the distributee foreign corporation,

(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

(B) Affiliated group

For purposes of this subsection, the term ''affiliated group'' has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

(3) Coordination with subpart F

If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

(4) Regulations

The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.

(Aug. 16, 1954, ch. 736, 68A Stat. 102; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, §631(e)(2), title XVIII, §1804(e)(6)(A), Oct. 22, 1986, 100 Stat. 2273, 2803; Pub. L. 105–277, div. J, title III, §3001(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681–904; Pub. L. 108–357, title VIII, §893(a), Oct. 22, 2004, 118 Stat. 1646; Pub. L. 109–135, title IV, §412(v), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (d)(1)(B). Pub. L. 109–135 substituted ''distribution of property to which section 301 applies'' for ''distribution to which section 301 applies''.

2004—Subsec. (d). Pub. L. 108–357 added subsec. (d).

1998—Subsec. (b). Pub. L. 105–277, § 3001(b)(1), substituted ''this section'' for ''subsection (a)'' in introductory provisions.

Subsec. (c). Pub. L. 105–277, § 3001(a), added subsec. (c).

1986—Subsec. (b)(1). Pub. L. 99–514, § 1804(e)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either''.

Subsec. (c). Pub. L. 99–514, § 631(e)(2), struck out subsec. (c) containing special rule for indebtedness of subsidiary to parent in relation to complete liquidations of subsidiaries.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 893(b), Oct. 22, 2004, 118 Stat. 1647, provided that: ''The amendment made by this section [amending this section] shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title III, § 3001(c), Oct. 21, 1998, 112 Stat. 2681–904, provided that: ''The amendments made by this section [amending this section and section 334 of this title] shall apply to distributions after May 21, 1998.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(2) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Pub. L. 99–514, title XVIII, § 1804(e)(6)(B), Oct. 22, 1986, 100 Stat. 2803, provided that:

''(i) IN GENERAL.—Except as provided in clause (iii), the amendment made by subparagraph (A) [amending this section] shall apply with respect to plans of complete liquidation adopted after March 28, 1985.

''(ii) CERTAIN DISTRIBUTIONS MADE AFTER DECEMBER 31, 1984.—Except as provided in clause (iii), the amendment made by subparagraph (A) shall also apply with respect to plans of complete liquidations adopted on or before March 28, 1985, pursuant to which any distribution is made in a taxable year beginning after December 31, 1984 (December 31, 1983, in the case of an affiliated group to which an election under section 60(b)(7) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out as a note under section 1504 of this title] applies), but only if the liquidating corporation and any corporation which receives a distribution in complete liquidation of such corporation are members of an affiliated group of corporations filing a consolidated return for the taxable year which includes the date of the distribution.

''(iii) TRANSITIONAL RULE FOR AFFILIATED GROUPS.—The amendment made by subparagraph (A) shall not apply with respect to plans of complete liquidation if the liquidating corporation is a member of an affiliated group of corporations under section 60(b) (2), (5), (6), or (8) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out as a note under section 1504 of this title], for all taxable years which include the date of any distribution pursuant to such plan.''

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.

[§ 333. Repealed. Pub. L. 99–514, title VI, § 631(e)(3), Oct. 22, 1986, 100 Stat. 2273]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 103; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(g), 78 Stat. 89; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(a)(44), 1906(b)(13)(A), 1951(b)(6)(A), 90 Stat. 1772, 1834, 1838, related to election as to recognition of gain in certain liquidations.

EFFECTIVE DATE OF REPEAL

Repeal applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

§ 334. Basis of property received in liquidations

(a) General rule

If property is received in a distribution in complete liquidation, and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) Liquidation of subsidiary

(1) In general

If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in the hands of such distributee—

(A) the basis of such property shall be the fair market value of the property at the time of the distribution in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, and

(B) the basis of any property described in section 362(e)(1)(B) shall be the fair market value of the property at the time of the distribution in any case in which such distributee's aggregate adjusted basis of such property would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.

(2) Corporate distributee

For purposes of this subsection, the term ''corporate distributee'' means only the cor-

poration which meets the stock ownership requirements specified in section 332(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 104; Pub. L. 89–809, title II, § 202(a), (b), Nov. 13, 1966, 80 Stat. 1576; Pub. L. 94–455, title XIX, §§ 1901(a)(45), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1772, 1834; Pub. L. 97–248, title II, §§ 222(e)(1)(C), 224(b), Sept. 3, 1982, 96 Stat. 480, 488; Pub. L. 99–514, title VI, § 631(e)(4), Oct. 22, 1986, 100 Stat. 2273; Pub. L. 100–647, title I, § 1006(e)(6), Nov. 10, 1988, 102 Stat. 3401; Pub. L. 105–277, div. J, title III, § 3001(b)(2), Oct. 21, 1998, 112 Stat. 2681–904; Pub. L. 108–357, title VIII, § 836(b), Oct. 22, 2004, 118 Stat. 1595; Pub. L. 109–135, title IV, § 403(dd)(1), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted ''except that, in the hands of such distributee—'' for ''except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—'' in introductory provisions, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''

2004—Subsec. (b)(1). Pub. L. 108–357 reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.''

1998—Subsec. (b)(1). Pub. L. 105–277 substituted ''section 332'' for ''section 332(a)''.

1988—Subsec. (b). Pub. L. 100–647 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) DISTRIBUTION IN COMPLETE LIQUIDATION.—If property is received by a corporation in a distribution in a complete liquidation to which section 332(a) applies, the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor.

''(2) TRANSFERS TO WHICH SECTION 332(c) APPLIES.—If property is received by a corporation in a transfer to which section 332(c) applies, the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

''(3) DISTRIBUTEE DEFINED.—For purposes of this subsection, the term 'distributee' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b).''

1986—Subsec. (a). Pub. L. 99–514, § 631(e)(4)(A), struck out ''(other than a distribution to which section 333 applies)'' after ''liquidation''.

Subsec. (c). Pub. L. 99–514, § 631(e)(4)(B), struck out subsec. (c) relating to property received in liquidation under section 333.

1982—Subsec. (a). Pub. L. 97–248, § 222(e)(1)(C), struck out ''partial or'' before ''complete liquidation''.

Subsec. (b). Pub. L. 97–248, § 224(b), struck out heading to par. (1) ''In general'', redesignated first sentence as par. (1) with heading ''Distribution in complete liquidation'', in par. (1) as so redesignated substituted reference to section 332(a) for reference to section 332(b) relating to a distribution in complete liquidation, struck out reference to par. (2) as an exception to the determination of basis, redesignated second sentence as par. (2) with heading ''Transfers to which section 332(c) applies'', in par. (2) as so redesignated struck out reference to par. (2) as an exception to the determination of basis, struck out par. (2) which had provided that if property was received by a corporation in a distribution in complete liquidation of another corporation and if the distribution was pursuant to a plan of liquidation adopted not more than 2 years after the date of the transaction described below, or in the case of a series of transactions, the date of the last such transaction, and stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which was limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in par. (3)) during a 12-month period beginning with the earlier of the date of the first acquisition by purchase of such stock, or if any of such stock was acquired in an acquisition which is a purchase within the meaning of second sentence of par. (3), the date on which the distributee was first considered under section 318(a) as owning stock owned by the corporation from which such acquisition was made, then the basis of the property in the hands of the distributee would be the adjusted basis of the stock with respect to which the distribution was made, and under regulations prescribed by the Secretary, proper adjustment in the adjusted basis of any stock would be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items, and struck out par. (3) which provided that ''purchase'' meant any acquisition of stock, but only if the basis of the stock in the hands of the distributee was not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or under section 1014(a) of this title the stock was not acquired in an exchange to which section 351 of this title applies, and the stock was not acquired from a person the ownership of whose stock would, under section 318(a) of this title, be attributed to the person acquiring such stock, but that ''purchase'' also meant an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase, and redesignated par. (4) as (3).

1976—Subsec. (b)(2). Pub. L. 94–455, §§ 1901(a)(45), 1906(b)(13)(A), struck out in subpar. (A) provision relating to distributions made pursuant to a plan of liquidation adopted on or before June 22, 1954, and in provisions following subpar. (B)(ii) ''or his delegate'' after ''Secretary''.

1966—Subsec. (b)(2)(B). Pub. L. 89–809, § 202(b), inserted provisions for the determination of the date on which to commence the running of the 12-month period during which the distributee must have acquired the stock by purchase by adding clauses (i) and (ii).

Subsec. (b)(3). Pub. L. 89–809, § 202(a), inserted provision that, for purposes of par. (2)(B), ''purchase'' also means an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 836(c)(2), Oct. 22, 2004, 118 Stat. 1596, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to liquidations after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to distributions after May 21, 1998, see section 3001(c) of Pub. L. 105–277, set out as a note under section 332 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 OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 222(e)(1)(C) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 224(b) of Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(45) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, § 202(d), Nov. 13, 1966, 80 Stat. 1576, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to acquisitions of stock after December 31, 1965. The amendment made by subsections (b) and (c) [amending this section and section 453 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Nov. 13, 1966].''

ADJUSTMENT FOR LIABILITY TO BASIS OF PROPERTY DISTRIBUTED IN COMPLETE LIQUIDATION OF CORPORATION PRIOR TO JULY 1, 1957; DEDUCTION FOR UNCOMPENSATED LIABILITY

Pub. L. 93–497, § 3, Oct. 29, 1974, 88 Stat. 1534, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Notwithstanding the provisions of section 334 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to basis of property received in liquidations), no adjustment to the basis of any property distributed in complete liquidation of a corporation prior to July 1, 1957, shall be made for any liability if—

''(1) the distributor and distributee did not consider the liability relevant to the value of the stock with respect to which the distribution was made,

''(2) the distributor and distributee reasonably relied upon a decision of a United States district court specifically adjudicating the amount of the liability and its affirmance by the appropriate United States court of appeals, and

''(3) the amount of liability so adjudicated was not greater than would be compensated for by insurance.

The provisions of this section apply without regard to whether such decision was subsequently reversed or modified by that United States court of appeals following distribution of such property in complete liquidation.

''(b) To the extent that the liability described in subsection (a) is not compensated for by insurance or otherwise, the amount thereof shall be allowed as a deduction under the appropriate provision of the Internal Revenue Code of 1986 for the taxable year in which payment thereof was made and shall be effective in determining income tax liabilities of all taxable years prior thereto.''

SUBPART B—EFFECTS ON CORPORATION

AMENDMENTS

1986—Pub. L. 99–514, title VI, § 631(e)(17), Oct. 22, 1986, 100 Stat. 2275, substituted ''Gain or loss recognized on property distributed in complete liquidation'' for ''General rule'' in item 336 and ''Nonrecognition for property distributed to parent in complete liquidation of subsidiary'' for ''Gain or loss on sales or exchanges in connection with certain liquidations'' in item 337.

1982—Pub. L. 97–248, title II, § 224(c)(9), Sept. 3, 1982, 96 Stat. 489, substituted ''Certain stock purchases treated as asset acquisitions'' for ''Effect on earnings and profits'' in item 338.

§ 336. Gain or loss recognized on property distributed in complete liquidation

(a) General rule

Except as otherwise provided in this section or section 337, gain or loss shall be recognized to a liquidating corporation on the distribution of property in complete liquidation as if such property were sold to the distributee at its fair market value.

(b) Treatment of liabilities

If any property distributed in the liquidation is subject to a liability or the shareholder assumes a liability of the liquidating corporation in connection with the distribution, for purposes of subsection (a) and section 337, the fair market value of such property shall be treated as not less than the amount of such liability.

(c) Exception for liquidations which are part of a reorganization

For provision providing that this subpart does not apply to distributions in pursuance of a plan of reorganization, see section 361(c)(4).

(d) Limitations on recognition of loss

(1) No loss recognized in certain distributions to related persons

(A) In general

No loss shall be recognized to a liquidating corporation on the distribution of any prop-

erty to a related person (within the meaning of section 267) if—

(i) such distribution is not pro rata, or

(ii) such property is disqualified property.

(B) Disqualified property

For purposes of subparagraph (A), the term ''disqualified property'' means any property which is acquired by the liquidating corporation in a transaction to which section 351 applied, or as a contribution to capital, during the 5-year period ending on the date of the distribution. Such term includes any property if the adjusted basis of such property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(2) Special rule for certain property acquired in certain carryover basis transactions

(A) In general

For purposes of determining the amount of loss recognized by any liquidating corporation on any sale, exchange, or distribution of property described in subparagraph (B), the adjusted basis of such property shall be reduced (but not below zero) by the excess (if any) of—

(i) the adjusted basis of such property immediately after its acquisition by such corporation, over

(ii) the fair market value of such property as of such time.

(B) Description of property

(i) In general

For purposes of subparagraph (A), property is described in this subparagraph if—

(I) such property is acquired by the liquidating corporation in a transaction to which section 351 applied or as a contribution to capital, and

(II) the acquisition of such property by the liquidating corporation was part of a plan a principal purpose of which was to recognize loss by the liquidating corporation with respect to such property in connection with the liquidation.

Other property shall be treated as so described if the adjusted basis of such other property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(ii) Certain acquisitions treated as part of plan

For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidated corporation after the date 2 years before the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as acquired as part of a plan described in clause (i)(II).

(C) Recapture in lieu of disallowance

The Secretary may prescribe regulations under which, in lieu of disallowing a loss under subparagraph (A) for a prior taxable year, the gross income of the liquidating corporation for the taxable year in which the plan of complete liquidation is adopted shall be increased by the amount of the disallowed loss.

(3) Special rule in case of liquidation to which section 332 applies

In the case of any liquidation to which section 332 applies, no loss shall be recognized to the liquidating corporation on any distribution in such liquidation. The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.

(e) Certain stock sales and distributions may be treated as asset transfers

Under regulations prescribed by the Secretary, if—

(1) a corporation owns stock in another corporation meeting the requirements of section 1504(a)(2), and

(2) such corporation sells, exchanges, or distributes all of such stock,

an election may be made to treat such sale, exchange, or distribution as a disposition of all of the assets of such other corporation, and no gain or loss shall be recognized on the sale, exchange, or distribution of such stock.

(Added Pub. L. 99–514, title VI, §631(a), Oct. 22, 1986, 100 Stat. 2269; amended Pub. L. 100–647, title I, §§1006(e)(1)–(3), (21)(A), 1018(d)(5)(D), Nov. 10, 1988, 102 Stat. 3400, 3403, 3580.)

PRIOR PROVISIONS

A prior section 336, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(1), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, §2(b)(1), (c)(1), 94 Stat. 2253, 2254; Sept. 3, 1982, Pub. L. 97–248, title II, §222(b), (e)(1)(D), 224(c)(4), 96 Stat. 478, 480, 489, related to distributions of property in liquidation, prior to repeal by Pub. L. 99–514, §631(a).

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, §1006(e)(21)(A), substituted ''liabilities'' for ''liabilities in excess of basis'' in heading.

Subsec. (c). Pub. L. 100–647, §1018(d)(5)(D), substituted ''liquidations which are part of a reorganization'' for ''certain liquidations to which part III applies'' in heading and amended text generally. Prior to amendment, text read as follows: ''This section shall not apply with respect to any distribution of property to the extent there is nonrecognition of gain or loss with respect to such property to the recipient under part III.''

Subsec. (d)(2)(B)(ii). Pub. L. 100–647, §1006(e)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidating corporation during the 2-year period ending on the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as part of a plan described in clause (i)(II).''

Subsec. (d)(3). Pub. L. 100–647, §1006(e)(2), inserted at end ''The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.''

Subsec. (e). Pub. L. 100–647, §1006(e)(3), substituted ''an election may be made'' for ''such corporation may elect'' in concluding provisions.

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

Pub. L. 99–514, title VI, § 633, Oct. 22, 1986, 100 Stat. 2277, as amended by Pub. L. 100–647, title I, § 1006(g), Nov. 10, 1988, 102 Stat. 3407, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle D (§§ 631–634) of title VI of Pub. L. 99–514, enacting this section and section 337 of this title, amending sections 26, 311, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealing former sections 333, 336, and 337 of this title] shall apply to—

''(1) any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before January 1, 1987,

''(2) any transaction described in section 338 of the Internal Revenue Code of 1986 for which the acquisition date occurs after December 31, 1986, and

''(3) any distribution (not in complete liquidation) made after December 31, 1986.

''(b) BUILT-IN GAINS OF S CORPORATIONS.—

''(1) IN GENERAL.—The amendments made by section 632 (other than subsection (b) thereof) [amending sections 26, 1366, 1374, and 1375 of this title] shall apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986.

''(2) APPLICATION OF PRIOR LAW.—In the case of any taxable year of an S corporation which begins after December 31, 1986, and to which the amendments made by section 632 (other than subsection (b) thereof) do not apply, paragraph (1) of section 1374(b) of the Internal Revenue Code of 1954 (as in effect on the date before the date of the enactment of this Act [Oct. 22, 1986]) shall be applied as if it read as follows:

'' '(1) an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or'[.]

''(c) EXCEPTION FOR CERTAIN PLANS OF LIQUIDATION AND BINDING CONTRACTS.—

''(1) IN GENERAL.—The amendments made by this subtitle shall not apply to—

''(A) any distribution or sale or exchange made pursuant to a plan of liquidation adopted before August 1, 1986, if the liquidating corporation is completely liquidated before January 1, 1988,

''(B) any distribution or sale or exchange made by any corporation if more than 50 percent of the voting stock (by value) of such corporation is acquired on or after August 1, 1986, pursuant to a written binding contract in effect before such date and if such corporation is completely liquidated before January 1, 1988,

''(C) any distribution or sale or exchange made by any corporation if substantially all of the assets of such corporation are sold on or after August 1, 1986, pursuant to 1 or more written binding contracts in effect before such date and if such corporation is completely liquidated before January 1, 1988, or

''(D) any transaction described in section 338 of the Internal Revenue Code of 1986 with respect to any target corporation if a qualified stock purchase of such target corporation is made on or after August 1, 1986, pursuant to a written binding contract in effect before such date and the acquisition date (within the meaning of such section 338) is before January 1, 1988.

''(2) SPECIAL RULE FOR CERTAIN ACTIONS TAKEN BEFORE NOVEMBER 20, 1985.—For purposes of paragraph (1), transactions shall be treated as pursuant to a plan of liquidation adopted before August 1, 1986, if—

''(A) before November 20, 1985—

''(i) the board of directors of the liquidating corporation adopted a resolution to solicit shareholder approval for a transaction of a kind described in section 336 or 337, or

''(ii) the shareholders or board of directors have approved such a transaction,

''(B) before November 20, 1985—

''(i) there has been an offer to purchase a majority of the voting stock of the liquidating corporation, or

''(ii) the board of directors of the liquidating corporation has adopted a resolution approving an acquisition or recommending the approval of an acquisition to the shareholders, or

''(C) before November 20, 1985, a ruling request was submitted to the Secretary of the Treasury or his delegate with respect to a transaction of a kind described in section 336 or 337 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this subtitle).

For purposes of the preceding sentence, any action taken by the board of directors or shareholders of a corporation with respect to any subsidiary of such corporation shall be treated as taken by the board of directors or shareholders of such subsidiary.

''(d) TRANSITIONAL RULE FOR CERTAIN SMALL CORPORATIONS.—

''(1) IN GENERAL.—In the case of the complete liquidation before January 1, 1989, of a qualified corporation, the amendments made by this subtitle shall not apply to the applicable percentage of each gain or loss which (but for this paragraph) would be recognized by the liquidating corporation by reason of the amendments made by this subtitle. Section 333 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall continue to apply to any complete liquidation described in the preceding sentence.

''(2) PARAGRAPH (1) NOT TO APPLY TO CERTAIN ITEMS.—Paragraph (1) shall not apply to—

''(A) any gain or loss which is an ordinary gain or loss (determined without regard to section 1239 of the Internal Revenue Code of 1986),

''(B) any gain or loss on a capital asset held for not more than 6 months, and

''(C) any gain on an asset acquired by the qualified corporation if—

''(i) the basis of such asset in the hands of the qualified corporation is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom acquired, and

''(ii) a principal purpose for the transfer of such asset to the qualified corporation was to secure the benefits of this subsection.

''(3) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means—

''(A) 100 percent if the applicable value of the qualified corporation is less than $5,000,000, or

''(B) 100 percent reduced by an amount which bears the same ratio to 100 percent as—

''(i) the excess of the applicable value of the corporation over $5,000,000, bears to

''(ii) $5,000,000.

''(4) APPLICABLE VALUE.—For purposes of this subsection, the applicable value is the fair market value of all of the stock of the corporation on the date of the adoption of the plan of complete liquidation (or if greater, on August 1, 1986).

''(5) QUALIFIED CORPORATION.—For purposes of this subsection, the term 'qualified corporation' means any corporation if—

''(A) on August 1, 1986, and at all times thereafter before the corporation is completely liquidated, more than 50 percent (by value) of the stock in such corporation is held by a qualified group, and

''(B) the applicable value of such corporation does not exceed $10,000,000.

''(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) QUALIFIED GROUP.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'qualified group' means any group of

10 or fewer qualified persons who at all times during the 5-year period ending on the date of the adoption of the plan of complete liquidation (or, if shorter, the period during which the corporation or any predecessor was in existence) owned (or was treated as owning under the rules of subparagraph (C)) more than 50 percent (by value) of the stock in such corporation.

''(ii) 5-YEAR OWNERSHIP REQUIREMENT NOT TO APPLY IN CERTAIN CASES.—In the case of—

''(I) any complete liquidation pursuant to a plan of liquidation adopted before March 31, 1988,

''(II) any distribution not in liquidation made before March 31, 1988,

''(III) an election to be an S corporation filed before March 31, 1988, or

''(IV) a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before March 31, 1988,

the term 'qualified group' means any group of 10 or fewer qualified persons.

''(B) QUALIFIED PERSON.—The term 'qualified person' means—

''(i) an individual,

''(ii) an estate, or

''(iii) any trust described in clause (ii) or clause (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

''(C) ATTRIBUTION RULES.—

''(i) IN GENERAL.—Any stock owned by a corporation, trust (other than a trust referred to in subparagraph (B)(iii)[)], or partnership shall be treated as owned proportionately by its shareholders, beneficiaries, or partners, and shall not be treated as owned by such corporation, trust, or partnership. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

''(ii) FAMILY MEMBERS.—Stock owned (or treated as owned) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person, and shall be treated as owned by such 1 person for any period during which it was owned (or treated as owned) by any such member.

''(iii) TREATMENT OF CERTAIN TRUSTS.—Stock owned (or treated as owned) by the estate of any decedent or by any trust referred to in subparagraph (B)(iii) with respect to such decedent shall be treated as owned by 1 person and shall be treated as owned by such 1 person for the period during which it was owned (or treated as owned) by such estate or any such trust or by the decedent.

''(D) SPECIAL HOLDING PERIOD RULES.—Any property acquired by reason of the death of an individual shall be treated as owned at all times during which such property was owned (or treated as owned) by the decedent.

''(E) CONTROLLED GROUP OF CORPORATIONS.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of determining whether any of such corporations met the requirement of paragraph (5)(B) and for purposes of determining the applicable percentage with respect to any of such corporations. For purposes of the preceding sentence, an S corporation shall not be treated as a member of a controlled group unless such corporation was a C corporation for its taxable year which includes August 1, 1986, or it was not described for such taxable year in paragraph (1) or (2) of section 1374(c) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]).

''(7) SECTION 338 TRANSACTIONS.—The provisions of this subsection shall also apply in the case of a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before January 1, 1989.

''(8) APPLICATION OF SECTION 1374.—Rules similar to the rules of this subsection shall apply for purposes of applying section 1374 of the Internal Revenue Code of 1986 (as amended by section 632) in the case of a qualified corporation which makes an election to be an S corporation under section 1362 of such Code before January 1, 1989, without regard to whether such corporation is completely liquidated.

''(9) APPLICATION TO NONLIQUIDATING DISTRIBUTIONS.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989, without regard to whether such corporation is completely liquidated.

''(e) COMPLETE LIQUIDATION DEFINED.—For purposes of this section, a corporation shall be treated as completely liquidated if all of the assets of such corporation are distributed in complete liquidation, less assets retained to meet claims.

''(f) OTHER TRANSITIONAL RULES.—

''(1) The amendments made by this subtitle shall not apply to any liquidation of a corporation incorporated under the laws of Pennsylvania on August 3, 1970, if—

''(A) the board of directors of such corporation approved a plan of liquidation before January 1, 1986,

''(B) an agreement for the sale of a material portion of the assets of such corporation was signed on May 9, 1986 (whether or not the assets are sold in accordance with such agreement), and

''(C) the corporation is completely liquidated on or before December 31, 1988.

''(2) The amendments made by this subtitle shall not apply to any liquidation (or deemed liquidation under section 338 of the Internal Revenue Code of 1986) of a diversified financial services corporation incorporated under the laws of Delaware on May 9, 1929 (or any direct or indirect subsidiary of such corporation), pursuant to a binding written contract entered into on or before December 31, 1986; but only if the liquidation is completed (or in the case of a section 338 election, the acquisition date occurs) before January 1, 1988.

''(3) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

''(A) of the assets owned (directly or indirectly) by a testamentary trust established under the will of a decedent dying on June 15, 1956, or its beneficiaries,

''(B) made pursuant to a court order in an action filed on January 18, 1984, if such order—

''(i) is issued after July 31, 1986, and

''(ii) directs the disposition of the assets of such trust and the division of the trust corpus into 3 separate sub-trusts.

For purposes of the preceding sentence, an election under section 338(g) of the Internal Revenue Code of 1986 (or an election under section 338(h)(10) of such Code qualifying as a section 337 liquidation pursuant to regulations prescribed by the Secretary under section 1.338(h)(10)–1T(j)) made in connection with a sale or exchange pursuant to a court order described in subparagraph (B) shall be treated as a sale of [or] exchange.

''(4)(A) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

''(i) if—

''(I) an option agreement to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976, is executed before August 1, 1986, the corporation adopts (by approval of its shareholders) a conditional plan of liquidation before August 1,

1986 to become effective upon the exercise of such option agreement (or modification thereto), and the assets are sold pursuant to the exercise of the option (as originally executed or subsequently modified provided that the purchase price is not thereby increased), or

''(II) in the event that the optionee does not acquire substantially all the assets of the corporation, the optionor corporation sells substantially all its assets to another purchaser at a purchase price not greater than that contemplated by such option agreement pursuant to an effective plan of liquidation, and

''(ii) the complete liquidation of the corporation occurs within 12 months of the time the plan of liquidation becomes effective, but in no event later than December 31, 1989.

''(B) For purposes of subparagraph (A), a distribution, or sale, or exchange, of a distributee corporation (within the meaning of section 337(c)(3) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of subparagraph (A) if its subsidiary satisfies the requirements of subparagraph (A).

''(C) For purposes of section 56 of the Internal Revenue Code of 1986 (as amended by this Act), any gain or loss not recognized by reason of this paragraph shall not be taken into account in determining the adjusted net book income of the corporation.

''(5) In the case of a corporation incorporated under the laws of Wisconsin on April 3, 1948—

''(A) a voting trust established not later than December 31, 1987, shall qualify as a trust permitted as a shareholder of an S corporation and shall be treated as only 1 shareholder if the holders of beneficial interests in such voting trust are—

''(i) employees or retirees of such corporation, or

''(ii) in the case of stock or voting trust certificates acquired from an employee or retiree of such corporation, the spouse, child, or estate of such employee or retiree or a trust created by such employee or retiree which is described in section 1361(c)(2) of the Internal Revenue Code of 1986 (or treated as described in such section by reason of section 1361(d) of such Code), and

''(B) the amendment made by section 632 (other than subsection (b) thereof) shall not apply to such corporation if it elects to be an S corporation before January 1, 1989.

''(6) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated on January 26, 1982, under the laws of the State of Alabama with a principal place of business in Colbert County, Alabama, but only if such corporation is completely liquidated on or before December 31, 1987.

''(7) The amendments made by this subtitle shall not apply to the acquisition by a Delaware bank holding company of all of the assets of an Iowa bank holding company pursuant to a written contract dated December 9, 1981.

''(8) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated under the laws of Delaware on January 20, 1984, if more than 40 percent of the stock of such corporation was acquired by purchase on June 11, 1986, and there was a tender offer with respect to all additional outstanding shares of such corporation on July 29, 1986, but only if the corporation is completely liquidated on or before December 31, 1987.

''(g) TREATMENT OF CERTAIN DISTRIBUTIONS IN RESPONSE TO HOSTILE TENDER OFFER.—

''(1) IN GENERAL.—No gain or loss shall be recognized under the Internal Revenue Code of 1986 to a corporation (hereinafter in this subsection referred to as 'parent') on a qualified distribution.

''(2) QUALIFIED DISTRIBUTION DEFINED.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'qualified distribution' means a distribution—

''(i) by parent of all of the stock of a qualified subsidiary in exchange for stock of parent which was acquired for purposes of such exchange pursuant to a tender offer dated February 16, 1982, and

''(ii) pursuant to a contract dated February 13, 1982, and

''(iii) which was made not more than 60 days after the board of directors of parent recommended rejection of an unsolicited tender offer to obtain control of parent.

''(B) QUALIFIED SUBSIDIARY.—The term 'qualified subsidiary' means a corporation created or organized under the laws of Delaware on September 7, 1976, all of the stock of which was owned by parent immediately before the qualified distribution.''

§ 337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary

(a) In general

No gain or loss shall be recognized to the liquidating corporation on the distribution to the 80-percent distributee of any property in a complete liquidation to which section 332 applies.

(b) Treatment of indebtedness of subsidiary, etc.

(1) Indebtedness of subsidiary to parent

If—

(A) a corporation is liquidated in a liquidation to which section 332 applies, and

(B) on the date of the adoption of the plan of liquidation, such corporation was indebted to the 80-percent distributee,

for purposes of this section and section 336, any transfer of property to the 80-percent distributee in satisfaction of such indebtedness shall be treated as a distribution to such distributee in such liquidation.

(2) Treatment of tax-exempt distributee

(A) In general

Except as provided in subparagraph (B), paragraph (1) and subsection (a) shall not apply where the 80-percent distributee is an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(B) Exception where property will be used in unrelated business

(i) In general

Subparagraph (A) shall not apply to any distribution of property to an organization described in section 511(a)(2) if, immediately after such distribution, such organization uses such property in an activity the income from which is subject to tax under section 511(a).

(ii) Later disposition or change in use

If any property to which clause (i) applied is disposed of by the organization acquiring such property, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of clause (i)) shall be included in such organization's unrelated business taxable income. For purposes of the preceding sentence, if such property ceases to be used in an activity referred to in clause (i), such organization shall be treated as having disposed of such property on the date of such cessation.

(c) 80-percent distributee

For purposes of this section, the term ''80-percent distributee'' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b). For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the amendments made by subtitle D of title VI of the Tax Reform Act of 1986, including—

(1) regulations to ensure that such purposes may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations and part III of this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity, and

(2) regulations providing for appropriate coordination of the provisions of this section with the provisions of this title relating to taxation of foreign corporations and their shareholders.

(Added Pub. L. 99–514, title VI, §631(a), Oct. 22, 1986, 100 Stat. 2271; amended Pub. L. 100–203, title X, §10223(a), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, §1006(e)(4), (5)(A), Nov. 10, 1988, 102 Stat. 3400.)

REFERENCES IN TEXT

The Tax Reform Act of 1986, referred to in subsec. (d), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085, as amended. Subtitle D (§§631–634) of title VI of the Tax Reform Act of 1986 enacted sections 336 and 337 of this title, amended sections 26, 311, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealed former sections 333, 336, and 337 of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 337, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Sept. 2, 1958, Pub. L. 85–866, title I, §19, 72 Stat. 1615; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(46), 1906(b)(13)(A), title XXI, §2118(a), 90 Stat. 1772, 1834, 1912; Nov. 6, 1978, Pub. L. 95–600, title VII, §701(i)(1), 92 Stat. 2904; Nov. 10, 1978, Pub. L. 95–628, §4(a), 92 Stat. 3628; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(2)(A), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, §2(c)(2), 94 Stat. 2254; Dec. 24, 1980, Pub. L. 96–589, §5(c), 94 Stat. 3405; Sept. 3, 1982, Pub. L. 97–248, title II, §224(c)(5), (6), 96 Stat. 489; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1804(e)(7)(A), 100 Stat. 2803, related to gain or loss on sales or exchanges in connection with certain liquidations, prior to repeal by Pub. L. 99–514, §631(a).

AMENDMENTS

1988—Subsec. (b)(2)(B)(i). Pub. L. 100–647, §1006(e)(4)(A), (B), substituted ''described in section 511(a)(2)'' for ''described in section 511(a)(2) or 511(b)(2)'' and ''in an activity the income from which is subject to tax under section 511(a)'' for ''in an unrelated trade or business (as defined in section 513)''.

Subsec. (b)(2)(B)(ii). Pub. L. 100–647, §1006(e)(4)(C), substituted ''an activity referred to in clause (i)'' for ''an unrelated trade or business of such organization''.

Subsec. (d). Pub. L. 100–647, §1006(e)(5)(A), in introductory provisions, substituted ''amendments made by subtitle D of title VI of the Tax Reform Act of 1986'' for ''amendments made to this subpart by the Tax Reform Act of 1986'', and in par. (1), substituted ''this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity'' for ''this subchapter)''.

1987—Subsec. (c). Pub. L. 100–203 inserted at end ''For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(e)(5)(B), Nov. 10, 1988, 102 Stat. 3401, provided that: ''The amendment made by subparagraph (A)(ii) [amending this section] shall not apply to any reorganization if before June 10, 1987—

''(i) the board of directors of a party to the reorganization adopted a resolution to solicit shareholder approval for the transaction, or

''(ii) the shareholders or the board of directors of a party to the reorganization approved the transaction.''

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 OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to distributions or transfers after Dec. 15, 1987, with exceptions for certain distributee corporations and distributions covered by prior transition rule, see section 10223(d) of Pub. L. 100–203, set out as a note under section 304 of this title.

EFFECTIVE DATE

Section applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as a note under section 336 of this title.

§338. Certain stock purchases treated as asset acquisitions

(a) General rule

For purposes of this subtitle, if a purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election), then, in the case of any qualified stock purchase, the target corporation—

(1) shall be treated as having sold all of its assets at the close of the acquisition date at fair market value in a single transaction, and

(2) shall be treated as a new corporation which purchased all of the assets referred to in paragraph (1) as of the beginning of the day after the acquisition date.

(b) Basis of assets after deemed purchase

(1) In general

For purposes of subsection (a), the assets of the target corporation shall be treated as purchased for an amount equal to the sum of—

(A) the grossed-up basis of the purchasing corporation's recently purchased stock, and

(B) the basis of the purchasing corporation's nonrecently purchased stock.

(2) Adjustment for liabilities and other relevant items

The amount described in paragraph (1) shall be adjusted under regulations prescribed by the Secretary for liabilities of the target corporation and other relevant items.

(3) Election to step-up the basis of certain target stock

(A) In general

Under regulations prescribed by the Secretary, the basis of the purchasing corporation's nonrecently purchased stock shall be the basis amount determined under subparagraph (B) of this paragraph if the purchasing corporation makes an election to recognize gain as if such stock were sold on the acquisition date for an amount equal to the basis amount determined under subparagraph (B).

(B) Determination of basis amount

For purposes of subparagraph (A), the basis amount determined under this subparagraph shall be an amount equal to the grossed-up basis determined under subparagraph (A) of paragraph (1) multiplied by a fraction—

(i) the numerator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(ii) the denominator of which is 100 percent minus the percentage referred to in clause (i).

(4) Grossed-up basis

For purposes of paragraph (1), the grossed-up basis shall be an amount equal to the basis of the corporation's recently purchased stock, multiplied by a fraction—

(A) the numerator of which is 100 percent, minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(B) the denominator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's recently purchased stock.

(5) Allocation among assets

The amount determined under paragraphs (1) and (2) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.

(6) Definitions of recently purchased stock and nonrecently purchased stock

For purposes of this subsection—

(A) Recently purchased stock

The term ''recently purchased stock'' means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which was purchased by such corporation during the 12-month acquisition period.

(B) Nonrecently purchased stock

The term ''nonrecently purchased stock'' means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which is not recently purchased stock.

[(c) Repealed. Pub. L. 99–514, title VI, § 631(b)(2), Oct. 22, 1986, 100 Stat. 2272]

(d) Purchasing corporation; target corporation; qualified stock purchase

For purposes of this section—

(1) Purchasing corporation

The term ''purchasing corporation'' means any corporation which makes a qualified stock purchase of stock of another corporation.

(2) Target corporation

The term ''target corporation'' means any corporation the stock of which is acquired by another corporation in a qualified stock purchase.

(3) Qualified stock purchase

The term ''qualified stock purchase'' means any transaction or series of transactions in which stock (meeting the requirements of section 1504(a)(2)) of 1 corporation is acquired by another corporation by purchase during the 12-month acquisition period.

(e) Deemed election where purchasing corporation acquires asset of target corporation

(1) In general

A purchasing corporation shall be treated as having made an election under this section with respect to any target corporation if, at any time during the consistency period, it acquires any asset of the target corporation (or a target affiliate).

(2) Exceptions

Paragraph (1) shall not apply with respect to any acquisition by the purchasing corporation if—

(A) such acquisition is pursuant to a sale by the target corporation (or the target affiliate) in the ordinary course of its trade or business,

(B) the basis of the property acquired is determined wholly by reference to the adjusted basis of such property in the hands of the person from whom acquired,

(C) such acquisition was before September 1, 1982, or

(D) such acquisition is described in regulations prescribed by the Secretary and meets such conditions as such regulations may provide.

(3) Anti-avoidance rule

Whenever necessary to carry out the purpose of this subsection and subsection (f), the Secretary may treat stock acquisitions which are pursuant to a plan and which meet the requirements of section 1504(a)(2) as qualified stock purchases.

(f) Consistency required for all stock acquisitions from same affiliated group

If a purchasing corporation makes qualified stock purchases with respect to the target corporation and 1 or more target affiliates during any consistency period, then (except as otherwise provided in subsection (e))—

(1) any election under this section with respect to the first such purchase shall apply to each other such purchase, and

(2) no election may be made under this section with respect to the second or subsequent such purchase if such an election was not made with respect to the first such purchase.

(g) Election

(1) When made

Except as otherwise provided in regulations, an election under this section shall be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(2) Manner

An election by the purchasing corporation under this section shall be made in such manner as the Secretary shall by regulations prescribe.

(3) Election irrevocable

An election by a purchasing corporation under this section, once made, shall be irrevocable.

(h) Definitions and special rules

For purposes of this section—

(1) 12-month acquisition period

The term ''12-month acquisition period'' means the 12-month period beginning with the date of the first acquisition by purchase of stock included in a qualified stock purchase (or, if any of such stock was acquired in an acquisition which is a purchase by reason of subparagraph (C) of paragraph (3), the date on which the acquiring corporation is first considered under section 318(a) (other than paragraph (4) thereof) as owning stock owned by the corporation from which such acquisition was made).

(2) Acquisition date

The term ''acquisition date'' means, with respect to any corporation, the first day on which there is a qualified stock purchase with respect to the stock of such corporation.

(3) Purchase

(A) In general

The term ''purchase'' means any acquisition of stock, but only if—

(i) the basis of the stock in the hands of the purchasing corporation is not determined (I) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (II) under section 1014(a) (relating to property acquired from a decedent),

(ii) the stock is not acquired in an exchange to which section 351, 354, 355, or 356 applies and is not acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction, and

(iii) the stock is not acquired from a person the ownership of whose stock would, under section 318(a) (other than paragaraph[1] (4) thereof), be attributed to the person acquiring such stock.

(B) Deemed purchase under subsection (a)

The term ''purchase'' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary.

(C) Certain stock acquisitions from related corporations

(i) In general

Clause (iii) of subparagraph (A) shall not apply to an acquisition of stock from a related corporation if at least 50 percent in value of the stock of such related corporation was acquired by purchase (within the meaning of subparagraphs (A) and (B)).

(ii) Certain distributions

Clause (i) of subparagraph (A) shall not apply to an acquisition of stock described in clause (i) of this subparagraph if the corporation acquiring such stock—

(I) made a qualified stock purchase of stock of the related corporation, and

(II) made an election under this section (or is treated under subsection (e) as having made such an election) with respect to such qualified stock purchase.

(iii) Related corporation defined

For purposes of this subparagraph, a corporation is a related corporation if stock owned by such corporation is treated (under section 318(a) other than paragraph (4) thereof) as owned by the corporation acquiring the stock.

(4) Consistency period

(A) In general

Except as provided in subparagraph (B), the term ''consistency period'' means the period consisting of—

(i) the 1-year period before the beginning of the 12-month acquisition period for the target corporation,

(ii) such acquisition period (up to and including the acquisition date), and

(iii) the 1-year period beginning on the day after the acquisition date.

(B) Extension where there is plan

The period referred to in subparagraph (A) shall also include any period during which the Secretary determines that there was in effect a plan to make a qualified stock purchase plus 1 or more other qualified stock purchases (or asset acquisitions described in subsection (e)) with respect to the target corporation or any target affiliate.

(5) Affiliated group

The term ''affiliated group'' has the meaning given to such term by section 1504(a) (determined without regard to the exceptions contained in section 1504(b)).

(6) Target affiliate

(A) In general

A corporation shall be treated as a target affiliate of the target corporation if each of such corporations was, at any time during so much of the consistency period as ends on the acquisition date of the target corporation, a member of an affiliated group which had the same common parent.

[1] So in original.

(B) Certain foreign corporations, etc.

Except as otherwise provided in regulations (and subject to such conditions as may be provided in regulations)—

(i) the term ''target affiliate'' does not include a foreign corporation, a DISC, or a corporation to which an election under section 936 applies, and

(ii) stock held by a target affiliate in a foreign corporation or a domestic corporation which is a DISC or described in section 1248(e) shall be excluded from the operation of this section.

[(7) Repealed. Pub. L. 100–647, title I, § 1006(e)(20), Nov. 10, 1988, 102 Stat. 3403]

(8) Acquisitions by affiliated group treated as made by 1 corporation

Except as provided in regulations prescribed by the Secretary, stock and asset acquisitions made by members of the same affiliated group shall be treated as made by 1 corporation.

(9) Target not treated as member of affiliated group

Except as otherwise provided in paragraph (10) or in regulations prescribed under this paragraph, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).

(10) Elective recognition of gain or loss by target corporation, together with nonrecognition of gain or loss on stock sold by selling consolidated group

(A) In general

Under regulations prescribed by the Secretary, an election may be made under which if—

(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

(B) Selling consolidated group

For purposes of subparagraph (A), the term ''selling consolidated group'' means any group of corporations which (for the taxable period which includes the transaction)—

(i) includes the target corporation, and

(ii) files a consolidated return.

To the extent provided in regulations, such term also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

(C) Information required to be furnished to the Secretary

Under regulations, where an election is made under subparagraph (A), the purchasing corporation and the common parent of the selling consolidated group shall, at such times and in such manner as may be provided in regulations, furnish to the Secretary the following information:

(i) The amount allocated under subsection (b)(5) to goodwill or going concern value.

(ii) Any modification of the amount described in clause (i).

(iii) Any other information as the Secretary deems necessary to carry out the provisions of this paragraph.

(11) Elective formula for determining fair market value

For purposes of subsection (a)(1), fair market value may be determined on the basis of a formula provided in regulations prescribed by the Secretary which takes into account liabilities and other relevant items.

[(12) Repealed. Pub. L. 99–514, title VI, § 631(e)(5), Oct. 22, 1986, 100 Stat. 2273]

(13) Tax on deemed sale not taken into account for estimated tax purposes

For purposes of section 6655, tax attributable to the sale described in subsection (a)(1) shall not be taken into account. The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).

[(14) Repealed. Pub. L. 108–27, title III, § 302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763]

(15) Combined deemed sale return

Under regulations prescribed by the Secretary, a combined deemed sale return may be filed by all target corporations acquired by a purchasing corporation on the same acquisition date if such target corporations were members of the same selling consolidated group (as defined in subparagraph (B) of paragraph (10)).

(16) Coordination with foreign tax credit provisions

Except as provided in regulations, this section shall not apply for purposes of determining the source or character of any item for purposes of subpart A of part III of subchapter N of this chapter (relating to foreign tax credit). The preceding sentence shall not apply to any gain to the extent such gain is includible in gross income as a dividend under section 1248 (determined without regard to any deemed sale under this section by a foreign corporation).

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(1) regulations to ensure that the purpose of this section to require consistency of treatment of stock and asset sales and purchases may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations) and

(2) regulations providing for the coordination of the provisions of this section with the

provision of this title relating to foreign corporations and their shareholders.

(Added Pub. L. 97–248, title II, §224(a), Sept. 3, 1982, 96 Stat. 485; amended Pub. L. 97–448, title III, §306(a)(8)(A)(i), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98–369, div. A, title VII, §712(k)(1)–(5)(D), (6), (7), July 18, 1984, 98 Stat. 948–952; Pub. L. 99–514, title VI, §631(b), (e)(5), title XII, §1275(c)(6), title XVIII, §§1804(e)(8)(A), 1899A(7), Oct. 22, 1986, 100 Stat. 2272, 2273, 2599, 2804, 2958; Pub. L. 100–647, title I, §§1006(e)(20), 1012(bb)(5)(A), 1018(d)(9), Nov. 10, 1988, 102 Stat. 3403, 3535, 3581; Pub. L. 101–508, title XI, §11323(c)(1), Nov. 5, 1990, 104 Stat. 1388–465; Pub. L. 108–27, title III, §302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763; Pub. L. 108–357, title VIII, §839(a), Oct. 22, 2004, 118 Stat. 1597.)

PRIOR PROVISIONS

A prior section 338, act Aug. 16, 1954, ch. 736, 68A Stat. 107, made reference to a special rule relating to the effect on earnings and profits of certain distributions in partial liquidation in section 312(e), prior to repeal by Pub. L. 97–248, §222(e)(4).

AMENDMENTS

2004—Subsec. (h)(13). Pub. L. 108–357 inserted at end ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''

2003—Subsec. (h)(14). Pub. L. 108–27 struck out heading and text of par. (14). Text read as follows: ''For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section.''

1990—Subsec. (h)(10)(C). Pub. L. 101–508 added subpar. (C).

1988—Subsec. (e)(3). Pub. L. 100–647, §1018(d)(9), substituted ''which meet the requirements of section 1504(a)(2)'' for ''which meet the 80 percent requirements of subparagraphs (A) and (B) of subsection (d)(3)''.

Subsec. (h)(7). Pub. L. 100–647, §1006(e)(20), struck out par. (7) which read as follows: ''ADDITIONAL PERCENTAGE MUST BE ATTRIBUTABLE TO PURCHASE, ETC.—For purposes of subsection (c)(1), any increase in the maximum percentage of stock taken into account over the percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date shall be taken into account only to the extent such increase is attributable to—

''(A) purchase, or

''(B) a redemption of stock of the target corporation—

''(i) to which section 302(a) applies, or

''(ii) in the case of a shareholder who is not a corporation, to which section 301 applies.''

Subsec. (h)(16). Pub. L. 100–647, §1012(bb)(5)(A), added par. (16).

1986—Subsec. (a)(1). Pub. L. 99–514, §631(b)(1), struck out ''to which section 337 applies'' after ''in a single transaction''.

Subsec. (c). Pub. L. 99–514, §631(b)(2), struck out subsec. (c) relating to special rules for coordination with section 337 where purchasing corporation holds less than 100 percent of stock, and in case of certain redemptions where an election is made under this section.

Subsec. (d)(3). Pub. L. 99–514, §1804(e)(8)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'qualified stock purchase' means any transaction or series of transactions in which stock of 1 corporation possessing—

''(A) at least 80 percent of total combined voting power of all classes of stock entitled to vote, and

''(B) at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), is acquired by another corporation by purchase during the 12-month acquisition period.''

Subsec. (h)(3)(C)(i). Pub. L. 99–514, §1899A(7), substituted ''subparagraphs'' for ''subparagraph''.

Subsec. (h)(6)(B)(i). Pub. L. 99–514, §1275(c)(6), struck out ''a corporation described in section 934(b),'' after ''DISC,''.

Subsec. (h)(10)(B). Pub. L. 99–514, §631(b)(3), inserted provision that to the extent provided in regulations, term ''selling consolidated group'' also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

Subsec. (h)(12). Pub. L. 99–514, §631(e)(5), struck out par. (12) relating to applicability of section 337 where target had adopted plan for complete liquidation.

1984—Subsec. (a)(1). Pub. L. 98–369, §712(k)(1)(A), inserted ''at fair market value'' after ''acquisition date''.

Subsec. (b). Pub. L. 98–369, §712(k)(1)(B), substituted ''Basis of assets after deemed purchase'' for ''Price at which deemed sale made'' in heading.

Subsec. (b)(1). Pub. L. 98–369, §712(k)(1)(B), amended par. (1) generally, substituting ''as purchased for an amount equal to the sum of'' for ''as sold (and purchased) at an amount equal to'' in introductory text, ''purchasing corporation's recently purchased stock, and'' for ''purchasing corporation's stock in the target corporation on the acquisition date'' in subpar. (A), and ''the basis of the purchasing corporation's nonrecently purchased stock'' in subpar. (B) in lieu of provision relating to adjustment for liabilities and other relevant items, now covered in par. (2).

Subsec. (b)(2). Pub. L. 98–369, §712(k)(1)(B), amended par. (2) generally, incorporating former par. (1)(B) provision, inserting heading ''Adjustment for liabilities and other relevant items'' and substituting ''adjusted under regulations'' for ''properly adjusted under regulations''. Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 98–369, §712(k)(1)(B), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 98–369, §712(k)(1)(B), redesignated former par. (2) as (4), substituted in introductory text ''corporation's recently purchased stock,'' for ''purchasing corporation's stock in the target corporation on the acquisition date'', inserted in subpar. (A) ''minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock'', and substituted in subpar. (B) ''in the target corporation attributable to the purchasing corporation's recently purchased stock'' for ''of the target corporation held by the purchasing corporation on the acquisition date''.

Subsec. (b)(5). Pub. L. 98–369, §712(k)(1)(B), redesignated former par. (3) as (5) and inserted reference to par. (2).

Subsec. (b)(6). Pub. L. 98–369, §712(k)(1)(B), added par. (6).

Subsec. (c)(1). Pub. L. 98–369, §712(k)(2), inserted in last sentence ''and section 333 does not apply to such liquidation''.

Subsec. (e)(2). Pub. L. 98–369, §712(k)(3), substituted ''wholly'' for ''(in whole or in part)'' in subpar. (B), struck out subpar. (D) providing for nonapplication of par. (1) to any acquisition by the purchasing corporation if, to the extent provided in regulations, the property acquired is located outside the United States, redesignated subpar. (E) as (D), and, in subpar. (D) as redesignated, inserted ''and meets such conditions as such regulations may provide''.

Subsec. (g)(1). Pub. L. 98–369, §712(k)(4), substituted ''the 15th day of the 9th month beginning after the month in which the acquisition date occurs'' for ''75 days after the acquisition date''.

Subsec. (h)(1). Pub. L. 98–369, §712(k)(5)(C), included within 12-month acquisition period the period beginning with the date on which the acquiring corporation is first considered as owning stock owned by corporation from which acquisition was made.

Subsec. (h)(3)(A)(ii). Pub. L. 98–369, §712(k)(5)(D), included references to sections 354, 355, and 356 and in defining ''purchase'' provided that the stock not be acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction.

Subsec. (h)(3)(B). Pub. L. 98–369, §712(k)(5)(A), substituted in heading ''under subsection (a)'' for ''of stock of subsidiaries'' and in text ''The term 'purchase' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary'' for ''If stock in a corporation is acquired by purchase (within the meaning of subparagraph (A)) and, as a result of such acquisition, the corporation making such purchase is treated (by reason of section 318(a)) as owning stock in a 3rd corporation, the corporation making such purchase shall be treated as having purchased such stock in such 3rd corporation. The corporation making such purchase shall be treated as purchasing stock in the 3rd corporation by reason of the preceding sentence on the first day on which the purchasing corporation is considered under section 318(a) as owning such stock''.

Subsec. (h)(3)(C). Pub. L. 98–369, §712(k)(5)(B), added subpar. (C).

Subsec. (h)(7). Pub. L. 98–369, §712(k)(6)(A), added par. (7) and struck out former par. (7) which had provided that acquisitions by purchasing corporation include acquisitions by corporations affiliated with purchasing corporation. See subsec. (h)(8).

Subsec. (h)(8). Pub. L. 98–369, §712(k)(6)(A), added par. (8) incorporating former par. (7) provision stating that ''Except as otherwise provided in regulations, an acquisition of stock or assets by any member of an affiliated group which includes a purchasing corporation shall be treated as made by the purchasing corporation.'' Former par. (8) redesignated (9).

Subsec. (h)(9). Pub. L. 98–369, §712(k)(6)(A), (B), redesignated former par. (8) as (9) and substituted therein ''paragraph (10)'' for ''paragraph (9)''. Former par. (9) redesignated (10).

Subsec. (h)(10). Pub. L. 98–369, §712(k)(6)(A), redesignated former par. (9) as (10).

Subsec. (h)(11) to (15). Pub. L. 98–369, §712(k)(6)(C), added pars. (11) to (15).

Subsec. (i). Pub. L. 98–369, §712(k)(7), provided in introductory text that the regulations be appropriate to carry out the purposes of this section; designated existing provisions as par. (1) and substituted therein ''treatment of stock and asset sales and purchases'' for ''treatment of stock and asset purchases with respect to a target corporation and its target affiliates (whether by treating all of them as stock purchases or as asset purchases)'' before ''may not be circumvented'', and added par. (2).

1983—Subsec. (h)(8), (9). Pub. L. 97–448 added pars. (8) and (9).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §839(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11323(d), Nov. 5, 1990, 104 Stat. 1388–465, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1060 and 6724 of this title] shall apply to acquisitions after October 9, 1990.

''(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(bb)(5)(B), Nov. 10, 1988, 102 Stat. 3535, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to qualified stock purchases (as defined in section 338(d)(3) of the 1986 Code) after March 31, 1988, except that, in the case of an election under section 338(h)(10) of the 1986 Code, such amendment shall apply to qualified stock purchases (as so defined) after June 10, 1987.''

Amendment by sections 1006(e)(20) and 1018(d)(9) 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(b), (e)(5) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1275(c)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Pub. L. 99–514, title XVIII, §1804(e)(8)(B), Oct. 22, 1986, 100 Stat. 2804, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in cases where the 12-month acquisition period (as defined in section 338(h)(1) of the Internal Revenue Code of 1954 [now 1986] begins after December 31, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §712(k)(9), July 18, 1984, 98 Stat. 952, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section and sections 269 and 318 of this title] shall not apply to any qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) where the acquisition date (as defined in section 338(h)(2) of such Code) is before September 1, 1982.

''(B) EXTENSION OF TIME FOR MAKING ELECTION.—In the case of any qualified stock purchase described in subparagraph (A), the time for making an election under section 338 of such Code shall not expire before the close of the 60th day after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 712(k) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, §224(d), Sept. 3, 1982, 96 Stat. 489, as amended by Pub. L. 97–448, title III, §306(a)(8)(B),

Jan. 12, 1983, 96 Stat. 2403; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 168, 318, 334, 336, 337, 381, and 617 of this title] shall apply to any target corporation (within the meaning of section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by this section) with respect to which the acquisition date (within the meaning of such section) occurs after August 31, 1982.

''(2) CERTAIN ACQUISITIONS BEFORE SEPTEMBER 1, 1982.—If—

''(A) an acquisition date (within the meaning of section 338 of such Code without regard to paragraph (5) of this subsection) occurred after August 31, 1980, and before September 1, 1982,

''(B) the target corporation (within the meaning of section 338 of such Code) is not liquidated before September 1, 1982, and

''(C) the purchasing corporation (within the meaning of section 338 of such Code) makes, not later than November 15, 1982, an election under section 338 of such Code,

then the amendments made by this section shall apply to the acquisition of such target corporation.

''(3) CERTAIN ACQUISITIONS OF FINANCIAL INSTITUTIONS.—In any case in which—

''(A) there is, on July 22, 1982, a binding contract to acquire control (within the meaning of section 368(c) of such Code) of any financial institution,

''(B) the approval of one or more regulatory authorities is required in order to complete such acquisition, and

''(C) within 90 days after the date of the final approval of the last such regulatory authority granting final approval, a plan of complete liquidation of such financial institution is adopted,

then the purchasing corporation may elect not to have the amendments made by this section apply to the acquisition pursuant to such contract.

''(4) EXTENSION OF TIME FOR MAKING ELECTIONS; REVOCATION OF ELECTIONS.—

''(A) EXTENSION.—The time for making an election under section 338 of such Code shall not expire before the close of February 28, 1983.

''(B) REVOCATION.—Any election made under section 338 of such Code may be revoked by the purchasing corporation if revoked before March 1, 1983.

''(5) RULES FOR ACQUISITIONS DESCRIBED IN PARAGRAPH (2).—

''(A) IN GENERAL.—For purposes of applying section 338 of such Code with respect to any acquisition described in paragraph (2)—

''(i) the date selected under subparagraph (B) of this paragraph shall be treated as the acquisition date,

''(ii) a rule similar to the last sentence of section 334(b)(2) of such Code (as in effect on August 31, 1982) shall apply, and

''(iii) subsections (e), (f), and (i) of such section 338, and paragraphs (4), (6), (8), and (9) of subsection (h) of such section 338, shall not apply.

''(B) SELECTION OF ACQUISITION DATE BY PURCHASING CORPORATION.—The purchasing corporation may select any date for purposes of subparagraph (A)(i) if such date—

''(i) is after the later of June 30, 1982, or the acquisition date (within the meaning of section 338 of such Code without regard to this paragraph), and

''(ii) is on or before the date on which the election described in paragraph (2)(C) is made.''

TREATMENT OF CERTAIN CORPORATION ORGANIZED ON FEBRUARY 22, 1983

Pub. L. 99–514, title XVIII, §1804(e)(9), Oct. 22, 1986, 100 Stat. 2804, provided that: ''In the case of a Rhode Island corporation which was organized on February 22, 1983, and which on February 25, 1983—

''(A) purchased the stock of another corporation,

''(B) filed an election under section 338(g) of the Internal Revenue Code of 1986 with respect to such purchase, and

''(C) merged into the acquired corporation,

such purchase of stock shall be considered as made by the acquiring corporation, such election shall be valid, and the acquiring corporation shall be considered a purchasing corporation for purposes of section 338 of such Code without regard to the duration of the existence of the acquiring corporation.''

SPECIAL RULES FOR DEEMED PURCHASES UNDER PRIOR LAW

Pub. L. 98–369, div. A, title VII, §712(k)(10), July 18, 1984, 98 Stat. 953, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, before October 20, 1983, a corporation was treated as making a qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), but would not be so treated under the amendments made by paragraphs (5) and (6) [amending subsec. (h) and section 318(b)(4) of this title] of this subsection, the amendments made by such paragraphs shall not apply to such purchase unless such corporation elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have the amendments made by such paragraphs apply.''

EXCEPTION FOR STOCK PURCHASES IN CONTEMPLATION OF TARGET CORPORATION AS MEMBER OF AFFILIATED GROUP

Pub. L. 97–448, title III, §306(a)(8)(A)(ii), Jan. 12, 1983, 96 Stat. 2402, as amended by Pub. L. 98–369, div. A, title VII, §722(a)(3), July 18, 1984, 98 Stat. 973; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after September 1, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], and

''(II) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the target corporation would be treated as a member of the affiliated group which includes the selling corporation,

then the amendment made by clause (i) [amending subsec. (h)] shall not apply to such qualified stock purchase.''

[SUBPART C—REPEALED]

[§ 341. Repealed. Pub. L. 108–27, title III, § 302(e)(4)(A), May 28, 2003, 117 Stat. 763]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 107; Pub. L. 85–866, title I, §20(a), Sept. 2, 1958, 72 Stat. 1615; Pub. L. 87–834, §13(f)(4), Oct. 16, 1962, 76 Stat. 1035; Pub. L. 88–272, title II, §231(b)(4), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, §1(a), Aug. 22, 1964, 78 Stat. 596; Pub. L. 89–570, §1(b)(4), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, §211(b)(4), title V, §514(b)(1), Dec. 30, 1969, 83 Stat. 570, 643; Pub. L. 94–455, title II, §205(c)(2), title XIV, §1402(b)(1)(B), (2), title XIX, §§1901(b)(3)(A), (I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1731, 1732, 1792, 1793, 1834; Pub. L. 97–34, title V, §505(c)(2), Aug. 13, 1981, 95 Stat. 332; Pub. L. 97–248, title II, §222(e)(5), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98–369, div. A, title I, §§43(c)(1), 65(a)–(c), 135(a), title IV, §492(b)(2), title X, §1001(b)(2), (e), July 18, 1984, 98 Stat. 558, 584, 669, 854, 1011, 1012; Pub. L. 99–514, title VI, §631(e)(6), title XVIII, §§1804(i)(1), 1899A(8), Oct. 22, 1986, 100 Stat. 2273, 2807, 2958; Pub. L. 100–647, title I, §1006(e)(18), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 104–188, title I, §1702(h)(7), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 106–170, title V, §532(c)(2)(D), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 107–147, title IV, §417(24)(B)(i), Mar. 9, 2002, 116 Stat. 57, related to collapsible corporations.

EFFECTIVE DATE OF REPEAL

Repeal applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section

302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

[§ 342. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(47), Oct. 4, 1976, 90 Stat. 1772]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 110, related to liquidation of certain foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

SUBPART D—DEFINITION AND SPECIAL RULE

Sec.
346. Definition and special rule.

AMENDMENTS

1982—Pub. L. 97–248, title II, § 222(e)(8)(A), Sept. 3, 1982, 96 Stat. 481, inserted ''and Special Rule'' in subpart heading, and substituted ''Definition and special rule'' for ''Partial liquidation defined'' in item 346.

§ 346. Definition and special rule

(a) Complete liquidation

For purposes of this subchapter, a distribution shall be treated as in complete liquidation of a corporation if the distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan.

(b) Transactions which might reach same result as partial liquidations

The Secretary shall prescribe such regulations as may be necessary to ensure that the purposes of subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982 (which repeal the special tax treatment for partial liquidations) may not be circumvented through the use of section 355, 351, or any other provision of law or regulations (including the consolidated return regulations).

(Aug. 16, 1954, ch. 736, 68A Stat. 110; Pub. L. 97–248, title II, § 222(d), Sept. 3, 1982, 96 Stat. 479; Pub. L. 99–514, title VI, § 631(e)(7), Oct. 22, 1986, 100 Stat. 2273.)

REFERENCES IN TEXT

Subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982, referred to in subsec. (b), are subsecs. (a) and (b) of Pub. L. 97–248, title II, § 222, Sept. 3, 1982, 96 Stat. 478, which amended sections 331(a) and 336(a) of this title.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 struck out ''337,'' after ''351,''.

1982—Subsec. (a). Pub. L. 97–248 substituted provision that a distribution shall be treated as in complete liquidation if the distribution is one of a series in redemption of all the stock pursuant to a plan for provision that a distribution was to be treated as in partial liquidation if the distribution was one of a series in redemption of all the stock pursuant to a plan, or the distribution was not essentially equivalent to a dividend, was in redemption of part of the stock pursuant to a plan, and occurred within the taxable year or the next taxable year of the plan being adopted, including but not limited to a distribution which met the requirements of former subsec. (b) of this section, and that for the purposes of sections 562(b) and 6043 of this title, a partial liquidation included a redemption of stock to which section 302 of this title applied.

Subsec. (b). Pub. L. 97–248 added subsec. (b) and struck out former subsec. (b) which provided that a distribution was to be treated as in partial liquidation of a corporation if the distribution was attributable to the cessation of a business which had been carried on for the previous 5-year period and had not been acquired by the corporation in a transaction involving recognition of gain or loss during that time, and if the distributing corporation was actively involved in a trade or business immediately after the distribution under the terms described above for the business being liquidated, and that compliance with the above requirements would be determined without regard to whether or not the distribution was pro rata with respect to all the shareholders of the corporation.

Subsec. (c). Pub. L. 97–248 struck out subsec. (c) which provided that the fact that, with respect to a shareholder, a distribution qualified under section 302(a) by reason of section 302(b) would not be taken into account in determining whether the distribution, with respect to such shareholder, was also a distribution in partial liquidation of the corporation.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

Subpart
A. Corporate organizations.
B. Effects on shareholders and security holders.
C. Effects on corporations.[1]
D. Special rule; definitions.

SUBPART A—CORPORATE ORGANIZATIONS

Sec.
351. Transfer to corporation controlled by transferor.

§ 351. Transfer to corporation controlled by transferor

(a) General rule

No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation.

(b) Receipt of property

If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received under subsection (a), other property or money, then—

[1] So in original. Does not conform to subpart heading.

(1) gain (if any) to such recipient shall be recognized, but not in excess of—

(A) the amount of money received, plus

(B) the fair market value of such other property received; and

(2) no loss to such recipient shall be recognized.

(c) Special rules where distribution to shareholders

(1) In general

In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

(2) Special rule for section 355

If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account in determining control for purposes of this section.

(d) Services, certain indebtedness, and accrued interest not treated as property

For purposes of this section, stock issued for—

(1) services,

(2) indebtedness of the transferee corporation which is not evidenced by a security, or

(3) interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt,

shall not be considered as issued in return for property.

(e) Exceptions

This section shall not apply to—

(1) Transfer of property to an investment company

A transfer of property to an investment company. For purposes of the preceding sentence, the determination of whether a company is an investment company shall be made—

(A) by taking into account all stock and securities held by the company, and

(B) by treating as stock and securities—

(i) money,

(ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives,

(iii) any foreign currency,

(iv) any interest in a real estate investment trust, a common trust fund, a regulated investment company, a publicly-traded partnership (as defined in section 7704(b)) or any other equity interest (other than in a corporation) which pursuant to its terms or any other arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii),

(v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such metal is used or held in the active conduct of a trade or business after the contribution,

(vi) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of any assets described in any preceding clause or clause (viii),

(vii) to the extent provided in regulations prescribed by the Secretary, any interest in any entity not described in clause (vi), but only to the extent of the value of such interest that is attributable to assets listed in clauses (i) through (v) or clause (viii), or

(viii) any other asset specified in regulations prescribed by the Secretary.

The Secretary may prescribe regulations that, under appropriate circumstances, treat any asset described in clauses (i) through (v) as not so listed.

(2) Title 11 or similar case

A transfer of property of a debtor pursuant to a plan while the debtor is under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), to the extent that the stock received in the exchange is used to satisfy the indebtedness of such debtor.

(f) Treatment of controlled corporation

If—

(1) property is transferred to a corporation (hereinafter in this subsection referred to as the ''controlled corporation'') in an exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

(2) such exchange is not in pursuance of a plan of reorganization,

section 311 shall apply to any transfer in such exchange by the controlled corporation in the same manner as if such transfer were a distribution to which subpart A of part I applies.

(g) Nonqualified preferred stock not treated as stock

(1) In general

In the case of a person who transfers property to a corporation and receives nonqualified preferred stock—

(A) subsection (a) shall not apply to such transferor, and

(B) if (and only if) the transferor receives stock other than nonqualified preferred stock—

(i) subsection (b) shall apply to such transferor; and

(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).

(2) Nonqualified preferred stock

For purposes of paragraph (1)—

(A) In general

The term ''nonqualified preferred stock'' means preferred stock if—

(i) the holder of such stock has the right to require the issuer or a related person to redeem or purchase the stock,

(ii) the issuer or a related person is required to redeem or purchase such stock,

(iii) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or

(iv) the dividend rate on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices.

(B) Limitations

Clauses (i), (ii), and (iii) of subparagraph (A) shall apply only if the right or obligation referred to therein may be exercised within the 20-year period beginning on the issue date of such stock and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

(C) Exceptions for certain rights or obligations

(i) In general

A right or obligation shall not be treated as described in clause (i), (ii), or (iii) of subparagraph (A) if—

(I) it may be exercised only upon the death, disability, or mental incompetency of the holder, or

(II) in the case of a right or obligation to redeem or purchase stock transferred in connection with the performance of services for the issuer or a related person (and which represents reasonable compensation), it may be exercised only upon the holder's separation from service from the issuer or a related person.

(ii) Exception

Clause (i)(I) shall not apply if the stock relinquished in the exchange, or the stock acquired in the exchange is in—

(I) a corporation if any class of stock in such corporation or a related party is readily tradable on an established securities market or otherwise, or

(II) any other corporation if such exchange is part of a transaction or series of transactions in which such corporation is to become a corporation described in subclause (I).

(3) Definitions

For purposes of this subsection—

(A) Preferred stock

The term ''preferred stock'' means stock which is limited and preferred as to dividends and does not participate in corporate growth to any significant extent. Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation. If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.

(B) Related person

A person shall be treated as related to another person if they bear a relationship to such other person described in section 267(b) or 707(b).

(4) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). The Secretary may also prescribe regulations, consistent with the treatment under this subsection and such sections, for the treatment of nonqualified preferred stock under other provisions of this title.

(h) Cross references

(1) For special rule where another party to the exchange assumes a liability, see section 357.

(2) For the basis of stock or property received in an exchange to which this section applies, see sections 358 and 362.

(3) For special rule in the case of an exchange described in this section but which results in a gift, see section 2501 and following.

(4) For special rule in the case of an exchange described in this section but which has the effect of the payment of compensation by the corporation or by a transferor, see section 61(a)(1).

(5) For coordination of this section with section 304, see section 304(b)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 111; Pub. L. 89–809, title II, § 203(a), (b), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 94–455, title XIX, § 1901(a)(48)(A), (B), Oct. 4, 1976, 90 Stat. 1772; Pub. L. 96–589, § 5(e), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–248, title II, § 226(a)(1)(B), Sept. 3, 1982, 96 Stat. 491; Pub. L. 100–647, title I, § 1018(d)(5)(G), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101–239, title VII, § 7203(a), (b), Dec. 19, 1989, 103 Stat. 2333; Pub. L. 101–508, title XI, § 11704(a)(3), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 105–34, title X, §§ 1002(a), 1012(c)(1), 1014(a), Aug. 5, 1997, 111 Stat. 909, 916, 919; Pub. L. 105–206, title VI, § 6010(c)(3)(A), (e)(1), July 22, 1998, 112 Stat. 813, 814; Pub. L. 105–277, div. J, title IV, § 4003(f)(1), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–36, title III, § 3001(d)(1), June 25, 1999, 113 Stat. 183; Pub. L. 107–147, title IV, § 417(9), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–357, title VIII, § 899(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, § 403(kk), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (g)(3)(A). Pub. L. 109–135 inserted at end ''If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.''

2004—Subsec. (g)(3)(A). Pub. L. 108–357 inserted at end ''Stock shall not be treated as participating in cor-

porate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''

2002—Subsec. (h)(1). Pub. L. 107–147 inserted comma after ''liability''.

1999—Subsec. (h)(1). Pub. L. 106–36 struck out '', or acquires property subject to a liability,'' after ''liability''.

1998—Subsec. (c). Pub. L. 105–206, §6010(c)(3)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In determining control for purposes of this section—

''(1) the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account, and

''(2) if the requirements of section 355 are met with respect to such distribution, the shareholders shall be treated as in control of such corporation immediately after the exchange if the shareholders own (immediately after the distribution) stock possessing—

''(A) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

''(B) more than 50 percent of the total value of shares of all classes of stock of such corporation.''

Subsec. (c)(2). Pub. L. 105–277 inserted '', or the fact that the corporation whose stock was distributed issues additional stock,'' after ''dispose of part or all of the distributed stock''.

Subsec. (g)(1)(A) to (C). Pub. L. 105–206, §6010(e)(1), inserted ''and'' at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

''(B) subsection (b) shall apply to such transferor, and

''(C) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).''

1997—Subsec. (c). Pub. L. 105–34, §1012(c)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.''

Subsec. (e)(1). Pub. L. 105–34, §1002(a), inserted last two sentences.

Subsecs. (g), (h). Pub. L. 105–34, §1014(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1990—Subsec. (e)(2). Pub. L. 101–508 substituted ''is used'' for ''are used''.

1989—Subsec. (a). Pub. L. 101–239, §7203(a), struck out ''or securities'' after ''stock''.

Subsecs. (b), (d), (e)(2). Pub. L. 101–239, §7203(b)(1), struck out ''or securities'' after ''stock''.

Subsec. (g)(2). Pub. L. 101–239, §7203(b)(2), substituted ''stock or property'' for ''stock, securities, or property''.

1988—Subsecs. (f), (g). Pub. L. 100–647 added subsec. (f) and redesignated former subsec. (f) as (g).

1982—Subsec. (f)(5). Pub. L. 97–248 added par. (5).

1980—Subsec. (a). Pub. L. 96–589, §5(e)(2), struck out provision that stock or securities issued for services shall not be considered as issued in return for property for purposes of this section.

Subsec. (d). Pub. L. 96–589, §5(e)(1), added subsec. (d). Former subsec. (d) redesignated (e)(1).

Subsec. (e). Pub. L. 96–589, §5(e)(2), redesignated former subsec. (d) as par. (1) and added par. (2). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 96–589, §5(e)(1), redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(48)(A), struck out ''(including, in the case of transfers made on or before June 30, 1967, an investment company)'' after ''property is transferred to a corporation''.

Subsec. (d). Pub. L. 94–455, §1901(a)(48)(B), among other changes, substituted ''Exception'' for ''Application of June 30, 1967, date'' in heading and in text provision that this section does not apply to a transfer of property to an investment company for provisions relating to treatment of a transfer of property to an investment company as made on or before June 30, 1967.

1966—Subsec. (a). Pub. L. 89–809, §203(a), inserted ''(including, in the case of transfers made on or before June 30, 1967, an investment company)'' after ''if property is transferred to a corporation''.

Subsecs. (d), (e). Pub. L. 89–809, §203(b), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §899(b), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendment made by this section [amending this section] shall apply to transactions after May 14, 2003.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–36, title III, §3001(e), June 25, 1999, 113 Stat. 184, provided that: ''The amendments made by this section [amending this section and sections 357, 358, 362, 368, 584, and 1031 of this title] shall apply to transfers after October 18, 1998.''

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1002(b), Aug. 5, 1997, 111 Stat. 909, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

''(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such transfer if such contract provides for the transfer of a fixed amount of property.''

Pub. L. 105–34, title X, §1012(d), Aug. 5, 1997, 111 Stat. 917, as amended by Pub. L. 105–206, title VI, §6010(c)(1), July 22, 1998, 112 Stat. 813, provided that:

''(1) SECTION 355 RULES.—The amendments made by subsections (a) and (b) [amending sections 355 and 358 of this title] shall apply to distributions after April 16, 1997; except that the amendment made by subsection (a) [amending section 355 of this title] shall apply to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 occurring after such date.

''(2) DIVISIVE TRANSACTIONS.—The amendments made by subsection (c) [amending this section and section 368 of this title] shall apply to transfers after the date of the enactment of this Act [Aug. 5, 1997].

''(3) TRANSITION RULE.—The amendments made by this section [amending this section and sections 355, 358, and 368 of this title] shall not apply to any distribution pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 (or, in the case of the amendments made by subsection

(c), any transfer) occurring after April 16, 1997, if such acquisition or transfer is—

''(A) made pursuant to an agreement which was binding on such date and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the acquisition or transfer.

This paragraph shall not apply to any agreement, ruling request, or public announcement or filing unless it identifies the acquirer of the distributing corporation or any controlled corporation, or the transferee, whichever is applicable.''

Pub. L. 105–34, title X, § 1014(f), Aug. 5, 1997, 111 Stat. 921, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 354 to 356 and 1036 of this title] shall apply to transactions after June 8, 1997.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any transaction after June 8, 1997, if such transaction is—

''(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the transaction.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, § 7203(c), Dec. 19, 1989, 103 Stat. 2334, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to transfers after October 2, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such transfer.

''(3) CORPORATE TRANSFERS.—In the case of property transferred (directly or indirectly through a partnership or otherwise) by a C corporation, paragraphs (1) and (2) shall be applied by substituting 'July 11, 1989' for 'October 2, 1989'. The preceding sentence shall not apply where the corporation meets the requirements of section 1504(a)(2) of the Internal Revenue Code of 1986 with respect to the transferee corporation (and where the transfer is not part of a plan pursuant to which the transferor subsequently fails to meet such requirements).''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1018(d)(5)(G), Nov. 10, 1988, 102 Stat. 3580, provided that the amendment made by that section is effective with respect to transfers on or after June 21, 1988.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to transfers occurring after Aug. 31, 1982, except for certain transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97–248, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, § 1901(a)(48)(C), Oct. 4, 1976, 90 Stat. 1772, provided that: ''The amendments made by this paragraph [amending this section] shall take effect with respect to transfers of property occurring after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, § 203(c), Nov. 13, 1966, 80 Stat. 1577, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to transfers of property to investment companies whether made before, on, or after the date of the enactment of this Act [Nov. 13, 1966].''

SUBPART B—EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

§ 354. Exchanges of stock and securities in certain reorganizations

(a) General rule

(1) In general

No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(2) Limitation

(A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(ii) any such securities are received and no such securities are surrendered.

(B) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(C) Nonqualified preferred stock

(i) In general

Nonqualified preferred stock (as defined in section 351(g)(2)) received in exchange for stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(ii) Recapitalizations of family-owned corporations

(I) In general

Clause (i) shall not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation.

(II) Family-owned corporation

For purposes of this clause, except as provided in regulations, the term ''family-owned corporation'' means any corporation which is described in clause (i) of section 447(d)(2)(C)[1] throughout the 8-year period beginning on the date which is 5 years before the date of the recapitalization. For purposes of the preceding sentence, stock shall not be treated as owned by a family member during any period described in section 355(d)(6)(B).

(III) Extension of statute of limitations

The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(3) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (2)(B) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (2)(B), see section 61.

(b) Exception

(1) In general

Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), unless—

(A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and

(B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(2) Cross reference

For special rules for certain exchanges in pursuance of plans of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), see section 355.

(c) Certain railroad reorganizations

Notwithstanding any other provision of this subchapter, subsection (a)(1) (and so much of section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368(a)) for a railroad confirmed under section 1173 of title 11 of the United States Code, as being in the public interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 112; Pub. L. 94–253, §1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L. 95–473, §2(a)(2)(F), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 96–589, §§4(e)(1), (h)(1), 6(i)(2), Dec. 24, 1980, 94 Stat. 3403, 3404, 3410; Pub. L. 101–508, title XI, §11801(c)(8)(D), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 104–88, title III, §304(c), Dec. 29, 1995, 109 Stat. 944; Pub. L. 105–34, title X, §1014(b), (e)(1), (2), Aug. 5, 1997, 111 Stat. 920, 921; Pub. L. 105–206, title VI, §6010(e)(2), July 22, 1998, 112 Stat. 814.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 447(d), referred to in subsec. (a)(2)(C)(ii)(II), was repealed and provisions not relating to family-owned corporations were redesignated as section 447(d) by Pub. L. 115–97, title I, §13102(a)(5)(C), Dec. 22, 2017, 131 Stat. 2103.

AMENDMENTS

1998—Subsec. (a)(2)(C)(ii)(III). Pub. L. 105–206 added subcl. (III).

1997—Subsec. (a)(2)(B). Pub. L. 105–34, §1014(e)(1), inserted ''(including nonqualified preferred stock, as defined in section 351(g)(2))'' after ''stock''.

Subsec. (a)(2)(C). Pub. L. 105–34, §1014(b), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 105–34, §1014(e)(2), inserted ''nonqualified preferred stock and'' after ''subsection (including''.

1995—Subsec. (c). Pub. L. 104–88 struck out ''or approved by the Interstate Commerce Commission under subchapter IV of chapter 113 of title 49,'' after ''Code,''.

1990—Subsec. (d). Pub. L. 101–508 struck out subsec. (d) ''Exchanges under the final system plan for ConRail'' which read as follows: ''No gain or loss shall be recognized if stock or securities in a corporation are, in pursuance of an exchange to which paragraph (1) or (2) of section 374(c) applies, exchanged solely for stock of the Consolidated Rail Corporation, securities of such Corporation, certificates of value of the United States Railway Association, or any combination thereof.''

1980—Subsec. (a)(2). Pub. L. 96–589, §4(e)(1), redesignated existing pars. (A) and (B) as par. (A)(i), (ii), and added par. (B).

Subsec. (a)(3). Pub. L. 96–589, §4(e)(1), designated existing provisions as subpar. (A), inserted provisions excluding property to which paragraph (2)(B) applies, and added subpar. (B).

Subsec. (b). Pub. L. 96–589, §4(h)(1), substituted ''subparagraph (D) or (G) of section 368(a)(1)'' for ''section 368(a)(1)(D)'', wherever appearing.

Subsec. (c). Pub. L. 96–589, §6(i)(2), substituted ''confirmed under section 1173 of title 11 of the United States Code, or approved by the Interstate Commerce Commission'' for ''approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or''.

1978—Subsec. (c). Pub. L. 95–473 substituted ''subchapter IV of chapter 113 of title 49'' for ''section 20b of the Interstate Commerce Act''.

1976—Subsec. (d). Pub. L. 94–253 added subsec. (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 4(e)(1) of Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, and to exchanges which occur after Dec. 31, 1980, and which do not occur in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11, Bankruptcy, commenced on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases, proceedings or exchanges commencing after Sept. 30, 1979, see section 7(c), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by section 4(h)(1) of Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by section 6(i)(2) of Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to any proceeding under Title 11 commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–253, § 2, Mar. 31, 1976, 90 Stat. 297, provided that: ''The amendments made by section 1 [amending this section and sections 356, 358, and 374 of this title] shall apply to taxable years ending after March 31, 1976.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

§ 355. Distribution of stock and securities of a controlled corporation

(a) Effect on distributees

(1) General rule

If—

(A) a corporation (referred to in this section as the ''distributing corporation'')—

(i) distributes to a shareholder, with respect to its stock, or

(ii) distributes to a security holder, in exchange for its securities,

solely stock or securities of a corporation (referred to in this section as ''controlled corporation'') which it controls immediately before the distribution,

(B) the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

(C) the requirements of subsection (b) (relating to active businesses) are satisfied, and

(D) as part of the distribution, the distributing corporation distributes—

(i) all of the stock and securities in the controlled corporation held by it immediately before the distribution, or

(ii) an amount of stock in the controlled corporation constituting control within the meaning of section 368(c), and it is established to the satisfaction of the Secretary that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax,

then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(2) Non pro rata distributions, etc.

Paragraph (1) shall be applied without regard to the following:

(A) whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation,

(B) whether or not the shareholder surrenders stock in the distributing corporation, and

(C) whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of section 368(a)(1)(D)).

(3) Limitations

(A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

(ii) securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

(B) Stock acquired in taxable transactions within 5 years treated as boot

For purposes of this section (other than paragraph (1)(D) of this subsection) and so much of section 356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction—

(i) which occurs within 5 years of the distribution of such stock, and

(ii) in which gain or loss was recognized in whole or in part,

shall not be treated as stock of such controlled corporation, but as other property.

(C) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall

apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(D) Nonqualified preferred stock

Nonqualified preferred stock (as defined in section 351(g)(2)) received in a distribution with respect to stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(4) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (3)(C) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (3)(C), see section 61.

(b) Requirements as to active business

(1) In general

Subsection (a) shall apply only if either—

(A) the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

(B) immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(2) Definition

For purposes of paragraph (1), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if—

(A) it is engaged in the active conduct of a trade or business,

(B) such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

(C) such trade or business was not acquired within the period described in subparagraph (B) in a transaction in which gain or loss was recognized in whole or in part, and

(D) control of a corporation which (at the time of acquisition of control) was conducting such trade or business—

(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B) and was not acquired by the distributing corporation directly (or through 1 or more corporations) within such period, or

(ii) was so acquired by any such corporation within such period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.

(3) Special rules for determining active conduct in the case of affiliated groups

(A) In general

For purposes of determining whether a corporation meets the requirements of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as one corporation.

(B) Separate affiliated group

For purposes of this paragraph, the term ''separate affiliated group'' means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

(C) Treatment of trade or business conducted by acquired member

If a corporation became a member of a separate affiliated group as a result of one or more transactions in which gain or loss was recognized in whole or in part, any trade or business conducted by such corporation (at the time that such corporation became such a member) shall be treated for purposes of paragraph (2) as acquired in a transaction in which gain or loss was recognized in whole or in part.

(D) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which provide for the proper application of subparagraphs (B), (C), and (D) of paragraph (2), and modify the application of subsection (a)(3)(B), in connection with the application of this paragraph.

(c) Taxability of corporation on distribution

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

(2) Distribution of appreciated property

(A) In general

If—

(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(B) Qualified property

For purposes of subparagraph (A), the term ''qualified property'' means any stock or securities in the controlled corporation.

(C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

(3) Coordination with sections 311 and 336(a)

Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).

(d) Recognition of gain on certain distributions of stock or securities in controlled corporation

(1) In general

In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Disqualified distribution

For purposes of this subsection, the term ''disqualified distribution'' means any distribution to which this section (or so much of section 356 as relates to this section) applies if, immediately after the distribution—

(A) any person holds disqualified stock in the distributing corporation which constitutes a 50-percent or greater interest in such corporation, or

(B) any person holds disqualified stock in the controlled corporation (or, if stock of more than 1 controlled corporation is distributed, in any controlled corporation) which constitutes a 50-percent or greater interest in such corporation.

(3) Disqualified stock

For purposes of this subsection, the term ''disqualified stock'' means—

(A) any stock in the distributing corporation acquired by purchase during the 5-year period ending on the date of the distribution, and

(B) any stock in any controlled corporation—

(i) acquired by purchase during the 5-year period ending on the date of the distribution, or

(ii) received in the distribution to the extent attributable to distributions on—

(I) stock described in subparagraph (A), or

(II) any securities in the distributing corporation acquired by purchase during the 5-year period ending on the date of the distribution.

(4) 50-percent or greater interest

For purposes of this subsection, the term ''50-percent or greater interest'' means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

(5) Purchase

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''purchase'' means any acquisition but only if—

(i) the basis of the property acquired in the hands of the acquirer is not determined (I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or (II) under section 1014(a), and

(ii) the property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

(B) Certain section 351 exchanges treated as purchases

The term ''purchase'' includes any acquisition of property in an exchange to which section 351 applies to the extent such property is acquired in exchange for—

(i) any cash or cash item,

(ii) any marketable stock or security, or

(iii) any debt of the transferor.

(C) Carryover basis transactions

If—

(i) any person acquires property from another person who acquired such property by purchase (as determined under this paragraph with regard to this subparagraph), and

(ii) the adjusted basis of such property in the hands of such acquirer is determined in whole or in part by reference to the adjusted basis of such property in the hands of such other person,

such acquirer shall be treated as having acquired such property by purchase on the date it was so acquired by such other person.

(6) Special rule where substantial diminution of risk

(A) In general

If this paragraph applies to any stock or securities for any period, the running of any 5-year period set forth in subparagraph (A) or (B) of paragraph (3) (whichever applies) shall be suspended during such period.

(B) Property to which suspension applies

This paragraph applies to any stock or securities for any period during which the holder's risk of loss with respect to such stock or securities, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by—

(i) an option,

(ii) a short sale,

(iii) any special class of stock, or

(iv) any other device or transaction.

(7) Aggregation rules

(A) In general

For purposes of this subsection, a person and all persons related to such person (with-

in the meaning of section 267(b) or 707(b)(1)) shall be treated as one person.

(B) Persons acting pursuant to plans or arrangements

If two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing corporation or controlled corporation, such persons shall be treated as one person for purposes of this subsection.

(8) Attribution from entities

(A) In general

Paragraph (2) of section 318(a) shall apply in determining whether a person holds stock or securities in any corporation (determined by substituting ''10 percent'' for ''50 percent'' in subparagraph (C) of such paragraph (2) and by treating any reference to stock as including a reference to securities).

(B) Deemed purchase rule

If—

(i) any person acquires by purchase an interest in any entity, and

(ii) such person is treated under subparagraph (A) as holding any stock or securities by reason of holding such interest,

such stock or securities shall be treated as acquired by purchase by such person on the later of the date of the purchase of the interest in such entity or the date such stock or securities are acquired by purchase by such entity.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(A) regulations to prevent the avoidance of the purposes of this subsection through the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

(B) regulations modifying the definition of the term ''purchase''.

(e) Recognition of gain on certain distributions of stock or securities in connection with acquisitions

(1) General rule

If there is a distribution to which this subsection applies, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Distributions to which subsection applies

(A) In general

This subsection shall apply to any distribution—

(i) to which this section (or so much of section 356 as relates to this section) applies, and

(ii) which is part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.

(B) Plan presumed to exist in certain cases

If 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution, such acquisition shall be treated as pursuant to a plan described in subparagraph (A)(ii) unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions.

(C) Certain plans disregarded

A plan (or series of related transactions) shall not be treated as described in subparagraph (A)(ii) if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group (as defined in section 1504 without regard to subsection (b) thereof).

(D) Coordination with subsection (d)

This subsection shall not apply to any distribution to which subsection (d) applies.

(3) Special rules relating to acquisitions

(A) Certain acquisitions not taken into account

Except as provided in regulations, the following acquisitions shall not be taken into account in applying paragraph (2)(A)(ii):

(i) The acquisition of stock in any controlled corporation by the distributing corporation.

(ii) The acquisition by a person of stock in any controlled corporation by reason of holding stock or securities in the distributing corporation.

(iii) The acquisition by a person of stock in any successor corporation of the distributing corporation or any controlled corporation by reason of holding stock or securities in such distributing or controlled corporation.

(iv) The acquisition of stock in the distributing corporation or any controlled corporation to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.

This subparagraph shall not apply to any acquisition if the stock held before the acquisition was acquired pursuant to a plan (or series of related transactions) described in paragraph (2)(A)(ii).

(B) Asset acquisitions

Except as provided in regulations, for purposes of this subsection, if the assets of the distributing corporation or any controlled corporation are acquired by a successor corporation in a transaction described in subparagraph (A), (C), or (D) of section 368(a)(1) or any other transaction specified in regulations by the Secretary, the shareholders (immediately before the acquisition) of the corporation acquiring such assets shall be treated as acquiring stock in the corporation from which the assets were acquired.

(4) Definition and special rules

For purposes of this subsection—

(A) 50-percent or greater interest

The term ''50-percent or greater interest'' has the meaning given such term by subsection (d)(4).

(B) Distributions in title 11 or similar case

Paragraph (1) shall not apply to any distribution made in a title 11 or similar case (as defined in section 368(a)(3)).

(C) Aggregation and attribution rules

(i) Aggregation

The rules of paragraph (7)(A) of subsection (d) shall apply.

(ii) Attribution

Section 318(a)(2) shall apply in determining whether a person holds stock or securities in any corporation. Except as provided in regulations, section 318(a)(2)(C) shall be applied without regard to the phrase ''50 percent or more in value'' for purposes of the preceding sentence.

(D) Successors and predecessors

For purposes of this subsection, any reference to a controlled corporation or a distributing corporation shall include a reference to any predecessor or successor of such corporation.

(E) Statute of limitations

If there is a distribution to which paragraph (1) applies—

(i) the statutory period for the assessment of any deficiency attributable to any part of the gain recognized under this subsection by reason of such distribution shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) that such distribution occurred, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) providing for the application of this subsection where there is more than 1 controlled corporation,

(B) treating 2 or more distributions as 1 distribution where necessary to prevent the avoidance of such purposes, and

(C) providing for the application of rules similar to the rules of subsection (d)(6) where appropriate for purposes of paragraph (2)(B).

(f) Section not to apply to certain intragroup distributions

Except as provided in regulations, this section (or so much of section 356 as relates to this section) shall not apply to the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a)) to another member of such group if such distribution is part of a plan (or series of related transactions) described in subsection (e)(2)(A)(ii) (determined after the application of subsection (e)).

(g) Section not to apply to distributions involving disqualified investment corporations

(1) In general

This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

(2) Disqualified investment corporation

For purposes of this subsection—

(A) In general

The term ''disqualified investment corporation'' means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is—

(i) in the case of distributions after the end of the 1-year period beginning on the date of the enactment of this subsection, ⅔ or more of the fair market value of all assets of the corporation, and

(ii) in the case of distributions during such 1-year period, ¾ or more of the fair market value of all assets of the corporation.

(B) Investment assets

(i) In general

Except as otherwise provided in this subparagraph, the term ''investment assets'' means—

(I) cash,

(II) any stock or securities in a corporation,

(III) any interest in a partnership,

(IV) any debt instrument or other evidence of indebtedness,

(V) any option, forward or futures contract, notional principal contract, or derivative,

(VI) foreign currency, or

(VII) any similar asset.

(ii) Exception for assets used in active conduct of certain financial trades or businesses

Such term shall not include any asset which is held for use in the active and regular conduct of—

(I) a lending or finance business (within the meaning of section 954(h)(4)),

(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

(III) an insurance business if the conduct of the business is licensed, author-

ized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

(iii) Exception for securities marked to market

Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

(iv) Stock or securities in a 20-percent controlled entity

(I) In general

Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 20-percent controlled entity with respect to the distributing or controlled corporation.

(II) Look-thru rule

The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 20-percent controlled entity.

(III) 20-percent controlled entity

For purposes of this clause, the term ''20-percent controlled entity'' means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting ''20 percent'' for ''80 percent'' and without regard to stock described in section 1504(a)(4).

(v) Interests in certain partnerships

(I) In general

Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

(II) Look-thru rule

The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

(3) 50-percent or greater interest

For purposes of this subsection—

(A) In general

The term ''50-percent or greater interest'' has the meaning given such term by subsection (d)(4).

(B) Attribution rules

The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

(4) Transaction

For purposes of this subsection, the term ''transaction'' includes a series of transactions.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

(C) which modify the application of the attribution rules applied for purposes of this subsection.

(h) Restriction on distributions involving real estate investment trusts

(1) In general

This section (and so much of section 356 as relates to this section) shall not apply to any distribution if either the distributing corporation or controlled corporation is a real estate investment trust.

(2) Exceptions for certain spinoffs

(A) Spinoffs of a real estate investment trust by another real estate investment trust

Paragraph (1) shall not apply to any distribution if, immediately after the distribution, the distributing corporation and the controlled corporation are both real estate investment trusts.

(B) Spinoffs of certain taxable REIT subsidiaries

Paragraph (1) shall not apply to any distribution if—

(i) the distributing corporation has been a real estate investment trust at all times during the 3-year period ending on the date of such distribution,

(ii) the controlled corporation has been a taxable REIT subsidiary (as defined in section 856(*l*)) of the distributing corporation at all times during such period, and

(iii) the distributing corporation had control (as defined in section 368(c) applied

by taking into account stock owned directly or indirectly, including through one or more corporations or partnerships, by the distributing corporation) of the controlled corporation at all times during such period.

A controlled corporation will be treated as meeting the requirements of clauses (ii) and (iii) if the stock of such corporation was distributed by a taxable REIT subsidiary in a transaction to which this section (or so much of section 356 as relates to this section) applies and the assets of such corporation consist solely of the stock or assets of assets held by one or more taxable REIT subsidiaries of the distributing corporation meeting the requirements of clauses (ii) and (iii). For purposes of clause (iii), control of a partnership means ownership of 80 percent of the profits interest and 80 percent of the capital interests.

(Aug. 16, 1954, ch. 736, 68A Stat. 113; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, § 4(e)(2), Dec. 24, 1980, 94 Stat. 3403; Pub. L. 100–203, title X, § 10223(b), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, § 1018(d)(5)(C), title II, § 2004(k)(1), Nov. 10, 1988, 102 Stat. 3580, 3605; Pub. L. 101–508, title XI, §§ 11321(a), 11702(e)(2), Nov. 5, 1990, 104 Stat. 1388–460, 1388–515; Pub. L. 104–188, title I, § 1704(t)(31), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 105–34, title X, §§ 1012(a), (b)(1), 1014(c), (e)(1), (2), Aug. 5, 1997, 111 Stat. 914, 916, 921; Pub. L. 105–206, title VI, § 6010(c)(2), July 22, 1998, 112 Stat. 813; Pub. L. 109–222, title II, § 202, title V, § 507(a), May 17, 2006, 120 Stat. 348, 358; Pub. L. 109–432, div. A, title IV, § 410(a), Dec. 20, 2006, 120 Stat. 2963; Pub. L. 110–172, § 4(b)(1), (2), Dec. 29, 2007, 121 Stat. 2476; Pub. L. 113–295, div. A, title II, § 221(a)(50), Dec. 19, 2014, 128 Stat. 4045; Pub. L. 114–113, div. Q, title III, § 311(a), Dec. 18, 2015, 129 Stat. 3090.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (g)(2)(A)(i), is the date of enactment of Pub. L. 109–222, which was approved May 17, 2006.

AMENDMENTS

2015—Subsec. (h). Pub. L. 114–113 added subsec. (h).

2014—Subsec. (d)(3)(A), (B)(i), (ii)(II). Pub. L. 113–295 struck out ''after October 9, 1990, and'' after ''acquired by purchase''.

2007—Subsec. (b)(2)(A). Pub. L. 110–172, § 4(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged,''.

Subsec. (b)(3). Pub. L. 110–172, § 4(b)(2), amended par. (3) generally. Prior to amendment, par. (3) provided for special rule relating to active business requirement applicable in the case of any distribution made after May 17, 2006.

2006—Subsec. (b)(3). Pub. L. 109–222, § 202, added par. (3).

Subsec. (b)(3)(A), (D). Pub. L. 109–432 struck out ''and on or before December 31, 2010'' after ''this paragraph'' in subpar. (A) and after ''such date'' in subpar. (D).

Subsec. (g). Pub. L. 109–222, § 507(a), added subsec. (g).

1998—Subsec. (e)(3)(A). Pub. L. 105–206, § 6010(c)(2)(A), substituted ''shall not be taken into account in applying'' for ''shall not be treated as described in'' in introductory provisions.

Subsec. (e)(3)(A)(iv). Pub. L. 105–206, § 6010(c)(2)(B), added cl. (iv) and struck out former cl. (iv) which read as follows: ''The acquisition of stock in a corporation if shareholders owning directly or indirectly stock possessing—

''(I) more than 50 percent of the total combined voting power of all classes of stock entitled to vote, and

''(II) more than 50 percent of the total value of shares of all classes of stock,

in the distributing corporation or any controlled corporation before such acquisition own directly or indirectly stock possessing such vote and value in such distributing or controlled corporation after such acquisition.''

1997—Subsec. (a)(3)(C). Pub. L. 105–34, § 1014(e)(1), inserted ''(including nonqualified preferred stock, as defined in section 351(g)(2))'' after ''stock''.

Subsec. (a)(3)(D). Pub. L. 105–34, § 1014(c), added subpar. (D).

Subsec. (a)(4)(A). Pub. L. 105–34, § 1014(e)(2), inserted ''nonqualified preferred stock and'' after ''subsection (including''.

Subsec. (e). Pub. L. 105–34, § 1012(a), added subsec. (e).

Subsec. (f). Pub. L. 105–34, § 1012(b)(1), added subsec. (f).

1996—Subsec. (d)(7)(A). Pub. L. 104–188 inserted ''section'' before ''267(b)''.

1990—Subsec. (c). Pub. L. 101–508, § 11321(a), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

''(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

''(A) IN GENERAL.—If—

''(i) in a distribution referred to in paragraph (1), the corporation distributes property other than stock or securities in the controlled corporation, and

''(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

''(B) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

''(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).''

Pub. L. 101–508, § 11702(e)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Section 311 shall apply to any distribution—

''(1) to which this section (or so much of section 356 as relates to this section) applies, and

''(2) which is not in pursuance of a plan of reorganization,

in the same manner as if such distribution were a distribution to which subpart A of part I applies; except that subsection (b) of section 311 shall not apply to any distribution of stock or securities in the controlled corporation.''

Subsec. (d). Pub. L. 101–508, § 11321(a), added subsec. (d).

1988—Subsec. (b)(2)(D)(i), (ii). Pub. L. 100–647, § 2004(k)(1), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B), or

''(ii) was so acquired such distributee corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.''

Subsec. (c). Pub. L. 100–647, §1018(d)(5)(C), added subsec. (c).

1987—Subsec. (b)(2)(D). Pub. L. 100–203, §10223(b)(3), inserted at end ''For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.''

Subsec. (b)(2)(D)(i). Pub. L. 100–203, §10223(b)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''was not acquired directly (or through one or more corporations) by another corporation within the period described in subparagraph (B), or''.

Subsec. (b)(2)(D)(ii). Pub. L. 100–203, §10223(b)(2), substituted ''such distributee corporation'' for ''by another corporation''.

1980—Subsec. (a)(3). Pub. L. 96–589 designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (a)(4). Pub. L. 96–589, §4(e)(2), designated existing provisions as subpar. (A), substituted ''exchange if any property'' for ''distribution if any property'', inserted provisions excluding property to which paragraph (3)(C) applies, and added subpar. (B).

1976—Subsec. (a)(1)(D)(ii). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, §311(c), Dec. 18, 2015, 129 Stat. 3091, provided that: ''The amendments made by this section [amending this section and section 856 of this title] shall apply to distributions on or after December 7, 2015, but shall not apply to any distribution pursuant to a transaction described in a ruling request initially submitted to the Internal Revenue Service on or before such date, which request has not been withdrawn and with respect to which a ruling has not been issued or denied in its entirety as of such date.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §4(d), Dec. 29, 2007, 121 Stat. 2478, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 911 and 954 of this title] shall take effect as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222] to which they relate.

''(2) MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsection (b) [amending this section] shall apply to distributions made after May 17, 2006.

''(B) TRANSITION RULE.—The amendments made by subsection (b) shall not apply to any distribution pursuant to a transaction which is—

''(i) made pursuant to an agreement which was binding on May 17, 2006, and at all times thereafter,

''(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

''(C) ELECTION OUT OF TRANSITION RULE.—Subparagraph (B) shall not apply if the distributing corporation elects not to have such subparagraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

''(D) SPECIAL RULE FOR CERTAIN PRE-ENACTMENT DISTRIBUTIONS.—For purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 of distributions made on or before May 17, 2006, as a result of an acquisition, disposition, or other restructuring after such date, such distribution shall be treated as made on the date of such acquisition, disposition, or restructuring for purposes of applying subparagraphs (A) through (C) of this paragraph. The preceding sentence shall only apply with respect to the corporation that undertakes such acquisition, disposition, or other restructuring, and only if such application results in continued qualification under section 355(b)(2)(A) of such Code.

''(3) AMENDMENT RELATED TO SECTION 515 OF THE ACT.—The amendment made by subsection (c) [amending section 911 of this title] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §410(b), Dec. 20, 2006, 120 Stat. 2963, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 202 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–222, title V, §507(b), May 17, 2006, 120 Stat. 361, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [May 17, 2006].

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

''(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1012(a), (b)(1) of Pub. L. 105–34 applicable, with transition rule, to distributions after Apr. 16, 1997, except that amendment by section 1012(a) applicable to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in subsec. (e)(2)(A)(ii) of this section occurring after such date, see section 1012(d) of Pub. L. 105–34, as amended, set out as a note under section 351 of this title.

Amendment by section 1014(c), (e)(1), (2) of Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11321(c), Nov. 5, 1990, 104 Stat. 1388–463, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 361 of this title] shall apply to distributions after October 9, 1990.

''(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any distribution pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such distribution.

''(3) TRANSITIONAL RULES.—For purposes of subparagraphs (A) and (B) of section 355(d)(3) of the Internal

Revenue Code of 1986 (as amended by subsection (a)), an acquisition shall be treated as occurring on or before October 9, 1990, if—

''(A) such acquisition is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition,

''(B) such acquisition is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

''(C) such acquisition is pursuant to a transaction—

''(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

''(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

''(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.''

Amendment by section 11702(e)(2) of Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(d)(5)(C) 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 2004(k)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to distributions or transfers after Dec. 15, 1987, with exceptions for certain distributee corporations and distributions covered by prior transition rule, see section 10223(d) of Pub. L. 100–203, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, and to exchanges which occur after Dec. 31, 1980, and which do not occur in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11, Bankruptcy, commenced on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases, proceedings or exchanges commencing after Sept. 30, 1979, see section 7(c), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

TERMINATION OF TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005 AND TAX RELIEF AND HEALTH CARE ACT OF 2006 AMENDMENTS

Pub. L. 110–172, § 4(b)(3), Dec. 29, 2007, 121 Stat. 2476, provided that: ''The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made by section 202 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, amending this section] and by section 410 of division A of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432, amending this section] had never been enacted.''

§ 356. Receipt of additional consideration

(a) Gain on exchanges

(1) Recognition of gain

If—

(A) section 354 or 355 would apply to an exchange but for the fact that

(B) the property received in the exchange consists not only of property permitted by section 354 or 355 to be received without the recognition of gain but also of other property or money,

then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) Treatment as dividend

If an exchange is described in paragraph (1) but has the effect of the distribution of a dividend (determined with the application of section 318(a)), then there shall be treated as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be treated as gain from the exchange of property.

(b) Additional consideration received in certain distributions

If—

(1) section 355 would apply to a distribution but for the fact that

(2) the property received in the distribution consists not only of property permitted by section 355 to be received without the recognition of gain, but also of other property or money,

then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which section 301 applies.

(c) Loss

If—

(1) section 354 would apply to an exchange or section 355 would apply to an exchange or distribution, but for the fact that

(2) the property received in the exchange or distribution consists not only of property permitted by section 354 or 355 to be received without the recognition of gain or loss, but also of other property or money,

then no loss from the exchange or distribution shall be recognized.

(d) Securities as other property

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''other property'' includes securities.

(2) Exceptions

(A) Securities with respect to which nonrecognition of gain would be permitted

The term ''other property'' does not include securities to the extent that, under section 354 or 355, such securities would be permitted to be received without the recognition of gain.

(B) Greater principal amount in section 354 exchange

If—

(i) in an exchange described in section 354 (other than subsection (c) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and

(ii) the principal amount of such securities received exceeds the principal amount of such securities surrendered,

then, with respect to such securities received, the term ''other property'' means only the fair market value of such excess. For purposes of this subparagraph and subparagraph (C), if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

(C) Greater principal amount in section 355 transaction

If, in an exchange or distribution described in section 355, the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term ''other property'' means only the fair market value of such excess.

(e) Nonqualified preferred stock treated as other property

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''other property'' includes nonqualified preferred stock (as defined in section 351(g)(2)).

(2) Exception

The term ''other property'' does not include nonqualified preferred stock (as so defined) to the extent that, under section 354 or 355, such preferred stock would be permitted to be received without the recognition of gain.

(f) Exchanges for section 306 stock

Notwithstanding any other provision of this section, to the extent that any of the other property (or money) is received in exchange for section 306 stock, an amount equal to the fair market value of such other property (or the amount of such money) shall be treated as a distribution of property to which section 301 applies.

(g) Transactions involving gift or compensation

For special rules for a transaction described in section 354, 355, or this section, but which—

(1) results in a gift, see section 2501 and following, or

(2) has the effect of the payment of compensation, see section 61(a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 115; Pub. L. 94–253, § 1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L. 97–248, title II, § 227(b), Sept. 3, 1982, 96 Stat. 492; Pub. L. 101–508, title XI, § 11801(c)(8)(E), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 105–34, title X, § 1014(d), Aug. 5, 1997, 111 Stat. 921.)

AMENDMENTS

1997—Subsecs. (e) to (g). Pub. L. 105–34 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1990—Subsec. (d)(2)(B)(i). Pub. L. 101–508 struck out ''or (d)'' after ''subsection (c)''.

1982—Subsec. (a)(2). Pub. L. 97–248 inserted ''(determined with the application of section 318(a))'' after ''distribution of a dividend''.

1976—Subsec. (d)(2)(B)(i). Pub. L. 94–253 substituted ''subsection (c) or (d) thereof'' for ''subsection (c) thereof''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, § 227(c)(2), Sept. 3, 1982, 96 Stat. 492, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to distributions after August 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–253 applicable to taxable years ending after Mar. 31, 1976, see section 2 of Pub. L. 94–253, set out as a note under section 354 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 357. Assumption of liability

(a) General rule

Except as provided in subsections (b) and (c), if—

(1) the taxpayer receives property which would be permitted to be received under section 351 or 361 without the recognition of gain if it were the sole consideration, and

(2) as part of the consideration, another party to the exchange assumes a liability of the taxpayer,

then such assumption shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of section 351 or 361, as the case may be.

(b) Tax avoidance purpose

(1) In general

If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption was made, it appears that the principal purpose of the taxpayer with respect to the assumption described in subsection (a)—

(A) was a purpose to avoid Federal income tax on the exchange, or

(B) if not such purpose, was not a bona fide business purpose,

then such assumption (in the total amount of the liability assumed pursuant to such exchange) shall, for purposes of section 351 or 361 (as the case may be), be considered as money received by the taxpayer on the exchange.

(2) Burden of proof

In any suit or proceeding where the burden is on the taxpayer to prove such assumption is

not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(c) Liabilities in excess of basis

(1) In general

In the case of an exchange—

(A) to which section 351 applies, or

(B) to which section 361 applies by reason of a plan of reorganization within the meaning of section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355,

if the sum of the amount of the liabilities assumed exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

(2) Exceptions

Paragraph (1) shall not apply to any exchange—

(A) to which subsection (b)(1) of this section applies, or

(B) which is pursuant to a plan of reorganization within the meaning of section 368(a)(1)(G) where no former shareholder of the transferor corporation receives any consideration for his stock.

(3) Certain liabilities excluded

(A) In general

If a taxpayer transfers, in an exchange to which section 351 applies, a liability the payment of which either—

(i) would give rise to a deduction, or

(ii) would be described in section 736(a),

then, for purposes of paragraph (1), the amount of such liability shall be excluded in determining the amount of liabilities assumed.

(B) Exception

Subparagraph (A) shall not apply to any liability to the extent that the incurrence of the liability resulted in the creation of, or an increase in, the basis of any property.

(d) Determination of amount of liability assumed

(1) In general

For purposes of this section, section 358(d), section 358(h), section 361(b)(3), section 362(d), section 368(a)(1)(C), and section 368(a)(2)(B), except as provided in regulations—

(A) a recourse liability (or portion thereof) shall be treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed to, and is expected to, satisfy such liability (or portion), whether or not the transferor has been relieved of such liability; and

(B) except to the extent provided in paragraph (2), a nonrecourse liability shall be treated as having been assumed by the transferee of any asset subject to such liability.

(2) Exception for nonrecourse liability

The amount of the nonrecourse liability treated as described in paragraph (1)(B) shall be reduced by the lesser of—

(A) the amount of such liability which an owner of other assets not transferred to the transferee and also subject to such liability has agreed with the transferee to, and is expected to, satisfy; or

(B) the fair market value of such other assets (determined without regard to section 7701(g)).

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and section 362(d). The Secretary may also prescribe regulations which provide that the manner in which a liability is treated as assumed under this subsection is applied, where appropriate, elsewhere in this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 116; June 29, 1956, ch. 463, § 2, 70 Stat. 403; Pub. L. 95–600, title III, § 365(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96–222, title I, § 103(a)(12), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96–589, § 4(h)(2), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 101–508, title XI, § 11801(c)(8)(F), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 106–36, title III, § 3001(a)(1), (b)(1), (d)(2)–(5), June 25, 1999, 113 Stat. 181–184; Pub. L. 106–554, § 1(a)(7) [title III, § 309(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638; Pub. L. 108–357, title VIII, § 898(b), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, § 403(jj)(2), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109–135 inserted ''section 361(b)(3),'' after ''section 358(h),''.

2004—Subsec. (c)(1)(B). Pub. L. 108–357 inserted ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

2000—Subsec. (d)(1). Pub. L. 106–554 inserted ''section 358(h),'' after ''section 358(d),'' in introductory provisions.

1999—Subsec. (a). Pub. L. 106–36, § 3001(d)(2), struck out ''or acquisition'' after ''assumption'' in concluding provisions.

Subsec. (a)(2). Pub. L. 106–36, § 3001(a)(1), struck out '', or acquires from the taxpayer property subject to a liability'' before comma at end.

Subsec. (b). Pub. L. 106–36, § 3001(d)(2), (3), struck out ''or acquisition'' after ''assumption'' wherever appearing and struck out ''or acquired'' after ''liability assumed'' in concluding provisions of par. (1).

Subsec. (c)(1). Pub. L. 106–36, § 3001(d)(4), struck out '', plus the amount of the liabilities to which the property is subject,'' after ''liabilities assumed'' in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 106–36, § 3001(d)(5), struck out ''or to which the property transferred is subject'' after ''liabilities assumed'' in concluding provisions.

Subsec. (d). Pub. L. 106–36, § 3001(b)(1), added subsec. (d).

1990—Subsecs. (a), (b)(1). Pub. L. 101–508, § 11801(c)(8)(F)(i), substituted ''351 or 361'' for ''351, 361, 371, or 374'' wherever appearing.

Subsec. (c)(2). Pub. L. 101–508, § 11801(c)(8)(F)(ii), inserted ''or'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''to which section 371 or 374 applies, or''.

1980—Subsec. (c)(2)(C). Pub. L. 96–589 added subpar. (C).

Subsec. (c)(3)(A). Pub. L. 96–222 struck out requirement that only taxpayers who compute taxable income under the cash receipts and disbursements method of accounting are eligible to exclude certain liabilities in determining the amount of gain realized on a transfer to a controlled corporation and the requirement that the excluded liability must be an account payable.

1978—Subsec. (c)(3). Pub. L. 95–600 added par. (3).

1956—Subsec. (a). Act June 29, 1956, §2(1), substituted ''371, or 374'' for ''or 371'' in two places.

Subsec. (b). Act June 29, 1956, §2(1), substituted ''371, or 374'' for ''or 371''.

Subsec. (c)(2)(B). Act June 29, 1956, §2(2), substituted ''371 or 374'' for ''371''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §898(c), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendments made by this section [amending this section and section 361 of this title] shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to assumptions of liability after Oct. 18, 1999, see section 1(a)(7) [title III, §309(d)] of Pub. L. 106–554, set out as a note under section 358 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §365(c), Nov. 6, 1978, 92 Stat. 2855, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 358 of this title] shall apply to transfers occurring on or after the date of the enactment of this Act [Nov. 6, 1978].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 358. Basis to distributees

(a) General rule

In the case of an exchange to which section 351, 354, 355, 356, or 361 applies—

(1) Nonrecognition property

The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged—

(A) decreased by—

(i) the fair market value of any other property (except money) received by the taxpayer,

(ii) the amount of any money received by the taxpayer, and

(iii) the amount of loss to the taxpayer which was recognized on such exchange, and

(B) increased by—

(i) the amount which was treated as a dividend, and

(ii) the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) Other property

The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) Allocation of basis

(1) In general

Under regulations prescribed by the Secretary, the basis determined under subsection (a)(1) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(2) Special rule for section 355

In the case of an exchange to which section 355 (or so much of section 356 as relates to section 355) applies, then in making the allocation under paragraph (1) of this subsection, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) Section 355 transactions which are not exchanges

For purposes of this section, a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) Assumption of liability

(1) In general

Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer, such assumption shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(2) Exception

Paragraph (1) shall not apply to the amount of any liability excluded under section 357(c)(3).

(e) Exception

This section shall not apply to property acquired by a corporation by the exchange of its

stock or securities (or the stock or securities of a corporation which is in control of the acquiring corporation) as consideration in whole or in part for the transfer of the property to it.

(f) Definition of nonrecognition property in case of section 361 exchange

For purposes of this section, the property permitted to be received under section 361 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation a party to the reorganization.

(g) Adjustments in intragroup transactions involving section 355

In the case of a distribution to which section 355 (or so much of section 356 as relates to section 355) applies and which involves the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a) without regard to subsection (b) thereof) to another member of such group, the Secretary may, notwithstanding any other provision of this section, provide adjustments to the adjusted basis of any stock which—

(1) is in a corporation which is a member of such group, and

(2) is held by another member of such group,

to appropriately reflect the proper treatment of such distribution.

(h) Special rules for assumption of liabilities to which subsection (d) does not apply

(1) In general

If, after application of the other provisions of this section to an exchange or series of exchanges, the basis of property to which subsection (a)(1) applies exceeds the fair market value of such property, then such basis shall be reduced (but not below such fair market value) by the amount (determined as of the date of the exchange) of any liability—

(A) which is assumed by another person as part of the exchange, and

(B) with respect to which subsection (d)(1) does not apply to the assumption.

(2) Exceptions

Except as provided by the Secretary, paragraph (1) shall not apply to any liability if—

(A) the trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange, or

(B) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange.

(3) Liability

For purposes of this subsection, the term ''liability'' shall include any fixed or contingent obligation to make payment, without regard to whether the obligation is otherwise taken into account for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 117; Pub. L. 85–866, title I, §21(a), Sept. 2, 1958, 72 Stat. 1620; Pub. L. 90–621, §2(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–253, §1(b), Mar. 31, 1976, 90 Stat. 296; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §365(b), Nov. 6, 1978, 92 Stat. 2855; Pub. L. 100–647, title I, §1018(d)(5)(B), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101–508, title XI, §11801(c)(8)(G), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 105–34, title X, §1012(b)(2), Aug. 5, 1997, 111 Stat. 916; Pub. L. 106–36, title III, §3001(a)(2), (d)(6), June 25, 1999, 113 Stat. 182, 184; Pub. L. 106–554, §1(a)(7) [title III, §309(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638; Pub. L. 107–147, title IV, §412(c), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (h)(1)(A). Pub. L. 107–147 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which is assumed in exchange for such property, and''.

2000—Subsec. (h). Pub. L. 106–554 added subsec. (h).

1999—Subsec. (d)(1). Pub. L. 106–36 struck out ''or acquired from the taxpayer property subject to a liability'' after ''liability of the taxpayer'' and ''or acquisition (in the amount of the liability)'' after ''such assumption''.

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(8)(G)(i), substituted ''or 361'' for ''361, 371(b), or 374''.

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(8)(G)(ii), struck out par. (3) ''Certain exchanges involving Con-Rail'' which read as follows: ''To the extent provided in regulations prescribed by the Secretary in the case of an exchange to which section 354(d) (or so much of section 356 as relates to section 354(d)) or section 374(c) applies, for purposes of allocating basis under paragraph (1), stock of the Consolidated Rail Corporation and the certificate of value of the United States Railway Association which relates to such stock shall, so long as they are held by the same person, be treated as one property.''

1988—Subsec. (f). Pub. L. 100–647 added subsec. (f).

1978—Subsec. (d). Pub. L. 95–600 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (a). Pub. L. 94–253, §1(b)(1), substituted ''371(b), or 374'' for ''or 371(b)''.

Subsec. (b)(1), (3). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

Pub. L. 94–253, §1(b)(2), added par. (3).

1968—Subsec. (e). Pub. L. 90–621 substituted exchange of stock and securities for issuance of stock or securities as the transaction involved and inserted parenthetical provisions making reference to stock or securities of a corporation which is in control of the acquiring corporation.

1958—Subsec. (a)(1)(A)(iii). Pub. L. 85–866 added cl. (iii).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §309(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 357 of this title] shall apply to assumptions of liability after October 18, 1999.

''(2) RULES.—The rules prescribed under subsection (c) [see Application of Comparable Rules to Partnerships and S Corporations note below] shall apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to distributions after Apr. 16, 1997, pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of this title occurring after such date, see section 1012(d) of Pub. L. 105–34, set out as a note under section 351 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 OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to transfers occurring on or after Nov. 6, 1978, see section 365(c) of Pub. L. 95–600, set out as a note under section 357 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–253 applicable to taxable years ending after Mar. 31, 1976, see section 2 of Pub. L. 94–253, set out as a note under section 354 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–621, §2(c), Oct. 22, 1968, 82 Stat. 1311, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 362 of this title] shall apply only in respect of plans of reorganization adopted after the date of the enactment of this Act [Oct. 22, 1968].''

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, §21(b), Sept. 2, 1958, 72 Stat. 1620, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply as provided in section 393 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as if the clause (iii) added by such amendment had been included in such Code at the time of its enactment [Aug. 16, 1954].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

APPLICATION OF COMPARABLE RULES TO PARTNERSHIPS AND S CORPORATIONS

Pub. L. 106–554, §1(a)(7) [title III, §309(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638, provided that: ''The Secretary of the Treasury or his delegate—

''(1) shall prescribe rules which provide appropriate adjustments under subchapter K of chapter 1 of the Internal Revenue Code of 1986 to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) of such Code (as added by subsection (a)) in transactions involving partnerships, and

''(2) may prescribe rules which provide appropriate adjustments under subchapter S of chapter 1 of such Code in transactions described in paragraph (1) involving S corporations rather than partnerships.''

SUBPART C—EFFECTS ON CORPORATION

Sec.
361. Nonrecognition of gain or loss to corporations; treatment of distributions.
362. Basis to corporations.
[363. Repealed.]

AMENDMENTS

1988—Pub. L. 100–647, title I, §1018(d)(5)(F), Nov. 10, 1988, 102 Stat. 3580, substituted ''corporations; treatment of distributions.'' for ''transferor corporation; other treatment of transferor corporation; etc.'' in item 361.

1986—Pub. L. 99–514, title XVIII, §1804(g)(3), Oct. 22, 1986, 100 Stat. 2806, substituted ''to transferor corporation; other treatment of transferor corporation; etc.'' for ''corporations'' in item 361.

1976—Pub. L. 94–455, title XIX, §1901(b)(13), Oct. 4, 1976, 90 Stat. 1795, struck out item 363 ''Effect on earnings and profits''.

§ 361. Nonrecognition of gain or loss to corporations; treatment of distributions

(a) General rule

No gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(b) Exchanges not solely in kind

(1) Gain

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

(A) Property distributed

If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) Property not distributed

If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized.

The amount of gain recognized under subparagraph (B) shall not exceed the sum of the money and the fair market value of the other property so received which is not so distributed.

(2) Loss

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of

other property or money, then no loss from the exchange shall be recognized.

(3) Treatment of transfers to creditors

For purposes of paragraph (1), any transfer of the other property or money received in the exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3). In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred (reduced by the amount of the liabilities assumed (within the meaning of section 357(c))).

(c) Treatment of distributions

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation a party to a reorganization on the distribution to its shareholders of property in pursuance of the plan of reorganization.

(2) Distributions of appreciated property

(A) In general

If—

(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(B) Qualified property

For purposes of this subsection, the term ''qualified property'' means—

(i) any stock in (or right to acquire stock in) the distributing corporation or obligation of the distributing corporation, or

(ii) any stock in (or right to acquire stock in) another corporation which is a party to the reorganization or obligation of another corporation which is such a party if such stock (or right) or obligation is received by the distributing corporation in the exchange.

(C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

(3) Treatment of certain transfers to creditors

For purposes of this subsection, any transfer of qualified property by the corporation to its creditors in connection with the reorganization shall be treated as a distribution to its shareholders pursuant to the plan of reorganization.

(4) Coordination with other provisions

Section 311 and subpart B of part II of this subchapter shall not apply to any distribution referred to in paragraph (1).

(5) Cross reference

For provision providing for recognition of gain in certain distributions, see section 355(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 99–514, title XVIII, § 1804(g)(1), Oct. 22, 1986, 100 Stat. 2805; Pub. L. 100–647, title I, § 1018(d)(5)(A), Nov. 10, 1988, 102 Stat. 3578; Pub. L. 101–508, title XI, § 11321(b), Nov. 5, 1990, 104 Stat. 1388–463; Pub. L. 108–357, title VIII, § 898(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, § 403(jj)(1), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109–135 inserted before period at end ''(reduced by the amount of the liabilities assumed (within the meaning of section 357(c)))''.

2004—Subsec. (b)(3). Pub. L. 108–357 inserted at end ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''

1990—Subsec. (c)(5). Pub. L. 101–508 added par. (5).

1988—Pub. L. 100–647 substituted ''corporations; treatment of distributions'' for ''transferor corporations; other treatment of transferor corporation; etc.'' in section catchline and amended text generally, revising content and structure of section.

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section related to whether gain or loss was recognized if corporation which was party to reorganization exchanged property, pursuant to plan of reorganization, for stock or securities in another corporation which was party to the reorganization or for other property or money.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after Oct. 22, 2004, see section 898(c) of Pub. L. 108–357, set out as a note under section 357 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to distributions after Oct. 9, 1990, but not applicable to any distribution pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such distribution, see section 11321(c) of Pub. L. 101–508, set out as a note under section 355 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 OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, § 1804(g)(4), Oct. 22, 1986, 100 Stat. 2806, provided that: ''The amendments made by this subsection [amending this section and section 368 of this title] shall apply to plans of reorganizations adopted after the date of the enactment of this Act [Oct. 22, 1986].''

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.

§ 362. Basis to corporations

(a) Property acquired by issuance of stock or as paid-in surplus

If property was acquired,[1] by a corporation—

(1) in connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, or

(2) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(b) Transfers to corporations

If property was acquired by a corporation in connection with a reorganization to which this part applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer.

(c) Special rule for certain contributions to capital

(1) Property other than money

Notwithstanding subsection (a)(2), if property other than money—

(A) is acquired by a corporation as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of such property shall be zero.

(2) Money

Notwithstanding subsection (a)(2), if money—

(A) is received by a corporation as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the Secretary.

(d) Limitation on basis increase attributable to assumption of liability

(1) In general

In no event shall the basis of any property be increased under subsection (a) or (b) above the fair market value of such property (determined without regard to section 7701(g)) by reason of any gain recognized to the transferor as a result of the assumption of a liability.

(2) Treatment of gain not subject to tax

Except as provided in regulations, if—

(A) gain is recognized to the transferor as a result of an assumption of a nonrecourse liability by a transferee which is also secured by assets not transferred to such transferee; and

(B) no person is subject to tax under this title on such gain,

then, for purposes of determining basis under subsections (a) and (b), the amount of gain recognized by the transferor as a result of the assumption of the liability shall be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all of the assets subject to such liability.

(e) Limitations on built-in losses

(1) Limitation on importation of built-in losses

(A) In general

If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

(B) Property described

For purposes of subparagraph (A), property is described in this subparagraph if—

(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be ap-

[1] So in original. The comma probably should not appear.

plied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

(C) Importation of net built-in loss

For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

(2) Limitation on transfer of built-in losses in section 351 transactions

(A) In general

If—

(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

(B) Allocation of basis reduction

The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

(C) Election to apply limitation to transferor's stock basis

(i) In general

If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph—

(I) subparagraph (A) shall not apply, and

(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

(ii) Election

Any election under clause (i) shall be made at such time and in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 90–621, § 2(b), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, § 2120(b), Oct. 4, 1976, 90 Stat. 1834, 1913; Pub. L. 99–514, title VIII, § 824(b), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 106–36, title III, § 3001(b)(2), June 25, 1999, 113 Stat. 182; Pub. L. 108–357, title VIII, § 836(a), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 109–135, title IV, § 403(dd)(2), Dec. 21, 2005, 119 Stat. 2631; Pub. L. 113–295, div. A, title II, § 221(a)(51), Dec. 19, 2014, 128 Stat. 4045.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–295 struck out ''on or after June 22, 1954'' after ''If property was acquired'' in introductory provisions.

Subsec. (c)(1)(A), (2)(A). Pub. L. 113–295 struck out '', on or after June 22, 1954,'' after ''by a corporation''.

2005—Subsec. (e)(2)(C)(ii). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''An election under clause (i) shall be included with the return of tax for the taxable year in which the transaction occurred, shall be in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.''

2004—Subsec. (e). Pub. L. 108–357 added subsec. (e).

1999—Subsec. (d). Pub. L. 106–36 added subsec. (d).

1986—Subsec. (c)(3). Pub. L. 99–514 struck out par. (3) relating to exceptions for contributions in aid of construction.

1976—Subsec. (c)(2)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(3). Pub. L. 94–455, § 2120(b), added par. (3).

1968—Subsec. (b). Pub. L. 90–621 substituted the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) for the issuance of stock or securities of the transferee as the transaction rendering the subsection applicable.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 836(c)(1), Oct. 22, 2004, 118 Stat. 1596, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, with certain exceptions and qualifications, see section 824(c) of Pub. L. 99–514, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2120(b) of Pub. L. 94–455 applicable to contributions made after Jan. 31, 1976, see section 2120(c) of Pub. L. 94–455, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–621 applicable only in respect of plans of reorganization adopted after Oct. 22, 1968, see section 2(c) of Pub. L. 90–621, set out as a note under section 358 of this title.

[§ 363. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(49), Oct. 4, 1976, 90 Stat. 1773]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 119, related to cross reference for rules relating to effect on earnings and profits of transactions to which this part applies.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set

out as an Effective Date of 1976 Amendment note under section 2 of this title.

SUBPART D—SPECIAL RULE; DEFINITIONS

§ 367. Foreign corporations

(a) Transfers of property from the United States

(1) General rule

If, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

(2) Exception for certain stock or securities

Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.

(3) Special rule for transfer of partnership interests

Except as provided in regulations prescribed by the Secretary, a transfer by a United States person of an interest in a partnership to a foreign corporation in an exchange described in paragraph (1) shall, for purposes of this subsection, be treated as a transfer to such corporation of such person's pro rata share of the assets of the partnership.

(4) Paragraph (2) not to apply to certain section 361 transactions

Paragraph (2) shall not apply in the case of an exchange described in subsection (a) or (b) of section 361. Subject to such basis adjustments and such other conditions as shall be provided in regulations, the preceding sentence shall not apply if the transferor corporation is controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations. For purposes of the preceding sentence, all members of the same affiliated group (within the meaning of section 1504) shall be treated as 1 corporation.

(5) Secretary may exempt certain transactions from application of this subsection

Paragraph (1) shall not apply to the transfer of any property which the Secretary, in order to carry out the purposes of this subsection, designates by regulation.

(b) Other transfers

(1) Effect of section to be determined under regulations

In the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in subsection (a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes.

(2) Regulations relating to sale or exchange of stock in foreign corporations

The regulations prescribed pursuant to paragraph (1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing—

(A) the circumstances under which—

(i) gain shall be recognized currently, or amounts included in gross income currently as a dividend, or both, or

(ii) gain or other amounts may be deferred for inclusion in the gross income of a shareholder (or his successor in interest) at a later date, and

(B) the extent to which adjustments shall be made to earnings and profits, basis of stock or securities, and basis of assets.

(c) Transactions to be treated as exchanges

(1) Section 355 distribution

For purposes of this section, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be treated as an exchange whether or not it is an exchange.

(2) Contribution of capital to controlled corporations

For purposes of this chapter, any transfer of property to a foreign corporation as a contribution to the capital of such corporation by one or more persons who, immediately after the transfer, own (within the meaning of section 318) stock possessing at least 80 percent of the total combined voting power of all classes of stock of such corporation entitled to vote shall be treated as an exchange of such property for stock of the foreign corporation equal in value to the fair market value of the property transferred.

(d) Special rules relating to transfers of intangibles

(1) In general

Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361—

(A) subsection (a) shall not apply to the transfer of such property, and

(B) the provisions of this subsection shall apply to such transfer.

(2) Transfer of intangibles treated as transfer pursuant to sale of contingent payments

(A) In general

If paragraph (1) applies to any transfer, the United States person transferring such property shall be treated as—

(i) having sold such property in exchange for payments which are contingent upon the productivity, use, or disposition of such property, and

(ii) receiving amounts which reasonably reflect the amounts which would have been received—

(I) annually in the form of such payments over the useful life of such property, or

(II) in the case of a disposition following such transfer (whether direct or indirect), at the time of the disposition.

The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.

(B) Effect on earnings and profits

For purposes of this chapter, the earnings and profits of a foreign corporation to which the intangible property was transferred shall be reduced by the amount required to be included in the income of the transferor of the intangible property under subparagraph (A)(ii).

(C) Amounts received treated as ordinary income

For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income. For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.

(D) Regulatory authority

For purposes of the last sentence of subparagraph (A), the Secretary shall require—

(i) the valuation of transfers of intangible property, including intangible property transferred with other property or services, on an aggregate basis, or

(ii) the valuation of such a transfer on the basis of the realistic alternatives to such a transfer,

if the Secretary determines that such basis is the most reliable means of valuation of such transfers.

(3) Regulations relating to transfers of intangibles to partnerships

The Secretary may provide by regulations that the rules of paragraph (2) also apply to the transfer of intangible property by a United States person to a partnership in circumstances consistent with the purposes of this subsection.

(e) Treatment of distributions described in section 355 or liquidations under section 332

(1) Distributions described in section 355

In the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a domestic corporation to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.

(2) Liquidations under section 332

In the case of any liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply where the 80-percent distributee (as defined in section 337(c)) is a foreign corporation.

(f) Other transfers

To the extent provided in regulations, if a United States person transfers property to a foreign corporation as paid-in surplus or as a contribution to capital (in a transaction not otherwise described in this section), such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

(1) the fair market value of the property so transferred, over

(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(Aug. 16, 1954, ch. 736, 68A Stat. 119; Pub. L. 91–681, § 1(a), Jan. 12, 1971, 84 Stat. 2065; Pub. L. 94–455, title X, § 1042(a), Oct. 4, 1976, 90 Stat. 1634; Pub. L. 97–248, title II, § 213(d), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98–369, div. A, title I, § 131(a)–(c), July 18, 1984, 98 Stat. 662–664; Pub. L. 99–514, title VI, § 631(d)(1), title XII, § 1231(e)(2), title XVIII, § 1810(g)(1), (4), Oct. 22, 1986, 100 Stat. 2272, 2563, 2828, 2829; Pub. L. 100–647, title I, § 1006(e)(13)(A), Nov. 10, 1988, 102 Stat. 3402; Pub. L. 101–508, title XI, § 11702(a)(1), Nov. 5, 1990, 104 Stat. 1388–514; Pub. L. 105–34, title XI, § 1131(b)(2), (4), (5)(A), Aug. 5, 1997, 111 Stat. 979, 980; Pub. L. 106–170, title V, § 532(c)(1)(C), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, § 406(a), Oct. 22, 2004, 118 Stat. 1498; Pub. L. 115–97, title I, §§ 14102(e)(1), (2), 14221(b)(1), Dec. 22, 2017, 131 Stat. 2194, 2218.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

2017—Subsec. (a)(3). Pub. L. 115–97, § 14102(e)(1), redesignated par. (4) as (3) and struck out former par. (3) which related to exception for transfers of certain property used in the active conduct of a trade or business.

Subsec. (a)(4). Pub. L. 115–97, § 14102(e)(1), (2), redesignated par. (5) as (4) and substituted ''Paragraph (2)'' for ''Paragraphs (2) and (3)'' in heading and text. Former par. (4) redesignated (3).

Subsec. (a)(5), (6). Pub. L. 115–97, § 14102(e)(1), redesignated pars. (5) and (6) as (4) and (5), respectively.

Subsec. (d)(2)(D). Pub. L. 115–97, § 14221(b)(1), added subpar. (D).

2004—Subsec. (d)(2)(C). Pub. L. 108–357 inserted at end ''For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.''

1999—Subsec. (a)(3)(B)(i). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1997—Subsec. (d)(2)(C). Pub. L. 105–34, § 1131(b)(4), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income from sources within the United States.''

Subsec. (d)(3). Pub. L. 105–34, § 1131(b)(5)(A), added par. (3).

Subsec. (f). Pub. L. 105–34, § 1131(b)(2), added subsec. (f).

1990—Subsec. (a)(5). Pub. L. 101–508 substituted ''subsection (a) or (b) of section 361'' for ''section 361''.

1988—Subsec. (a)(5), (6). Pub. L. 100–647 added par. (5) and redesignated former par. (5) as (6).

1986—Subsec. (a)(1). Pub. L. 99–514, § 1810(g)(4)(A), struck out ''355,'' after ''354,''.

Subsec. (d)(2)(A). Pub. L. 99–514, § 1231(e)(2), inserted at end ''The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.''

Subsec. (e). Pub. L. 99–514, § 631(d)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e), treat-

ment of distributions described in section 336 or 355, read as follows: ''In the case of any distribution described in section 336 or 355 (or so much of section 356 as relates to section 355) by a domestic corporation which is made to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.''

Subsec. (f). Pub. L. 99–514, §1810(g)(1), struck out subsec. (f) which related to transitional rules in the case of any exchanges beginning before Jan. 1, 1978.

Pub. L. 99–514, §1810(g)(4)(B), in heading substituted ''distributions described in section 336 or 355'' for ''liquidations under section 336'', and in text inserted ''or 355 (or so much of section 356 as relates to section 355)''.

1984—Subsec. (a). Pub. L. 98–369, §131(a), amended subsec. (a) generally, revising provisions of pars. (1) and (2), and adding pars. (3) to (5).

Subsec. (d). Pub. L. 98–369, §131(b), amended subsec. (d) generally, substituting provision providing special rules relating to transfers of intangibles for provision providing special rules relating to transfers of intangibles by possession corporation.

Subsecs. (e), (f). Pub. L. 98–369, §131(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1982—Subsecs. (d), (e). Pub. L. 97–248 added subsec. (d) and redesignated former subsec. (d) as (e).

1976—Pub. L. 94–455, among other changes, inserted provisions permitting nonrecognition of gain if a request for a ruling that tax avoidance is not present is filed within 183 days after beginning of an exchange, relating to an organization, reorganization, and liquidation of a foreign corporation, in the case of outbound transfers, however, for all other transfers, regulations are to provide the extent that earnings are to be taken into account as dividends and provisions relating to Tax Court review of the tax avoidance rulings.

1971—Subsec. (a). Pub. L. 91–681 designated existing provisions as subsec. (a), and, as so designated, inserted provisions relating to instances of an exchange, described in subsec. (b). Provisions relating to distributions described in section 355 (or so much of section 356 as relates to section 355) were stricken and were transferred to subsec. (c).

Subsec. (b). Pub. L. 91–681 added subsec. (b).

Subsec. (c). Pub. L. 91–681 designated as subsec. (c) provisions relating to distribution described in section 355 (or so much of section 356 as relates to section 355).

Subsec. (d). Pub. L. 91–681 added subsec. (d).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §14102(e)(3), Dec. 22, 2017, 131 Stat. 2195, provided that: ''The amendments made by this subsection [amending this section] shall apply to transfers after December 31, 2017.''

Pub. L. 115–97, title I, §14221(c)(1), Dec. 22, 2017, 131 Stat. 2219, provided that: ''The amendments made by this section [amending this section and sections 482 and 936 of this title] shall apply to transfers in taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §406(b), Oct. 22, 2004, 118 Stat. 1498, provided that: ''The amendment made by this section [amending this section] shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1131(d), Aug. 5, 1997, 111 Stat. 980, provided that: ''The amendments made by this section [enacting section 684 of this title, amending this section and sections 721, 814, 1035, and 6422 of this title, and repealing sections 1057, 1491, 1492, and 1494 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(e)(13)(B), Nov. 10, 1988, 102 Stat. 3402, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to exchanges on or after June 21, 1988, except that such amendment shall not apply to any exchange pursuant to any reorganization for which a plan of reorganization was adopted before June 21, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(d)(1) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1231(e)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only with respect to transfers after Nov. 16, 1985, or licenses granted after such date, or before such date with respect to property not in existence or owned by taxpayer on such date, except that for purposes of section 936(h)(5)(C) of this title, such amendment applicable to taxable years beginning after Dec. 31, 1986, without regard to when the transfer or license was made, see section 1231(g)(2) of Pub. L. 99–514, set out as a note under section 936 of this title.

Amendment by section 1810(g)(1), (4) of 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 OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §131(g), July 18, 1984, 98 Stat. 665, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 6038B of this title, amending this section and sections 1492, 1494, 6501, and 7482 of this title, and repealing section 7477 of this title] shall apply to transfers or exchanges after December 31, 1984, in taxable years ending after such date.

''(2) SPECIAL RULE FOR CERTAIN TRANSFERS OF INTANGIBLES.—

''(A) IN GENERAL.—If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a foreign corporation or in a transfer described in section 1491, such transfer shall be treated for purposes of sections 367(a), 1492(2), and 1494(b) of such Code as pursuant to a plan having as 1 of its principal purposes the avoidance of Federal income tax.

''(B) WAIVER.—Subject to such terms and conditions as the Secretary of the Treasury or his delegate may prescribe, the Secretary may waive the application of subparagraph (A) with respect to any transfer.

''(3) RULING REQUEST BEFORE MARCH 1, 1984.—The amendments made by this section (and the provisions

of paragraph (2) of this subsection) shall not apply to any transfer or exchange of property described in a request filed before March 1, 1984, under section 367(a), 1492(2), or 1494(b) of the Internal Revenue Code of 1986 (as in effect before such amendments).''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years ending after Aug. 14, 1982, see section 213(e)(3) of Pub. L. 97–248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1042(e), Oct. 4, 1976, 90 Stat. 1639, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by this section (other than by subsection (d)) [amending this section and sections 751 and 1248 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date. The amendments made by subsection (d) [enacting section 7477 of this title and amending sections 7476 and 7482 of this title] shall apply with respect to pleadings filed with the Tax Court after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to transfers beginning after October 9, 1975.

''(2) In the case of any exchange described in section 367 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on December 31, 1974) in any taxable year beginning after December 31, 1962, and before the date of the enactment of this Act [Oct. 4, 1976], which does not involve the transfer of property to or from a United States person, a taxpayer shall have for purposes of such section until 183 days after the date of the enactment of this Act [Oct. 4, 1976] to file a request with the Secretary of the Treasury or his delegate seeking to establish to the satisfaction of the Secretary of the Treasury or his delegate that such exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes and that for purposes of such section a foreign corporation is to be treated as a foreign corporation.''

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–681, §1(c), Jan. 12, 1971, 84 Stat. 2066, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 1492 of this title] shall apply to transfers made after December 31, 1967; except that sections 367(d) and 1492 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) shall apply only with respect to transfers made after December 31, 1970.''

APPLICABILITY OF SUBSECTION (e)(2)

Pub. L. 100–647, title I, §1006(e)(13)(C), Nov. 10, 1988, 102 Stat. 3402, provided that: ''Section 367(e)(2) of the 1986 Code (as amended by the Reform Act [Pub. L. 99–514]) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which has an income tax treaty with the United States.''

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.

§ 368. Definitions relating to corporate reorganizations

(a) Reorganization

(1) In general

For purposes of parts I and II and this part, the term ''reorganization'' means—

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization;

(F) a mere change in identity, form, or place of organization of one corporation, however effected; or

(G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) Special rules relating to paragraph (1)

(A) Reorganizations described in both paragraph (1)(C) and paragraph (1)(D)

If a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter (other than for purposes of subparagraph (C)), such transaction shall be treated as described only in paragraph (1)(D).

(B) Additional consideration in certain paragraph (1)(C) cases

If—

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the

acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1)(C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1)(C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation shall be treated as money paid for the property.

(C) Transfers of assets or stock to subsidiaries in certain paragraph (1)(A), (1)(B), (1)(C), and (1)(G) cases

A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets.

(D) Use of stock of controlling corporation in paragraph (1)(A) and (1)(G) cases

The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as ''controlling corporation'') which is in control of the acquiring corporation, of substantially all of the properties of another corporation shall not disqualify a transaction under paragraph (1)(A) or (1)(G) if—

(i) no stock of the acquiring corporation is used in the transaction, and

(ii) in the case of a transaction under paragraph (1)(A), such transaction would have qualified under paragraph (1)(A) had the merger been into the controlling corporation.

(E) Statutory merger using voting stock of corporation controlling merged corporation

A transaction otherwise qualifying under paragraph (1)(A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subparagraph as the ''controlling corporation'') which before the merger was in control of the merged corporation is used in the transaction, if—

(i) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and

(ii) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(F) Certain transactions involving 2 or more investment companies

(i) If immediately before a transaction described in paragraph (1) (other than subparagraph (E) thereof), 2 or more parties to the transaction were investment companies, then the transaction shall not be considered to be a reorganization with respect to any such investment company (and its shareholders and security holders) unless it was a regulated investment company, a real estate investment trust, or a corporation which meets the requirements of clause (ii).

(ii) A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.

(iii) For purposes of this subparagraph the term ''investment company'' means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and a corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

(iv) For purposes of this subparagraph, in determining total assets there shall be excluded cash and cash items (including receivables). Government securities, and, under regulations prescribed by the Secretary, assets acquired (through incurring indebtedness or otherwise) for purposes of meeting the requirements of clause (ii) or ceasing to be an investment company.

(v) This subparagraph shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions.

(vi) If an investment company which does not meet the requirements of clause

(ii) acquires assets of another corporation, clause (i) shall be applied to such investment company and its shareholders and security holders as though its assets had been acquired by such other corporation. If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange. For purposes of section 1001, the deemed acquisition or exchange referred to in the two preceding sentences shall be treated as a sale or exchange of property by the corporation and by the shareholders and security holders to which clause (i) is applied.

(vii) For purposes of clauses (ii) and (iii), the term ''securities'' includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a–2(36)).[1]

[(viii) Repealed. Pub. L. 98–369, div. A, title I, § 174(b)(5)(D), July 18, 1984, 98 Stat. 707]

(G) Distribution requirement for paragraph (1)(C)

(i) In general

A transaction shall fail to meet the requirements of paragraph (1)(C) unless the acquired corporation distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the plan of reorganization. For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.

(ii) Exception

The Secretary may waive the application of clause (i) to any transaction subject to any conditions the Secretary may prescribe.

(H) Special rules for determining whether certain transactions are qualified under paragraph (1)(D)

For purposes of determining whether a transaction qualifies under paragraph (1)(D)—

(i) in the case of a transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, the term ''control'' has the meaning given such term by section 304(c), and

(ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account.

(3) Additional rules relating to title 11 and similar cases

(A) Title 11 or similar case defined

For purposes of this part, the term ''title 11 or similar case'' means—

(i) a case under title 11 of the United States Code, or

(ii) a receivership, foreclosure, or similar proceeding in a Federal or State court.

(B) Transfer of assets in a title 11 or similar case

In applying paragraph (1)(G), a transfer of the assets of a corporation shall be treated as made in a title 11 or similar case if and only if—

(i) any party to the reorganization is under the jurisdiction of the court in such case, and

(ii) the transfer is pursuant to a plan of reorganization approved by the court.

(C) Reorganizations qualifying under paragraph (1)(G) and another provision

If a transaction would (but for this subparagraph) qualify both—

(i) under subparagraph (G) of paragraph (1), and

(ii) under any other subparagraph of paragraph (1) or under section 332 or 351,

then, for purposes of this subchapter (other than section 357(c)(1)), such transaction shall be treated as qualifying only under subparagraph (G) of paragraph (1).

(D) Agency receivership proceedings which involve financial institutions

For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.

(E) Application of paragraph (2)(E)(ii)

In the case of a title 11 or similar case, the requirement of clause (ii) of paragraph (2)(E) shall be treated as met if—

(i) no former shareholder of the surviving corporation received any consideration for his stock, and

(ii) the former creditors of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, debt of the surviving corporation which had a fair market value equal to 80 percent or more of the total fair market value of the debt of the surviving corporation.

(b) Party to a reorganization

For purposes of this part, the term ''a party to a reorganization'' includes—

[1] So in original. A reference to 15 U.S.C. 80a–2(a)(36) was probably intended.

(1) a corporation resulting from a reorganization, and

(2) both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

In the case of a reorganization qualifying under paragraph (1)(B) or (1)(C) of subsection (a), if the stock exchanged for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term ''a party to a reorganization'' includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1)(A), (1)(B), (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C) of subsection (a), the term ''a party to a reorganization'' includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D) of that subsection, the term ''a party to a reorganization'' includes the controlling corporation referred to in such paragraph (2)(D). In the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E), the term ''party to a reorganization'' includes the controlling corporation referred to in subsection (a)(2)(E).

(c) Control defined

For purposes of part I (other than section 304), part II, this part, and part V, the term ''control'' means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 120; Pub. L. 88–272, title II, §218(a), (b), Feb. 26, 1964, 78 Stat. 57; Pub. L. 90–621, §1(a), (b), Oct. 22, 1968, 82 Stat. 1310, 1311; Pub. L. 91–693, §1(a), (b), Jan. 12, 1971, 84 Stat. 2077; Pub. L. 94–455, title VIII, §806(f)(1), title XXI, §2131(a), Oct. 4, 1976, 90 Stat. 1605, 1922; Pub. L. 95–600, title VII, §701(j)(1), Nov. 6, 1978, 92 Stat. 2905; Pub. L. 96–589, §4(a)–(d), (h)(3), (4), Dec. 24, 1980, 94 Stat. 3401–3403, 3405; Pub. L. 97–34, title II, §241, Aug. 13, 1981, 95 Stat. 254; Pub. L. 97–248, title II, §225(a), Sept. 3, 1982, 96 Stat. 490; Pub. L. 97–448, title III, §304(b), (c), Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, §§63(a), 64(a), 174(b)(5)(D), July 18, 1984, 98 Stat. 583, 584, 707; Pub. L. 99–514, title VI, §621(e)(1), title IX, §904(a), title XVIII, §§1804(g)(2), (h), 1879(*l*)(1), Oct. 22, 1986, 100 Stat. 2266, 2385, 2806, 2909; Pub. L. 100–647, title I, §1018(q)(5), title IV, §4012(b)(1)(A), Nov. 10, 1988, 102 Stat. 3586, 3656; Pub. L. 101–73, title XIV, §1401(a)(1), (b)(1), Aug. 9, 1989, 103 Stat. 548, 549; Pub. L. 105–34, title X, §1012(c)(2), Aug. 5, 1997, 111 Stat. 917; Pub. L. 105–206, title VI, §6010(c)(3)(B), July 22, 1998, 112 Stat. 813; Pub. L. 105–277, div. J, title IV, §4003(f)(2), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–36, title III, §3001(a)(3), June 25, 1999, 113 Stat. 182.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(F)(vii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

1999—Subsec. (a)(1)(C). Pub. L. 106–36, §3001(a)(3)(A), struck out '', or the fact that property acquired is subject to a liability,'' before ''shall be disregarded''.

Subsec. (a)(2)(B). Pub. L. 106–36, §3001(a)(3)(B), which directed amendment of concluding provisions by striking out '', and the amount of any liability to which any property acquired from the acquiring corporation is subject,'', was executed by striking out '', and the amount of any liability to which any property acquired by the acquiring corporation is subject,'' after ''acquiring corporation'', to reflect the probable intent of Congress.

1998—Subsec. (a)(2)(H)(ii). Pub. L. 105–277 inserted '', or the fact that the corporation whose stock was distributed issues additional stock,'' after ''dispose of part or all of the distributed stock''.

Pub. L. 105–206 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''in the case of a transaction with respect to which the requirements of section 355 are met, the shareholders described in paragraph (1)(D) shall be treated as having control of the corporation to which the assets are transferred if such shareholders own (immediately after the distribution) stock possessing—

''(I) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

''(II) more than 50 percent of the total value of shares of all classes of stock of such corporation.''

1997—Subsec. (a)(2)(H). Pub. L. 105–34 amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows: ''In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction qualifies under subparagraph (D) of paragraph (1), the term 'control' has the meaning given to such term by section 304(c).''

1989—Subsec. (a)(3)(D). Pub. L. 101–73, §1401(b)(1), repealed amendment made by Pub. L. 99–514, §904(a), see 1986 Amendment note below.

Pub. L. 101–73, §1401(a)(1), inserted ''receivership'' in heading and amended text generally, changing the structure of the subparagraph from one consisting of five clauses designated (i) to (v) to one consisting of a single undesignated subparagraph.

1988—Subsec. (a)(2)(F)(ii). Pub. L. 100–647, §1018(q)(5), struck out ''(other than stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause (ii))'' after ''any one issuer'' and after ''or fewer issuers'' and inserted at end ''For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.''

Subsec. (a)(3)(D)(iv), (v). Pub. L. 100–647, §4012(b)(1)(A), amended subpar. (D), as in effect before the amendment made by section 904(a) of Pub. L. 99–514, by adding cls. (iv) and (v).

1986—Subsec. (a)(2)(A). Pub. L. 99–514, §1804(h)(3), inserted ''(other than for purposes of subparagraph (C))'' after ''subchapter''.

Subsec. (a)(2)(F)(ii). Pub. L. 99–514, §1879(*l*)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer.''

Subsec. (a)(2)(G)(i). Pub. L. 99–514, § 1804(g)(2), inserted ''For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.''

Subsec. (a)(2)(H). Pub. L. 99–514, § 1804(h)(2), added subpar. (H).

Subsec. (a)(3)(D). Pub. L. 99–514, § 904(a), (c)(1), as amended by Pub. L. 100–647, § 4012(a)(1), which (applicable to acquisitions after Dec. 31, 1989, in taxable years ending after such date) directed amendment of subpar. (D) to read ''(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.'', was repealed by Pub. L. 101–73, § 1401(b)(1), (c)(4), eff. Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendments made by such section had not been enacted.

Subsec. (c). Pub. L. 99–514, § 1804(h)(1), in amending subsec. (c) generally, struck out par. (1) designation and struck out par. (2) defining term ''control'' as having meaning given to such term by section 304(c) in case of any transaction with respect to which requirements of subpars. (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction is described in subpar. (D) of subsec. (a)(1).

Pub. L. 99–514, § 621(e)(1), repealed amendment by Pub. L. 94–455, § 806(f)(1). See 1976 Amendment note below.

1984—Subsec. (a)(2)(F)(viii). Pub. L. 98–369, § 174(b)(5)(D), struck out cl. (viii) which provided that in applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) be treated as including a reference to an investment company and the determination of whether a corporation is an investment company be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3).

Subsec. (a)(2)(G). Pub. L. 98–369, § 63(a), added subpar. (G).

Subsec. (c). Pub. L. 98–369, § 64(a), designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (a)(2)(C). Pub. L. 97–448, § 304(b), struck out ''or stock'' after ''acquisition of the assets''.

Subsec. (a)(3)(B)(i). Pub. L. 97–448, § 304(c), substituted ''any party to the reorganization'' for ''such corporation''.

1982—Subsec. (a)(1)(F). Pub. L. 97–248 inserted ''of one corporation'' after ''place of organization''.

1981—Subsec. (a)(3)(D). Pub. L. 97–34 substituted ''Agency proceedings'' for ''Agency receivership proceedings'' in heading, incorporated existing provisions in text designated cl. (i), inserted in cl. (i)(II) definition for term ''title 11 or similar case'', and added cls. (ii) and (iii).

1980—Subsec. (a)(1)(G). Pub. L. 96–589, § 4(a), (h)(3), added subpar. (G).

Subsec. (a)(2)(C). Pub. L. 96–589, § 4(c), inserted provision that a similar rule would apply to a transaction otherwise qualifying under par. (1)(G), where the requirements of subpars. (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets or stock.

Subsec. (a)(2)(D). Pub. L. 96–589, § 4(d), among other changes, inserted reference to par. (1)(G).

Subsec. (a)(3). Pub. L. 96–589, § 4(b), added par. (3).

Subsec. (b). Pub. L. 96–589, § 4(h)(4), substituted ''paragraph (1)(A), (1)(B), (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C)'' and ''paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D)'' for ''paragraph (1)(A), (1)(B), or (1)(C) of subsection (a) by reason of paragraph (2)(C)'' and ''paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D)'', respectively.

1978—Subsec. (a)(2)(F). Pub. L. 95–600 substituted in cl. (iii), first sentence, ''50 percent or more'' and ''80 percent or more'' for ''more than 50 percent'' and ''more than 80 percent''; substituted in cl. (vi), first sentence, ''does not meet the requirements'' for ''is not diversified within the meaning''; struck from cl. (vi), second sentence, ''(hereafter referred to as the ('actual acquisition')'' after ''section 368(a)(1)(B)'' and ''and security holders'' after ''the shareholders'' and substituted ''stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange'' for ''stock in such investment company for a percentage of the value of the total outstanding stock of the other corporation equal to the percentage of the value of the total outstanding stock of such investment company which such shareholders own immediately after the actual acquisition''; and added cls. (vii) and (viii).

1976—Subsec. (a)(2)(F). Pub. L. 94–455, § 2131(a), added subpar. (F).

Subsec. (c). Pub. L. 94–455, § 806(f)(1), which substituted ''this part, and Part V,'' for ''and this part,'' was repealed by Pub. L. 99–514, § 621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1971—Subsec. (a)(2)(E). Pub. L. 91–693, § 1(a), added subpar. (E).

Subsec. (b). Pub. L. 91–693, § 1(b), defined ''party to a reorganization'' in the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E).

1968—Subsec. (a)(2)(D). Pub. L. 90–621, § 1(a), added subpar. (D).

Subsec. (b). Pub. L. 90–621, § 1(b), inserted reference to the inclusion of the controlling corporation in term ''a party to a reorganization'' in reorganizations qualifying under paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D) of subsection (a).

1964—Subsec. (a). Pub. L. 88–272, § 218(a), (b)(1), inserted ''(or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation)'' in par. (1)(B), and in par. (2)(C), inserted references to par. (1)(B), and substituted ''assets or stock'' for ''assets'' wherever appearing.

Subsec. (b). Pub. L. 88–272, § 218(b)(2), inserted references to par. (1)(B) wherever appearing.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transfers after Aug. 5, 1997, see section 1012(d) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Repeal of amendment by section 904(a) of Pub. L. 99–514 effective Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendment had not been enacted, see section 1401(b)(1) of Pub. L. 101–73, set out as a Repeal of Provisions Relating to Repeal of Special Reorganization Rules for Financial Institutions note set out under section 597 of this title, and section 1401(c)(4) of Pub. L. 101–73, set out as Effective Date of 1989 Amendment note under section 597 of this title.

Pub. L. 101–73, title XIV, § 1401(c)(1), Aug. 9, 1989, 103 Stat. 550, provided that: ''The amendment made by sub-

section (a)(1) [amending this section] shall apply to acquisitions on or after May 10, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(q)(5) 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.

Pub. L. 100–647, title IV, § 4012(b)(1)(C)(i), Nov. 10, 1988, 102 Stat. 3657, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Repeal of amendment by section 806(f)(1) of Pub. L. 94–455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Pub. L. 99–514, title IX, § 904(c)(1), Oct. 22, 1986, 100 Stat. 2385, as amended by Pub. L. 100–647, title IV, § 4012(a)(1), Nov. 10, 1988, 102 Stat. 3656, which provided that the amendments made by subsection (a), amending this section, were to apply to acquisitions after Dec. 31, 1989, in taxable years ending after such date, was repealed by Pub. L. 101–73, title XIV, § 1401(b)(1), Aug. 9, 1989, 103 Stat. 549.

Amendment by section 1804(g)(2) of Pub. L. 99–514 applicable to plans of reorganizations adopted after Oct. 22, 1986, see section 1804(g)(4) of Pub. L. 99–514, set out as a note under section 361 of this title.

Amendment by section 1804(h) of 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.

Pub. L. 99–514, title XVIII, § 1879(*l*)(2), Oct. 22, 1986, 100 Stat. 2910, provided that: ''The amendment made by this subsection [amending this section] shall apply as if included in section 2131 of the Tax Reform Act of 1976 [Pub. L. 94–455].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 63(a) of Pub. L. 98–369 applicable to transactions pursuant to plans adopted after July 18, 1984, see section 63(c) of Pub. L. 98–369, set out as a note under section 312 of this title.

Pub. L. 98–369, div. A, title I, § 64(b), July 18, 1984, 98 Stat. 584, provided that: ''The amendments made by this section [amending this section] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 174(b)(5)(D) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, § 311(b)(2), Jan. 12, 1983, 96 Stat. 2411, provided that: ''The amendment made by subsection (b) of section 304 [amending this section] shall take effect as if included in the amendments made by section 4 of such Act [Pub. L. 96–589, the Bankruptcy Tax Act of 1980, see 1980 Amendment notes above].''

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, § 225(b), Sept. 3, 1982, 96 Stat. 490, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions occurring after August 31, 1982.

''(2) PLANS ADOPTED ON OR BEFORE AUGUST 31, 1982.—The amendment made by subsection (a) shall not apply with respect to plans of reorganization adopted on or before August 31, 1982, but only if the transaction occurs before January 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, § 246(a), Aug. 13, 1981, 95 Stat. 256, provided that: ''The amendment made by sections 241 and 242 [amending this section and section 382 of this title] shall apply to any transfer made on or after January 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, § 701(j)(2), Nov. 6, 1978, 92 Stat. 2906, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) [amending this section] shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2131(a) of the Tax Reform Act of 1976 [Pub. L. 94–455, title XX, § 2131(a), Oct. 4, 1976, 90 Stat. 1922].

''(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

''(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, § 2131(f)(1), (2), Oct. 4, 1976, 90 Stat. 1924, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

''(2) The amendment made by subsection (a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

For effective date of amendment by section 806(f)(1) of Pub. L. 94–455, see section 806(g)(2), (3) of Pub. L. 94–455, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–693, § 1(c), Jan. 12, 1971, 84 Stat. 2077, provided that: ''The amendments made by this section [amending this section] shall apply to statutory mergers occurring after December 31, 1970.''

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–621, § 1(c), Oct. 22, 1968, 82 Stat. 1311, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to statutory mergers occurring after the date of the enactment of this Act [Oct. 22, 1968].''

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, § 218(c), Feb. 26, 1964, 78 Stat. 57, provided that: ''The amendments made by this section [amending this section] shall apply with respect to transactions after December 31, 1963, in taxable years ending after such date.''

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.

[PART IV—REPEALED]

[§§ 370 to 372. Repealed. Pub. L. 101–508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388–521]

Section 370, added Pub. L. 96–589, § 4(f), Dec. 24, 1980, 94 Stat. 3404, related to termination of part.

Section 371, acts Aug. 16, 1954, ch. 736, 68A Stat. 121; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(a)(50), 90 Stat. 1773, related to reorganization in certain receivership and bankruptcy proceedings.

Section 372, acts Aug. 16, 1954, ch. 736, 68A Stat. 122; Sept. 2, 1958, Pub. L. 85–866, title I, § 95(a), 72 Stat. 1671; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(a)(51), (b)(14)(A), 1906(b)(13)(A), 90 Stat. 1773, 1795, 1834, related to basis in connection with certain receivership and bankruptcy proceedings.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 373. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(52), Oct. 4, 1976, 90 Stat. 1773]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 123; June 29, 1956, ch. 463, § 3, 70 Stat. 403, related to loss not recognized in certain railroad reorganizations.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[§ 374. Repealed. Pub. L. 101–508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added June 29, 1956, ch. 463, § 1, 70 Stat. 402; amended Mar. 31, 1976, Pub. L. 94–253, § 1(a), (d), 90 Stat. 295, 296; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(a)(53), (b)(10)(A), (14)(B), (C), 90 Stat. 1773, 1795, 1796; Nov. 6, 1978, Pub. L. 95–600, title III, § 369(a), 92 Stat. 2857; Apr. 1, 1980, Pub. L. 96–222, title I, § 103(a)(14), 94 Stat. 214; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1899A(9), 100 Stat. 2958, related to nonrecognition of gain or loss in certain railroad reorganizations.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART V—CARRYOVERS

AMENDMENTS

1987—Pub. L. 100–203, title X, § 10226(b), Dec. 22, 1987, 101 Stat. 1330–415, added item 384.

1986—Pub. L. 99–514, title VI, § 621(c)(2), Oct. 22, 1986, 100 Stat. 2266, substituted ''Limitation on net operating loss carryforwards and certain built-in losses following ownership change'' for ''Special limitations on net operating loss carryovers'' in item 382 and ''Special limitations on certain excess credits, etc.'' for ''Special limitations on unused business credits, research credits, foreign taxes, and capital losses'' in item 383.

1984—Pub. L. 98–369, div. A, title IV, § 474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted ''unused business credits, research credits, foreign taxes, and capital losses'' for ''carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses'' in item 383.

1981—Pub. L. 97–34, title II, § 221(b)(1)(E), title III, § 331(d)(1)(E), Aug. 13, 1981, 95 Stat. 246, 295, inserted references to alcohol fuel credits, research credits, and employee stock ownership credits in item 383. For applicability of amendment by section 221(b)(1)(E) to amounts paid or incurred after June 30, 1981, and before Jan. 1, 1986, see section 221(d) of Pub. L. 97–34, set out as an Effective Date note under section 30 of this title.

1977—Pub. L. 95–30, title II, § 202(d)(3)(D), May 23, 1977, 91 Stat. 148, inserted ''new employee credits,'' after ''work incentive program credits,'' in item 383.

1971—Pub. L. 92–178, title III, § 302(b), Dec. 10, 1971, 85 Stat. 521, added item 383.

§ 381. Carryovers in certain corporate acquisitions

(a) General rule

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

(b) Operating rules

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) Items of the distributor or transferor corporation

The items referred to in subsection (a) are:

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the ''loss year'') of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a ''prior taxable year'' (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the ''pre-acquisition part year'' and the ''post-acquisition part year'');

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B),[1] but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).[1]

(2) Earnings and profits

In the case of a distribution or transfer described in subsection (a)—

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) Capital loss carryover

The capital loss carryover determined under section 1212, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the capital gain net income (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corpora-

[1] See References in Text note below.

tion in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the capital gain net income in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) Method of accounting

The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary.

(5) Inventories

In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary.

(6) Method of computing depreciation allowance

The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under sections 167 and 168 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

[(7) Repealed. June 15, 1955, ch. 143, § 2(1), 69 Stat. 134]

(8) Installment method

If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation reports on the installment basis under section 453) the acquiring corporation shall, for purposes of section 453, be treated as if it were the distributor or transferor corporation.

(9) Amortization of bond discount or premium

If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with respect to such discount or premium.

(10) Treatment of certain mining development and exploration expenses of distributor or transferor corporation

The acquiring corporation shall be entitled to deduct, as if it were the distributor or transferor corporation, expenses deferred under section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected.

(11) Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans

The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(12) Recovery of tax benefit items

If the acquiring corporation is entitled to the recovery of any amounts previously deducted by (or allowable as credits to) the distributor or transferor corporation, the acquiring corporation shall succeed to the treatment under section 111 which would apply to such amounts in the hands of the distributor or transferor corporation.

(13) Involuntary conversions under section 1033

The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1033.

(14) Dividend carryover to personal holding company

The dividend carryover (described in section 564) to taxable years ending after the date of distribution or transfer.

[(15) Repealed. Pub. L. 101–508, title XI, § 11801(c)(10)(A), Nov. 5, 1990, 104 Stat. 1388–526]

(16) Certain obligations of distributor or transferor corporation

If the acquiring corporation—

(A) assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income,

the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of

this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

(17) Deficiency dividend of personal holding company

If the acquiring corporation pays a deficiency dividend (as defined in section 547(d)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 547.

(18) Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining

The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground).

(19) Charitable contributions in excess of prior years' limitations

Contributions made in the taxable year ending on the date of distribution or transfer and the 4 prior taxable years by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2) for such taxable years shall be deductible by the acquiring corporation for its taxable years which begin after the date of distribution or transfer, subject to the limitations imposed in section 170(b)(2). In applying the preceding sentence, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

(20) Carryforward of disallowed business interest

The carryover of disallowed business interest described in section 163(j)(2) to taxable years ending after the date of distribution or transfer.

[(21) Repealed. Pub. L. 94–455, title XIX, § 1901(b)(16), Oct. 4, 1976, 90 Stat. 1796]

(22) Successor insurance company

If the acquiring corporation is an insurance company taxable under subchapter L, there shall be taken into account (to the extent proper to carry out the purposes of this section and of subchapter L, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter L in respect of the distributor or transferor corporation.

(23) Deficiency dividend of regulated investment company or real estate investment trust

If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 860.

(24) Credit under section 38

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(25) Credit under section 53

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 53, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 53 in respect of the distributor or transferor corporation.

(26) Enterprise zone provisions

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 124; June 15, 1955, ch. 143, § 2(1), 69 Stat. 134; Jan. 28, 1956, ch. 15, § 1, 70 Stat. 7; Pub. L. 85–866, title I, § 29(c), Sept. 2, 1958, 72 Stat. 1628; Pub. L. 86–69, § 3(c), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, § 2(d), Oct. 16, 1962, 76 Stat. 971; Pub. L. 88–272, title II, §§ 209(d)(2), 225(i)(3), Feb. 26, 1964, 78 Stat. 46, 92; Pub. L. 90–240, § 5(d), Jan. 2, 1968, 81 Stat. 778; Pub. L. 91–172, title V, §§ 504(c)(2), 512(c), 521(f), Dec. 30, 1969, 83 Stat. 633, 639, 654; Pub. L. 92–178, title VI, § 601(c)(3), Dec. 10, 1971, 85 Stat. 557; Pub. L. 94–455, title XVI, § 1601(e), title XIX, §§ 1901(a)(54), (b)(16), (17), (21)(B), (33)(N), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1773, 1796, 1797, 1802, 1834; Pub. L. 95–30, title II, § 202(d)(3)(A), May 23, 1977, 91 Stat. 148; Pub. L. 95–600, title III, § 362(d)(2), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 96–223, title II, § 232(b)(2)(B), Apr. 2, 1980, 94 Stat. 276; Pub. L. 96–471, § 2(b)(2), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 96–589, § 4(g), Dec. 24, 1980, 94 Stat. 3404; Pub. L. 97–34, title II, §§ 208, 221(b)(1)(B), title III, § 331(d)(1)(B), Aug. 13, 1981, 95 Stat. 226, 246, 294; Pub. L. 97–248, title II, § 224(c)(7), Sept. 3, 1982, 96 Stat. 489; Pub. L. 97–448, title I, §§ 102(h)(3), 103(g)(2)(F), Jan. 12, 1983, 96 Stat. 2372, 2379; Pub. L. 98–369, div. A, title II, § 211(b)(4), title IV, § 474(r)(11), July 18, 1984, 98 Stat. 754, 841; Pub. L. 99–514, title II, § 231(d)(3)(F), title IV, § 411(b)(2)(C)(iii), title VII, § 701(e)(1), title XVIII, § 1812(a)(3), Oct. 22, 1986, 100 Stat. 2179, 2227, 2342, 2833; Pub. L. 100–203,

title X, § 10202(c)(3), Dec. 22, 1987, 101 Stat. 1330–392; Pub. L. 100–647, title I, § 1002(a)(13), Nov. 10, 1988, 102 Stat. 3355; Pub. L. 101–239, title VII, § 7841(d)(10), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101–508, title XI, §§ 11801(c)(10)(A), 11812(b)(6), Nov. 5, 1990, 104 Stat. 1388–526, 1388–535; Pub. L. 103–66, title XIII, § 13302(e), Aug. 10, 1993, 107 Stat. 556; Pub. L. 104–188, title I, § 1704(t)(26), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 115–97, title I, §§ 13301(b)(1), 13511(b)(3), Dec. 22, 2017, 131 Stat. 2121, 2142.)

REFERENCES IN TEXT

Section 172(b)(2)(B), referred to in subsec. (c)(1)(C)(v), (vi), was amended by Pub. L. 115–97, title I, § 13302(a)(2), Dec. 22, 2017, 131 Stat. 2121, and, as so amended, no longer relates to net operating loss deductions. Provisions similar to those contained in former subpar. (B) of section 172(b)(2) of this title are now contained in subpar. (A) of section 172(b)(2) of this title.

AMENDMENTS

2017—Subsec. (c)(20). Pub. L. 115–97, § 13301(b)(1), added par. (20).

Subsec. (d). Pub. L. 115–97, § 13511(b)(3), struck out subsec. (d). Text read as follows: ''For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 810.''

1996—Subsec. (c)(26), (27). Pub. L. 104–188 amended directory language of Pub. L. 101–239. See 1989 Amendment note below.

1993—Subsec. (c)(26). Pub. L. 103–66 added par. (26).

1990—Subsec. (c)(6). Pub. L. 101–508, § 11812(b)(6)(A), substituted ''sections 167 and 168'' for ''subsections (b), (j), and (k) of section 167''.

Subsec. (c)(15). Pub. L. 101–508, § 11801(c)(10)(A), struck out par. (15) ''Indebtedness of certain personal holding companies'' which read as follows: ''The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of subsection (c) of section 545, relating to deduction with respect to payment of certain indebtedness.''

Subsec. (c)(24) to (26). Pub. L. 101–508, § 11812(b)(6)(B), redesignated pars. (25) and (26) as (24) and (25), respectively, and struck out former par. (24) ''Method of computing depreciation deduction'' which read as follows: ''The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the deduction allowable under section 168(a) on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.''

1989—Subsec. (c)(26), (27). Pub. L. 101–239, as amended by Pub. L. 104–188, redesignated par. (27) as (26).

1988—Subsec. (c)(24). Pub. L. 100–647 substituted ''depreciation deduction'' for ''recovery allowance for recovery property'' in heading.

1987—Subsec. (c)(8). Pub. L. 100–203 struck out ''or 453A'' after ''section 453'' in two places.

1986—Subsec. (c)(10). Pub. L. 99–514, § 411(b)(2)(C)(iii), struck out last sentence which read: ''For the purpose of applying the limitation provided in section 617(h), if, for any taxable year, the distributor or transferor corporation was allowed a deduction under section 617(a), the acquiring corporation shall be deemed to have been allowed such deduction.''

Subsec. (c)(12). Pub. L. 99–514, § 1812(a)(3), amended par. (12) generally. Prior to amendment, par. (12), recovery of bad debts, prior taxes, or delinquency amounts, read as follows: ''If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includible by the distributor or transferor corporation in accordance with section 111 (relating to the recovery of bad debts, prior taxes, and delinquency amounts).''

Subsec. (c)(25), (26). Pub. L. 99–514, § 231(d)(3)(F), redesignated par. (26) as (25). Former par. (25), relating to credit under section 30, was struck out.

Subsec. (c)(27). Pub. L. 99–514, § 701(e)(1), added par. (27).

1984—Subsec. (c)(23). Pub. L. 98–369, § 474(r)(11)(B), redesignated par. (25) as (23). Former par. (23), relating to credit under section 38 for investment in certain depreciable property, was struck out.

Subsec. (c)(24). Pub. L. 98–369, § 474(r)(11)(B), redesignated par. (28) as (24). Former par. (24), relating to credit under section 40 for work incentive program expenses, was struck out.

Subsec. (c)(25). Pub. L. 98–369, § 474(r)(11)(B), (C), redesignated par. (29) as (25), and substituted ''30'' for ''44F'' wherever appearing in heading and text. Former par. (25) redesignated (23).

Subsec. (c)(26). Pub. L. 98–369, § 474(r)(11)(D), added par. (26). Former par. (26), relating to credit under section 44B for employment of certain new employees, was struck out.

Subsec. (c)(27). Pub. L. 98–369, § 474(r)(11)(A), struck out par. (27) relating to credit under section 44E for alcohol used as fuel.

Subsec. (c)(28), (29). Pub. L. 98–369, § 474(r)(11)(B), redesignated pars. (28) and (29) as (24) and (25), respectively.

Subsec. (c)(30). Pub. L. 98–369, § 474(r)(11)(A), struck out par. (30) relating to credit under section 44G.

Subsec. (d). Pub. L. 98–369, § 211(b)(4), substituted ''section 810'' for ''section 812(f)''.

1983—Subsec. (c)(28), (29). Pub. L. 97–448, § 102(h)(3), redesignated par. (28), relating to credit under section 44F, as (29). Former par. (29) redesignated (30).

Subsec. (c)(30). Pub. L. 97–448, § 103(g)(2)(F), redesignated former par. (29), relating to credit under section 44G, as (30).

1982—Subsec. (a)(1). Pub. L. 97–248 struck out '', except in a case in which the basis of the assets distributed is determined under section 334(b)(2)'' after ''applies''.

1981—Subsec. (c)(28). Pub. L. 97–34, § 208, added par. (28) relating to recovery allowance for recovery property.

Pub. L. 97–34, § 221(b)(1)(B), added par. (28) relating to credit under section 44F.

Subsec. (c)(29). Pub. L. 97–34, § 331(d)(1)(B), added par. (29).

1980—Subsec. (a). Pub. L. 96–589, § 4(g)(2), inserted provisions that a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

Subsec. (a)(2). Pub. L. 96–589, § 4(g)(1), substituted ''subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1)'' for ''subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met), or (F) of section 368(a)(1)''.

Subsec. (c)(8). Pub. L. 96–471 substituted ''reports on the installment basis under section 453 or 453A'' for ''has elected, under section 453, to report on the installment basis'' and ''for purposes of section 453 or 453A'' for ''for purposes of section 453.''

Subsec. (c)(27). Pub. L. 96–223 added par. (27).

1978—Subsec. (c)(25). Pub. L. 95–600 substituted ''regulated investment company or real estate investment trust'' for ''real estate investment trust'' in heading, and in text ''section 860(f)'' for ''section 859(d)'' and ''section 860'' for ''section 859''.

1977—Subsec. (c)(26). Pub. L. 95–30 added par. (26).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(3). Pub. L. 94–455, § 1901(b)(33)(N), substituted in subpars. (B) and (C) ''capital gain net income'' for ''net capital gain''.

Subsec. (c)(4), (5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(10). Pub. L. 94–455, § 1901(b)(21)(B), among other changes, substituted reference to section 616 (re-

lating to certain development expenditures) if the distributor or transferor corporation has so elected for reference to sections 615 and 616 (relating to pre-1970 exploration expenditures and development expenditures, respectively) if the distributor or transferor corporation has so elected and struck out provisions that if, for any taxable year, the distributor of transferor corporation was allowed or made the election of the deduction under section 615 of this title, the acquiring corporation shall be deemed to have been allowed or to have made such election of the deduction under section 615 of this title.

Subsec. (c)(15). Pub. L. 94–455, §1901(b)(17), substituted ''subsection (c)'' for ''subsections (b)(7) and (c)''.

Subsec. (c)(20). Pub. L. 94–455, §1901(a)(54), struck out par. (20) which related to carry-over of unused pension trust deductions in certain cases.

Subsec. (c)(21). Pub. L. 94–455, §1901(b)(16), struck out par. (21) which related to pre-1954 adjustments resulting from change in method of accounting.

Subsec. (c)(22) to (24). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(25). Pub. L. 94–455, §1601(e), added par. (25).

1971—Subsec. (c)(24). Pub. L. 92–178 added par. (24).

1969—Subsec. (b)(3). Pub. L. 91–172, §512(c), substituted ''a net operating loss or a net capital loss'' for ''a net operating loss''.

Subsec. (c)(6). Pub. L. 91–172, §521(f), substituted ''subsections (b), (j) and (k) of section 167'' for ''paragraphs (2), (3) and (4) of section 167(b)'' and inserted reference to adjusted basis in the hand of the distributor or transferor corporation.

Subsec. (c)(10). Pub. L. 91–172, §504(c)(2), substituted ''Treatment of certain mining exploration and development expenses of distributor or transferor corporation'' for ''Treatment of certain expenses deferred by the election of distributor or transferor corporation'' in heading, limited deduction of expenses deferred under sections 615 and 616 of this title by the acquiring corporation as if it were the distributor or transferor corporation to pre-1970 exploration and development expenditures, and inserted provision that if distributor or transferor corporation, for any taxable year, was allowed the deduction in sections 615(a) or 617(a) of this title or made the election provided in section 615(b) of this title, acquiring corporation shall be deemed to have been allowed such deduction or deductions or to have made such election, as the case may be, for the purpose of applying the limitation provided in section 617 of this title.

1968—Subsec. (c)(22). Pub. L. 90–240 substituted successor insurance companies for successor life insurance companies as the business enterprise covered, substituted reference to insurance companies taxable under subchapter L for reference to life insurance companies as defined in section 801(a), and substituted reference to the purposes of this section and of subchapter L for reference to the purposes of this section and part I of subchapter L.

1964—Subsec. (c)(15). Pub. L. 88–272, §225(i)(3), substituted ''subsections (b)(7) and (c) of section 545, relating to deductions with respect to payment of certain indebtedness'' for ''section 545(b)(7), relating to a deduction for payment of certain indebtedness incurred before Jan. 1, 1934''.

Subsec. (c)(19). Pub. L. 88–272, §209(d)(2), permitted deductions for contributions made in the taxable year and in 4 prior taxable years, instead of one prior taxable year, and provided that each taxable year beginning on or before the distribution or transfer date shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

1962—Subsec. (c)(23). Pub. L. 87–834 added par. (23).

1959—Subsec. (c)(22). Pub. L. 86–69, §3(c)(1), added par. (22).

Subsec. (d). Pub. L. 86–69, §3(c)(2), added subsec. (d).

1958—Subsec. (c)(21). Pub. L. 85–866 added par. (21).

1956—Subsec. (c)(20). Act Jan. 28, 1956 added par. (20).

1955—Subsec. (c)(7). Act June 15, 1955, repealed par. (7) which related to carryover of prepaid income.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13301 of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13301(c) of Pub. L. 115–97, set out as a note under section 163 of this title.

Pub. L. 115–97, title I, §13511(c), Dec. 22, 2017, 131 Stat. 2142, provided that: ''The amendments made by this section [amending this section and sections 805, 831, 953, and 1351 of this title and repealing sections 810 and 844 of this title] shall apply to losses arising in taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(6) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 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 OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for nondealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 411(b)(2)(C)(iii) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514, set out as a note under section 263 of this title.

Amendment by section 701(e)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1812(a)(3) of 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 OF 1984 AMENDMENT

Amendment by section 211(b)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(11) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition

date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 208 of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 221(b)(1)(B) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(B) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceeding commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceeding commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(e) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(54), (b)(16), (17), (21)(B), (33)(N) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title VI, § 601(f), Dec. 10, 1971, 85 Stat. 560, provided that: ''The amendments made by this section [enacting sections 40, 50A, and 50B of this title and amending this section and sections 56, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 504(c)(2) of Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as a note under section 243 of this title.

Amendment by section 512(c) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

Amendment by section 521(f) of Pub. L. 91–172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91–172, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–240 applicable to taxable years beginning after Dec. 31, 1966, see section 5(e) of Pub. L. 90–240, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(i)(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

Amendment by section 209(d)(2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, with respect to contributions paid or treated as paid under section 170(a)(2) of this title, in taxable years beginning after Dec. 31, 1961, see section 209(f)(2) of Pub. L. 88–272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–69, § 4, June 25, 1959, 73 Stat. 141, provided that: ''Except as otherwise provided in this Act, the amendments made by this Act [amending this section, part I (§ 801 et seq.) of subchapter L, and sections 841, 842, 891, 1016, 1201, 1232, 1504, 4371, and 6501 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–866, see section 29(d) of Pub. L. 85–866, set out as a note under section 481 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Jan. 28, 1956, ch. 15, § 2, 70 Stat. 7, provided that: ''The amendments made by the first section of this Act [amending this section] shall reply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1955 AMENDMENT

Act June 15, 1955, ch. 143, § 3, 69 Stat. 135, provided that: ''The amendments made by this Act [amending this section and repealing sections 452 and 462 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Act June 15, 1955, ch. 143, § 4, 69 Stat. 135, as amended by act Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided:

''(a) FILING OF STATEMENT.—If—

''(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this Act [June 15, 1955] is increased by reason of the enactment of this Act [amending this section and repealing sections 452 and 462], and

''(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955, then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this Act.

''(b) FORM AND EFFECT OF STATEMENT.—

''(1) FORM OF STATEMENT, ETC.—The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

''(2) TREATMENT AS AMOUNT SHOWN ON RETURN.—The amount shown on a statement filed under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this Act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

''(3) WAIVER OF INTEREST IN CASE OF PAYMENT ON OR BEFORE DECEMBER 15, 1955.—If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date prescribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 452 and 462 of this title], as those sections existed before the enactment of this Act.

''(c) SPECIAL RULES.—

''(1) INTEREST FOR PERIOD BEFORE ENACTMENT.—Interest shall not be imposed on the amount of any increase in tax resulting from the enactment of this Act for any period before the day after the date of the enactment of this Act [June 15, 1955].

''(2) ESTIMATED TAX.—Any addition to the tax under section 294(d) of the Internal Revenue Code of 1939 [section 294(d) of former Title 26, Internal Revenue Code], shall be computed as if this Act had not been enacted. In the case of any installment for which the last date prescribed for payment is before December 15, 1955, any addition to the tax under section 6654 of the Internal Revenue Code of 1986 [section 6654 of this title], shall be computed as if this Act had not been enacted.

''(3) TREATMENT OF CERTAIN PAYMENTS WHICH TAXPAYER IS REQUIRED TO MAKE.—If—

''(A) the taxpayer is required to make a payment (or an additional payment) to another person by reason of the enactment of this Act, and

''(B) the Internal Revenue Code of 1986 [this title] prescribes a period, which expires after the close of the taxable year, within which the taxpayer must make such payment (or additional payment) if the amount thereof is to be taken into account (as a deduction or otherwise) in computing taxable income for such taxable year,

then, subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, if such payment (or additional payment) is made on or before December 15, 1955, it shall be treated as having been made within the period prescribed by such Code.

''(4) TREATMENT OF CERTAIN DIVIDENDS.—Subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, for purposes of section 561(a)(1) of the Internal Revenue Code of 1986 [section 561(a)(1) of this title], dividends paid after the 15th day of the third month following the close of the taxable year and on or before December 15, 1955, may be treated as having been paid on the last day of the taxable year, but only to the extent (A) that such dividends are attributable to an increase in taxable income for the taxable year resulting from the enactment of this Act, and (B) elected by the taxpayer.

''(5) DETERMINATION OF DATE PRESCRIBED.—For purposes of this section, the determination of the last date prescribed for payment or for filing a return shall be made without regard to any extension of time therefor and without regard to any provision of this section.

''(6) REGULATIONS.—For requirement that the Secretary of the Treasury or his delegate shall prescribe all rules and regulations as may be necessary by reason of the enactment of this Act, see section 7805(a) of the Internal Revenue Code of 1986 [section 7805(a) of this title].''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(1) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 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.

§ 382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change

(a) General rule

The amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year.

(b) Section 382 limitation

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the section 382 limitation for any post-change year is an amount equal to—

(A) the value of the old loss corporation, multiplied by

(B) the long-term tax-exempt rate.

(2) Carryforward of unused limitation

If the section 382 limitation for any post-change year exceeds the taxable income of the new loss corporation for such year which was offset by pre-change losses, the section 382 limitation for the next post-change year shall be increased by the amount of such excess.

(3) Special rule for post-change year which includes change date

In the case of any post-change year which includes the change date—

(A) Limitation does not apply to taxable income before change

Subsection (a) shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the change date. Except as provided in subsection (h)(5) and in regulations, taxable income shall be allocated ratably to each day in the year.

(B) Limitation for period after change

For purposes of applying the limitation of subsection (a) to the remainder of the taxable income for such year, the section 382 limitation shall be an amount which bears the same ratio to such limitation (determined without regard to this paragraph) as—

(i) the number of days in such year after the change date, bears to

(ii) the total number of days in such year.

(c) Carryforwards disallowed if continuity of business requirements not met

(1) In general

Except as provided in paragraph (2), if the new loss corporation does not continue the business enterprise of the old loss corporation at all times during the 2-year period beginning on the change date, the section 382 limitation for any post-change year shall be zero.

(2) Exception for certain gains

The section 382 limitation for any post-change year shall not be less than the sum of—

(A) any increase in such limitation under—

(i) subsection (h)(1)(A) for recognized built-in gains for such year, and

(ii) subsection (h)(1)(C) for gain recognized by reason of an election under section 338, plus

(B) any increase in such limitation under subsection (b)(2) for amounts described in subparagraph (A) which are carried forward to such year.

(d) Pre-change loss and post-change year

For purposes of this section—

(1) Pre-change loss

The term ''pre-change loss'' means—

(A) any net operating loss carryforward of the old loss corporation to the taxable year ending with the ownership change or in which the change date occurs, and

(B) the net operating loss of the old loss corporation for the taxable year in which the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date.

Except as provided in subsection (h)(5) and in regulations, the net operating loss shall, for purposes of subparagraph (B), be allocated ratably to each day in the year.

(2) Post-change year

The term ''post-change year'' means any taxable year ending after the change date.

(3) Application to carryforward of disallowed interest

The term ''pre-change loss'' shall include any carryover of disallowed interest described in section 163(j)(2) under rules similar to the rules of paragraph (1).

(e) Value of old loss corporation

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the value of the old loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change.

(2) Special rule in the case of redemption or other corporate contraction

If a redemption or other corporate contraction occurs in connection with an ownership change, the value under paragraph (1) shall be determined after taking such redemption or other corporate contraction into account.

(3) Treatment of foreign corporations

Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States.

(f) Long-term tax-exempt rate

For purposes of this section—

(1) In general

The long-term tax-exempt rate shall be the highest of the adjusted Federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the change date occurs.

(2) Adjusted Federal long-term rate

For purposes of paragraph (1), the term ''adjusted Federal long-term rate'' means the Federal long-term rate determined under section 1274(d), except that—

(A) paragraphs (2) and (3) thereof shall not apply, and

(B) such rate shall be properly adjusted for differences between rates on long-term taxable and tax-exempt obligations.

(g) Ownership change

For purposes of this section—

(1) In general

There is an ownership change if, immediately after any owner shift involving a 5-percent shareholder or any equity structure shift—

(A) the percentage of the stock of the loss corporation owned by 1 or more 5-percent shareholders has increased by more than 50 percentage points, over

(B) the lowest percentage of stock of the loss corporation (or any predecessor corporation) owned by such shareholders at any time during the testing period.

(2) Owner shift involving 5-percent shareholder

There is an owner shift involving a 5-percent shareholder if—

(A) there is any change in the respective ownership of stock of a corporation, and

(B) such change affects the percentage of stock of such corporation owned by any person who is a 5-percent shareholder before or after such change.

(3) Equity structure shift defined

(A) In general

The term ''equity structure shift'' means any reorganization (within the meaning of section 368). Such term shall not include—

(i) any reorganization described in subparagraph (D) or (G) of section 368(a)(1) unless the requirements of section 354(b)(1) are met, and

(ii) any reorganization described in subparagraph (F) of section 368(a)(1).

(B) Taxable reorganization-type transactions, etc.

To the extent provided in regulations, the term ''equity structure shift'' includes taxable reorganization-type transactions, public offerings, and similar transactions.

(4) Special rules for application of subsection

(A) Treatment of less than 5-percent shareholders

Except as provided in subparagraphs (B)(i) and (C), in determining whether an ownership change has occurred, all stock owned by shareholders of a corporation who are not 5-percent shareholders of such corporation shall be treated as stock owned by 1 5-percent shareholder of such corporation.

(B) Coordination with equity structure shifts

For purposes of determining whether an equity structure shift (or subsequent transaction) is an ownership change—

(i) Less than 5-percent shareholders

Subparagraph (A) shall be applied separately with respect to each group of shareholders (immediately before such equity structure shift) of each corporation which was a party to the reorganization involved in such equity structure shift.

(ii) Acquisitions of stock

Unless a different proportion is established, acquisitions of stock after such equity structure shift shall be treated as being made proportionately from all shareholders immediately before such acquisition.

(C) Coordination with other owner shifts

Except as provided in regulations, rules similar to the rules of subparagraph (B) shall apply in determining whether there has been an owner shift involving a 5-percent shareholder and whether such shift (or subsequent transaction) results in an ownership change.

(D) Treatment of worthless stock

If any stock held by a 50-percent shareholder is treated by such shareholder as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term ''50-percent shareholder'' means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated.

(h) Special rules for built-in gains and losses and section 338 gains

For purposes of this section—

(1) In general

(A) Net unrealized built-in gain

(i) In general

If the old loss corporation has a net unrealized built-in gain, the section 382 limitation for any recognition period taxable year shall be increased by the recognized built-in gains for such taxable year.

(ii) Limitation

The increase under clause (i) for any recognition period taxable year shall not exceed—

(I) the net unrealized built-in gain, reduced by

(II) recognized built-in gains for prior years ending in the recognition period.

(B) Net unrealized built-in loss

(i) In general

If the old loss corporation has a net unrealized built-in loss, the recognized built-in loss for any recognition period taxable year shall be subject to limitation under this section in the same manner as if such loss were a pre-change loss.

(ii) Limitation

Clause (i) shall apply to recognized built-in losses for any recognition period taxable year only to the extent such losses do not exceed—

(I) the net unrealized built-in loss, reduced by

(II) recognized built-in losses for prior taxable years ending in the recognition period.

(C) Special rules for certain section 338 gains

If an election under section 338 is made in connection with an ownership change and the net unrealized built-in gain is zero by reason of paragraph (3)(B), then, with respect to such change, the section 382 limitation for the post-change year in which gain is recognized by reason of such election shall be increased by the lesser of—

(i) the recognized built-in gains by reason of such election, or

(ii) the net unrealized built-in gain (determined without regard to paragraph (3)(B)).

(2) Recognized built-in gain and loss

(A) Recognized built-in gain

The term ''recognized built-in gain'' means any gain recognized during the recognition period on the disposition of any asset to the extent the new loss corporation establishes that—

(i) such asset was held by the old loss corporation immediately before the change date, and

(ii) such gain does not exceed the excess of—

(I) the fair market value of such asset on the change date, over

(II) the adjusted basis of such asset on such date.

(B) Recognized built-in loss

The term ''recognized built-in loss'' means any loss recognized during the recognition period on the disposition of any asset except to the extent the new loss corporation establishes that—

(i) such asset was not held by the old loss corporation immediately before the change date, or

(ii) such loss exceeds the excess of—

(I) the adjusted basis of such asset on the change date, over

(II) the fair market value of such asset on such date.

Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).

(3) Net unrealized built-in gain and loss defined

(A) Net unrealized built-in gain and loss

(i) In general

The terms ''net unrealized built-in gain'' and ''net unrealized built-in loss'' mean, with respect to any old loss corporation, the amount by which—

(I) the fair market value of the assets of such corporation immediately before an ownership change is more or less, respectively, than

(II) the aggregate adjusted basis of such assets at such time.

(ii) Special rule for redemptions or other corporate contractions

If a redemption or other corporate contraction occurs in connection with an ownership change, to the extent provided in regulations, determinations under clause (i) shall be made after taking such redemption or other corporate contraction into account.

(B) Threshold requirement

(i) In general

If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than the lesser of—

(I) 15 percent of the amount determined for purposes of subparagraph (A)(i)(I), or

(II) $10,000,000,

the net unrealized built-in gain or net unrealized built-in loss shall be zero.

(ii) Cash and cash items not taken into account

In computing any net unrealized built-in gain or net unrealized built-in loss under clause (i), except as provided in regulations, there shall not be taken into account—

(I) any cash or cash item, or

(II) any marketable security which has a value which does not substantially differ from adjusted basis.

(4) Disallowed loss allowed as a carryforward

If a deduction for any portion of a recognized built-in loss is disallowed for any post-change year, such portion—

(A) shall be carried forward to subsequent taxable years under rules similar to the rules for the carrying forward of net operating losses (or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses), but

(B) shall be subject to limitation under this section in the same manner as a pre-change loss.

(5) Special rules for post-change year which includes change date

For purposes of subsection (b)(3)—

(A) in applying subparagraph (A) thereof, taxable income shall be computed without regard to recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses), and gain described in paragraph (1)(C), for the year, and

(B) in applying subparagraph (B) thereof, the section 382 limitation shall be computed without regard to recognized built-in gains, and gain described in paragraph (1)(C), for the year.

(6) Treatment of certain built-in items

(A) Income items

Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) Deduction items

Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the change date shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) Adjustments

The amount of the net unrealized built-in gain or loss shall be properly adjusted for

amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(7) Recognition period, etc.

(A) Recognition period

The term ''recognition period'' means, with respect to any ownership change, the 5-year period beginning on the change date.

(B) Recognition period taxable year

The term ''recognition period taxable year'' means any taxable year any portion of which is in the recognition period.

(8) Determination of fair market value in certain cases

If 80 percent or more in value of the stock of a corporation is acquired in 1 transaction (or in a series of related transactions during any 12-month period), for purposes of determining the net unrealized built-in loss, the fair market value of the assets of such corporation shall not exceed the grossed up amount paid for such stock properly adjusted for indebtedness of the corporation and other relevant items.

(9) Tax-free exchanges or transfers

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection where property held on the change date was acquired (or is subsequently transferred) in a transaction where gain or loss is not recognized (in whole or in part).

(i) Testing period

For purposes of this section—

(1) 3-year period

Except as otherwise provided in this section, the testing period is the 3-year period ending on the day of any owner shift involving a 5-percent shareholder or equity structure shift.

(2) Shorter period where there has been recent ownership change

If there has been an ownership change under this section, the testing period for determining whether a 2nd ownership change has occurred shall not begin before the 1st day following the change date for such earlier ownership change.

(3) Shorter period where all losses arise after 3-year period begins

The testing period shall not begin before the earlier of the 1st day of the 1st taxable year from which there is a carryforward of a loss or of an excess credit to the 1st post-change year or the taxable year in which the transaction being tested occurs. Except as provided in regulations, this paragraph shall not apply to any loss corporation which has a net unrealized built-in loss (determined after application of subsection (h)(3)(B)).

(j) Change date

For purposes of this section, the change date is—

(1) in the case where the last component of an ownership change is an owner shift involving a 5-percent shareholder, the date on which such shift occurs, and

(2) in the case where the last component of an ownership change is an equity structure shift, the date of the reorganization.

(k) Definitions and special rules

For purposes of this section—

(1) Loss corporation

The term ''loss corporation'' means a corporation entitled to use a net operating loss carryover or having a net operating loss for the taxable year in which the ownership change occurs. Such term shall include any corporation entitled to use a carryforward of disallowed interest described in section 381(c)(20). Except to the extent provided in regulations, such term includes any corporation with a net unrealized built-in loss.

(2) Old loss corporation

The term ''old loss corporation'' means any corporation—

(A) with respect to which there is an ownership change, and

(B) which (before the ownership change) was a loss corporation.

(3) New loss corporation

The term ''new loss corporation'' means a corporation which (after an ownership change) is a loss corporation. Nothing in this section shall be treated as implying that the same corporation may not be both the old loss corporation and the new loss corporation.

(4) Taxable income

Taxable income shall be computed with the modifications set forth in section 172(d).

(5) Value

The term ''value'' means fair market value.

(6) Rules relating to stock

(A) Preferred stock

Except as provided in regulations and subsection (e), the term ''stock'' means stock other than stock described in section 1504(a)(4).

(B) Treatment of certain rights, etc.

The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

(ii) to treat stock as not stock.

(C) Determinations on basis of value

Determinations of the percentage of stock of any corporation held by any person shall be made on the basis of value.

(7) 5-percent shareholder

The term ''5-percent shareholder'' means any person holding 5 percent or more of the stock of the corporation at any time during the testing period.

***(l)* Certain additional operating rules**

For purposes of this section—

(1) Certain capital contributions not taken into account

(A) In general

Any capital contribution received by an old loss corporation as part of a plan a principal purpose of which is to avoid or increase any limitation under this section shall not be taken into account for purposes of this section.

(B) Certain contributions treated as part of plan

For purposes of subparagraph (A), any capital contribution made during the 2-year period ending on the change date shall, except as provided in regulations, be treated as part of a plan described in subparagraph (A).

(2) Ordering rules for application of section

(A) Coordination with section 172(b) carryover rules

In the case of any pre-change loss for any taxable year (hereinafter in this subparagraph referred to as the ''loss year'') subject to limitation under this section, for purposes of determining under the 2nd sentence of section 172(b)(2) the amount of such loss which may be carried to any taxable year, taxable income for any taxable year shall be treated as not greater than—

(i) the section 382 limitation for such taxable year, reduced by

(ii) the unused pre-change losses for taxable years preceding the loss year.

Similar rules shall apply in the case of any credit or loss subject to limitation under section 383.

(B) Ordering rule for losses carried from same taxable year

In any case in which—

(i) a pre-change loss of a loss corporation for any taxable year is subject to a section 382 limitation, and

(ii) a net operating loss of such corporation from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset first by the loss subject to such limitation.

(3) Operating rules relating to ownership of stock

(A) Constructive ownership

Section 318 (relating to constructive ownership of stock) shall apply in determining ownership of stock, except that—

(i) paragraphs (1) and (5)(B) of section 318(a) shall not apply and an individual and all members of his family described in paragraph (1) of section 318(a) shall be treated as 1 individual for purposes of applying this section,

(ii) paragraph (2) of section 318(a) shall be applied—

(I) without regard to the 50-percent limitation contained in subparagraph (C) thereof, and

(II) except as provided in regulations, by treating stock attributed thereunder as no longer being held by the entity from which attributed,

(iii) paragraph (3) of section 318(a) shall be applied only to the extent provided in regulations,

(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account—

(I) in the case of attribution from a corporation, stock which is not treated as stock for purposes of this section, or

(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I).

A rule similar to the rule of clause (iv) shall apply in the case of any contingent purchase, warrant, convertible debt, put, stock subject to a risk of forfeiture, contract to acquire stock, or similar interests.

(B) Stock acquired by reason of death, gift, divorce, separation, etc.

If—

(i) the basis of any stock in the hands of any person is determined—

(I) under section 1014 (relating to property acquired from a decedent),

(II) section 1015 (relating to property acquired by a gift or transfer in trust), or

(III) section 1041(b)(2) (relating to transfers of property between spouses or incident to divorce),

(ii) stock is received by any person in satisfaction of a right to receive a pecuniary bequest, or

(iii)[1] stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2)),

such person shall be treated as owning such stock during the period such stock was owned by the person from whom it was acquired.

(C) Certain changes in percentage ownership which are attributable to fluctuations in value not taken into account

Except as provided in regulations, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

(4) Reduction in value where substantial nonbusiness assets

(A) In general

If, immediately after an ownership change, the new loss corporation has substantial nonbusiness assets, the value of the old loss corporation shall be reduced by the excess (if any) of—

(i) the fair market value of the nonbusiness assets of the old loss corporation, over

[1] See Amendment of Subsection (*l*)(3)(B)(iii) note below.

(ii) the nonbusiness asset share of indebtedness for which such corporation is liable.

(B) Corporation having substantial nonbusiness assets

For purposes of subparagraph (A)—

(i) In general

The old loss corporation shall be treated as having substantial nonbusiness assets if at least ⅓ of the value of the total assets of such corporation consists of nonbusiness assets.

(ii) Exception for certain investment entities

A regulated investment company to which part I of subchapter M applies, a real estate investment trust to which part II of subchapter M applies, or a REMIC to which part IV of subchapter M applies, shall not be treated as a new loss corporation having substantial nonbusiness assets.

(C) Nonbusiness assets

For purposes of this paragraph, the term ''nonbusiness assets'' means assets held for investment.

(D) Nonbusiness asset share

For purposes of this paragraph, the nonbusiness asset share of the indebtedness of the corporation is an amount which bears the same ratio to such indebtedness as—

(i) the fair market value of the nonbusiness assets of the corporation, bears to

(ii) the fair market value of all assets of such corporation.

(E) Treatment of subsidiaries

For purposes of this paragraph, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, and 50 percent or more of the total value of shares of all classes of stock.

(5) Title 11 or similar case

(A) In general

Subsection (a) shall not apply to any ownership change if—

(i) the old loss corporation is (immediately before such ownership change) under the jurisdiction of the court in a title 11 or similar case, and

(ii) the shareholders and creditors of the old loss corporation (determined immediately before such ownership change) own (after such ownership change and as a result of being shareholders or creditors immediately before such change) stock of the new loss corporation (or stock of a controlling corporation if also in bankruptcy) which meets the requirements of section 1504(a)(2) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears).

(B) Reduction for interest payments to creditors becoming shareholders

In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if no deduction was allowable under this chapter for the interest paid or accrued by the old loss corporation on indebtedness which was converted into stock pursuant to title 11 or similar case during—

(i) any taxable year ending during the 3-year period preceding the taxable year in which the ownership change occurs, and

(ii) the period of the taxable year in which the ownership change occurs on or before the change date.

(C) Coordination with section 108

In applying section 108(e)(8) to any case to which subparagraph (A) applies, there shall not be taken into account any indebtedness for interest described in subparagraph (B).

(D) Section 382 limitation zero if another change within 2 years

If, during the 2-year period immediately following an ownership change to which this paragraph applies, an ownership change of the new loss corporation occurs, this paragraph shall not apply and the section 382 limitation with respect to the 2nd ownership change for any post-change year ending after the change date of the 2nd ownership change shall be zero.

(E) Only certain stock taken into account

For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is transferred in satisfaction of indebtedness and only if such indebtedness—

(i) was held by the creditor at least 18 months before the date of the filing of the title 11 or similar case, or

(ii) arose in the ordinary course of the trade or business of the old loss corporation and is held by the person who at all times held the beneficial interest in such indebtedness.

(F) Title 11 or similar case

For purposes of this paragraph, the term ''title 11 or similar case'' has the meaning given such term by section 368(a)(3)(A).

(G) Election not to have paragraph apply

A new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of this paragraph apply.

(6) Special rule for insolvency transactions

If paragraph (5) does not apply to any reorganization described in subparagraph (G) of section 368(a)(1) or any exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3)(A)), the value under subsection (e) shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction.

(7) Coordination with alternative minimum tax

The Secretary shall by regulation provide for the application of this section to the alternative tax net operating loss deduction under section 56(d).

(8) Predecessor and successor entities

Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity.

(m) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and section 383, including (but not limited to) regulations—

(1) providing for the application of this section and section 383 where an ownership change with respect to the old loss corporation is followed by an ownership change with respect to the new loss corporation, and

(2) providing for the application of this section and section 383 in the case of a short taxable year,

(3) providing for such adjustments to the application of this section and section 383 as is necessary to prevent the avoidance of the purposes of this section and section 383, including the avoidance of such purposes through the use of related persons, pass-thru entities, or other intermediaries,

(4) providing for the application of subsection (g)(4) where there is only 1 corporation involved, and

(5) providing, in the case of any group of corporations described in section 1563(a) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears and determined without regard to paragraph (4) thereof), appropriate adjustments to value, built-in gain or loss, and other items so that items are not omitted or taken into account more than once.

(n) Special rule for certain ownership changes

(1) In general

The limitation contained in subsection (a) shall not apply in the case of an ownership change which is pursuant to a restructuring plan of a taxpayer which—

(A) is required under a loan agreement or a commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008, and

(B) is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.

(2) Subsequent acquisitions

Paragraph (1) shall not apply in the case of any subsequent ownership change unless such ownership change is described in such paragraph.

(3) Limitation based on control in corporation

(A) In general

Paragraph (1) shall not apply in the case of any ownership change if, immediately after such ownership change, any person (other than a voluntary employees' beneficiary association under section 501(c)(9)) owns stock of the new loss corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of the total value of the stock of such corporation.

(B) Treatment of related persons

(i) In general

Related persons shall be treated as a single person for purposes of this paragraph.

(ii) Related persons

For purposes of clause (i), a person shall be treated as related to another person if—

(I) such person bears a relationship to such other person described in section 267(b) or 707(b), or

(II) such persons are members of a group of persons acting in concert.

(Aug. 16, 1954, ch. 736, 68A Stat. 129; Pub. L. 88–554, § 4(b)(3), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94–455, title VIII, § 806(e), Oct. 4, 1976, 90 Stat. 1599; Pub. L. 96–589, § 2(d), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 97–34, title II, § 242, Aug. 13, 1981, 95 Stat. 255; Pub. L. 98–369, div. A, title I, § 62(b)(1), July 18, 1984, 98 Stat. 583; Pub. L. 99–514, title VI, § 621(a), (e)(1), Oct. 22, 1986, 100 Stat. 2254, 2266; Pub. L. 100–203, title X, § 10225(a), (b), Dec. 22, 1987, 101 Stat. 1330–413; Pub. L. 100–647, title I, § 1006(d)(1)(A)–(C), (2)–(10), (17)(A), (18)–(28)(A), (29), (t)(22)(A), title IV, § 4012(a)(3), (b)(1)(B), title V, § 5077(a), Nov. 10, 1988, 102 Stat. 3395–3400, 3426, 3656, 3657, 3683; Pub. L. 101–73, title XIV, § 1401(a)(2), Aug. 9, 1989, 103 Stat. 548; Pub. L. 101–239, title VII, §§ 7205(a), 7304(d)(1), 7811(c)(5)(A), 7815(h), 7841(d)(11), Dec. 19, 1989, 103 Stat. 2335, 2354, 2407, 2420, 2428; Pub. L. 103–66, title XIII, § 13226(a)(2)(A), Aug. 10, 1993, 107 Stat. 487; Pub. L. 104–188, title I, § 1621(b)(3), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, § 835(b)(2), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 111–5, div. B, title I, § 1262(a), Feb. 17, 2009, 123 Stat. 343; Pub. L. 113–295, div. A, title II, § 221(a)(30)(D), Dec. 19, 2014, 128 Stat. 4042; Pub. L. 115–97, title I, §§ 11051(b)(3)(F), 13301(b)(2), (3), Dec. 22, 2017, 131 Stat. 2090, 2121.)

AMENDMENT OF SUBSECTION (*l*)(3)(B)(iii)

Pub. L. 115–97, title I, § 11051(b)(3)(F), (c), Dec. 22, 2017, 131 Stat. 2090, amended subsection (l)(3)(B)(iii) of this section, applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115–97 applies to such modification. After amendment, subsection (l)(3)(B)(iii) reads as follows:

(iii) stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 121(d)(3)(C)),

See 2017 Amendment note below.

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (n)(1)(A), is div. A of Pub. L.

110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2017—Subsec. (d)(3). Pub. L. 115–97, §13301(b)(2), added par. (3).

Subsec. (k)(1). Pub. L. 115–97, §13301(b)(3), inserted after first sentence ''Such term shall include any corporation entitled to use a carryforward of disallowed interest described in section 381(c)(20).''

Subsec. (*l*)(3)(B)(iii). Pub. L. 115–97, §11051(b)(3)(F), substituted ''section 121(d)(3)(C)'' for ''section 71(b)(2)''.

2014—Subsec. (*l*)(5)(F) to (H). Pub. L. 113–295 redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which related to a special rule for certain financial institutions for certain equity structure shifts and transactions occurring before May 10, 1989.

2009—Subsec. (n). Pub. L. 111–5 added subsec. (n).

2004—Subsec. (*l*)(4)(B)(ii). Pub. L. 108–357 substituted ''or a REMIC to which part IV of subchapter M applies,'' for ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,''.

1996—Subsec. (*l*)(4)(B)(ii). Pub. L. 104–188 substituted ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies'' for ''or a REMIC to which part IV of subchapter M applies''.

1993—Subsec. (*l*)(5)(C). Pub. L. 103–66 amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—In any case to which subparagraph (A) applies, 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been applied to reduce tax attributes under section 108(b) shall be so applied.

''(ii) CLARIFICATION WITH SUBPARAGRAPH (B).—In applying clause (i), there shall not be taken into account any indebtedness for interest described in subparagraph (B).''

1989—Subsec. (h)(3)(B)(i). Pub. L. 101–239, §7205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than 25 percent of the amount determined for purposes of subparagraph (A)(i)(I), the net unrealized built-in gain or net unrealized built-in loss shall be zero.''

Subsec. (h)(6)(B). Pub. L. 101–239, §7811(c)(5)(A)(i), inserted ''(determined without regard to any carryover)'' after ''during the recognition period''.

Subsec. (h)(6)(C). Pub. L. 101–239, §7811(c)(5)(A)(ii), substituted ''which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period'' for ''treated as recognized built-in gains or losses under this paragraph''.

Subsec. (*l*)(3)(B)(i)(III). Pub. L. 101–239, §7841(d)(11), substituted ''incident to divorce),'' for ''incident to divorce,''.

Subsec. (*l*)(3)(C). Pub. L. 101–239, §7304(d)(1), redesignated subpar. (D) as (C) and struck out former subpar. (C) which related to special rule for employee stock ownership plans.

Subsec. (*l*)(3)(C)(ii). Pub. L. 101–239, §7815(h), substituted ''For purposes of subclause (III),'' for ''for purposes of subclause (III),'' in concluding provisions.

Subsec. (*l*)(3)(D). Pub. L. 101–239, §7304(d)(1), redesignated subpar. (D) as (C).

Subsec. (*l*)(5)(F). Pub. L. 101–73 substituted ''on or after May 10, 1989'' for ''after December 31, 1989'' in last sentence.

1988—Subsec. (e)(2). Pub. L. 100–647, §1006(d)(1)(A), inserted ''or other corporate contraction'' after ''redemption'' in heading and in two places in text.

Subsec. (e)(3). Pub. L. 100–647, §1006(d)(17)(A), added par. (3).

Subsec. (g)(1)(A). Pub. L. 100–647, §1006(d)(21)(A), struck out ''new'' after ''stock of the''.

Subsec. (g)(1)(B). Pub. L. 100–647, §1006(d)(21)(B), struck out ''old'' after ''stock of the''.

Subsec. (g)(4)(C). Pub. L. 100–647, §1006(d)(2), inserted ''rules similar to'' after ''provided in regulations,''.

Subsec. (h)(1)(C). Pub. L. 100–647, §1006(d)(3)(A), substituted ''Special rules for certain section 338 gains'' for ''Section 338 gain'' in heading and amended text generally. Prior to amendment, text read as follows: ''The section 382 limitation for any taxable year in which gain is recognized by reason of an election under section 338 shall be increased by the excess of—

''(i) the amount of such gain, over

''(ii) the portion of such gain taken into account in computing recognized built-in gains for such taxable year.''

Subsec. (h)(3)(A)(ii). Pub. L. 100–647, §1006(d)(28)(A), inserted ''to the extent provided in regulations,'' after ''an ownership change,''.

Pub. L. 100–647, §1006(d)(1)(B), inserted ''or other corporate contractions'' after ''redemptions'' in heading and ''or other corporate contraction'' after ''redemption'' in two places in text.

Subsec. (h)(3)(B)(ii). Pub. L. 100–647, §1006(d)(26), inserted ''except as provided in regulations,'' after ''under clause (i),''.

Subsec. (h)(4). Pub. L. 100–647, §1006(d)(20), substituted ''allowed as a carryforward'' for ''treated as a net operating loss'' in heading and inserted ''(or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses)'' after ''net operating losses'' in subpar. (A).

Subsec. (h)(5)(A). Pub. L. 100–647, §1006(d)(3)(B), substituted ''recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses)'' for ''recognized built-in gains and losses''.

Subsec. (h)(6). Pub. L. 100–647, §1006(d)(22), substituted ''Treatment of certain built-in items'' for ''Secretary may treat certain deductions as built-in losses'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary may by regulation treat amounts which accrue on or before the change date but which are allowable as a deduction after such date as recognized built-in losses.''

Subsec. (h)(9). Pub. L. 100–647, §1006(d)(23), substituted ''was acquired (or is subsequently transferred)'' for ''is transferred''.

Subsec. (i)(3). Pub. L. 100–647, §1006(d)(4), inserted ''the earlier of'' after ''not begin before'' and ''or the taxable year in which the transaction being tested occurs'' after ''1st post-change year''.

Subsec. (k)(1). Pub. L. 100–647, §1006(d)(5)(A), inserted ''or having a net operating loss for the taxable year in which the ownership change occurs'' after ''operating loss carryover''.

Subsec. (k)(2). Pub. L. 100–647, §1006(d)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'old loss corporation' means any corporation with respect to which there is an ownership change—

''(A) which (before the ownership change) was a loss corporation, or

''(B) with respect to which there is a pre-change loss described in subsection (d)(1)(B).''

Subsec. (*l*)(3)(A)(iv), (v). Pub. L. 100–647, §1006(d)(6), added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: ''except to the extent provided in regulations, paragraph (4) of section 318(a) shall apply to an option if such application results in an ownership change.''

Subsec. (*l*)(3)(C)(ii). Pub. L. 100–647, §5077(a), added subcl. (III) and concluding provisions.

Subsec. (*l*)(4)(B)(ii). Pub. L. 100–647, §1006(t)(22)(A), substituted ''REMIC'' for ''real estate mortgage pool''.

Subsec. (*l*)(5)(A)(ii). Pub. L. 100–647, §1006(d)(25), substituted ''stock of a controlling corporation'' for ''stock of controlling corporation''.

Pub. L. 100–647, §1006(d)(7), substituted ''after such ownership change and as a result of being shareholders or creditors immediately before such change'' for ''immediately after such ownership change''.

Subsec. (*l*)(5)(B). Pub. L. 100–647, §1006(d)(27), substituted ''the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed'' for ''the net operating loss deduction under section 172(a) for any post-change year shall be determined''.

Subsec. (*l*)(5)(C). Pub. L. 100–647, §1006(d)(18), substituted ''tax attributes'' for ''carryforwards'' in heading and amended text generally. Prior to amendment, text read as follows: ''In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been includible in gross income for any taxable year had been so included.''

Subsec. (*l*)(5)(E). Pub. L. 100–647, §1006(d)(19), substituted ''taken into account'' for ''of creditors taken into account'' in heading and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''For purposes of subparagraph (A)(ii), stock transferred to a creditor in satisfaction of indebtedness shall be taken into account only if such indebtedness—''.

Subsec. (*l*)(5)(F). Pub. L. 100–647, §4012(a)(3), substituted ''1989'' for ''1988'' in last sentence.

Subsec. (*l*)(5)(F)(i)(I). Pub. L. 100–647, §1006(d)(8)(A), inserted '' '1504(a)(2)(B)' for '1504(a)(2)' and'' after ''by substituting''.

Subsec. (*l*)(5)(F)(ii)(III). Pub. L. 100–647, §1006(d)(8)(B), substituted ''the amount of deposits in the new loss corporation immediately after the change'' for ''deposits described in subclause (II)''.

Subsec. (*l*)(5)(F)(iii)(I). Pub. L. 100–647, §4012(b)(1)(B), inserted ''(as modified by section 368(a)(3)(D)(iv))'' after ''section 368(a)(3)(D)(ii)''.

Pub. L. 100–647, §1006(d)(29), which directed amendment of subcl. (I) by substituting ''section 368(a)(3)(D)(ii)'' for ''section 368(a)(D)(ii)'', could not be executed because ''section 368(a)(3)(D)(ii)'' appeared and ''section 368(a)(D)(ii)'' did not appear.

Subsec. (*l*)(6). Pub. L. 100–647, §1006(d)(9), substituted ''shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction'' for ''shall be the value of the new loss corporation immediately after the ownership change''.

Subsec. (*l*)(8). Pub. L. 100–647, §1006(d)(10), added par. (8).

Subsec. (m)(4). Pub. L. 100–647, §1006(d)(1)(C), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''providing for the treatment of corporate contractions as redemptions for purposes of subsections (e)(2) and (h)(3)(A), and''.

Subsec. (m)(5). Pub. L. 100–647, §1006(d)(24), added par. (5).

Pub. L. 100–647, §1006(d)(1)(C), redesignated former par. (5) as (4).

1987—Subsec. (g)(4)(D). Pub. L. 100–203, §10225(a), added subpar. (D).

Subsec. (h)(2)(B). Pub. L. 100–203, §10225(b), inserted at end ''Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).''

1986—Pub. L. 99–514, §621(a), in amending section generally, in subsec. (a), substituted provisions setting forth general rule that amount of taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed section 382 limitation for such year for provisions relating to change in ownership of corporation and change in its business, description of persons owning corporation, attribution of ownership, and definition of ''purchase'', in subsec. (b), substituted provisions relating to section 382 limitation for provisions relating to change in ownership as result of reorganization, in subsec. (c), substituted provisions relating to disallowance of carryforwards if continuity of business requirements are not met for provisions defining stock as all shares except nonvoting stock which is limited and preferred as to dividends, and added subsecs. (d) to (m).

Pub. L. 99–514, §621(e)(1), repealed amendment by Pub. L. 94–455, §806(e). See 1976 Amendment note below.

1984—Subsec. (b)(1). Pub. L. 98–369, in section as amended by Pub. L. 94–455, substituted ''subparagraph (A), (B), (C), or (F) of section 368(a)(1) or subparagraph (D) or (G) of section 368(a)(1) (but only if the requirements of section 354(b)(1) are met)'' for ''section 368(a)(1)(A), (B), (C), (D) (but only if the requirements of section 354(b)(1) are met, or (F)''.

1981—Subsec. (b)(7). Pub. L. 97–34 designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (b)(7). Pub. L. 96–589 added par. (7).

1976—Pub. L. 94–455, §806(e), which amended section generally, substituting provisions relating to special limitations on net operating loss carryovers based on continuity of trade or business conducted, for provisions relating to special limitations on net operating loss carryovers based on continuity of ownership, was repealed by Pub. L. 99–514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1964—Subsec. (a)(3). Pub. L. 88–554 inserted reference to section 318(a)(3)(C) of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11051(b)(3)(F) of Pub. L. 115–97 applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115–97 applies to such modification, see section 11051(c) of Pub. L. 115–97, set out as a note under section 61 of this title.

Amendment by section 13301(b)(2), (3) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13301(c) of Pub. L. 115–97, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1262(b), Feb. 17, 2009, 123 Stat. 344, provided that: ''The amendment made by this section [amending this section] shall apply to ownership changes after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock transferred after Dec. 31, 1994, in satisfaction of any in-

debtedness, except that such amendment inapplicable to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case filed on or before Dec. 31, 1993, see section 13226(a)(3) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7205(a) of Pub. L. 101–239 applicable, except as otherwise provided, to ownership changes and acquisitions after Oct. 2, 1989, in taxable years ending after such date, see section 7205(c) of Pub. L. 101–239, set out as a note under section 56 of this title.

Pub. L. 101–239, title VII, §7304(d)(2), Dec. 19, 1989, 103 Stat. 2354, provided that: ''The amendments made by this subsection [amending this section] shall apply to acquisitions of employer securities after July 12, 1989, except that such amendments shall not apply to acquisitions after July 12, 1989, pursuant to a written binding contract in effect on July 12, 1989, and at all times thereafter before such acquisition.''

Amendment by sections 7811(c)(5)(A) and 7815(h) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–73, title XIV, §1401(c)(2), Aug. 9, 1989, 103 Stat. 550, provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply to transactions on or after May 10, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(d)(1)(D), Nov. 10, 1988, 102 Stat. 3395, provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to ownership changes after June 10, 1987.''

Pub. L. 100–647, title I, §1006(d)(17)(B), Nov. 10, 1988, 102 Stat. 3398, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to any ownership change after June 10, 1987. For purposes of the preceding sentence, any equity structure shift pursuant to a plan of reorganization adopted on or before June 10, 1987, shall be treated as occurring when such plan was adopted.''

Pub. L. 100–647, title I, §1006(d)(28)(B), Nov. 10, 1988, 102 Stat. 3400, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in the case of ownership changes on or after June 21, 1988.''

Amendment by section 1006(d)(2)–(10), (18)–(27), (29), (t)(22)(A) 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.

Pub. L. 100–647, title IV, §4012(b)(1)(C)(ii), Nov. 10, 1988, 102 Stat. 3657, provided that: ''The amendment made by subparagraph (B) [amending this section] shall apply to any ownership change occurring after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990.''

Pub. L. 100–647, title V, §5077(b), Nov. 10, 1988, 102 Stat. 3683, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to acquisition after December 31, 1988.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to acquisitions after December 31, 1988, pursuant to a binding written contract entered into on or before October 21, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10225(c), Dec. 22, 1987, 101 Stat. 1330–413, provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply in the case of stock treated as becoming worthless in taxable years beginning after December 31, 1987.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply in the case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after December 15, 1987; except that such amendment shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change.''

EFFECTIVE DATE OF 1986 AMENDMENT; SAVINGS PROVISIONS

Pub. L. 99–514, title VI, §621(f), Oct. 22, 1986, 100 Stat. 2266, as amended by Pub. L. 100–647, title I, §1006(d)(11)–(16), title VI, §6277(a), (b), Nov. 10, 1988, 102 Stat. 3397, 3398, 3753, 3754, provided that:

''(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), AND (c).—

''(A) IN GENERAL.—

''(i) CHANGES AFTER 1986.—The amendments made by subsections (a), (b), and (c) [amending this section and sections 318 and 383 of this title] shall apply to any ownership change after December 31, 1986.

''(ii) PLANS OF REORGANIZATION ADOPTED BEFORE 1987.—For purposes of clause (i), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

''(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

''(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a) and the amendments made by section 806 of the Tax Reform Act of 1976 [section 806 of Pub. L. 94–455]) shall not apply to any increase in percentage points occurring after December 31, 1988, and

''(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring pursuant to a plan of reorganization adopted after December 31, 1986.

In no event shall sections 382(a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

''(C) COORDINATION WITH SECTION 382(i).—For purposes of section 382(i) of the Internal Revenue Code of 1986 (as added by this section), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

''(2) FOR AMENDMENTS TO TAX REFORM ACT OF 1976.—

''(A) IN GENERAL.—The repeals made by subsection (e)(1) [repealing amendments by Pub. L. 94–455, §806(e), (f), amending this section and sections 108, 368, and 383 of this title] and the amendment made by subsection (e)(2) [repealing section 806(g)(2), (3) of Pub. L. 94–455, formerly set out as an Effective Date of 1976 Amendment note below] shall take effect on January 1, 1986.

''(B) ELECTION TO HAVE AMENDMENTS APPLY.—

''(i) If a taxpayer described in clause (ii) elects to have the provisions of this subparagraph apply, the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [amending this section and sections 108, 368, and 383 of this title] shall apply to the reorganization described in clause (ii).

''(ii) A taxpayer is described in this clause if the taxpayer filed a title 11 or similar case on December 8, 1981, filed a plan of reorganization on February 5, 1986, filed an amended plan on March 14, 1986, and received court approval for the amended plan and disclosure statement on April 16, 1986.

''(C) APPLICATION OF OLD RULES TO CERTAIN DEBT.—In the case of debt of a corporation incorporated in Colorado on November 8, 1924, and reincorporated in Delaware in 1987, with headquarters in Denver, Colorado—

''(i) the amendments made by subsections (a), (b), and (c) shall not apply to any debt restructuring of

such debt which was approved by the debtor's Board of Directors and the lenders in 1986, and

''(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring.

''(D) SPECIAL RULE FOR OIL AND GAS WELL DRILLING BUSINESS.—In the case of a Texas corporation incorporated on July 23, 1935, in applying section 382 of the Internal Revenue Code of 1986 (as in effect before and after the amendments made by subsections (a), (b), and (c)) to a loan restructuring agreement during 1985, section 382(a)(5)(C) of the Internal Revenue Code of 1954 (as added by the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976) shall be applied as if it were in effect with respect to such restructuring. For purposes of the preceding sentence, in applying section 382 (as so in effect), if a person has a warrant to acquire stock, such stock shall be considered as owned by such person.

''(3) TESTING PERIOD.—For purposes of determining whether there is an ownership change, the testing period shall not begin before the later of—

''(A) May 6, 1986, or

''(B) in the case of an ownership change which occurs after May 5, 1986, and to which the amendments made by subsections (a), (b), and (c) do not apply, the first day following the date on which such ownership change occurs.

''(4) SPECIAL TRANSITION RULES.—The amendments made by subsections (a), (b), and (c) shall not apply to any—

''(A) stock-for-debt exchanges and stock sales made pursuant to a plan of reorganization with respect to a petition for reorganization filed by a corporation under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and related plan of reorganization before March 1, 1986, or

''(B) ownership change of a Delaware corporation incorporated in August 1983, which may result from the exercise of put or call option under an agreement entered into on September 14, 1983, but only with respect to taxable years beginning after 1991 regardless of when such ownership change takes place.

Any regulations prescribed under section 382 of the Internal Revenue Code of 1986 (as added by subsection (a)) which have the effect of treating a group of shareholders as a separate 5-percent shareholder by reason of a public offering shall not apply to any public offering before January 1, 1989, for the benefit of institutions described in section 591 of such Code. Unless the corporation otherwise elects, an underwriter of any offering of stock in a corporation before September 19, 1986 (January 1, 1989, in the case of an offering for the benefit of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering).

''(5) BANKRUPTCY PROCEEDINGS.—Unless the taxpayer elects not to have the provisions of this paragraph apply, in the case of a reorganization described in subparagraph (G) of section 368(a)(1) of the Internal Revenue Code of 1986 or an exchange of debt for stock in a title 11 or similar case, as defined in section 368(a)(3) of such Code, the amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986. The determination as to whether an ownership change has occurred during the period beginning January 1, 1987, and ending on the final settlement of any reorganization or proceeding described in the preceding sentence shall be redetermined as of the time of such final settlement.

''(6) CERTAIN PLANS.—The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change with respect to—

''(A) the acquisition of a corporation the stock of which is acquired pursuant to a plan of divestiture which identified such corporation and its assets, and was agreed to by the board of directors of such corporation's parent corporation on May 17, 1985,

''(B) a merger which occurs pursuant to a merger agreement (entered into before September 24, 1985) and an application for approval by the Federal Home Loan Bank Board was filed on October 4, 1985,

''(C) a reorganization involving a party to a reorganization of a group of corporations engaged in enhanced oil recovery operations in California, merged in furtherance of a plan of reorganization adopted by a board of directors vote on September 24, 1985, and a Delaware corporation whose principal oil and gas producing fields are located in California, or

''(D) the conversion of a mutual savings and loan association holding a Federal charter dated March 22, 1985, to a stock savings and loan association pursuant to the rules and regulations of the Federal Home Loan Bank Board.

''(7) OWNERSHIP CHANGE OF REGULATED AIR CARRIER.—The amendments made by subsections (a), (b), and (c) shall not apply to an ownership change of a regulated air carrier if—

''(A) on July 16, 1986, at least 40 percent of the outstanding common stock (excluding all preferred stock, whether or not convertible) of such carrier had been acquired by a parent corporation incorporated in March 1980 under the laws of Delaware, and

''(B) the acquisition (by or for such parent corporation) or retirement of the remaining common stock of such carrier is completed before the later of March 31, 1987, or 90 days after the requisite governmental approvals are finally granted,

but only if the ownership change occurs on or before the later of March 31, 1987, or such 90th day. The aggregate reduction in tax for any taxable year by reason of this paragraph shall not exceed $10,000,000. The testing period for determining whether a subsequent ownership change has occurred shall not begin before the 1st day following an ownership change to which this paragraph applies.

''(8) The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from the conversion of a Minnesota mutual savings bank holding a Federal charter dated December 31, 1985, to a stock savings bank pursuant to the rules and regulations of the Federal Home Loan Bank Board, and from the issuance of stock pursuant to that conversion to a holding company incorporated in Delaware on February 21, 1984. For purposes of determining whether any ownership change occurs with respect to the holding company or any subsidiary thereof (whether resulting from the transaction described in the preceding sentence or otherwise), any issuance of stock made by such holding company in connection with the transaction described in the preceding sentence shall not be taken into account.

''(9) DEFINITIONS.—Except as otherwise provided, terms used in this subsection shall have the same meaning as when used in section 382 of the Internal Revenue Code of 1986 (as amended by this section).''

[Pub. L. 100–647, title VI, § 6277(c), Nov. 10, 1988, 102 Stat. 3754, provided that: ''The amendments made by this section [amending section 621(f) of Pub. L. 99–514, set out above] shall take effect as if included in section 621(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99–514].'']

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 62(b)(2), July 18, 1984, 98 Stat. 583, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 4 of the Bankruptcy Tax Act of 1980 [Pub. L. 96–589].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to any transfer made on or after Jan. 1, 1981, see section 246(a) of

Pub. L. 97–34, set out as a note under section 368 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–589, § 2(d), Dec. 24, 1980, 94 Stat. 3396, provided that the amendment made by section 2(b) of Pub. L. 96–589 is to subsec. (b) as in effect before its amendment by section 806 of the Tax Reform Act of 1976, Pub. L. 94–455.

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title VIII, § 806(g)(2), (3), Oct. 4, 1976, 90 Stat. 1605, 1606, as amended by Pub. L. 95–600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95–615, § 8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96–167, § 9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97–119, title I, § 111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98–369, div. A, title I, § 62(a), July 18, 1984, 98 Stat. 583, which provided an effective date for the amendments made by section 806(e), (f) of Pub. L. 94–455 for purposes of applying sections 382(a) and 383 (as it relates to section 382(a)) of this title, was repealed by Pub. L. 99–514, title VI, § 621(e)(2), (f)(2), Oct. 22, 1986, 100 Stat. 2266, eff. Jan. 1, 1986.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendment shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 95–600, title III, § 368, Nov. 6, 1978, 92 Stat. 2857, provided for delaying the effective date established by section 806(g)(2), (3) of Pub. L. 94–455, formerly set out above, by substituting ''1980'' for ''1978'', with certain elections.

CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Pub. L. 111–5, div. B, title I, § 1261, Feb. 17, 2009, 123 Stat. 342, provided that:

''(a) FINDINGS.—Congress finds as follows:

''(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

''(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

''(3) The legal authority to prescribe Internal Revenue Service Notice 2008–83 is doubtful.

''(4) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008–83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation on built-in losses following an ownership change of a bank.

''(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

''(1) IN GENERAL.—Internal Revenue Service Notice 2008–83—

''(A) shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g) of the Internal Revenue Code of 1986) occurring on or before January 16, 2009, and

''(B) shall have no force or effect with respect to any ownership change after such date.

''(2) BINDING CONTRACTS.—Notwithstanding paragraph (1), Internal Revenue Service Notice 2008–83 shall have the force and effect of law with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change—

''(A) is pursuant to a written binding contract entered into on or before such date, or

''(B) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.''

REPORT ON DEPRECIATION AND BUILT-IN DEDUCTIONS; REPORT ON BANKRUPTCY WORKOUTS

Pub. L. 99–514, title VI, § 621(d), Oct. 22, 1986, 100 Stat. 2266, directed Secretary of the Treasury or his delegate to, not later than Jan. 1, 1989, conduct a study and report to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate with respect to treatment of depreciation, amortization, depletion, and other built-in deductions for purposes of sections 382 and 383 of this title, and, not later than Jan. 1, 1988, conduct a study and report to committees referred to above with respect to treatment of informal bankruptcy workouts for purposes of sections 108 and 382 of this title, prior to repeal by Pub. L. 101–508, title XI, § 11832(3), Nov. 5, 1990, 104 Stat. 1388–559.

§ 383. Special limitations on certain excess credits, etc.

(a) Excess credits

(1) In general

Under regulations, if an ownership change occurs with respect to a corporation, the amount of any excess credit for any taxable year which may be used in any post-change year shall be limited to an amount determined on the basis of the tax liability which is attributable to so much of the taxable income as does not exceed the section 382 limitation for such post-change year to the extent available after the application of section 382 and subsections (b) and (c) of this section.

(2) Excess credit

For purposes of paragraph (1), the term ''excess credit'' means—

(A) any unused general business credit of the corporation under section 39, and

(B) any unused minimum tax credit of the corporation under section 53.

(b) Limitation on net capital loss

If an ownership change occurs with respect to a corporation, the amount of any net capital loss under section 1212 for any taxable year before the 1st post-change year which may be used in any post-change year shall be limited under regulations which shall be based on the principles applicable under section 382. Such regulations shall provide that any such net capital loss used in a post-change year shall reduce the section 382 limitation which is applied to pre-change losses under section 382 for such year.

(c) Foreign tax credits

If an ownership change occurs with respect to a corporation, the amount of any excess foreign

taxes under section 904(c) for any taxable year before the 1st post-change taxable year shall be limited under regulations which shall be consistent with purposes of this section and section 382.

(d) Pro ration rules for year which includes change

For purposes of this section, rules similar to the rules of subsections (b)(3) and (d)(1)(B) of section 382 shall apply.

(e) Definitions

Terms used in this section shall have the same respective meanings as when used in section 382, except that appropriate adjustments shall be made to take into account that the limitations of this section apply to credits and net capital losses.

(Added Pub. L. 92–178, title III, § 302(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94–455, title VIII, § 806(f)(2), title X, § 1031(b)(5), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1605, 1623, 1834; Pub. L. 95–30, title II, § 202(d)(3)(B), (C), May 23, 1977, 91 Stat. 148; Pub. L. 96–222, title I, § 103(a)(6)(G)(xiii), Apr. 1, 1980, 94 Stat. 211; Pub. L. 96–223, title II, § 232(b)(2)(C), (D), Apr. 2, 1980, 94 Stat. 276; Pub. L. 97–34, title II, § 221(b)(1)(C), (D), title III, § 331(d)(1)(C), (D), Aug. 13, 1981, 95 Stat. 246, 294; Pub. L. 98–369, div. A, title IV, § 474(r)(12)(A), (B), July 18, 1984, 98 Stat. 841; Pub. L. 99–514, title VI, § 621(b), (e)(1), Oct. 22, 1986, 100 Stat. 2265, 2266.)

AMENDMENTS

1986—Pub. L. 99–514, § 621(b), amended section generally. Prior to amendment, section read as follows: ''If—

''(1) the ownership and business of a corporation are changed in the manner described in section 382(a)(1), or

''(2) in the case of a reorganization specified in paragraph (2) of section 381(a), there is a change in ownership described in section 382(b)(1)(B),

then the limitations provided in section 382 in such cases with respect to the carryover of net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.''

Pub. L. 99–514, § 621(e)(1), repealed amendment by Pub. L. 94–455, § 806(f)(2). See 1976 Amendment note below.

1984—Pub. L. 98–369, § 474(r)(12)(A)(ii), in catchline of section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''Special limitations on unused business credits, research credits, foreign taxes, and capital losses'' for ''Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses''.

Pub. L. 98–369, § 474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(b) of this title, substituted ''business credits, research credits'' for ''investment credits, work incentive program credits''.

Pub. L. 98–369, § 474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''business credits'' for ''investment credits'' and struck out references to work incentive program credits, new employee credits, alcohol fuel credits, and employee stock ownership credits.

Pub. L. 98–369, § 474(r)(12)(A)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212'' for ''with respect to any unused investment credit of the corporation which can otherwise be carried forward under section 46(b), to any unused work incentive program credit of the corporation which can otherwise be carried forward under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(b), to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2), to any excess foreign taxes of the corporation which can otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212''.

Pub. L. 98–369, § 474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(b) of this title, substituted ''with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212'' for ''with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212''.

Pub. L. 98–369, § 474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212'' for ''with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation under section 53(b), to any unused credit of the corporation under section 44E(e)(2), to any unused credit of the corporation under section 44F(g)(2), to any unused credit of the corporation under section 44G(b)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212''.

1981—Pub. L. 97–34, § 331(d)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, § 806(f)(2), inserted reference to employee stock ownership credits.

Pub. L. 97–34, § 331(d)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2),''.

Pub. L. 97–34, § 331(d)(1)(C)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation under section 44G(b)(2),''.

Pub. L. 97–34, § 221(b)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, be-

fore and after amendment by Pub. L. 94–455, § 806(f)(2), inserted reference to research credits.

Pub. L. 97–34, § 221(b)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2),'' after ''section 44E(e)(2),''.

Pub. L. 97–34, § 221(b)(1)(C)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation under section 44F(g)(2),'' after ''section 44E(e)(2),''.

1980—Pub. L. 96–223, § 232(b)(2)(D), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2) in text.

Pub. L. 96–223, § 232(b)(2)(C), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation under section 44E(e)(2) in text.

Pub. L. 96–222, in sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, § 806(f)(2), substituted ''section 53(b)'' for ''section 53(c)''.

1977—Pub. L. 95–30, § 202(d)(3)(C), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(c)'' in text and ''new employee credits,'' in catchline.

Pub. L. 95–30, § 202(d)(3)(B), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused new employee credit of the corporation under section 53(c)'' in text and ''new employee credits,'' in section catchline.

1976—Pub. L. 94–455, §§ 1031(b)(5), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', and substituted ''section 904(c)'' for ''section 904(d)'', respectively, in section 383 set out first.

Pub. L. 94–455, § 806(f)(2), which substituted, in sections 383 as related to section 382(a) and (b) of this title, provisions that the net operating loss limitations in section 382 shall apply to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(b), to excess foreign taxes under section 904(d) and to net capital losses under section 1212 for provisions that the net operating loss carryover limitations in section 382 shall apply, in the case of ownership changes described in section 382(a)(1) or reorganizations specified in section 381(a)(2) resulting in ownership changes described in section 382(b)(1)(B), to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(B), to excess foreign taxes under section 904(c), and to net capital losses under section 1212, was repealed by Pub. L. 99–514, § 621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 621(b) of Pub. L. 99–514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99–514, as amended, set out as a note under section 382 of this title.

Repeal of amendment by section 806(f)(1) of Pub. L. 94–455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 221(b)(1)(C), (D) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(C), (D) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, Nov. 6, 1978, 92 Stat. 2763, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1031(b)(5) of Pub. L. 94–455, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

For purposes of applying this section (as it relates to section 382(a) of this title) as amended by section 806(e), (f) of Pub. L. 94–455, the amendments made by section 806(e), (f) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1985, with specified provisions for determining the beginning of the taxable years specified in section 382(a)(1)(B)(ii) of this title, and this section (as it relates to section 382(b) of this title) as amended by section 806(e), (f) of Pub. L. 94–455 to apply (and such sections as in effect prior to such amendment not to apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after Jan. 1, 1986, see section 806(g)(2), (3) of Pub. L. 94–455, as amended, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE

Pub. L. 92–178, title III, § 302(c), Dec. 10, 1971, 85 Stat. 521, provided that: ''The amendments made by this section [enacting this section] shall be applicable only with respect to reorganizations and other changes in ownership occurring after the date of enactment of this Act [Dec. 10, 1971] pursuant to a plan of reorganization or contract entered into on or after September 29, 1971.''

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

For election by taxpayer for application of prior law with respect to any acquisition or reorganization occurring before the end of the taxpayer's first taxable year beginning after June 30, 1978, see section 368 of Pub. L. 95–600, set out as a Delay in Effective Date of 1976 Amendment note under section 382 of this title.

§ 384. Limitation on use of preacquisition losses to offset built-in gains

(a) General rule

If—

(1)(A) a corporation acquires directly (or through 1 or more other corporations) control of another corporation, or

(B) the assets of a corporation are acquired by another corporation in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

(2) either of such corporations is a gain corporation,

income for any recognition period taxable year (to the extent attributable to recognized built-in

gains) shall not be offset by any preacquisition loss (other than a preacquisition loss of the gain corporation).

(b) Exception where corporations under common control

(1) In general

Subsection (a) shall not apply to the preacquisition loss of any corporation if such corporation and the gain corporation were members of the same controlled group at all times during the 5-year period ending on the acquisition date.

(2) Controlled group

For purposes of this subsection, the term ''controlled group'' means a controlled group of corporations (as defined in section 1563(a)); except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears,

(B) the ownership requirements of section 1563(a) must be met both with respect to voting power and value, and

(C) the determination shall be made without regard to subsection (a)(4) of section 1563.

(3) Shorter period where corporations not in existence for 5 years

If either of the corporations referred to in paragraph (1) was not in existence throughout the 5-year period referred to in paragraph (1), the period during which such corporation was in existence (or if both, the shorter of such periods) shall be substituted for such 5-year period.

(c) Definitions

For purposes of this section—

(1) Recognized built-in gain

(A) In general

The term ''recognized built-in gain'' means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in any case described in subsection (a)(1)(B), the acquiring corporation) establishes that—

(i) such asset was not held by the gain corporation on the acquisition date, or

(ii) such gain exceeds the excess (if any) of—

(I) the fair market value of such asset on the acquisition date, over

(II) the adjusted basis of such asset on such date.

(B) Treatment of certain income items

Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

(C) Limitation

The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

(i) the net unrealized built-in gain, reduced by

(ii) the recognized built-in gains for prior years ending in the recognition period which (but for this section) would have been offset by preacquisition losses.

(2) Acquisition date

The term ''acquisition date'' means—

(A) in any case described in subsection (a)(1)(A), the date on which the acquisition of control occurs, or

(B) in any case described in subsection (a)(1)(B), the date of the transfer in the reorganization.

(3) Preacquisition loss

(A) In general

The term ''preacquisition loss'' means—

(i) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

(ii) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii), be allocated ratably to each day in the year.

(B) Treatment of recognized built-in loss

In the case of a corporation with a net unrealized built-in loss, the term ''preacquisition loss'' includes any recognized built-in loss.

(4) Gain corporation

The term ''gain corporation'' means any corporation with a net unrealized built-in gain.

(5) Control

The term ''control'' means ownership of stock in a corporation which meets the requirements of section 1504(a)(2).

(6) Treatment of members of same group

Except as provided in regulations and except for purposes of subsection (b), all corporations which are members of the same affiliated group immediately before the acquisition date shall be treated as 1 corporation. To the extent provided in regulations, section 1504 shall be applied without regard to subsection (b) thereof for purposes of the preceding sentence.

(7) Treatment of predecessors and successors

Any reference in this section to a corporation shall include a reference to any predecessor or successor thereof.

(8) Other definitions

Except as provided in regulations, the terms ''net unrealized built-in gain'', ''net unrealized built-in loss'', ''recognized built-in loss'', ''recognition period'', and ''recognition period taxable year'', have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

(d) Limitation also to apply to excess credits or net capital losses

Rules similar to the rules of subsection (a) shall also apply in the case of any excess credit

(as defined in section 383(a)(2)) or net capital loss.

(e) Ordering rules for net operating losses, etc.

(1) Carryover rules

If any preacquisition loss may not offset a recognized built-in gain by reason of this section, such gain shall not be taken into account in determining under section 172(b)(2) the amount of such loss which may be carried to other taxable years. A similar rule shall apply in the case of any excess credit or net capital loss limited by reason of subsection (d).

(2) Ordering rule for losses carried from same taxable year

In any case in which—

(A) a preacquisition loss for any taxable year is subject to limitation under subsection (a), and

(B) a net operating loss from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset 1st by the loss subject to such limitation.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to ensure that the purposes of this section may not be circumvented through—

(1) the use of any provision of law or regulations (including subchapter K of this chapter), or

(2) contributions of property to a corporation.

(Added Pub. L. 100–203, title X, §10226(a), Dec. 22, 1987, 101 Stat. 1330–414; amended Pub. L. 100–647, title II, §2004(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3606, 3607; Pub. L. 101–239, title VII, §7812(c)(1), Dec. 19, 1989, 103 Stat. 2412.)

AMENDMENTS

1989—Subsec. (e)(1). Pub. L. 101–239 substituted ''built-in gain'' for ''build-in gain''.

1988—Subsec. (a). Pub. L. 100–647, §2004(m)(1)(A), amended subsec. (a) generally, making changes in substance and structure.

Subsec. (b). Pub. L. 100–647, §2004(m)(3), substituted ''corporations under common control'' for ''50 percent of gain corporation held'' in heading and amended text generally. Prior to amendment, text read as follows: ''Subsection (a) shall not apply if more than 50 percent of the stock (by vote and value) of the gain corporation was held throughout the 5-year period ending on the acquisition date—

''(1) in any case described in subsection (a)(1), by members of the affiliated group referred to in subsection (a)(1), or

''(2) in any case described in subsection (a)(2), by the acquiring corporation or members of such acquiring corporation's affiliated group.

For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.''

Subsec. (c)(1)(A). Pub. L. 100–647, §2004(m)(1)(D), substituted ''subsection (a)(1)(B)'' for ''subsection (a)(2)''.

Subsec. (c)(2). Pub. L. 100–647, §2004(m)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'acquisition date' means the date on which the gain corporation becomes a member of the affiliated group or, in any case described in subsection (a)(2), the date of the distribution or transfer in the liquidation or reorganization.''

Subsec. (c)(4) to (8). Pub. L. 100–647, §2004(m)(1)(B), redesignated par. (4) as (8) and added pars. (4) to (7).

Subsecs. (e), (f). Pub. L. 100–647, §2004(m)(2), (4), substituted ''a corporation'' for ''the gain corporation'' in subsec. (e)(2), redesignated subsec. (e) as (f), and added subsec. (e).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Pub. L. 100–203, title X, §10226(c), Dec. 22, 1987, 101 Stat. 1330–416, provided that: ''The amendments made by this section [enacting this section] shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after December 15, 1987; except that such amendments shall not apply in the case of any transaction pursuant to—

''(1) a binding written contract in effect on or before December 15, 1987, or

''(2) a letter of intent or agreement of merger signed on or before December 15, 1987.''

ELECTION TO HAVE AMENDMENTS BY PUB. L. 100–647 NOT APPLY

Pub. L. 100–647, title II, §2004(m)(5), Nov. 10, 1988, 102 Stat. 3607, provided that: ''In any case where the acquisition date (as defined in section 384(c)(2) of the 1986 Code as amended by this subsection) is before March 31, 1988, the acquiring corporation may elect to have the amendments made by this subsection not apply. Such an election shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe and shall be made not later than the later of the due date (including extensions) for filing the return for the taxable year of the acquiring corporation in which the acquisition date occurs or the date 120 days after the date of the enactment of this Act [Nov. 10, 1989]. Such an election, once made, shall be irrevocable.''

PART VI—TREATMENT OF CERTAIN CORPORATE INTERESTS AS STOCK OR INDEBTEDNESS

Sec.
385. Treatment of certain interests in corporations as stock or indebtedness.

AMENDMENTS

1969—Pub. L. 91–172, title IV, §415(a), Dec. 30, 1969, 83 Stat. 613, added part heading and analysis of sections.

§385. Treatment of certain interests in corporations as stock or indebtedness

(a) Authority to prescribe regulations

The Secretary is authorized to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated for purposes of this title as stock or indebtedness (or as in part stock and in part indebtedness).

(b) Factors

The regulations prescribed under this section shall set forth factors which are to be taken into

account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation-shareholder relationship exists. The factors so set forth in the regulations may include among other factors:

(1) whether there is a written unconditional promise to pay on demand or on a specified date a sum certain in money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest,

(2) whether there is subordination to or preference over any indebtedness of the corporation,

(3) the ratio of debt to equity of the corporation,

(4) whether there is convertibility into the stock of the corporation, and

(5) the relationship between holdings of stock in the corporation and holdings of the interest in question.

(c) Effect of classification by issuer

(1) In general

The characterization (as of the time of issuance) by the issuer as to whether an interest in a corporation is stock or indebtedness shall be binding on such issuer and on all holders of such interest (but shall not be binding on the Secretary).

(2) Notification of inconsistent treatment

Except as provided in regulations, paragraph (1) shall not apply to any holder of an interest if such holder on his return discloses that he is treating such interest in a manner inconsistent with the characterization referred to in paragraph (1).

(3) Regulations

The Secretary is authorized to require such information as the Secretary determines to be necessary to carry out the provisions of this subsection.

(Added Pub. L. 91–172, title IV, §415(a), Dec. 30, 1969, 83 Stat. 613; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, §7208(a)(1), Dec. 19, 1989, 103 Stat. 2337; Pub. L. 102–486, title XIX, §1936(a), Oct. 24, 1992, 106 Stat. 3032.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–486 added subsec. (c).

1989—Subsec. (a). Pub. L. 101–239 inserted ''(or as in part stock and in part indebtedness)'' before period at end.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1936(b), Oct. 24, 1992, 106 Stat. 3032, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to instruments issued after the date of the enactment of this Act [Oct. 24, 1992].''

REGULATIONS NOT TO BE APPLIED RETROACTIVELY

Pub. L. 101–239, title VII, §7208(a)(2), Dec. 19, 1989, 103 Stat. 2337, provided that: ''Any regulations issued pursuant to the authority granted by the amendment made by paragraph (1) [amending this section] shall only apply with respect to instruments issued after the date on which the Secretary of the Treasury or his delegate provides public guidance as to the characterization of such instruments whether by regulation, ruling, or otherwise.''

[PART VII—REPEALED]

[§ 386. Repealed. Pub. L. 100–647, title I, § 1006(e)(8)(A), Nov. 10, 1988, 102 Stat. 3401]

Section, added Pub. L. 98–369, div. A, title I, §75(a), July 18, 1984, 98 Stat. 594; amended Pub. L. 99–514, title XVIII, §1805(c)(1), Oct. 22, 1986, 100 Stat. 2810, related to transfers of partnership and trust interests by corporations.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1988 Amendment note under section 1 of this title.

[§§ 391 to 395. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(55), Oct. 4, 1976, 90 Stat. 1773]

Section 391, acts Aug. 16, 1954, ch. 736, 68A Stat. 131; Sept. 2, 1958, Pub. L. 85–866, title I, §22(a), 72 Stat. 1620, related to effective date of section 301 et seq. of this title.

Section 392, act Aug. 16, 1954, ch. 736, 68A Stat. 131, related to effective date of section 331 et seq. of this title.

Section 393, act Aug. 16, 1954, ch. 736, 68A Stat. 132, related to effective date of section 351 et seq. of this title.

Section 394, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to effective date of section 381 et seq. of this title.

Section 395, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to special rules for application of this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Subchapter D—Deferred Compensation, Etc.

Part

AMENDMENTS

2006—Pub. L. 109–280, title I, §113(a)(2), Aug. 17, 2006, 120 Stat. 852, added item for part III.

1964—Pub. L. 88–272, title II, §221(d)(1), Feb. 26, 1964, 78 Stat. 75, substituted ''Certain stock options'' for ''Miscellaneous provisions'' in heading to part II.

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart

AMENDMENTS

2014—Pub. L. 113–235, div. O, title I, §108(b)(3)(D), Dec. 16, 2014, 128 Stat. 2789, which directed amendment of the

[1] Period editorially supplied.

[1] Editorially supplied. Subpart E of part I added by Pub. L. 101–508 without corresponding amendment of part analysis.

table of subparts for part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 by striking the heading and inserting ''INSOLVENT PLANS'' without specifying the subpart, was executed to the heading for subpart C by substituting ''Insolvent plans'' for ''Special rules for multiemployer plans'', to reflect the probable intent of Congress.

1984—Pub. L. 98–369, div. A, title V, §511(d), July 18, 1984, 98 Stat. 862, added heading for subpart D.

1980—Pub. L. 96–364, title II, §202(b), Sept. 26, 1980, 94 Stat. 1285, added heading for subpart C.

SUBPART A—GENERAL RULE

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §885(c), Oct. 22, 2004, 118 Stat. 1640, added item 409A.

2001—Pub. L. 107–16, title VI, §617(e)(2), June 7, 2001, 115 Stat. 106, added item 402A.

1997—Pub. L. 105–34, title III, §302(e), Aug. 5, 1997, 111 Stat. 829, added item 408A.

1986—Pub. L. 99–514, title XVIII, §1899A(70), Oct. 22, 1986, 100 Stat. 2963, substituted ''Qualifications'' for ''Qualification'' in item 409.

1984—Pub. L. 98–369, div. A, title IV, §491(d)(54), (e)(10), July 18, 1984, 98 Stat. 852, 853, struck out items 405 and 409, which read ''Qualified bond purchase plans'' and ''Retirement bonds'', respectively, and redesignated item 409A as 409.

1983—Pub. L. 98–21, title III, §321(e)(2)(D)(ii), Apr. 20, 1983, 97 Stat. 120, substituted ''Employees of foreign affiliates covered by section 3121(*l*) agreements'' for ''Certain employees of foreign subsidiaries'' in item 406.

1980—Pub. L. 96–603, §2(d)(1), Dec. 28, 1980, 94 Stat. 3510, added item 404A.

Pub. L. 96–222, title I, §101(a)(7)(L)(v)(VIII), Apr. 1, 1980, 94 Stat. 200, substituted ''tax credit employee stock ownership plans'' for ''ESOPS'' in item 409A.

1978—Pub. L. 95–600, title I, §141(f)(8), Nov. 6, 1978, 92 Stat. 2795, added item 409A.

1974—Pub. L. 93–406, title II, §1016(b)(1), Sept. 2, 1974, 88 Stat. 932, inserted heading ''Subpart A—General Rule'' and added analysis of subparts.

Pub. L. 93–406, title II, §2002(h)(2), Sept. 2, 1974, 88 Stat. 970, added items 408 and 409.

1964—Pub. L. 88–272, title II, §220(c)(1), Feb. 26, 1964, 78 Stat. 62, added items 406 and 407.

1962—Pub. L. 87–792, §5(b), Oct. 10, 1962, 76 Stat. 827, added item 405.

§ 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination).;[1]

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) SALARIED OR CLERICAL EMPLOYEES.—A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan

[1] So in original. Period before semicolon probably should be a closing parenthesis.

favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) INTEGRATED DEFINED BENEFIT PLAN.—

(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(4)) paid to the participant by the employer for any year—

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) BENEFITS.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined).

(G) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) REQUIRED DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

(i) WHERE DISTRIBUTIONS HAVE BEGUN UNDER SUBPARAGRAPH (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-YEAR RULE FOR OTHER CASES.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) SPECIAL RULE FOR SURVIVING SPOUSE OF EMPLOYEE.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70½, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''required beginning date'' means April 1 of the calendar year following the later of—

(I) the calendar year in which the employee attains age 70½, or

(II) the calendar year in which the employee retires.

(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

(II) for purposes of section 408(a)(6) or (b)(3).

(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term ''church plan'' means a plan maintained by a church for church employees, and the term ''church'' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(D) LIFE EXPECTANCY.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) DESIGNATED BENEFICIARY.—For purposes of this paragraph, the term ''designated beneficiary'' means any individual designated as a beneficiary by the employee.

(F) TREATMENT OF PAYMENTS TO CHILDREN.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) TREATMENT OF INCIDENTAL DEATH BENEFIT DISTRIBUTIONS.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(10) OTHER REQUIREMENTS.—

(A) PLANS BENEFITING OWNER-EMPLOYEES.—In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) TOP-HEAVY PLANS.—

(i) IN GENERAL.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) PLANS WHICH MAY BECOME TOP-HEAVY.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) EXEMPTION FOR GOVERNMENTAL PLANS.—This subparagraph shall not apply to any governmental plan.

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(C).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) ASSIGNMENT AND ALIENATION.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant's benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if—

(i) the order or requirement to pay arises—

(I) under a judgment of conviction for a crime involving such plan,

(II) under a civil judgment (including a consent order or decree) entered by a

court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person,

(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a),

(II) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of such subtitle, or

(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

A plan shall not be treated as failing to meet the requirements of this subsection, subsection (k), section 403(b), or section 409(d) solely by reason of an offset described in this subparagraph.

(D) SURVIVOR ANNUITY.—

(i) IN GENERAL.—The survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if—

(I) the participant terminated employment on the date of the offset,

(II) there was no offset,

(III) the plan permitted commencement of benefits only on or after normal retirement age,

(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(ii) DEFINITION.—For purposes of this subparagraph, the term ''minimum-required qualified joint and survivor annuity'' means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

(15) a[2] trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which

[2] So in original. Probably should be capitalized.

such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) COMPENSATION LIMIT.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000.

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $200,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

[(18) Repealed. Pub. L. 97–248, title II, § 237(b), Sept. 3, 1982, 96 Stat. 511.]

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes 1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan. This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution. For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 521 of the Unemployment Compensation Amendments of 1992) shall apply.

[(21) Repealed. Pub. L. 99–514, title XI, § 1171(b)(5), Oct. 22, 1986, 100 Stat. 2513.]

(22) If a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (*o*) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (*o*) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term ''employer securities'' shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

(i) 50 employees of the employer, or

(ii) the greater of—

(I) 40 percent of all employees of the employer, or

(II) 2 employees (or if there is only 1 employee, such employee).

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees de-

scribed in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) SPECIAL RULE FOR COLLECTIVE BARGAINING UNITS.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(D) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(E) SPECIAL RULE FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.

(F) SEPARATE LINES OF BUSINESS.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term ''separate line of business'' has the meaning given such term by section 414(r) (without regard to paragraph (2)(A) or (7) thereof).

(G) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).

(H) REGULATIONS.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.

(27) DETERMINATIONS AS TO PROFIT-SHARING PLANS.—

(A) CONTRIBUTIONS NEED NOT BE BASED ON PROFITS.—The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

(B) PLAN MUST DESIGNATE TYPE.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) DIVERSIFICATION OF INVESTMENTS.—

(i) IN GENERAL.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting ''50 percent'' for ''25 percent''.

(ii) METHOD OF MEETING REQUIREMENTS.—A plan shall be treated as meeting the requirements of clause (i) if—

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election.

(iii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term ''qualified participant'' means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term ''qualified election period'' means the 6-plan-year period beginning with the later of—

(I) the 1st plan year in which the individual first became a qualified participant, or

(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.

(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined con-

tribution plan (as defined in paragraph (35)(E)).

(C) USE OF INDEPENDENT APPRAISER.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term ''independent appraiser'' means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).

(29) BENEFIT LIMITATIONS.—In the case of a defined benefit plan (other than a multiemployer plan or a CSEC plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436.

(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1)(A) for taxable years beginning in such calendar year.

(31) DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution—

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

(B) CERTAIN MANDATORY DISTRIBUTIONS.—

(i) IN GENERAL.—In case of a trust which is part of an eligible plan, such trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if—

(I) a distribution described in clause (ii) in excess of $1,000 is made, and

(II) the distributee does not make an election under subparagraph (A) and does not elect to receive the distribution directly,

the plan administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer and shall notify the distributee in writing (either separately or as part of the notice under section 402(f)) that the distribution may be transferred to another individual retirement plan.

(ii) ELIGIBLE PLAN.—For purposes of clause (i), the term ''eligible plan'' means a plan which provides that any nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11)) does not exceed $5,000 shall be immediately distributed to the participant.

(C) LIMITATION.—Subparagraphs (A) and (B) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c), 403(a)(4), 403(b)(8), and 457(e)(16)). The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

(i) is a qualified trust which is part of a plan which is a defined contribution plan and agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

(D) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this paragraph, the term ''eligible rollover distribution'' has the meaning given such term by section 402(f)(2)(A).

(E) ELIGIBLE RETIREMENT PLAN.—For purposes of this paragraph, the term ''eligible retirement plan'' has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

(32) TREATMENT OF FAILURE TO MAKE CERTAIN PAYMENTS IF PLAN HAS LIQUIDITY SHORTFALL.—

(A) IN GENERAL.—A trust forming part of a pension plan to which section section[3] 430(j)(4) or 433(f)(5) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section section[3] 430(j)(4) or 433(f)(5)).

(B) PAYMENTS DESCRIBED.—A payment is described in this subparagraph if such payment is—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A),

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

[3] So in original.

(iii) any other payment specified by the Secretary by regulations.

(C) PERIOD OF SHORTFALL.—For purposes of this paragraph, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 430(j)(3) or 433(f) by reason of section 430(j)(4)(A) or 433(f)(5), respectively.

(33) PROHIBITION ON BENEFIT INCREASES WHILE SPONSOR IS IN BANKRUPTCY.—

(A) IN GENERAL.—A trust which is part of a plan to which this paragraph applies shall not constitute a qualified trust under this section if an amendment to such plan is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, if such amendment increases liabilities of the plan by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

(B) EXCEPTIONS.—This paragraph shall not apply to any plan amendment if—

(i) the plan, were such amendment to take effect, would have a funding target attainment percentage (as defined in section 430(d)(2)) of 100 percent or more,

(ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(iii) such amendment only repeals an amendment described in section 412(d)(2), or

(iv) such amendment is required as a condition of qualification under this part.

(C) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply only to plans (other than multiemployer plans or CSEC plans) covered under section 4021 of the Employee Retirement Income Security Act of 1974.

(D) EMPLOYER.—For purposes of this paragraph, the term ''employer'' means the employer referred to in section 412(b)(1), without regard to section 412(b)(2).

(34) BENEFITS OF MISSING PARTICIPANTS ON PLAN TERMINATION.—In the case of a plan covered by title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part, upon its termination, transfers benefits of missing participants to the Pension Benefit Guaranty Corporation in accordance with section 4050 of such Act.

(35) DIVERSIFICATION REQUIREMENTS FOR CERTAIN DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B), (C), and (D).

(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who—

(i) is a participant who has completed at least 3 years of service, or

(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(D) INVESTMENT OPTIONS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

(ii) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

(I) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

(II) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(E) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''applicable defined contribution plan'' means any defined contribution plan which holds any publicly traded employer securities.

(ii) EXCEPTION FOR CERTAIN ESOPS.—Such term does not include an employee stock ownership plan if—

(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and

(II) such plan is a separate plan for purposes of section 414(*l*) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

(iii) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term does not include a one-participant retirement plan.

(iv) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of clause (iii), the term ''one-participant retirement plan'' means a retirement plan that on the first day of the plan year—

(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(II) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(F) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) DEFINITIONS.—For purposes of this subparagraph, the term—

(I) ''controlled group of corporations'' has the meaning given such term by section 1563(a), except that ''50 percent'' shall be substituted for ''80 percent'' each place it appears,

(II) ''employer corporation'' means a corporation which is an employer maintaining the plan, and

(III) ''parent corporation'' has the meaning given such term by section 424(e).

(G) OTHER DEFINITIONS.—For purposes of this paragraph—

(i) APPLICABLE INDIVIDUAL.—The term ''applicable individual'' means—

(I) any participant in the plan, and

(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

(ii) ELECTIVE DEFERRAL.—The term ''elective deferral'' means an employer contribution described in section 402(g)(3)(A).

(iii) EMPLOYER SECURITY.—The term ''employer security'' has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

(iv) EMPLOYEE STOCK OWNERSHIP PLAN.—The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7).

(v) PUBLICLY TRADED EMPLOYER SECURITIES.—The term ''publicly traded employer securities'' means employer securities which are readily tradable on an established securities market.

(vi) YEAR OF SERVICE.—The term ''year of service'' has the meaning given such term by section 411(a)(5).

(H) TRANSITION RULE FOR SECURITIES ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

(i) RULES PHASED IN OVER 3 YEARS.—

(I) IN GENERAL.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, subparagraph (C) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

(II) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined as follows:

Plan year to which subparagraph (C) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.

(36) DISTRIBUTIONS DURING WORKING RETIREMENT.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(37) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A trust shall

not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) Certain retroactive changes in plan

A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) Definitions and rules relating to self-employed individuals and owner-employees

For purposes of this section—

(1) Self-employed individual treated as employee

(A) In general

The term ''employee'' includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) Self-employed individual

The term ''self-employed individual'' means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income

(A) In general

The term ''earned income'' means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections[4] 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term ''trade or business'' for purposes of section 1402 included service described in section 1402(c)(6).

[(B) Repealed]

(C) Income from disposition of certain property

For purposes of this section, the term ''earned income'' includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee

The term ''owner-employee'' means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees

The term ''contribution on behalf of an owner-employee'' includes, except as the con-

[4] So in original. Probably should be ''section''.

text otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen

For purposes of this subsection, the term ''self-employed individual'' includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) Contribution limit on owner-employees

A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) Repealed. Pub. L. 98–369, div. A, title VII, § 713(d)(3), July 18, 1984, 98 Stat. 958]

(f) Certain custodial accounts and contracts

For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) Annuity defined

For purposes of this section and sections 402, 403, and 404, the term ''annuity'' includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., benefits for retired employees and their spouses and dependents

Under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term ''key employee'' means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i). In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established. For purposes of this subsection, the term ''dependent'' shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27.

(i) Certain union-negotiated pension plans

In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary determined that the trust constituted a qualified trust, substantially com-

plied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

[(j) Repealed. Pub. L. 97–248, title II, § 238(b), Sept. 3, 1982, 96 Stat. 512]

(k) Cash or deferred arrangements

(1) General rule

A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement

A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) severance from employment, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½,

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, or

(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

(3) Application of participation and discrimination standards

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for the plan year bears a relationship to the actual deferral percentage for all other eligible employees for the preceding plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement. An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

(i) 3 percent, or

(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.

(F) SPECIAL RULE FOR EARLY PARTICIPATION.—If an employer elects to apply section 410(b)(4)(B) in determining whether a cash or deferred arrangement meets the requirements of subparagraph (A)(i), the employer may, in determining whether the arrangement meets the requirements of subparagraph (A)(ii), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(G) GOVERNMENTAL PLAN.—A governmental plan (within the meaning of section 414(d)) shall be treated as meeting the requirements of this paragraph.

(4) Other requirements

(A) Benefits (other than matching contributions) must not be contingent on election to defer

A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) Eligibility of State and local governments and tax-exempt organizations

(i) Tax-exempts eligible

Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

(ii) Governments ineligible

A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

(iii) Treatment of Indian tribal governments

An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing may include a qualified cash or deferred arrangement as part of a plan maintained by the employer.

(C) Coordination with other plans

Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) Highly compensated employee

For purposes of this subsection, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(6) Pre-ERISA money purchase plan

For purposes of this subsection, the term ''pre-ERISA money purchase plan'' means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) Rural cooperative plan

For purposes of this subsection—

(A) In general

The term ''rural cooperative plan'' means any pension plan—

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.

(B) Rural cooperative defined

For purposes of subparagraph (A), the term ''rural cooperative'' means—

(i) any organization which—

(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof),

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12),

(iv) any organization which—

(I) is a mutual irrigation or ditch company described in section 501(c)(12) (without regard to the 85 percent requirement thereof), or

(II) is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation, or drainage, and

(v) an organization which is a national association of organizations described in clause (i), (ii),,[3] (iii), or (iv).

(C) Special rule for certain distributions

A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 59½. For purposes of this section, the term ''hardship distribution'' means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limitation of its application to profit-sharing or stock bonus plans).

(8) Arrangement not disqualified if excess contributions distributed

(A) In general

A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions

For purposes of subparagraph (A), the term ''excess contributions'' means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions

Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

(D) Additional tax under section 72(t) not to apply

No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(F) Cross reference

For excise tax on certain excess contributions, see section 4979.

(9) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 414(s).

(10) Distributions upon termination of plan

(A) In general

An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) Distributions must be lump sum distributions

(i) In general

A termination shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.

(ii) Lump-sum distribution

For purposes of this subparagraph, the term ''lump-sum distribution'' has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof). Such term includes a distribution of an annuity contract from—

(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

(II) an annuity plan described in section 403(a).

(11) Adoption of simple plan to meet nondiscrimination tests

(A) In general

A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—

(i) the contribution requirements of subparagraph (B),

(ii) the exclusive plan requirements of subparagraph (C), and

(iii) the vesting requirements of section 408(p)(3).

(B) Contribution requirements

(i) In general

The requirements of this subparagraph are met if, under the arrangement—

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii),

(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

(III) no other contributions may be made other than contributions described in subclause (I) or (II).

(ii) Employer may elect 2-percent nonelective contribution

An employer shall be treated as meeting the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects (pursuant to the terms of the arrangement) to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

(iii) Administrative requirements

(I) In general

Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

(II) Notice of election period

The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).

(C) Exclusive plan requirement

The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

(D) Definitions and special rule

(i) Definitions

For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

(ii) Coordination with top-heavy rules

A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year if such plan allows only contributions required under this paragraph.

(12) Alternative methods of meeting nondiscrimination requirements

(A) In general

A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

(i) meets the contribution requirements of subparagraph (B) or (C), and

(ii) meets the notice requirements of subparagraph (D).

(B) Matching contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

(ii) Rate for highly compensated employees

The requirements of this subparagraph are not met if, under the arrangement, the

rate of matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

(iii) Alternative plan designs

If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increase, and

(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

(C) Nonelective contributions

The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(D) Notice requirement

An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(E) Other requirements

(i) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) of this paragraph unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraphs (B) and (C) of this paragraph are met.

(ii) Social security and similar contributions not taken into account

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (*l*), and, for purposes of subsection (*l*), employer contributions under subparagraph (B) or (C) shall not be taken into account.

(F) Other plans

An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

(13) Alternative method for automatic contribution arrangements to meet nondiscrimination requirements

(A) In general

A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) Qualified automatic contribution arrangement

For purposes of this paragraph, the term ''qualified automatic contribution arrangement'' means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (E).

(C) Automatic deferral

(i) In general

The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

(ii) Election out

The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

(I) to not have such contributions made, or

(II) to make elective contributions at a level specified in such affirmative election.

(iii) Qualified percentage

For purposes of this subparagraph, the term ''qualified percentage'' means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

(II) 4 percent during the first plan year following the plan year described in subclause (I),

(III) 5 percent during the second plan year following the plan year described in subclause (I), and

(IV) 6 percent during any subsequent plan year.

(iv) Automatic deferral for current employees not required

Clause (i) may be applied without taking into account any employee who—

(I) was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and

(II) had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

(D) Matching or nonelective contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer—

(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or

(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(ii) Application of rules for matching contributions

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

(iii) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

(iv) Application of certain other rules

The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

(E) Notice requirements

(i) In general

The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(ii) Timing and content requirements

A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

***(l)* Permitted disparity in plan contributions or benefits**

(1) In general

The requirements of this subsection are met with respect to a plan if—

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) Defined contribution plan

(A) In general

A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) Contribution percentages

For purposes of this paragraph—

(i) Excess contribution percentage

The term ''excess contribution percentage'' means the percentage of compensation which is contributed by the employer under the plan with respect to that portion of each participant's compensation in excess of the integration level.

(ii) Base contribution percentage

The term ''base contribution percentage'' means the percentage of compensation contributed by the employer under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) Defined benefit plan

A defined benefit plan meets the requirements of this paragraph if—

(A) Excess plans

(i) In general

In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) Benefit percentages

For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions rather than contributions.

(B) Offset plans

In the case of an offset plan, the plan provides that—

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) Definitions relating to paragraph (3)

For purposes of paragraph (3)—

(A) Maximum excess allowance

The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ of a percentage point, and

(ii) in the case of total benefits, ¾ of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) Maximum offset allowance

The maximum offset allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ percent of the participant's final average compensation, and

(ii) in the case of total benefits, ¾ percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) Reductions

(i) In general

The Secretary shall prescribe regulations requiring the reduction of the ¾ percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) Basis of reductions

Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) Offset plan

The term ''offset plan'' means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) Other definitions and special rules

For purposes of this subsection—

(A) Integration level

(i) In general

The term ''integration level'' means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) Limitation

The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) Level to apply to all participants

A plan's integration level shall apply with respect to all participants in the plan.

(iv) Multiple integration levels

Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) Compensation

The term ''compensation'' has the meaning given such term by section 414(s).

(C) Average annual compensation

The term ''average annual compensation'' means the participant's highest average annual compensation for—

(i) any period of at least 3 consecutive years, or

(ii) if shorter, the participant's full period of service.

(D) Final average compensation

(i) In general

The term ''final average compensation'' means the participant's average annual compensation for—

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) Limitation

A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) Covered compensation

(i) In general

The term ''covered compensation'' means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age.

(ii) Computation for any year

For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age.

(iii) Social security retirement age

For purposes of this subparagraph, the term ''social security retirement age'' has the meaning given such term by section 415(b)(8).

(F) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

(6) Special rule for plan maintained by railroads

In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) Nondiscrimination test for matching contributions and employee contributions

(1) In general

A defined contribution plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) Requirements

(A) Contribution percentage requirement

A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees for such plan year does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees for the preceding plan year, or

(ii) the lesser of 200 percent of such percentage for all other eligible employees for the preceding plan year, or such percentage for all other eligible employees for the preceding plan year plus 2 percentage points.

This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) Multiple plans treated as a single plan

If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies are made, all such contributions shall be aggregated for purposes of this subsection.

(3) Contribution percentage

For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year. Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.

(4) Definitions

For purposes of this subsection—

(A) Matching contribution

The term ''matching contribution'' means—

(i) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee's elective deferral.

(B) Elective deferral

The term ''elective deferral'' means any employer contribution described in section 402(g)(3).

(C) Qualified nonelective contributions

The term ''qualified nonelective contribution'' means any employer contribution (other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) Employees taken into consideration

(A) In general

Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) Certain nonparticipants

If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(C) Special rule for early participation

If an employer elects to apply section 410(b)(4)(B) in determining whether a plan meets the requirements of section 410(b), the employer may, in determining whether the plan meets the requirements of paragraph (2), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(6) Plan not disqualified if excess aggregate contributions distributed before end of following plan year

(A) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) Excess aggregate contributions

For purposes of subparagraph (A), the term ''excess aggregate contributions'' means, with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) Method of distributing excess aggregate contributions

Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions on behalf of, or by, each such employee. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) Coordination with subsection (k) and 402(g)

The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) Treatment of distributions

(A) Additional tax of section 72(t) not applicable

No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6).

(B) Exclusion of employee contributions

Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) Highly compensated employee

For purposes of this subsection, the term ''highly compensated employee'' has the meaning given to such term by section 414(q).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.

(10) Alternative method of satisfying tests

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11),

(B) meets the exclusive plan requirements of subsection (k)(11)(C), and

(C) meets the vesting requirements of section 408(p)(3).

(11) Additional alternative method of satisfying tests

(A) In general

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(12),

(ii) meets the notice requirements of subsection (k)(12)(D), and

(iii) meets the requirements of subparagraph (B).

(B) Limitation on matching contributions

The requirements of this subparagraph are met if—

(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

(ii) the rate of an employer's matching contribution does not increase as the rate of an employee's contributions or elective deferrals increase, and

(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee.

(12) Alternative method for automatic contribution arrangements

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) meets the requirements of paragraph (11)(B).

(13) Cross reference

For excise tax on certain excess contributions, see section 4979.

(n) Coordination with qualified domestic relations orders

The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(*o*) Cross reference

For exemption from tax of a trust qualified under this section, see section 501(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 134; Pub. L. 87–792, § 2, Oct. 10, 1962, 76 Stat. 809; Pub. L. 87–863, § 2(a), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88–272, title II, § 219(a), Feb. 26, 1964, 78 Stat. 57; Pub. L. 89–97, title I, § 106(d)(4), July 30, 1965, 79 Stat. 337; Pub. L. 89–809, title II, §§ 204(b)(1), (c), 205(a), Nov. 13, 1966, 80 Stat. 1577, 1578; Pub. L. 91–691, § 1(a), Jan. 12, 1971, 84 Stat. 2074; Pub. L. 93–406, title II, §§ 1012(b), 1016(a)(2), 1021, 1022(a)–(d), (f), 1023, 2001(c)–(e)(4), (h)(1), 2004(a)(1), Sept. 2, 1974, 88 Stat. 913, 929, 935, 938–940, 943, 952–955, 957, 979; Pub. L. 94–267, § 1(c)(1), (2), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title VIII, § 803(b)(2), title XV, § 1505(b), title XIX, §§ 1901(a)(56), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1738, 1773, 1834; Pub. L. 95–600, title I, §§ 135(a), 141(f)(3), 143(a), 152(e), Nov. 6, 1978, 92 Stat. 2785, 2795, 2796, 2799; Pub. L. 96–222, title I, § 101(a)(7)(L)(i)(V), (9), (14)(E)(iii), Apr. 1, 1980, 94 Stat. 199, 201, 205; Pub. L. 96–364, title II, § 208(a), (e), title IV, § 410(b), Sept. 26, 1980, 94 Stat. 1289, 1290, 1308; Pub. L. 96–605, title II, §§ 221(a), 225(b)(1), (2), Dec. 28, 1980, 94 Stat. 3528, 3529; Pub. L. 97–34, title III, §§ 312(b)(1), (c)(2)–(4), (e)(2), 314(a)(1), 335, 338(a), Aug. 13, 1981, 95 Stat. 283–286, 297, 298; Pub. L. 97–248, title II, §§ 237(a), (b), (e)(1), 238(b), (d)(1), (2), 240(b), 242(a), 249(a), 254(a), Sept. 3, 1982, 96 Stat. 511–513, 520, 521, 527, 533; Pub. L. 97–448, title I, § 103(c)(10)(A), (d)(2), (g)(2)(A), title III, § 306(a)(12), Jan. 12, 1983, 96 Stat. 2377–2379, 2405; Pub. L. 98–21, title I, § 124(c)(4)(A), Apr. 20, 1983, 97 Stat. 91; Pub. L. 98–369, div. A, title II, § 211(b)(5), title IV, §§ 474(r)(13), 491(e)(4), (5), title V, §§ 521(a), 524(d)(1), 527(a), (b), 528(b), title VII, § 713(c)(2)(A), (d)(3), July 18, 1984, 98 Stat. 754, 842, 853, 865, 872, 875–877, 957, 958; Pub. L. 98–397, title II, §§ 203(a), 204(a), title III, § 301(b), Aug. 23, 1984, 98 Stat. 1440, 1445, 1451; Pub. L. 99–514, title XI, §§ 1106(d)(1), 1111(a), (b), 1112(b), (d)(1), 1114(b)(7), 1116(a)–(e), 1117(a), 1119(a), 1121(b), 1136(a),

1143(a), 1145(a), 1171(b)(5), 1174(c)(2)(A), 1175(a)(1), 1176(a), title XVIII, §§1848(b), 1852(a)(4)(A), (6), (b)(8), (g), (h)(1), 1879(g)(1), (2), 1898(b)(2)(A), (3)(A), (7)(A), (13)(A), (14)(A), (c)(3), 1899A(10), Oct. 22, 1986, 100 Stat. 2423, 2435, 2439, 2444, 2445, 2451, 2454–2456, 2459, 2463, 2465, 2485, 2490, 2513, 2518, 2519, 2857, 2865–2869, 2906, 2907, 2945, 2948, 2950, 2953, 2958; Pub. L. 100–203, title IX, §9341(a), Dec. 22, 1987, 101 Stat. 1330–369; Pub. L. 100–647, title I, §§1011(c)(7)(A), (d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), s2)–(7), (9), (*l*)(1)–(5)(A), (6), (7), 1011A(j), (*l*), 1011B(j)(1), (2), (6), (k)(1), (2), title VI, §§6053(a), 6055(a), 6071(a), (b), Nov. 10, 1988, 102 Stat. 3458–3460, 3463, 3464, 3468–3470, 3483, 3492, 3493, 3696, 3697, 3705; Pub. L. 101–140, title II, §203(a)(5), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§7311(a), 7811(g)(1), (h)(3), 7816(*l*), 7881(i)(1)(A), (4)(A), Dec. 19, 1989, 103 Stat. 2354, 2409, 2421, 2442; Pub. L. 101–508, title XII, §12011(b), Nov. 5, 1990, 104 Stat. 1388–571; Pub. L. 102–318, title V, §§521(b)(5)–(8), 522(a)(1), July 3, 1992, 106 Stat. 310, 313; Pub. L. 103–66, title XIII, §13212(a), Aug. 10, 1993, 107 Stat. 471; Pub. L. 103–465, title VII, §§732(a), 751(a)(9)(C), 766(b), 776(d), Dec. 8, 1994, 108 Stat. 5004, 5021, 5037, 5048; Pub. L. 104–188, title I, §§1401(b)(5), (6), 1404(a), 1422(a), (b), 1426(a), 1431(b)(2), (c)(1)(B), 1432(a), (b), 1433(a)–(e), 1441(a), 1443(a), (b), 1445(a), 1459(a), (b), 1704(a), (t)(67), Aug. 20, 1996, 110 Stat. 1789, 1791, 1800, 1801, 1803–1809, 1811, 1820, 1878, 1890; Pub. L. 105–34, title XV, §§1502(b), 1505(a)(1), (2), (b), 1525(a), 1530(c)(1), title XVI, §1601(d)(2)(A), (B), (D), (3), Aug. 5, 1997, 111 Stat. 1059, 1063, 1072, 1078, 1088, 1089; Pub. L. 106–554, §1(a)(7) [title III, §316(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 107–16, title VI, §§611(c), (f)(3), (g)(1), 641(e)(3), 643(b), 646(a)(1), 657(a), 666(a), June 7, 2001, 115 Stat. 97, 99, 120, 122, 126, 135, 143; Pub. L. 107–147, title IV, §411(*o*)(2), (q)(1), Mar. 9, 2002, 116 Stat. 48, 51; Pub. L. 108–311, title IV, §407(b), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 109–280, title I, §114(a), title VIII, §§827(b)(1), 861(a), (b), title IX, §§901(a)(1), (2)(A), 902(a), (b), (d)(2)(C), (D), (e)(3)(B), 905(b), Aug. 17, 2006, 120 Stat. 853, 1000, 1020, 1021, 1026, 1029, 1033, 1035, 1038, 1050; Pub. L. 110–245, title I, §104(a), June 17, 2008, 122 Stat. 1626; Pub. L. 110–458, title I, §§101(d)(2)(A)–(C), 109(a)–(b)(2), title II, §201(a), Dec. 23, 2008, 122 Stat. 5099, 5111, 5116; Pub. L. 111–152, title I, §1004(d)(5), Mar. 30, 2010, 124 Stat. 1036; Pub. L. 113–97, title II, §202(c)(3)(A), (4), (5), Apr. 7, 2014, 128 Stat. 1136; Pub. L. 113–295, div. A, title II, §221(a)(52), Dec. 19, 2014, 128 Stat. 4045.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(12), (13)(C)(i)(II), (III), (iii)(II), (29)(B)(i), (33)(C), (34), (35)(G)(iii), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 4 of subtitle B of title I of the Act is classified generally to part 4 (§1101 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. Title IV of the Act is classified generally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 407, 412, 4021, and 4050 of the Act are classified to sections 1107, 1112, 1321, and 1350, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Social Security Act, referred to in subsecs. (a)(15), (*l*)(4)(C)(ii), (5)(A)(ii), (D)(ii), (E)(i), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 223(d) and 230 of the Social Security Act are classified to sections 423(d) and 430, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 521 of the Unemployment Compensation Amendments of 1992, referred to in subsec. (a)(20), is section 521 of Pub. L. 102–318, which amended section 402(a) to (f) of this title generally, and, as so amended, subsec. (a) of section 402 does not contain a par. (6)(B).

The Railroad Retirement Act of 1974, referred to in subsec. (*l*)(6), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2014—Subsec. (a)(9)(H). Pub. L. 113–295 struck out subpar. (H) which related to a waiver from the minimum distribution requirements of subsec. (a)(9) during calendar year 2009 for certain defined contribution and individual retirement plans.

Subsec. (a)(29). Pub. L. 113–97, §202(c)(3)(A), substituted ''multiemployer plan or a CSEC plan'' for ''multiemployer plan''.

Subsec. (a)(32)(A). Pub. L. 113–97, §202(c)(5)(A), substituted ''430(j)(4) or 433(f)(5)'' for ''430(j)(4)'' in two places.

Subsec. (a)(32)(C). Pub. L. 113–97, §202(c)(5)(B), substituted ''430(j)(3) or 433(f) by reason of section 430(j)(4)(A) or 433(f)(5), respectively'' for ''430(j)(3) by reason of section 430(j)(4)(A) thereof''.

Subsec. (a)(33)(C). Pub. L. 113–97, §202(c)(4), substituted ''multiemployer plans or CSEC plans'' for ''multiemployer plans''.

2010—Subsec. (h). Pub. L. 111–152 inserted at end ''For purposes of this subsection, the term 'dependent' shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27.''

2008—Subsec. (a)(9)(H). Pub. L. 110–458, §201(a), added subpar. (H).

Subsec. (a)(29). Pub. L. 110–458, §101(d)(2)(A), struck out ''on plans in at-risk status'' after ''limitations'' in heading.

Subsec. (a)(32)(C). Pub. L. 110–458, §101(d)(2)(B), substituted ''section 430(j)(3)'' for ''section 430(j)'' and ''section 430(j)(4)(A)'' for ''paragraph (5)(A)''.

Subsec. (a)(33)(B)(iii). Pub. L. 110–458, §101(d)(2)(C)(i), substituted ''section 412(d)(2)'' for ''section 412(c)(2)''.

Subsec. (a)(33)(D). Pub. L. 110–458, §101(d)(2)(C)(ii), substituted ''section 412(b)(1), without regard to section 412(b)(2)'' for ''section 412(b)(2) (without regard to subparagraph (B) thereof)''.

Subsec. (a)(35)(E)(iv). Pub. L. 110–458, §109(a), amended cl. (iv) generally. Prior to amendment, text read as follows: ''For purposes of clause (iii), the term 'one-participant retirement plan' means a retirement plan that—

''(I) on the first day of the plan year covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or covered only one or more partners (or partners and their spouses) in the plan sponsor,

''(II) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the business,

''(III) does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses),

''(IV) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

''(V) does not cover a business that uses the services of leased employees (within the meaning of section 414(n)).

For purposes of this clause, the term ''partner'' includes a 2-percent shareholder (as defined in section 1372(b)) of an S corporation.''

Subsec. (a)(37). Pub. L. 110–245 added par. (37).

Subsec. (k)(8)(E). Pub. L. 110–458, § 109(b)(2), substituted ''permissible withdrawal'' for ''erroneous automatic contribution'' in heading and ''a permissible withdrawal'' for ''an erroneous automatic contribution'' in text.

Subsec. (k)(13)(D)(i)(I). Pub. L. 110–458, § 109(b)(1), substituted ''such contributions as exceed 1 percent but do not'' for ''such compensation as exceeds 1 percent but does not''.

2006—Subsec. (a)(5)(G). Pub. L. 109–280, § 861(a)(1), (b)(1), substituted ''Governmental'' for ''State and local governmental'' in heading and ''section 414(d))'' for ''section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' in text.

Subsec. (a)(26)(G). Pub. L. 109–280, § 861(a)(1), (b)(2), substituted ''Exception for'' for ''Exception for state and local'' in heading and ''section 414(d))'' for ''section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' in text.

Subsec. (a)(28)(B)(v). Pub. L. 109–280, § 901(a)(2)(A), added cl. (v).

Subsec. (a)(29). Pub. L. 109–280, § 114(a)(1), amended heading and text of par. (29) generally, substituting provisions relating to benefit limitations on plans in at-risk status for provisions relating to security required upon adoption of plan amendment resulting in significant underfunding.

Subsec. (a)(32)(A). Pub. L. 109–280, § 114(a)(2)(A), substituted ''section 430(j)(4)'' for ''412(m)(5)'' in two places.

Subsec. (a)(32)(C). Pub. L. 109–280, § 114(a)(2)(B), substituted ''section 430(j)'' for ''section 412(m)''.

Subsec. (a)(33)(B)(i). Pub. L. 109–280, § 114(a)(3)(A), which directed amendment of cl. (i) by substituting ''funding target attainment percentage (as defined in section 430(d)(2))'' for ''funded current liability percentage (within the meaning of section 412(*l*)(8))'', was executed by making the substitution for ''funded current liability percentage (as defined in section 412(*l*)(8))'', to reflect the probable intent of Congress.

Subsec. (a)(33)(B)(iii). Pub. L. 109–280, § 114(a)(3)(B), substituted ''section 412(c)(2)'' for ''subsection 412(c)(8)''.

Subsec. (a)(33)(D). Pub. L. 109–280, § 114(a)(3)(C), substituted ''section 412(b)(2) (without regard to subparagraph (B) thereof)'' for ''section 412(c)(11) (without regard to subparagraph (B) thereof)''.

Subsec. (a)(35). Pub. L. 109–280, § 901(a)(1), added par. (35).

Subsec. (a)(36). Pub. L. 109–280, § 905(b), added par. (36).

Subsec. (k)(2)(B)(i)(V). Pub. L. 109–280, § 827(b)(1), added subcl. (V).

Subsec. (k)(3)(G). Pub. L. 109–280, § 861(a)(2), (b)(3), inserted heading and struck out ''maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' after ''414(d))'' in text.

Subsec. (k)(8)(A)(i). Pub. L. 109–280, § 902(e)(3)(B)(i), inserted ''through the end of such year'' after ''such contributions''.

Subsec. (k)(8)(E). Pub. L. 109–280, § 902(d)(2)(C), (D), inserted ''or erroneous automatic contribution'' after ''or contribution'' in heading and inserted ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),'' in text.

Subsec. (k)(13). Pub. L. 109–280, § 902(a), added par. (13).

Subsec. (m)(6)(A). Pub. L. 109–280, § 902(e)(3)(B)(ii), inserted ''through the end of such year'' after ''to such contributions''.

Subsec. (m)(12), (13). Pub. L. 109–280, § 902(b), added par. (12) and redesignated former par. (12) as (13).

2004—Subsec. (a)(26)(C) to (I). Pub. L. 108–311 redesignated subpars. (D) to (I) as (C) to (H), respectively, and struck out heading and text of former subpar. (C). Text read as follows: ''In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan.''

2002—Subsec. (a)(30). Pub. L. 107–147, § 411(*o*)(2), substituted ''402(g)(1)(A)'' for ''402(g)(1)''.

Subsec. (a)(31)(C)(i). Pub. L. 107–147, § 411(q)(1), inserted ''is a qualified trust which is part of a plan which is a defined contribution plan and'' before ''agrees''.

2001—Subsec. (a)(17). Pub. L. 107–16, § 611(c)(1), substituted ''$200,000'' for ''$150,000'' in two places.

Subsec. (a)(17)(B). Pub. L. 107–16, § 611(c)(2), substituted ''July 1, 2001'' for ''October 1, 1993'' and substituted ''$5,000'' for ''$10,000'' in two places.

Subsec. (a)(31). Pub. L. 107–16, § 657(a)(2)(A), substituted ''Direct'' for ''Optional direct'' in heading.

Subsec. (a)(31)(B). Pub. L. 107–16, § 657(a)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 107–16, § 643(b), inserted at end ''The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

''(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

''(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).''

Pub. L. 107–16, § 641(e)(3), substituted '', 403(a)(4), 403(b)(8), and 457(e)(16)'' for ''and 403(a)(4)''.

Subsec. (a)(31)(C). Pub. L. 107–16, § 657(a)(2)(B), substituted ''Subparagraphs (A) and (B)'' for ''Subparagraph (A)''.

Pub. L. 107–16, § 657(a)(1), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(31)(D), (E). Pub. L. 107–16, § 657(a)(1), redesignated subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (c)(2)(A). Pub. L. 107–16, § 611(g)(1), inserted at end ''For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).''

Subsec. (k)(2)(B)(i)(I). Pub. L. 107–16, § 646(a)(1)(A), substituted ''severance from employment'' for ''separation from service''.

Subsec. (k)(10). Pub. L. 107–16, § 646(a)(1)(C)(iii), struck out ''or disposition of assets or subsidiary'' after ''plan'' in heading.

Subsec. (k)(10)(A). Pub. L. 107–16, § 646(a)(1)(B), reenacted heading without change and amended text generally, substituting present provisions for provisions including termination of plan, disposition of assets, and disposition of subsidiary as events described in this paragraph.

Subsec. (k)(10)(B)(i). Pub. L. 107–16, § 646(a)(1)(C)(i), substituted ''A termination'' for ''An event'' and ''the termination'' for ''the event''.

Subsec. (k)(10)(C). Pub. L. 107–16, § 646(a)(1)(C)(ii), struck out heading and text of subpar. (C). Text read as follows: ''An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.''

Subsec. (k)(11)(B)(i)(I). Pub. L. 107–16, § 611(f)(3)(A), substituted ''the amount in effect under section 408(p)(2)(A)(ii)'' for ''$6,000''.

Subsec. (k)(11)(E). Pub. L. 107–16, § 611(f)(3)(B), struck out heading and text of subpar. (E). Text read as follows: ''The Secretary shall adjust the $6,000 amount

under subparagraph (B)(i)(I) at the same time and in the same manner as under section 408(p)(2)(E).''

Subsec. (m)(9). Pub. L. 107–16, §666(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

''(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

''(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term 'alternative limitation' means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.''

2000—Subsec. (k)(10)(B)(ii). Pub. L. 106–554 inserted at end ''Such term includes a distribution of an annuity contract from—

''(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

''(II) an annuity plan described in section 403(a).''

1997—Subsec. (a)(1). Pub. L. 105–34, §1530(c)(1), inserted ''or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)),'' after ''stock bonus plans),''.

Subsec. (a)(5)(G). Pub. L. 105–34, §1505(a)(1), added subpar. (G).

Subsec. (a)(13)(C), (D). Pub. L. 105–34, §1502(b), added subpars. (C) and (D).

Subsec. (a)(26)(H). Pub. L. 105–34, §1505(a)(2), amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

''(ii) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this subparagraph, the term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.''

Subsec. (k)(3)(G). Pub. L. 105–34, §1505(b), added subpar. (G).

Subsec. (k)(7)(B)(iii) to (v). Pub. L. 105–34, §1525(a), struck out ''and'' at end of cl. (iii), added cl. (iv), redesignated former cl. (iv) as (v), and in cl. (v), substituted '', (iii), or (iv)'' for ''or (iii)''.

Subsec. (k)(11)(B)(iii). Pub. L. 105–34, §1601(d)(2)(D), added cl. (iii).

Subsec. (k)(11)(D)(ii). Pub. L. 105–34, §1601(d)(2)(A), inserted ''if such plan allows only contributions required under this paragraph'' before period at end.

Subsec. (k)(11)(E). Pub. L. 105–34, §1601(d)(2)(B), added subpar. (E).

Subsec. (m)(11). Pub. L. 105–34, §1601(d)(3), substituted ''Additional alternative'' for ''Alternative'' in heading.

1996—Subsec. (a)(5)(D)(ii). Pub. L. 104–188, §1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)'' in introductory provisions.

Subsec. (a)(5)(F). Pub. L. 104–188, §1445(a), added subpar. (F).

Subsec. (a)(9)(C). Pub. L. 104–188, §1404(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the calendar year in which the employee attains age 70½. In the case of a governmental plan or church plan, the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires. For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

Subsec. (a)(17)(A). Pub. L. 104–188, §1431(b)(2), struck out at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (a)(20). Pub. L. 104–188, §1704(t)(67), substituted ''section 521'' for ''section 211'' in last sentence.

Subsec. (a)(26)(A). Pub. L. 104–188, §1432(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''A trust shall not constitute a qualified trust under this subsection unless such trust is part of a plan which on each day of the plan year benefits the lesser of—

''(i) 50 employees of the employer, or

''(ii) 40 percent or more of all employees of the employer.''

Subsec. (a)(26)(G). Pub. L. 104–188, §1432(b), substituted ''paragraph (2)(A) or (7)'' for ''paragraph (7)''.

Subsec. (a)(28)(B)(v). Pub. L. 104–188, §1401(b)(5), struck out cl. (v) which read as follows:

''(v) COORDINATION WITH DISTRIBUTION RULES.—Any distribution required by this subparagraph shall not be taken into account in determining whether a subsequent distribution is a lump sum distribution under section 402(d)(4)(A) or in determining whether section 402(c)(10) applies.''

Subsec. (d). Pub. L. 104–188, §1441(a), amended subsec. (d) generally, substituting provisions relating to contribution limit on owner-employees for former provisions relating to additional requirements for qualification of trusts and plans benefiting owner-employees.

Subsec. (h). Pub. L. 104–188, §1704(a), provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Section 12011(b) of title XII of Pub. L. 101–508 directed the amendment of this section without specifying that the amendment was to the Internal Revenue Code of 1986. See 1990 Amendment note below.

Subsec. (k)(3)(A). Pub. L. 104–188, §1433(c)(1), in introductory provisions of cl. (ii) substituted ''the plan year'' for ''such year'' and ''for the preceding plan year'' for ''for such plan year'' and inserted at end of closing provisions of subpar. (A) ''An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.''

Subsec. (k)(3)(E). Pub. L. 104–188, §1433(d)(1), added subpar. (E).

Subsec. (k)(3)(F). Pub. L. 104–188, §1459(a), added subpar. (F).

Subsec. (k)(4)(B). Pub. L. 104–188, §1426(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B) STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by—

''(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

''(ii) any organization exempt from tax under this subtitle.

This subparagraph shall not apply to a rural cooperative plan.''

Subsec. (k)(7)(B)(i). Pub. L. 104–188, §1443(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any organization which—

''(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

''(II) is engaged primarily in providing electric service on a mutual or cooperative basis,''.

Subsec. (k)(7)(C). Pub. L. 104–188, § 1443(a), added subpar. (C).

Subsec. (k)(8)(C). Pub. L. 104–188, § 1433(e)(1), substituted ''on the basis of the amount of contributions by, or on behalf of, each of such employees'' for ''on the basis of the respective portions of the excess contributions attributable to each of such employees''.

Subsec. (k)(10)(B)(ii). Pub. L. 104–188, § 1401(b)(6), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows:

''(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' has the meaning given such term by section 402(d)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (F) thereof.''

Subsec. (k)(11). Pub. L. 104–188, § 1422(a), added par. (11).

Subsec. (k)(12). Pub. L. 104–188, § 1433(a), added par. (12).

Subsec. (m)(2)(A). Pub. L. 104–188, § 1433(c)(2), inserted ''for such plan year'' after ''highly compensated employees'' in introductory provisions, inserted ''for the preceding plan year'' after ''eligible employees'' wherever appearing in cls. (i) and (ii), and inserted at end ''This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.''

Subsec. (m)(3). Pub. L. 104–188, § 1433(d)(2), inserted at end of closing provisions ''Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.''

Subsec. (m)(5)(C). Pub. L. 104–188, § 1459(b), added subpar. (C).

Subsec. (m)(6)(C). Pub. L. 104–188, § 1433(e)(2), substituted ''on the basis of the amount of contributions on behalf of, or by, each such employee'' for ''on the basis of the respective portions of such amounts attributable to each of such employees''.

Subsec. (m)(10). Pub. L. 104–188, § 1422(b), added par. (10). Former par. (10) redesignated (11).

Subsec. (m)(11). Pub. L. 104–188, § 1433(b), added par. (11). Former par. (11) redesignated (12).

Pub. L. 104–188, § 1422(b), redesignated par. (10) as (11).

Subsec. (m)(12). Pub. L. 104–188, § 1433(b), redesignated par. (11) as (12).

1994—Subsec. (a)(17)(B). Pub. L. 103–465, § 732(a), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—If, for any calendar year after 1994, the excess (if any) of—

''(I) $150,000, increased by the cost-of-living adjustment for the calendar year, over

''(II) the dollar amount in effect under subparagraph (A) for taxable years beginning in the calendar year,

is equal to or greater than $10,000, then the $150,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased by the amount of such excess, rounded to the next lowest multiple of $10,000.

''(ii) COST-OF-LIVING ADJUSTMENT.—The cost-of-living adjustment for any calendar year shall be the adjustment made under section 415(d) for such calendar year, except that the base period for purposes of section 415(d)(1)(A) shall be the calendar quarter beginning October 1, 1993.''

Subsec. (a)(32). Pub. L. 103–465, § 751(a)(9)(C), which directed amendment of subsec. (a) by adding par. (32) at end, was executed by adding par. (32) after par. (31) to reflect the probable intent of Congress.

Subsec. (a)(33). Pub. L. 103–465, § 766(b), which directed amendment of subsec. (a) by adding par. (33) at end, was executed by adding par. (33) after par. (32) to reflect the probable intent of Congress.

Subsec. (a)(34). Pub. L. 103–465, § 776(d), added par. (34).

1993—Subsec. (a)(17). Pub. L. 103–66 inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, substituted ''$150,000'' for ''$200,000'' in first sentence, struck out after first sentence ''The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).'', and added subpar. (B).

1992—Subsec. (a)(20). Pub. L. 102–318, § 521(b)(5), substituted ''1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan'' for ''a qualified total distribution described in section 402(a)(5)(E)(i)(I)'' and inserted at end ''For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 211 of the Unemployment Compensation Amendments of 1992) shall apply.''

Subsec. (a)(28)(B)(v). Pub. L. 102–318, § 521(b)(6), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''Any distribution required by this subparagraph shall not be taken into account in determining whether—

''(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

''(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution.''

Subsec. (a)(31). Pub. L. 102–318, § 522(a)(1), added par. (31).

Subsec. (k)(2)(B)(i)(IV). Pub. L. 102–318, § 521(b)(7), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (k)(10)(B)(ii). Pub. L. 102–318, § 521(b)(8), substituted ''402(d)(4)'' for ''402(e)(4)'' and ''subparagraph (F)'' for ''subparagraph (H)''.

1990—Subsec. (h). Pub. L. 101–508, which directed that ''section 401(h) is amended by inserting ', and subject to the provisions of section 420'' without specifying that amendment was to the Internal Revenue Code of 1986, was executed by making the insertion in subsec. (h) of this section. See 1996 Amendment note above.

1989—Subsec. (a)(9)(C). Pub. L. 101–140 struck out ''(as defined in section 89(i)(4))'' after ''governmental or church plan'' and inserted at end ''For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

Subsec. (a)(28)(B)(ii)(II). Pub. L. 101–239, § 7811(h)(3), made technical correction to directory language of Pub. L. 100–647, § 1011B(j)(1), see 1988 Amendment note below.

Subsec. (a)(29)(A)(i). Pub. L. 101–239, § 7881(i)(4)(A), substituted ''multiemployer plan) to which the requirements of section 412 apply'' for ''multiemployer plan)''.

Subsec. (a)(29)(C)(i)(II). Pub. L. 101–239, § 7881(i)(1)(A), substituted ''plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment'' for ''plan amendment''.

Subsec. (a)(30). Pub. L. 101–239, § 7811(g)(1), moved par. (30) from a position after the undesignated closing par. to a position immediately after par. (29).

Subsec. (h). Pub. L. 101–239, § 7311(a), inserted at end ''In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established.''

Subsec. (k)(4)(B). Pub. L. 101–239, § 7816(*l*), amended Pub. L. 100–647, § 6071(b)(2), see 1988 Amendment note below.

1988—Subsec. (a)(9)(C). Pub. L. 100–647, § 6053(a), inserted at end ''In the case of a governmental plan or

church plan (as defined in section 89(i)(4)), the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires.''

Subsec. (a)(11)(E), (F). Pub. L. 100–647, §1011A(*l*), redesignated subpar. (E), relating to cross reference, as (F).

Subsec. (a)(17). Pub. L. 100–647, §1011(d)(4), inserted at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (a)(22). Pub. L. 100–647, §1011B(k)(1), (2), substituted ''is not readily tradable on an established market'' for ''is not publicly traded'' in subpar. (A) and in last sentence, and inserted at end ''For purposes of the preceding sentence, subsections (b), (c), (m), and (*o*) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.''

Subsec. (a)(26)(F), (G). Pub. L. 100–647, §1011(h)(3), added subpars. (F) and (G). Former subpar. (F) redesignated (H).

Subsec. (a)(26)(H). Pub. L. 100–647, §6055(a), added subpar. (H). Former subpar. (H) redesignated (I).

Pub. L. 100–647, §1011(h)(3), redesignated former subpar. (F) as (H).

Subsec. (a)(26)(I). Pub. L. 100–647, §6055(a), redesignated former subpar. (H) as (I).

Subsec. (a)(27). Pub. L. 100–647, §1011A(j), inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsec. (a)(28)(B)(ii)(II). Pub. L. 100–647, §1011B(j)(1), as amended by Pub. L. 101–239, §7811(h)(3), inserted ''and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election'' after ''clause (i)''.

Subsec. (a)(28)(B)(iv). Pub. L. 100–647, §1011B(d)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''For purposes of this subparagraph, the term 'qualified election period' means the 5-plan-year period beginning with the plan year after the plan year in which the participant attains age 55 (or, if later, beginning with the plan year after the 1st plan year in which the individual 1st became a qualified participant).''

Subsec. (a)(28)(B)(v). Pub. L. 100–647, §1011B(j)(6), added cl. (v).

Subsec. (a)(30). Pub. L. 100–647, §1011(c)(7)(A), added par. (30) at end.

Subsec. (k)(1), (2). Pub. L. 100–647, §6071(a), struck out ''electric'' after ''or a rural''.

Subsec. (k)(2)(B). Pub. L. 100–647, §1011(k)(2)(A), inserted ''amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election'' after ''under which''.

Subsec. (k)(2)(B)(i). Pub. L. 100–647, §1011(k)(2)(B), struck out ''amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election'' before ''may not be''.

Pub. L. 100–647, §1011(k)(1)(A), added subcl. (II), redesignated former subcls. (V) and (VI) as (III) and (IV), respectively, and struck out former subcls. (II) to (IV) which read as follows:

''(II) termination of the plan without establishment of a successor plan,

''(III) the date of the sale by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation with respect to an employee who continues employment with the corporation acquiring such assets,

''(IV) the date of the sale by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)) with respect to an employee who continues employment with such subsidiary,''.

Subsec. (k)(2)(B)(ii). Pub. L. 100–647, §1011(k)(2)(C), struck out ''amounts'' before ''will not be''.

Subsec. (k)(3)(A). Pub. L. 100–647, §1011(k)(3)(B), made technical correction to Pub. L. 99–514, §1116(b)(4). See 1986 Amendment note below.

Subsec. (k)(3)(A)(ii). Pub. L. 100–647, §1011(k)(3)(A), inserted ''eligible'' before ''highly compensated employees'' in introductory text, in subcl. (I), and in two places in subcl. (II).

Subsec. (k)(3)(C), (D). Pub. L. 100–647, §1011(k)(4), (5), redesignated subpar. (C), relating to employer contributions, as (D), and substituted ''meet'' for ''meets'' in cl. (ii)(I).

Subsec. (k)(4)(A). Pub. L. 100–647, §1011(k)(6), struck out ''provided by such employer'' after ''any other benefit''.

Subsec. (k)(4)(B). Pub. L. 100–647, §6071(b)(2), as amended by Pub. L. 101–239, §7816(*l*), substituted ''rural cooperative plan'' for ''rural electric cooperative plan'' in last sentence.

Pub. L. 100–647, §1011(k)(9), inserted at end ''This subparagraph shall not apply to a rural electric cooperative plan.''

Subsec. (k)(7). Pub. L. 100–647, §6071(b)(1), substituted ''Rural cooperative plan'' for ''Rural electric cooperative plan'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'rural cooperative plan' means any pension plan—

''(i) which is a defined contribution plan (as defined in section 414(i)), and

''(ii) which is established and maintained by a rural cooperative.

''(B) RURAL COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term 'rural cooperative' means—

''(i) any organization which—

''(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

''(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

''(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i), and

''(iii) an organization which is a national association of organizations described in clause (i) or (ii).''

Pub. L. 100–647, §1011(e)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''For purposes of this subsection, the term 'rural electric cooperative plan' means any pension plan—

''(A) which is a defined contribution plan (as defined in section 414(i)), and

''(B) which is established and maintained by a rural electric cooperative (as defined in section 457(d)(9)(B)) or a national association of such rural electric cooperatives.''

Subsec. (k)(8)(E), (F). Pub. L. 100–647, §1011(k)(7), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (k)(10). Pub. L. 100–647, §1011(k)(1)(B), added par. (10).

Subsec. (*l*)(2)(B)(i), (ii). Pub. L. 100–647, §1011(g)(1)(A), substituted ''contributed by the employer under'' for ''contributed under''.

Subsec. (*l*)(3)(A)(ii). Pub. L. 100–647, §1011(g)(1)(B), inserted ''attributable to employer contributions'' after ''basis of benefits''.

Subsec. (*l*)(5)(C). Pub. L. 100–647, §1011(g)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The term 'average annual compensation' means the greater of—

''(i) the participant's final average compensation (determined without regard to subparagraph (D)(ii)), or

''(ii) the participant's highest average annual compensation for any other period of at least 3 consecutive years.''

Subsec. (*l*)(5)(E). Pub. L. 100–647, §1011(g)(3), substituted ''the social security retirement age'' for ''age 65'' in cl. (i) and in two places in cl. (ii), and added cl. (iii).

Subsec. (m)(1). Pub. L. 100–647, §1011(*l*)(1), substituted ''A defined contribution plan'' for ''A plan''.

Subsec. (m)(2)(B). Pub. L. 100–647, §1011(*l*)(3), substituted ''contributions to which this subsection applies are made'' for ''such contributions are made''.

Subsec. (m)(3). Pub. L. 100–647, §1011(*l*)(2), inserted at end ''If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year.''

Subsec. (m)(4)(A)(i), (ii). Pub. L. 100–647, §1011(*l*)(4), substituted ''a defined contribution plan'' for ''the plan''.

Subsec. (m)(4)(B). Pub. L. 100–647, §1011(*l*)(5)(A), substituted ''section 402(g)(3)'' for ''section 402(g)(3)(A)''.

Subsec. (m)(6)(C). Pub. L. 100–647, §1011(*l*)(6), substituted ''excess aggregate contributions'' for ''excess contributions'' in heading.

Subsec. (m)(7)(A). Pub. L. 100–647, §1011(*l*)(7), substituted ''paragraph (6)'' for ''paragraph (8)''.

1987—Subsec. (a)(29). Pub. L. 100–203 added par. (29).

1986—Subsec. (a)(4). Pub. L. 99–514, §1114(b)(7), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''if the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

''(A) officers,

''(B) shareholders, or

''(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).''

Subsec. (a)(5). Pub. L. 99–514, §1111(b), amended par. (5) generally. Prior to amendment, par. (5) related to conditions which taken alone would not require a classification to be considered discriminatory and means of determining the basic or regular rate of compensation of an employee and whether two or more plans of an employer satisfy requirements of par. (4) when considered as a single plan.

Subsec. (a)(8). Pub. L. 99–514, §1119(a), substituted ''defined benefit plan'' for ''pension plan''.

Subsec. (a)(9)(C). Pub. L. 99–514, §1121(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the later of—

''(i) the calendar year in which the employee attains age 70½, or

''(ii) the calendar year in which the employee retires.

Clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5-plan-year period ending in the calendar year in which the employee attains age 70½. If the employee becomes a 5-percent owner during any subsequent plan year, the required beginning date shall be April 1 of the calendar year following the calendar year in which such subsequent plan year ends.''

Pub. L. 99–514, §1852(a)(4)(A), substituted last 2 sentences for ''Except as provided in section 409(d), clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains 70½.''

Subsec. (a)(9)(G). Pub. L. 99–514, §1852(a)(6), added subpar. (G).

Subsec. (a)(11)(A)(i). Pub. L. 99–514, §1898(b)(3)(A), substituted ''who does not die before the annuity starting date'' for ''who retires under the plan''.

Subsec. (a)(11)(B). Pub. L. 99–514, §1898(b)(2)(A)(ii), inserted at end ''Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.''

Subsec. (a)(11)(B)(iii)(I). Pub. L. 99–514, §1898(b)(7)(A), inserted ''(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)''.

Pub. L. 99–514, §1898(b)(13)(A), substituted ''section 417(a)(2)'' for ''section 417(a)(2)(A)''.

Subsec. (a)(11)(B)(iii)(III). Pub. L. 99–514, §1898(b)(2)(A)(i), inserted ''(in a transfer after December 31, 1984)''.

Subsec. (a)(11)(D), (E). Pub. L. 99–514, §1145(a), added subpar. (E) relating to exception for plans described in section 404(c) and redesignated former subpar. (D), relating to cross references, as (E).

Pub. L. 99–514, §1898(b)(14)(A), added subpar. (D) and redesignated former subpar. (D), relating to cross references, as (E).

Subsec. (a)(17). Pub. L. 99–514, §1106(d)(1), added par. (17).

Subsec. (a)(20). Pub. L. 99–514, §1852(b)(8), substituted ''qualified total distribution described in section 402(a)(5)(E)(i)(I)'' for ''qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)''.

Subsec. (a)(21). Pub. L. 99–514, §1171(b)(5), struck out par. (21) which read as follows: ''A trust forming part of a tax credit employee stock ownership plan shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to the amount of credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B)''.

Subsec. (a)(22). Pub. L. 99–514, §1899A(10), substituted ''If'' for ''if''.

Pub. L. 99–514, §1176(a), inserted at end ''The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not publicly traded and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation.''

Subsec. (a)(23). Pub. L. 99–514, §1174(c)(2)(A), amended par. (23) generally. Prior to amendment, par. (23) read as follows: ''A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409(h), except that in applying section 409(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan.''

Subsec. (a)(26). Pub. L. 99–514, §1112(b), added par. (26).

Subsec. (a)(27). Pub. L. 99–514, §1136(a), added par. (27).

Subsec. (a)(28). Pub. L. 99–514, §1175(a)(1), added par. (28).

Subsec. (c)(2)(A)(v). Pub. L. 99–514, §1848(b), substituted ''section 404'' for ''sections 404 and 405(c)''.

Subsec. (c)(6). Pub. L. 99–514, §1143(a), added par. (6).

Subsec. (h). Pub. L. 99–514, §1852(h)(1), substituted ''key employee'' for ''5-percent owner'' in two places in par. (6) and amended last sentence generally, substituting '' 'key employee' means any employee, who'' for '' '5-percent owner' means any employee who,'' and ''key employee as defined in section 416(i)'' for ''5-percent owner (as defined in section 416(i)(1)(B))''.

Subsec. (k)(1), (2). Pub. L. 99–514, §1879(g)(1), substituted '', a pre-ERISA money purchase plan, or a rural electric cooperative plan'' for ''(or a pre-ERISA money purchase plan)''.

Subsec. (k)(2)(B). Pub. L. 99–514, §1116(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than upon retirement, death, disability, or separation from service (or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age

59½) and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and''.

Subsec. (k)(2)(C). Pub. L. 99–514, §1852(g)(3), substituted ''is nonforfeitable'' for ''are nonforfeitable''.

Subsec. (k)(2)(D). Pub. L. 99–514, §1116(b)(2), added subpar. (D).

Subsec. (k)(3). Pub. L. 99–514, §1116(d)(3), which directed that the last sentence of subpar. (B) be struck out was executed by striking out the last sentence of par. (3) as the probable intent of Congress because subpar. (B) is composed of only one sentence. Prior to being stricken, such last sentence read as follows: ''For purposes of the preceding sentence, the compensation of any employee for a plan year shall be the amount of his compensation which is taken into account under the plan in calculating the contribution which may be made on his behalf for such plan year.''

Subsec. (k)(3)(A). Pub. L. 99–514, §1116(b)(4), as amended by Pub. L. 100–647, §1011(k)(3)(B), substituted ''any highly compensated employee'' for ''an employee'' in concluding provisions.

Pub. L. 99–514, §1852(g)(2), substituted ''If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement'' for ''The deferral percentage taken into account under this subparagraph for any employee who is a participant under 2 or more cash or deferred arrangements of the employer shall be the sum of the deferral percentages for such employee under each of such arrangements''.

Subsec. (k)(3)(A)(i). Pub. L. 99–514, §1112(d)(1), struck out ''subparagraph (A) or (B) of'' before ''section 410(b)(1)''.

Subsec. (k)(3)(A)(ii). Pub. L. 99–514, §1116(c)(2), substituted ''paragraph (5)'' for ''paragraph (4)''.

Pub. L. 99–514, §1116(a), substituted ''1.25'' for ''1.5'' in subcl. (I), and ''2 percentage points'' for ''3 percentage points'' and ''2'' for ''2.5'' in subcl. (II).

Subsec. (k)(3)(C). Pub. L. 99–514, §1852(g)(1), added subpar. (C) relating to treatment of cash or deferred arrangements.

Pub. L. 99–514, §1116(e), added subpar. (C) relating to employer contributions.

Subsec. (k)(4). Pub. L. 99–514, §1116(b)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (k)(5). Pub. L. 99–514, §1116(b)(3), (d)(1), redesignated former par. (4) as (5) and substituted ''the term 'highly compensated employee' has the meaning given such term by section 414(q)'' for ''the term 'highly compensated employee' means any employee who is more highly compensated than two-thirds of all eligible employees, taking into account only compensation which is considered in applying paragraph (3)''. Former par. (5) redesignated (6).

Subsec. (k)(6). Pub. L. 99–514, §1116(b)(3), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 99–514, §1879(g)(2), added par. (6).

Subsec. (k)(7). Pub. L. 99–514, §1116(b)(3), redesignated former par. (6) as (7).

Subsec. (k)(8). Pub. L. 99–514, §1116(c)(1), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, §1116(d)(2), added par. (9).

Subsec. (*l*). Pub. L. 99–514, §1111(a), amended subsec. (*l*) generally, substituting provisions relating to permitted disparity in plan contributions or benefits for provisions relating to nondiscriminatory coordination of defined contribution plans with OASDI.

Subsec. (m). Pub. L. 99–514, §1117(a), added subsec. (m) and redesignated former subsec. (m) as (n).

Pub. L. 99–514, §1898(c)(3), added subsec. (m).

Subsec. (n). Pub. L. 99–514, §1117(a), redesignated former subsec. (m) as (n). Former subsec. (n) redesignated (*o*).

Pub. L. 99–514, §1898(c)(3), redesignated subsec. (*o*) as (n).

Subsec. (*o*). Pub. L. 99–514, §1117(a), redesignated former subsec. (n) as (*o*).

Pub. L. 99–514, §1898(c)(3), redesignated subsec. (*o*) as (n).

1984—Subsec. (a)(9). Pub. L. 98–369, §521(a)(1), amended par. (9) generally, redesignating existing provisions as subpar. (A) and in subpar. (A) as so redesignated struck out ''In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1)'' before ''a trust forming part of such plan'', substituted ''the plan provides that the entire interest of each employee—'' for '', under the plan, the entire interest of each employee—'', redesignated subpars. (A) and (B) as cls. (i) and (ii) respectively, in cl. (i) as so redesignated substituted provisions stating that a qualified plan provides that the entire interest will be distributed to the employee not later than the beginning date for former provisions which provided alternative dates for providing interest, in cl. (ii) as so redesignated substituted alternate distribution dates to be set in accordance with regulations for former provisions stating that a qualified plan shall be distributed not later than the taxable year in which the taxpayer attains age 70½, and struck out the par. following cl. (ii) which provided ''A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.'', and added subpars. (B) to (F).

Pub. L. 98–369, §521(a)(2), repealed amendment made by Pub. L. 97–248, §242(a). See 1982 Amendment note below.

Subsec. (a)(10)(B)(iii). Pub. L. 98–369, §524(d)(1), added cl. (iii).

Subsec. (a)(11). Pub. L. 98–397, §203(a), amended par. (11) generally, inserting provisions relating to preretirement survivor annuities, and substituting present four subpars. for former eight subpars.

Subsec. (a)(13). Pub. L. 98–397, §204(a), designated existing provisions as subpar. (A), corrected the margin of subpar. (A), and added subpar. (B).

Subsec. (a)(21). Pub. L. 98–369, §474(r)(13), substituted provisions relating to the amount of the credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B) for former provisions which had related to the amount of credit which would be allowable under section 46(a) if the employer made the transfer described in section 48(n)(1) or under section 44G if the employer made the transfer described in section 44G(c)(1)(B).

Subsec. (a)(22). Pub. L. 98–369, §491(e)(4), substituted ''section 409'' for ''section 409A''.

Subsec. (a)(23). Pub. L. 98–369, §491(e)(5), substituted ''section 409(h)'' for ''section 409A(h)'' in two places.

Subsec. (a)(24). Pub. L. 98–369, §211(b)(5), substituted ''section 818(a)(6)'' for ''section 805(d)(6)''.

Subsec. (a)(25). Pub. L. 98–397, §301(b), added par. (25).

Subsec. (e). Pub. L. 98–369, §713(d)(3), repealed subsec. (e) which related to contributions for premiums on annuity, etc., contracts.

Subsec. (f)(2). Pub. L. 98–369, §713(c)(2)(A), substituted ''(as defined in section 408(n))'' for ''(as defined in subsection (d)(1))''.

Subsec. (h)(6). Pub. L. 98–369, §528(b), added par. (6).

Subsec. (k)(1), (2). Pub. L. 98–369, §527(b)(1), inserted ''(or a pre-ERISA money purchase plan)''.

Subsec. (k)(2)(B). Pub. L. 98–369, §527(b)(3), substituted ''(or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½)'' for '', hardship or the attainment of age 59½,''.

Subsec. (k)(3)(A). Pub. L. 98–369, §527(a), struck out ''qualified'' before ''cash or deferred arrangement'', substituted ''shall not be treated as a qualified cash or deferred arrangement unless'' for ''shall be considered to satisfy the requirements of subsection (a)(4), with respect to the amount of contributions, and of subparagraph (B) of section 410(b)(1) for a plan year if'', designated provisions beginning ''those employees'' and ending ''section 401(b)(1)'' as cl. (i) and text following as

cl. (ii), redesignated former cls. (i) and (ii) as subcls. (I) and (II) and inserted text following subcl. (II).

Subsec. (k)(5). Pub. L. 98–369, § 527(b)(2), added par. (5).

1983—Subsec. (a)(21). Pub. L. 97–448, § 103(g)(2)(A), designated part of existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(2)(A)(vi). Pub. L. 98–21 added cl. (vi).

Subsec. (d)(2). Pub. L. 97–448, § 306(a)(12), substituted ''paragraph (1)(B)'' for ''paragraph (9)(B)''.

Subsec. (d)(5). Pub. L. 97–448, § 103(c)(10)(A), substituted ''Subparagraphs (A) and (B) shall not apply to contributions described in subsection (e), and shall not apply to any deductible employee contribution (as defined in section 72(*o*)(5))'' for ''Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)'' in second sentence.

Subsec. (j)(3). Pub. L. 97–448, § 103(d)(2), substituted ''under subparagraph (A) of paragraph (2) shall be treated as beginning a new period of plan participation with respect only to such change'' for ''under subparagraph (A) of subsection (j)(2) shall be treated as beginning a new period of plan participation'' in last sentence.

1982—Subsec. (a)(9). Pub. L. 97–248, § 242(a), which was repealed by Pub. L. 98–369, § 521(a)(2), had amended par. (9) generally, redesignating existing provisions as subpar. (A), in subpar. (A), as so redesignated, struck out preliminary provision which limited the application of this paragraph to plans providing contributions or benefits for employees some or all of whom were employees within the meaning of subsec. (c)(1), redesignated former subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), in cl. (i), as so redesignated, substituted reference to a key employee who is a participant in a top-heavy plan for former reference to owner-employees (within the meaning of subsec. (c)(3)), redesignated former cls. (i) and (ii) of subpar. (B) as subcls. (I) and (II) of cl. (ii), struck out former provision that a trust would not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust was a part, of a method of distribution which did not meet the terms of this paragraph, and adding subpar. (B).

Subsec. (a)(10). Pub. L. 97–248, § 237(e)(1), amended par. (10) generally, redesignating subpar. (B) as (A) and striking out former subpar. (A) relating to qualified trust as a trust forming part of such plan, for provisions relating to discriminatory plans with respect to nonapplicability of paragraph (3), the first and second sentences of paragraph (5) and section 410 of this title.

Subsec. (a)(10)(B). Pub. L. 97–248, § 240(b), added subpar. (B).

Subsec. (a)(17), (18). Pub. L. 97–248, § 237(b), struck out pars. (17) and (18) which related, respectively, to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), and a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d).

Subsec. (a)(24). Pub. L. 97–248 added par. (24).

Subsec. (c)(1). Pub. L. 97–248, § 238(d)(1), amended par. (1) generally, substituting in heading ''Self-employed individual treated as employee'' for ''Employee'', adding subparagraph headings, and substituting provisions defining ''employee'' and ''self-employed individual'', for provisions defining ''employee''.

Subsec. (c)(2)(A). Pub. L. 97–248, § 238(d)(2), added cl. (v).

Subsec. (d). Pub. L. 97–248, § 237(a), redesignated pars. (9) to (11) as (1) to (3), respectively. Former pars. (1) to (7), which related to trusts created or organized before or after October 10, 1962, contributions under the plan, benefits under the plan for employees, contributions or benefits under the plan, limitations pursuant to the plan, applicability of requirements of subsec. (a)(4) of this section, and distributions under the plan, respectively, were struck out.

Subsec. (j). Pub. L. 97–248, § 238(b), struck out subsec. (j) which related to general requirements, regulation guidelines, applicable percentage, certain contributions and benefits not taken into account, definitions, and special rules with respect to defined benefit plans providing benefits for self-employed individuals and shareholder-employees.

Subsecs. (*l*), (*o*). Pub. L. 97–248, § 249(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (*o*).

1981—Subsec. (a)(17). Pub. L. 97–34, § 312(b)(1), designated provision relating to the annual compensation of each employee as subpar. (A), and in subpar. (A) as so designated, substituted ''$200,000'' for ''$100,000'', and added subpar. (B).

Subsec. (a)(22). Pub. L. 97–34, § 338(a), inserted ''(other than a profit-sharing plan)'' and substituted ''if'' for ''If'' and ''such plan'' for ''said plan''.

Subsec. (a)(23). Pub. L. 97–34, § 335, substituted ''409A(h), except that in applying section 409A(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan'' for ''409A(h)(2)''.

Subsec. (d)(4). Pub. L. 97–34, § 312(e)(2), inserted provision making subpar. (B) inapplicable to any distribution to which section 72(m)(9) applies.

Subsec. (d)(5). Pub. L. 97–34, § 314(a)(1), inserted provision making subpar. (C) inapplicable to a distribution on account of the termination of the plan.

Subsec. (e). Pub. L. 97–34, § 312(c)(2), substituted ''for such taxable year exceeds $15,000'' for ''for all such years exceeds $7,500''.

Subsec. (j). Pub. L. 97–34, § 312(c)(3), (4), substituted in par. (2)(A) ''$100,000'' for ''$50,000'' and in par. (3) inserted provision that for purposes of this paragraph, a change in the annual compensation taken into account under subpar. (A) of subsec. (j)(2) be treated as beginning a new period of plan participation.

1980—Subsec. (a)(2). Pub. L. 96–364, §§ 208(e), 410(b), inserted provisions relating to applicability to multiemployer plans and return of contributions made by a mistake of law or fact, or return of withdrawal liability payment.

Subsec. (a)(4). Pub. L. 96–605, § 225(b)(1), substituted ''section 410(b)(3)(A)'' for ''section 410(b)(2)(A)''.

Subsec. (a)(12). Pub. L. 96–364, § 208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (a)(20). Pub. L. 96–222, § 101(a)(14)(E)(iii), substituted ''makes a qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)'' for ''makes a payment or distribution described in section 402(a)(5)(i) or 403(a)(4)(i)''.

Subsec. (a)(21). Pub. L. 96–222, § 101(a)(7)(L)(i)(V), substituted ''a tax credit employee stock ownership plan'' for ''an ESOP''.

Subsec. (a)(22)(B). Pub. L. 96–222, § 101(a)(9), substituted ''are securities'' for ''as securities''.

Subsec. (a)(23). Pub. L. 96–605, § 221(a), added par. (23).

Subsec. (d)(3)(B). Pub. L. 96–605, § 225(b)(2), substituted in cl. (i) ''section 410(b)(3)(A)'' for ''section 410(b)(2)(A)'' and in cl. (ii) ''section 410(b)(3)(C)'' for ''section 410(b)(2)(C)''.

1978—Subsec. (a)(5). Pub. L. 95–600, § 152(e), inserted provision that for purposes of determining whether one or more plans of the employer satisfy the requirements of section 410(b)(4), an employer may take into account all simplified employee pensions to which only the employer contributes.

Subsec. (a)(21). Pub. L. 95–600, § 141(f)(3), substituted ''ESOP'' for ''employee stock option plan which satisfies the requirements of section 301(d) of the Tax Reduction Act of 1975'' and ''section 48(n)(1)'' for ''subsection (d)(6) or (e)(3) of section 301 of the Tax Reduction Act of 1975''.

Subsec. (a)(22). Pub. L. 95–600, §143(a), added par. (22).

Subsecs. (k), (*l*). Pub. L. 95–600, §135(a), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1976—Subsec. (a). Pub. L. 94–455, §§803(b)(2), 1901(a)(56), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in pars. (5), (11), and (14), substituted references to Sept. 2, 1974, for references to the enactment of the Employee Retirement Income Security Act of 1974 in pars. (12), (13), (15), and (19), added par. (21), and inserted reference to par. (20) in provisions following par. (21), such addition of reference to par. (20) duplicating amendment by Pub. L. 94–267, §1(c)(2).

Pub. L. 94–267, §1(c)(2), substituted ''(19), and (20)'' for ''and (19)''.

Subsec. (a)(20). Pub. L. 94–267, §1(c)(1), added par. (20).

Subsecs. (b), (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1505(b), inserted reference to contracts (other than life, health, or accident, property, casualty, or liability insurance contracts) issued by an insurance company qualified to do a business in a State and struck out ''or his delegate'' after ''Secretary''.

Subsecs. (h), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (a). Pub. L. 93–406, §1021(a)(2), inserted provision that paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of this section.

Subsec. (a)(3). Pub. L. 93–406, §1016(a)(2)(A), substituted provisions referring simply to a plan of which the trust is a part and the satisfaction by that plan of the requirements of section 410 (relating to minimum participation standards) for provisions referring to a trust, trusts, or trust or trusts and annuity plan or plans designated by the employer as constituting parts of a plan intended to qualify under subsec. (a) and spelling out the requisite coverage of the plan.

Subsec. (a)(4). Pub. L. 93–406, §1022(a), struck out provisions referring to persons whose principal duties consist in supervising the work of other employees and inserted provisions directing the exclusion from consideration of employees described in section 410(b)(2) (A) and (C).

Subsec. (a)(5). Pub. L. 93–406, §§1012(b), 1016(a)(2)(B), inserted provisions covering the determination of whether two or more plans of an employer satisfy the requirements of par. (4) when considered as a single plan and substituted ''shall not be considered discriminatory within the meaning of paragraph (4) of section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''shall not be considered discriminatory within the meaning of paragraph (3)(B) or (4)''.

Subsec. (a)(7). Pub. L. 93–406, §1016(a)(2)(C), substituted provisions referring simply to the satisfaction by the plan of which a trust is a part of the requirements of section 411 (relating to minimum vesting standards) for provisions spelling out in detail the conditions which the plan had to satisfy in order that the trust forming part of that plan constitute a qualified trust under this section.

Subsec. (a)(10)(A). Pub. L. 93–406, §§1022(b)(1), 2001(e)(4), inserted reference to section 410 in provisions preceding cl. (i) and substituted ''subsection (e)'' for ''subsection (e)(3)(A)'' in cl. (ii).

Subsec. (a)(11). Pub. L. 93–406, §1021(a)(1), added par. (11).

Subsec. (a)(12). Pub. L. 93–406, §1021(b), added par. (12).

Subsec. (a)(13). Pub. L. 93–406, §1021(c), added par. (13).

Subsec. (a)(14). Pub. L. 93–406, §1021(d), added par. (14).

Subsec. (a)(15). Pub. L. 93–406, §1021(e), added par. (15).

Subsec. (a)(16). Pub. L. 93–406, §2004(a)(1), added par. (16).

Subsec. (a)(17). Pub. L. 93–406, §2001(c), added par. (17).

Subsec. (a)(18). Pub. L. 93–406, §2001(d)(1), added par. (18).

Subsec. (a)(19). Pub. L. 93–406, §1021(f), added par. (19).

Subsec. (b). Pub. L. 93–406, §1023, substituted reference to the requirements of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate for reference to the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect.

Subsec. (d)(1). Pub. L. 93–406, §1022(c), (f), substituted ''October 10, 1962'' for ''the date of the enactment of this subsection'' and ''assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust'' for ''trustee is a bank, but a person (including the employer) other than a bank'' and inserted reference to an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act) in definition of ''bank''.

Subsec. (d)(3). Pub. L. 93–406, §1022(b)(2), inserted reference to the section 410(a)(3) definition of ''years of service'' and substituted reference to employees included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A) and employees who are nonresident aliens described in section 410(b)(2)(C) for reference to employees whose customary employment was for not more than 20 hours in any one week or was for not more than 5 months in any calendar year.

Subsec. (d)(4)(B). Pub. L. 93–406, §2001(h)(1), inserted ''in excess of contributions made by an owner-employee as an employee'' after ''benefits''.

Subsec. (d)(5). Pub. L. 93–406, §2001(e)(1), substituted ''Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)'' for ''Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3)''.

Subsec. (d)(8). Pub. L. 93–406, §2001(e)(2), struck out par. (8) covering excess contributions.

Subsec. (e). Pub. L. 93–406, §2001(e)(3), struck out pars. (1) and (2) which defined and described the effect of excess contributions, redesignated par. (3) as the entire subsec. (e) and in provisions as thus carried forward as the entire subsec. (e) substituted ''$7,500'' for ''$2,500'' and inserted references to section 4972(b).

Subsec. (f). Pub. L. 93–406, §1022(d), expanded provisions to cover annuity contracts.

Subsecs. (j), (k). Pub. L. 93–406, §2001(d)(2), added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (i). Pub. L. 91–691 struck out ''multi-employer'' before ''pension plans'' in heading, and substituted ''one or more employers'' for ''two or more employers who are not related (determined under regulations prescribed by the Secretary or his delegate)'' in par. (1).

1966—Subsec. (a)(10)(A)(ii). Pub. L. 89–809, §204(b)(1)(A), struck out ''(determined without regard to section 404(a)(10))'' after ''deducted under section 404''.

Subsec. (c)(2)(A). Pub. L. 89–809, §204(c), struck out ''to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B))'' after ''The term 'earned income' means the net earnings from self-employment (as defined in section 1402(a))'', added cl. (i) and redesignated former cls. (i) to (ii) as (ii) to (iv)

respectively, and struck out references to section 911(b) and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, in text following cl. (iv).

Subsec. (c)(2)(B). Pub. L. 89–809, § 204(c), struck out subpar. (B) relating to earned income when both personal services and capital are material income-producing factors. See subsec. (c)(2)(A)(i).

Subsec. (c)(2)(C). Pub. L. 89–809, § 205(a), added subpar. (C).

Subsecs. (d)(5)(A), (B), (d)(6)(A), (e)(1)(A), (B)(i), (3). Pub. L. 89–809, § 204(b)(1)(B) to (E), struck out ''(determined without regard to section 404(a)(10))'' wherever appearing.

1965—Subsec. (d)(4)(B). Pub. L. 89–97 substituted ''section 72(m)(7)'' for ''section 213(g)(3)''.

1964—Subsecs. (i), (j). Pub. L. 88–272 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (a)(5). Pub. L. 87–792, § 2(1), inserted provisions defining total compensation for purposes of par. (5) and par. (10) of this subsection.

Subsec. (a)(7) to (10). Pub. L. 87–792, § 2(2), added pars. (7) to (10).

Subsecs. (c) to (g). Pub. L. 87–792, § 2(3), added subsecs. (c) to (g). Former subsec. (c) redesignated (h).

Subsec. (h). Pub. L. 87–863 added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 87–792, § 2(3), redesignated former subsec. (c) as (h).

Subsec. (i). Pub. L. 87–863 redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

Pub. L. 113–97, § 3, Apr. 7, 2014, 128 Stat. 1101, provided that: ''Unless otherwise specified in this Act [see Tables for classification], the provisions of this Act shall apply to years beginning after December 31, 2013.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, § 202(c)(1), June 25, 2010, 124 Stat. 1299, provided that: ''The amendment made by subsection (a) [amending sections 1021, 1023, 1053, 1054, 1056, 1057, 1103, 1108, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29, Labor, and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1021 of Title 29] shall take effect as if included in the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by sections 101(d)(2)(A)–(C) and 109(a)–(b)(2) of 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.

Pub. L. 110–458, title II, § 201(c), Dec. 23, 2008, 122 Stat. 5117, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 402 of this title] shall apply for calendar years beginning after December 31, 2008.

''(2) PROVISIONS RELATING TO PLAN OR CONTRACT AMENDMENTS.—

''(A) IN GENERAL.—If this paragraph applies to any pension plan or contract amendment, such pension plan or contract shall not fail to be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii) solely because the plan operates in accordance with this section.

''(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

''(i) IN GENERAL.—This paragraph shall apply to any amendment to any pension plan or annuity contract which—

''(I) is made pursuant to the amendments made by this section, and

''(II) is made on or before the last day of the first plan year beginning on or after January 1, 2011.

In the case of a governmental plan, subclause (II) shall be applied by substituting '2012' for '2011'.

''(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless during the period beginning on the effective date of the amendment and ending on December 31, 2009, the plan or contract is operated as if such plan or contract amendment were in effect.''

Pub. L. 110–245, title I, § 104(d), June 17, 2008, 122 Stat. 1627, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403, 404, 414, and 457 of this title] shall apply with respect to deaths and disabilities occurring on or after January 1, 2007.

''(2) PROVISIONS RELATING TO PLAN AMENDMENTS.—

''(A) IN GENERAL.—If this subparagraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(iii).

''(B) AMENDMENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—

''(i) IN GENERAL.—Subparagraph (A) shall apply to any amendment to any plan or annuity contract which is made—

''(I) pursuant to the amendments made by subsection (a) [amending this section] or pursuant to any regulation issued by the Secretary of the Treasury under subsection (a), and

''(II) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this clause shall be applied by substituting '2012' for '2010' in subclause (II).

''(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless—

''(I) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in clause (iii), and

''(II) such plan or contract amendment applies retroactively for such period.

''(iii) PERIOD DESCRIBED.—The period described in this clause is the period—

''(I) beginning on the effective date specified by the plan, and

''(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted).''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, § 114(g), as added by Pub. L. 110–458, title I, § 101(d)(3), Dec. 23, 2008, 122 Stat. 5099, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 411, 414, 420, 4971, 4972, and 6059 of this title] shall apply to plan years beginning after 2007.

''(2) EXCISE TAX.—The amendments made by subsection (e) [amending sections 4971 and 4972 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years described in paragraph (1) which end with or within any such taxable year.''

Amendment by section 827(b)(1) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Pub. L. 109–280, title VIII, § 861(c), Aug. 17, 2006, 120 Stat. 1021, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under this section] shall apply to any

year beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title IX, §901(c), Aug. 17, 2006, 120 Stat. 1032, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after December 31, 2006.

''(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for 'December 31, 2006' the earlier of—

''(A) the later of—

''(i) December 31, 2007, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

''(B) December 31, 2008.

''(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

''(A) IN GENERAL.—In the case of employer securities to which this paragraph applies, the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after the earlier of—

''(i) December 31, 2007, or

''(ii) the first date on which the fair market value of such securities exceeds the guaranteed minimum value described in subparagraph (B)(ii).

''(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which are attributable to employer contributions other than elective deferrals, and which, on September 17, 2003—

''(i) consist of preferred stock, and

''(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

''(C) COORDINATION WITH TRANSITION RULE.—In applying section 401(a)(35)(H) of the Internal Revenue Code of 1986 and section 204(j)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(j)(7)] (as added by this section) to employer securities to which this paragraph applies, the applicable percentage shall be determined without regard to this paragraph.''

Pub. L. 109–280, title IX, §902(g), Aug. 17, 2006, 120 Stat. 1039, provided that: ''The amendments made by this section [amending this section, sections 411, 414, 416, and 4979 of this title, and sections 1053, 1132, and 1144 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007, except that the amendments made by subsection (f) [amending sections 1132 and 1144 of Title 29] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title IX, §905(c), Aug. 17, 2006, 120 Stat. 1051, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, §407(c), Oct. 4, 2004, 118 Stat. 1190, provided that: ''The amendments made by this section [amending this section and section 1377 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c), (f)(3), (g)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(3) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §643(d), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and sections 402 and 408 of this title] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, §646(b), June 7, 2001, 115 Stat. 126, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2001.''

Pub. L. 107–16, title VI, §657(d), June 7, 2001, 115 Stat. 137, provided that: ''The amendments made by this section [amending this section, section 402 of this title, and section 1104 of Title 29, Labor] shall apply to distributions made after final regulations implementing subsection (c)(2)(A) [set out as a note below] are prescribed [Final regulations implementing subsec. (c)(2)(A) became effective Mar. 28, 2005. See 69 F.R. 58017.].''

Pub. L. 107–16, title VI, §666(b), June 7, 2001, 115 Stat. 144, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1502(c), Aug. 5, 1997, 111 Stat. 1061, provided that: ''The amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act [Aug. 5, 1997].''

Pub. L. 105–34, title XV, §1505(d), Aug. 5, 1997, 111 Stat. 1064, as amended by Pub. L. 105–206, title VI, §6015(b), July 22, 1998, 112 Stat. 820; Pub. L. 109–280, title VIII, §861(a)(2), Aug. 17, 2006, 120 Stat. 1021, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403 and 410 of this title] apply to taxable years beginning on or after the date of enactment of this Act [Aug. 5, 1997].

''(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403(b)(1)(D) and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.''

Pub. L. 105–34, title XV, §1525(b), Aug. 5, 1997, 111 Stat. 1072, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

Pub. L. 105–34, title XV, §1530(d), Aug. 5, 1997, 111 Stat. 1080, provided that: ''The amendments made by this section [amending this section and sections 404, 415, 664, 674, 2055, 2056, 4947, 4975, 4978, and 4979A of this title] shall apply to transfers made by trusts to, or for the use of, an employee stock ownership plan after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1601(d)(2)(A), (B), (3) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, and amendment by section 1601(d)(2)(D) of Pub. L. 105–34 applicable to calendar years beginning after Aug. 5, 1997, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(5), (6) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Pub. L. 104–188, title I, § 1404(b), Aug. 20, 1996, 110 Stat. 1792, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, § 1422(c), Aug. 20, 1996, 110 Stat. 1801, provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1996.''

Pub. L. 104–188, title I, § 1426(b), Aug. 20, 1996, 110 Stat. 1802, provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies [Pub. L. 99–514, set out below].''

Amendment by section 1431(b)(2) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, and amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, amendment by section 1431(c)(1)(B) to be treated as having been in effect for years beginning in 1996, see section 1431(d) of Pub. L. 104–188, set out as a note under section 414 of this title.

Pub. L. 104–188, title I, § 1432(c), Aug. 20, 1996, 110 Stat. 1804, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, § 1433(f), Aug. 20, 1996, 110 Stat. 1807, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1998.

''(2) EXCEPTIONS.—The amendments made by subsections (c), (d), and (e) [amending this section] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, § 1441(b), Aug. 20, 1996, 110 Stat. 1808, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, § 1443(c), Aug. 20, 1996, 110 Stat. 1809, provided that:

''(1) DISTRIBUTIONS.—The amendments made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].

''(2) PUBLIC UTILITY DISTRICTS.—The amendments made by subsection (b) [amending this section] shall apply to plan years beginning after December 31, 1996.''

Pub. L. 104–188, title I, § 1445(b), Aug. 20, 1996, 110 Stat. 1811, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, § 1459(c), Aug. 20, 1996, 110 Stat. 1820, provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, § 732(e), Dec. 8, 1994, 108 Stat. 5005, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 408, and 415 of this title] shall apply to years beginning after December 31, 1994.

''(2) ROUNDING NOT TO RESULT IN DECREASES.—The amendments made by this section providing for the rounding of indexed amounts shall not apply to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994.''

Pub. L. 103–465, title VII, § 751(b), Dec. 8, 1994, 108 Stat. 5022, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 404, 412, and 4971 of this title] shall apply to plan years beginning after December 31, 1994.

''(2) REFERENCE.—The amendment made by subsection (a)(11) [amending section 404 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 1994].''

Pub. L. 103–465, title VII, § 766(d), Dec. 8, 1994, 108 Stat. 5037, provided that: ''The amendments made by this section [amending this section and sections 1054 and 1322 of Title 29, Labor] shall apply to plan amendments adopted on or after the date of enactment of this Act [Dec. 8, 1994].''

Amendment by section 776(d) of Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of Title 29, Labor.

Pub. L. 103–465, title VII, § 781, Dec. 8, 1994, 108 Stat. 5050, provided that: ''Except as otherwise provided in this subtitle [subtitle F (§§ 750–781) of title VII of Pub. L. 103–465, enacting sections 1310, 1311, and 1350 of Title 29, Labor, amending this section, sections 404, 411, 412, 415, 417, 4971, and 4972 of this title, and sections 1053 to 1056, 1082, 1132, 1301, 1303, 1305, 1306, 1322, 1341, 1342, and 1343 of Title 29, and enacting provisions set out as notes under this section, sections 1, 411, 412, and 4972 of this title, and sections 1056, 1082, 1303, 1306, 1310, 1311, 1322, 1341, and 1342 of Title 29], the amendments made by this subtitle shall be effective on the date of enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13212(d), Aug. 10, 1993, 107 Stat. 472, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 404, 408, and 505 of this title] shall apply to benefits accruing in plan years beginning after December 31, 1993.

''(2) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act [Aug. 10, 1993], the amendments made by this section shall not apply to contributions or benefits pursuant to such agreements for plan years beginning before the earlier of—

''(A) the latest of—

''(i) January 1, 1994,

''(ii) the date on which the last of such collective bargaining agreements terminates (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment), or

''(iii) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act [45 U.S.C. 151 et seq.], the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on such date of enactment, or

''(B) January 1, 1997.

''(3) TRANSITION RULE FOR STATE AND LOCAL PLANS.—

''(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the dollar limitation under section 401(a)(17) of such Code shall not apply to the extent the amount of compensation which is allowed to be taken into ac-

count under the plan would be reduced below the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993.

''(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the 1st plan year beginning after the earlier of—

''(i) the plan year in which the plan is amended to reflect the amendments made by this section, or

''(ii) December 31, 1995.

''(C) PLAN MUST BE AMENDED TO INCORPORATE LIMITS.—This paragraph shall not apply to any eligible participant of a plan unless the plan is amended so that the plan incorporates by reference the dollar limitation under section 401(a)(17) of the Internal Revenue Code of 1986, effective with respect to noneligible participants for plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides).''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(5)–(8) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Pub. L. 102–318, title V, §522(d), July 3, 1992, 106 Stat. 315, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402 to 404, 3402, 3405, 6047, and 6652 of this title] shall apply to distributions after December 31, 1992.

''(2) TRANSITION RULE FOR CERTAIN ANNUITY CONTRACTS.—If, as of July 1, 1992, a State law prohibits a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 which was purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of any 1 or more of either), the amendments made by this section shall not apply to distributions before the earlier of—

''(A) 90 days after the first day after July 1, 1992, on which such transfer is allowed under State law, or

''(B) January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to transfers in taxable years beginning after Dec. 31, 1990, see section 12011(c)(1) of Pub. L. 101–508, set out as an Effective Date note under section 420 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7311(b), Dec. 19, 1989, 103 Stat. 2354, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to contributions after October 3, 1989.

''(2) TRANSITION.—The amendment made by this section shall not apply to contributions made before January 1, 1990, if—

''(A) the employer requested before October 3, 1989, a private letter ruling or determination letter with respect to the qualification of the plan maintaining the account under section 401(h) of the Internal Revenue Code of 1986,

''(B) the request sets forth a method under which the amount of contributions to the account are to be determined on the basis of cost,

''(C) such method is permissible under section 401(h) of such Code under the provisions of General Counsel Memorandum 39785, and

''(D) the Internal Revenue Service issued before October 4, 1989, a private letter ruling, determination letter, or other letter providing that the specific plan involved qualifies under section 401(a) of such Code when such method is used, that contributions to the account are deductible, or acknowledging that the account would not adversely affect the qualified status of the plan (contingent on all phases of the particular plan being approved).''

Amendment by sections 7811(g)(1), (h)(3) and 7816(*l*) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–239, title VII, §7882, Dec. 19, 1989, 103 Stat. 2445, provided that: ''Except as otherwise provided in this subpart [subpart C (§§7881, 7882) of part V of title VII of Pub. L. 101–239, amending this section and sections 411 and 412 of this title, and sections 1002, 1021, 1023, 1054, 1082, 1083, 1085b, 1103, 1107, 1108, 1113, 1132, 1306, 1322, 1341, 1342, 1344, 1362, 1364, 1368, 1370, and 1371 of Title 29, Labor, enacting provisions set out as a note under section 1054 of Title 29, and amending provisions set out as notes under sections 404 and 412 of this title and sections 1021, 1301, 1322, and 1344 of Title 29], any amendment made by this subpart shall take effect as if included in the provision of the Pension Protection Act [Pub. L. 100–203, title IX, subtitle D, part II, §§9302–9346] to which such amendment relates.''

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

Pub. L. 100–647, title I, §1011(c)(7)(E), Nov. 10, 1988, 102 Stat. 3458, provided that:

''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and sections 403, 408, and 501 of this title] shall apply to plan years beginning after December 31, 1987.

''(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act [section 1105(c)(2) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 402 of this title], the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

''(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(II) January 1, 1989.''

Pub. L. 100–647, title I, §1011(k)(1)(C), Nov. 10, 1988, 102 Stat. 3469, provided that:

''(i) Subparagraph (A)(i) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after October 16, 1987.

''(ii) Subparagraph (B) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after March 31, 1988.''

Pub. L. 100–647, title I, §1011(*l*)(5)(B), Nov. 10, 1988, 102 Stat. 3470, provided that: ''The amendment made by this paragraph [amending this section] shall take effect as if included in the amendments made by section 1120 of the Reform Act [Pub. L. 99–514].''

Amendment by sections 1011(d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), (2)–(7), (9), (*l*)(1)–(4), (6), (7), 1011A(j), (*l*), and 1011B(j)(1), (2), (6), (k)(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.

Pub. L. 100–647, title VI, §6053(b), Nov. 10, 1988, 102 Stat. 3696, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 1121 of the Reform Act [Pub. L. 99–514].''

Pub. L. 100–647, title VI, §6055(b), Nov. 10, 1988, 102 Stat. 3697, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1112(b) of the Reform Act [Pub. L. 99–514].''

Pub. L. 100–647, title VI, §6071(d), Nov. 10, 1988, 102 Stat. 3705, provided that: ''The amendments made by

this section [amending this section and section 457 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, § 9341(c), Dec. 22, 1987, 101 Stat. 1330–371, as amended by Pub. L. 101–239, title VII, § 7881(i)(5), Dec. 19, 1989, 103 Stat. 2442, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting section 1085b of Title 29, Labor, and amending this section] shall apply to plan amendments adopted after the date of the enactment of this Act [Dec. 22, 1987].

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan amendments adopted pursuant to collective bargaining agreements ratified before the date of enactment (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(1) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Pub. L. 99–514, title XI, § 1111(c), Oct. 22, 1986, 100 Stat. 2440, as amended by Pub. L. 100–647, title I, § 1011(g)(4), Nov. 10, 1988, 102 Stat. 3464, provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply to benefits attributable to plan years beginning after December 31, 1988.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1988.

''(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.''

Pub. L. 99–514, title XI, § 1112(e), Oct. 22, 1986, 100 Stat. 2445, as amended by Pub. L. 100–647, title I, § 1011(h)(6)–(9), Nov. 10, 1988, 102 Stat. 3465, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title] shall apply to plan years beginning after December 31, 1988.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.

''(3) WAIVER OF EXCISE TAX ON REVERSIONS.—

''(A) IN GENERAL.—If—

''(i) a plan is in existence on August 16, 1986,

''(ii) such plan would fail to meet the requirements of section 401(a)(26) of the Internal Revenue Code of 1986 (as added by subsection (b)) if such section were in effect for the plan year including August 16, 1986, and

''(iii) there is no transfer of assets to or liabilities from the plan or spinoff or merger involving such plan after August 16, 1986,

then no tax shall be imposed under section 4980 of such Code on any employer reversion by reason of the termination or merger of such plan before the 1st year to which the amendment made by subsection (b) applies.

''(B) INTEREST RATE FOR DETERMINING ACCRUED BENEFIT OF HIGHLY COMPENSATED EMPLOYEES FOR CERTAIN PURPOSES.—In the case of a termination, transfer, or distribution of assets of a plan described in subparagraph (A)(ii) before the 1st year to which the amendment made by subsection (b) applies—

''(i) AMOUNT ELIGIBLE FOR ROLLOVER, INCOME AVERAGING, OR TAX-FREE TRANSFER.—For purposes of determining any eligible amount, the present value of the accrued benefit of any highly compensated employee shall be determined by using an interest rate not less than the highest of—

''(I) the applicable rate under the plan's method in effect under the plan on August 16, 1986,

''(II) the highest rate (as of the date of the termination, transfer, or distribution) determined under any of the methods applicable under the plan at any time after August 15, 1986, and before the termination, transfer, or distribution in calculating the present value of the accrued benefit of an employee who is not a highly compensated employee under the plan (or any other plan used in determining whether the plan meets the requirements of section 401 of the Internal Revenue Code of 1986), or

''(III) 5 percent.

''(ii) ELIGIBLE AMOUNT.—For purposes of clause (i), the term 'eligible amount' means any amount with respect to a highly compensated employee which—

''(I) may be rolled over under section 402(a)(5) of such Code,

''(II) is eligible for income averaging under section 402(e)(1) of such Code, or capital gains treatment under section 402(a)(2) or 403(a)(2) of such Code (as in effect before this Act), or

''(III) may be transferred to another plan without inclusion in gross income.

''(iii) AMOUNTS SUBJECT TO EARLY WITHDRAWAL OR EXCESS DISTRIBUTION TAX.—For purposes of sections 72(t) and 4980A of such Code, there shall not be taken into account the excess (if any) of—

''(I) the amount distributed to a highly compensated employee by reason of such termination or distribution, over

''(II) the amount determined by using the interest rate applicable under clause (i).

''(iv) DISTRIBUTIONS OF ANNUITY CONTRACTS.—If an annuity contract purchased after August 16, 1986, is distributed to a highly compensated employee in connection with such termination or distribution, there shall be included in gross income for the taxable year of such distribution an amount equal to the excess of—

''(I) the purchase price of such contract, over

''(II) the present value of the benefits payable under such contract determined by using the interest rate applicable under clause (i).

Such excess shall not be taken into account for purposes of sections 72(t) and 4980A of such Code.

''(v) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subparagraph, the term 'highly compensated employee' has the meaning given such term by section 414(q) of such Code.

''(4) SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a

plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate.''

Amendment by section 1114(b)(7) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XI, §1116(f), Oct. 22, 1986, 100 Stat. 2457, as amended by Pub. L. 100–647, title I, §1011(k)(8), (10), Nov. 10, 1988, 102 Stat. 3470, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

''(2) NONDISCRIMINATION RULES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a), (b)(4), and (d) [amending this section], and the provisions of section 401(k)(4)(B) of the Internal Revenue Code of 1986 (as added by this section), shall apply to years beginning after December 31, 1986.

''(B) TRANSITION RULES FOR CERTAIN GOVERNMENTAL AND TAX-EXEMPT PLANS.—Subparagraph (B) of section 401(k)(4) of the Internal Revenue Code of 1986 (relating to governments and tax-exempt organizations not eligible for cash or deferred arrangements), as added by this section, shall not apply to any cash or deferred arrangement adopted by—

''(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, before May 6, 1986, or

''(ii) a tax-exempt organization before July 2, 1986.

In the case of an arrangement described in clause (i), the amendments made by subsections (a), (b)(4), and (d) shall apply to years beginning after December 31, 1988. If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, then any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date.

''(3) AGGREGATION AND EXCESS CONTRIBUTIONS.—The amendments made by subsections (c) and (e) [amending this section] shall apply to years beginning after December 31, 1986.

''(4) COLLECTIVE BARGAINING AGREEMENTS.—

''(A) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to years beginning before the earlier of—

''(i) the later of—

''(I) January 1, 1989, or

''(II) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(ii) January 1, 1991.

''(B) SPECIAL RULE FOR NONDISCRIMINATION RULES.—In the case of a plan described in subparagraph (A), the amendments and provisions described in paragraph (2) shall not apply to years beginning before the earlier of—

''(i) the date determined under subparagraph (A)(i)(II), or

''(ii) January 1, 1989.

''(5) SPECIAL RULE FOR QUALIFIED OFFSET ARRANGEMENTS.—

''(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of section 401(k)(4) of the Internal Revenue Code of 1986 (as added by this section) to the extent such arrangement is part of a qualified offset arrangement consisting of such cash or deferred arrangement and a defined benefit plan.

''(B) QUALIFIED OFFSET ARRANGEMENT.—For purposes of subparagraph (A), a cash or deferred arrangement is part of a qualified offset arrangement with a defined benefit plan to the extent such offset arrangement satisfies each of the following conditions with respect to the employer maintaining the arrangement on April 16, 1986, and at all times thereafter:

''(i) The benefit under the defined benefit plan is directly and uniformly conditioned on the initial elective deferrals (up to 4 percent of compensation).

''(ii) The benefit provided under the defined benefit plan (before the offset) is at least 60 percent of an employee's cumulative elective deferrals (up to 4 percent of compensation).

''(iii) The benefit under the defined benefit plan is reduced by the benefit attributable to the employee's elective deferrals under the plan (up to 4 percent of compensation) and the income allocable thereto. The interest rate used to calculate the reduction shall not exceed the greater of the rate under section 411(a)(11)(B)(ii) of such Code or the interest rate applicable under section 411(c)(2)(C)(iii) of such Code, taking into account section 411(c)(2)(D) of such Code.

For purposes of applying section 401(k)(3) of such Code to the cash or deferred arrangement, the benefits under the defined benefit plan conditioned on initial elective deferrals may be treated as matching contributions under such rules as the Secretary of the Treasury or his delegate may prescribe. The Secretary shall provide rules for the application of this paragraph in the case of successor plans.

''(C) DEFINITION OF EMPLOYER.—For purposes of this paragraph, the term 'employer' includes any research and development center which is federally funded and engaged in cancer research, but only with respect to employees of contractor-operators whose salaries are reimbursed as direct costs against the operator's contract to perform work at such center.

''(6) WITHDRAWALS ON SALE OF ASSETS.—Subclauses (II), (III), and (IV) of section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 (as added by subsection (b)(1)) shall apply to distributions after December 31, 1984.

''(7) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(k)(8) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below], shall be treated as made in accordance with the provisions of such plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(k)(8) of such Code.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.''

Pub. L. 99–514, title XI, §1117(d), Oct. 22, 1986, 100 Stat. 2462, as amended by Pub. L. 100–647, title I, §1011(*l*)(12), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 4979 of this title and amending this section and section 414 of this title] shall apply to plan years beginning after December 31, 1986.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) January 1, 1989, or

''(B) the date on which the last of such collective bargaining agreements terminates (determined with-

out regard to any extension thereof after February 28, 1986).

''(3) ANNUITY CONTRACTS.—In the case of an annuity contract under section 403(b) of the Internal Revenue Code of 1986—

''(A) the amendments made by this section shall apply to plan years beginning after December 31, 1988, and

''(B) in the case of a collective bargaining agreement described in paragraph (2), the amendments made by this section shall not apply to years beginning before the earlier of—

''(i) the later of—

''(I) January 1, 1989, or

''(II) the date determined under paragraph (2)(B), or

''(ii) January 1, 1991.

''(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below] shall be treated as made in accordance with the provisions of the plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.''

Pub. L. 99–514, title XI, § 1119(b), Oct. 22, 1986, 100 Stat. 2463, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1985.''

Pub. L. 99–514, title XI, § 1121(d), Oct. 22, 1986, 100 Stat. 2465, as amended by Pub. L. 100–647, title I, § 1011A(a)(3), (4), Nov. 10, 1988, 102 Stat. 3472, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 402, 408, and 4974 of this title] shall apply to years beginning after December 31, 1988.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending sections 402 and 408 of this title] shall apply to years beginning after December 31, 1986.

''(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to distributions to individuals covered by such agreements in years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(ii) January 1, 1989, or

''(B) January 1, 1991.

''(4) TRANSITION RULES.—

''(A) The amendments made by subsections (a) and (b) [amending this section and section 4974 of this title] shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as a note below].

''(B)(i) Except as provided in clause (ii), the amendment made by subsection (b) [amending this section] shall not apply in the case of any individual who has attained age 70½ before January 1, 1988.

''(ii) Clause (i) shall not apply to any individual who is a 5-percent owner (as defined in section 416(i) of the Internal Revenue Code of 1986), at any time during—

''(I) the plan year ending with or within the calendar year in which such owner attains age 66½, and

''(II) any subsequent plan year.

''(5) PLANS MAY INCORPORATE SECTION 401(a)(9) REQUIREMENTS BY REFERENCE.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986.''

Pub. L. 99–514, title XI, § 1136(c), Oct. 22, 1986, 100 Stat. 2486, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1985.''

Pub. L. 99–514, title XI, § 1143(b), Oct. 22, 1986, 100 Stat. 2490, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Pub. L. 99–514, title XI, § 1145(d), Oct. 22, 1986, 100 Stat. 2491, provided that: ''The amendments made by this section [amending this section, section 1055 of Title 29, Labor, and provisions set out as a note under section 1001 of Title 29] shall apply as if included in the amendments made by the Retirement Equity Act of 1984 [Pub. L. 98–397].''

Amendment by section 1171(b)(5) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Pub. L. 99–514, title XI, § 1174(c)(2)(B), Oct. 22, 1986, 100 Stat. 2518, provided that: ''The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986.''

Pub. L. 99–514, title XI, § 1175(a)(2), Oct. 22, 1986, 100 Stat. 2519, provided that: ''The amendment made by this subsection [amending this section] shall apply to stock acquired after December 31, 1986.''

Pub. L. 99–514, title XI, § 1176(c), Oct. 22, 1986, 100 Stat. 2520, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective December 31, 1986. The amendment made by subsection (b) [amending section 409 of this title] shall apply to acquisitions of securities after December 31, 1986.''

Pub. L. 99–514, title XVIII, § 1852(h)(1), Oct. 22, 1986, 100 Stat. 2869, as amended by Pub. L. 100–647, title I, § 1018(t)(3)(C), Nov. 10, 1988, 102 Stat. 3588, provided that the amendment made by that section is effective for years beginning after Dec. 31, 1985.

Pub. L. 99–514, title XVIII, § 1879(g)(3), Oct. 22, 1986, 100 Stat. 2907, provided that: ''The amendments made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984.''

Amendment by sections 1848(b) and 1852(a)(4)(A), (6), (b)(8), (g), (h)(1) of 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.

Pub. L. 99–514, title XVIII, § 1898(j), Oct. 22, 1986, 100 Stat. 2957, provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 402, 411, 414, 415, 417, and 2503 of this title, and sections 1053 to 1056 of Title 29, Labor, and provisions set out as notes under section 1001 of Title 29] shall take effect as if included in the provision of the Retirement Equity Act of 1984 [Pub. L. 98–397] to which such amendment relates.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 203(a) of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, amendment by section 204(a) of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 301(b) of Pub. L. 98–397

applicable to plan amendments made after July 30, 1984, but not applicable to the termination of a certain defined benefit plan, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Nothing in amendment by section 203(a) of Pub. L. 98–397 to prevent any distribution required by reason of a failure to comply with the terms of a loan made on or before Aug. 18, 1985, and secured by a portion of the participant's accrued benefit, see section 1898(b)(4)(C)(ii) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 417 of this title.

Amendment by section 211(b)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(13) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title IV, § 491(f)(3), July 18, 1984, 98 Stat. 853, provided that: ''The amendments made by subsection (e) [redesignating section 409A as section 409 of this title and amending this section and sections 41, 415, 4975, and 6699 of this title] shall take effect on January 1, 1984.''

Pub. L. 98–369, div. A, title V, § 521(e), July 18, 1984, 98 Stat. 868, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 72, 403, and 408 of this title and repealing provisions set out as a note under this section] shall apply to years beginning after December 31, 1984.

''(2) REPEAL OF SECTION 242 OF TEFRA.—The amendment made by subsection (a)(2) [repealing section 242 of Pub. L. 97–248, which amended this section and enacted provisions formerly set out below] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

''(3) TRANSITION RULE.—A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(1), by reason of distributions under a designation (before January 1, 1984) by any employee in accordance with a designation described in section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (as in efffect [sic] before the amendments made by this Act) [formerly set out as an Effective Date of 1982 Amendment note below].

''(4) SPECIAL RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), paragraph (1) shall be applied by substituting '1986' for '1984'.

''(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified on or before the date of the enactment of this Act [July 18, 1984] between employee representatives and one or more employers, the amendments made by this section shall not apply to years beginning before the earlier of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1988.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

Pub. L. 98–369, div. A, title V, § 524(d)(2), July 18, 1984, 98 Stat. 872, provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983.''

Pub. L. 98–369, div. A, title V, § 527(c), July 18, 1984, 98 Stat. 876, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) SUBSECTION (a).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1984.

''(B) EXCEPTION FOR CERTAIN EXISTING PLANS.—The amendment made by subsection (a) shall not apply to any plan—

''(i) which was maintained by a State on June 8, 1984, and

''(ii) with respect to which a determination letter had been issued by the Secretary on December 6, 1982.

''(2) SUBSECTION (b).—

''(A) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [July 18, 1984].

''(B) TRANSITIONAL RULE.—Rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 [section 135(c)(2) of Pub. L. 95–600, set out below] shall apply with respect to any pre-ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for plan years beginning after December 31, 1979, and on or before the date of the enactment of this Act.''

Pub. L. 98–369, div. A, title V, § 528(c), July 18, 1984, 98 Stat. 877, provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after March 31, 1984.''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, § 242(b), Sept. 3, 1982, 96 Stat. 521, which prescribed the effective date for amendment by section 242(a) of Pub. L. 97–248, was repealed by Pub. L. 98–369, div. A, title V, § 521(a)(2), July 18, 1984, 98 Stat. 867.

Pub. L. 97–248, title II, § 249(b), Sept. 3, 1982, 96 Stat. 528, provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1983.''

Pub. L. 97–248, title II, § 254(b), Sept. 3, 1982, 96 Stat. 533, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1981.''

Amendment by sections 237, 238, and 240 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(b)(1), (c)(2)–(4), (e)(2) of Pub. L. 97–34 applicable to plans which include employees within the meaning of subsec. (c)(1) of this section with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Pub. L. 97–34, title III, § 314(a)(2), Aug. 13, 1981, 95 Stat. 286, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions after December 31, 1980, in taxable years beginning after such date.''

Pub. L. 97–34, title III, § 338(b), Aug. 13, 1981, 95 Stat. 298, provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions of securities after December 31, 1979.''

Pub. L. 97–34, title III, § 339, Aug. 13, 1981, 95 Stat. 299, provided that: ''Except as otherwise provided, the amendments made by this subtitle [subtitle D (§§ 331–339) of title III of Pub. L. 97–34, enacting section 44G of this title and amending this section and sections 46, 48, 55, 56, 381, 383, 404, 409A, 415, 6096, 6411, 6511, and 6699 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title II, § 221(b), Dec. 28, 1980, 94 Stat. 3528, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to plan years beginning after December 31, 1980.''

Pub. L. 96–605, title II, § 225(c), Dec. 28, 1980, 94 Stat. 3529, provided that: ''The amendments made by this section [amending this section and sections 408 and 410 of this title] shall apply with respect to plan years beginning after December 31, 1980.''

Pub. L. 96–364, title IV, § 410(c), Sept. 26, 1980, 94 Stat. 1308, provided that: ''The amendment made by this section [amending this section and section 1103 of Title 29, Labor] shall take effect on January 1, 1975, except that in the case of contributions received by a collectively bargained plan maintained by more than one employer before the date of enactment of this Act, [Sept. 26, 1980], any determination by the plan administrator that any such contribution was made by mistake of fact or law before such date shall be deemed to have been made on such date of enactment.''

Amendment by section 208(a), (e) of 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.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, § 135(c)(1), Nov. 6, 1978, 92 Stat. 2787, provided that: ''The amendments made by this section [amending this section and section 402 of this title] shall apply to plan years beginning after December 31, 1979.''

Amendment by section 141(f)(3) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Pub. L. 95–600, title I, § 143(b), Nov. 6, 1978, 92 Stat. 2796, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to acquisitions of securities after December 31, 1979.''

Amendment by section 152(e) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1974, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Pub. L. 94–455, title XV, § 1505(c), Oct. 4, 1976, 90 Stat. 1739, provided that: ''The amendments made by this section [amending this section and section 801 of this title] apply for taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(56) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–267, § 1(e), Apr. 15, 1976, 90 Stat. 369, provided that: ''The amendments made by this Act [amending this section and sections 402 to 404 and 805 of this title, and enacting provisions set out as a note under section 402 of this title] shall apply with respect to payments made to an employee on or after July 4, 1974.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1012(b) and 1016(a)(2) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1012(b) and 196(a)(2) of Pub. L. 93–406 applicable 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.

Pub. L. 93–406, title II, § 1021(a)(1), (b), Sept. 2, 1974, 88 Stat. 935, 937, provided that the amendment made by that section is effective with respect to plan years beginning after Dec. 31, 1975.

Pub. L. 93–406, title II, § 1022(d), Sept. 2, 1974, 88 Stat. 939, provided that the amendment made by that section is effective as of Jan. 1, 1974.

Pub. L. 93–406, title II, § 1022(f), Sept. 2, 1974, 88 Stat. 940, provided that the amendment made by that section is effective as of Jan. 1, 1974.

Pub. L. 93–406, title II, § 1024, Sept. 2, 1974, 88 Stat. 943, provided that: ''Except as otherwise provided in section 1021, the amendments made by section 1021 [amending this section] shall apply to plan years to which part I applies. [For description of plan years to which part I applies, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.] Except as otherwise provided in section 1022, the amendments made by section 1022 [amending this section and section 6051 of this title] shall apply to plan years to which part I applies. Section 1023 [amending this section] shall take effect on the date of the enactment of this Act [Sept. 2, 1974].''

Pub. L. 93–406, title II, § 2001(i)(2)–(4), Sept. 2, 1974, 88 Stat. 958, provided that:

''(2) The amendments made by subsection (c) [amending this section] apply to

''(A) taxable years beginning after December 31, 1975, and

''(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) [of this title] as in effect on the day before the date of the enactment of this Act [Sept. 2, 1974].

''(3) The amendments made by subsection (d) [amending this section] apply to taxable years beginning after December 31, 1975.

''(4) The amendments made by subsections (e) and (f) [enacting section 4972 of this title and amending this section and section 72 of this title] apply to contributions made in taxable years beginning after December 31, 1975.''

Amendment by section 2001(h)(1) of Pub. L. 93–406 applicable to taxable years ending after Sept. 2, 1974, see section 2001(i)(6) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2004(a)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transitional Provisions note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–691, § 1(b), Jan. 12, 1971, 84 Stat. 2074, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years be-

ginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954.''

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §204(d), Nov. 13, 1966, 80 Stat. 1578, as amended by Pub. L. 90–607, Oct. 21, 1968, 82 Stat. 1189; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply with respect to taxable years beginning after December 31, 1967. The amendment made by subsection (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1967, and in the case of a taxpayer who applies the averaging provisions of section 401(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning after December 31, 1967, the computation of the amount deductible under section 404 of such Code for any prior taxable year which began before January 1, 1968, shall be made, for purposes of such averaging provisions, as if the amendment made by subsection (c) were applicable to such prior taxable year.''

Pub. L. 89–809, title II, §205(b), Nov. 13, 1966, 80 Stat. 1578, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 13, 1966].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §219(b), Feb. 26, 1964, 78 Stat. 58, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954.''

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–863, §2(c), Oct. 23, 1962, 76 Stat. 1142, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 23, 1962].''

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–792, §1, Oct. 10, 1962, 76 Stat. 809, provided: ''That this Act [enacting sections 405 and 6047 of this title and amending this section and sections 37, 62, 72, 101, 104, 105, 172, 402 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401, and 7207 of this title] may be cited as the 'Self-Employed Individuals Tax Retirement Act of 1962'.''

REGULATIONS

Pub. L. 109–280, title VIII, §823, Aug. 17, 2006, 120 Stat. 998, provided that: ''The Secretary of the Treasury shall issue regulations under which a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall, for all years to which section 401(a)(9) of such Code applies to such plan, be treated as having complied with such section 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9).''

Pub. L. 109–280, title VIII, §826, Aug. 17, 2006, 120 Stat. 999, provided that: ''Within 180 days after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of the Treasury shall modify the rules for determining whether a participant has had a hardship for purposes of section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that if an event (including the occurrence of a medical expense) would constitute a hardship under the plan if it occurred with respect to the participant's spouse or dependent (as defined in section 152 of such Code), such event shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary under the plan with respect to the participant. The Secretary of the Treasury shall issue similar rules for purposes of determining whether a participant has had—

''(1) a hardship for purposes of section 403(b)(11)(B) of such Code; or

''(2) an unforeseen financial emergency for purposes of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such Code.''

Pub. L. 107–16, title VI, §657(c)(2), June 7, 2001, 115 Stat. 136, provided that:

''(A) AUTOMATIC ROLLOVER SAFE HARBOR.—Not later than 3 years after the date of enactment of this Act [June 7, 2001], the Secretary of Labor shall prescribe regulations providing for safe harbors under which the designation of an institution and investment of funds in accordance with section 401(a)(31)(B) of the Internal Revenue Code of 1986 is deemed to satisfy the fiduciary requirements of section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)).

''(B) USE OF LOW-COST INDIVIDUAL RETIREMENT PLANS.—The Secretary of the Treasury and the Secretary of Labor may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of transfers under section 401(a)(31)(B) of the Internal Revenue Code of 1986 and for other uses that promote the preservation of assets for retirement income purposes.''

Pub. L. 99–514, title XI, §1141, Oct. 22, 1986, 100 Stat. 2490, provided that: ''The Secretary of the Treasury or his delegate shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by—

''(1) section 1111 [amending this section], relating to application of nondiscrimination rules to integrated plans,

''(2) section 1112 [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title], relating to coverage requirements for qualified plans,

''(3) section 1113 [amending sections 410 and 411 of this title and sections 1052 to 1054 of Title 29, Labor], relating to minimum vesting standards,

''(4) section 1114 [amending this section, sections 106, 117, 120, 127, 129, 132, 274, 404A, 406, 407, 411, 414, 415, 423, 501, 505, and 4975 of this title, and section 1108 of Title 29], relating to the definition of highly compensated employee,

''(5) section 1115 [amending section 414 of this title], relating to separate lines of business and the definition of compensation,

''(6) section 1116 [amending this section], relating to rules for section 401(k) plans,

''(7) section 1117 [enacting section 4979 of this title and amending this section and section 414 of this title], relating to nondiscrimination requirements for employer matching and employer contribution,

''(8) section 1120 [amending section 403 of this title], relating to nondiscrimination requirements for tax sheltered annuities, and

''(9) section 1133 [enacting section 4981A [now 4980A] of this title], relating to tax on excess distributions.''

SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES

Pub. L. 109–280, title I, §104, Aug. 17, 2006, 120 Stat. 816, as amended by Pub. L. 111–192, title II, §202(b), June 25, 2010, 124 Stat. 1298; Pub. L. 113–97, title I, §103(b), Apr. 7, 2014, 128 Stat. 1117, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan or an eligible charity plan for its plan year which includes such date, the amendments made by this subtitle [subtitle A (§§101 to 108) of title

I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§ 111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earlier of—

''(1) the first plan year for which the plan ceases to be an eligible cooperative plan or an eligible charity plan, or

''(2) January 1, 2017.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible cooperative plan or an eligible charity plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

''(1) rural cooperatives (as defined in section 401(k)(7)(B) of such Code without regard to clause (iv) thereof), or

''(2) organizations which are—

''(A) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

''(B) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subparagraph (A).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1060(a)] and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act [29 U.S.C. 1002(40)(B)(v)].

''(d) ELIGIBLE CHARITY PLAN DEFINED.—

''(1) IN GENERAL.—For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if the plan is maintained by more than one employer (determined without regard to section 414(c) of the Internal Revenue Code) and 100 percent of the employers are described in section 501(c)(3) of such Code.

''(2) ELECTION NOT TO BE AN ELIGIBLE CHARITY PLAN.—A plan sponsor may elect for a plan to cease to be treated as an eligible charity plan for plan years beginning after December 31, 2013. Such election shall be made at such time and in such form and manner as shall be prescribed by the Secretary of the Treasury. Any such election may be revoked only with the consent of the Secretary of the Treasury.

''(3) ELECTION TO USE FUNDING OPTIONS AVAILABLE TO OTHER PLAN SPONSORS.—

''(A) A plan sponsor that makes the election described in paragraph (2) may elect for a plan to apply the rules described in subparagraphs (B), (C), and (D) for plan years beginning after December 31, 2013. Such election shall be made at such time and in such form and manner as shall be prescribed by the Secretary of the Treasury. Any such election may be revoked only with the consent of the Secretary of the Treasury.

''(B) Under the rules described in this subparagraph, for the first plan year beginning after December 31, 2013, a plan has—

''(i) an 11-year shortfall amortization base,

''(ii) a 12-year shortfall amortization base, and

''(iii) a 7-year shortfall amortization base.

''(C) Under the rules described in this subparagraph, section 303(c)(2)(A) and (B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(2)(A), (B)], and section 430(c)(2)(A) and (B) of the Internal Revenue Code of 1986 shall be applied by—

''(i) in the case of an 11-year shortfall amortization base, substituting '11-plan-year period' for '7-plan-year period' wherever such phrase appears, and

''(ii) in the case of a 12-year shortfall amortization base, substituting '12-plan-year period' for '7-plan-year period' wherever such phrase appears.

''(D) Under the rules described in this subparagraph, section 303(c)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(7)] and section 430(c)(7) of the Internal Revenue Code of 1986 shall apply to a plan for which an election has been made under subparagraph (A). Such provisions shall apply in the following manner:

''(i) The first plan year beginning after December 31, 2013, shall be treated as an election year, and no other plan years shall be so treated.

''(ii) All references in section 303(c)(7) of such Act [29 U.S.C. 1083(c)(7)] and section 430(c)(7) of such Code to 'February 28, 2010' or 'March 1, 2010' shall be treated as references to 'February 28, 2013' or 'March 1, 2013', respectively.

''(E) For purposes of this paragraph, the 11-year amortization base is an amount, determined for the first plan year beginning after December 31, 2013, equal to the unamortized principal amount of the shortfall amortization base (as defined in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(3)] and section 430(c)(3) of the Internal Revenue Code of 1986) that would have applied to the plan for the first plan beginning after December 31, 2009, if—

''(i) the plan had never been an eligible charity plan,

''(ii) the plan sponsor had made the election described in section 303(c)(2)(D)(i) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(2)(D)(i)] and in section 430(c)(2)(D)(i) of the Internal Revenue Code of 1986 to have section 303(c)(2)(D)(i) of such Act and section 430(c)(2)(D)(iii) of such Code apply with respect to the shortfall amortization base for the first plan year beginning after December 31, 2009, and

''(iii) no event had occurred under paragraph (6) or (7) of section 303(c) of such Act [29 U.S.C. 1083(c)(6), (7)] or paragraph (6) or (7) of section 430(c) of such Code that, as of the first day of the first plan year beginning after December 31, 2013, would have modified the shortfall amortization base or the shortfall amortization installments with respect to the first plan year beginning after December 31, 2009.

''(F) For purposes of this paragraph, the 12-year amortization base is an amount, determined for the first plan year beginning after December 31, 2013, equal to the unamortized principal amount of the shortfall amortization base (as defined in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(3)] and section 430(c)(3) of the Internal Revenue Code of 1986) that would have applied to the plan for the first plan beginning after December 31, 2010, if—

''(i) the plan had never been an eligible charity plan,

''(ii) the plan sponsor had made the election described in section 303(c)(2)(D)(i) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(2)(D)(i)] and in section 430(c)(2)(D)(i) of the

Internal Revenue Code of 1986 to have section 303(c)(2)(D)(i) of such Act and section 430(c)(2)(D)(iii) of such Code apply with respect to the shortfall amortization base for the first plan year beginning after December 31, 2010, and

''(iii) no event had occurred under paragraph (6) or (7) of section 303(c) of such Act [29 U.S.C. 1083(c)(6), (7)] or paragraph (6) or (7) of section 430(c) of such Code that, as of the first day of the first plan year beginning after December 31, 2013, would have modified the shortfall amortization base or the shortfall amortization installments with respect to the first plan year beginning after December 31, 2010.

''(G) For purposes of this paragraph, the 7-year shortfall amortization base is an amount, determined for the first plan year beginning after December 31, 2013, equal to—

''(i) the shortfall amortization base for the first plan year beginning after December 31, 2013, without regard to this paragraph, minus

''(ii) the sum of the 11-year shortfall amortization base and the 12-year shortfall amortization base.

''(4) RETROACTIVE ELECTION.—Not later than December 31, 2014, a plan sponsor may make a one-time, irrevocable, retroactive election to not be treated as an eligible charity plan. Such election shall be effective for plan years beginning after December 31, 2007, and shall be made by providing reasonable notice to the Secretary of the Treasury.''

[Pub. L. 111–192, title II, §202(c)(2), June 25, 2010, 124 Stat. 1299, provided that: ''The amendments made by subsection (b) [amending section 104 of Pub. L. 109–280, set out above] shall apply to plan years beginning after December 31, 2007, except that a plan sponsor may elect to apply such amendments to plan years beginning after December 31, 2008. Any such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.'']

TEMPORARY RELIEF FOR CERTAIN PBGC SETTLEMENT PLANS

Pub. L. 109–280, title I, §105, Aug. 17, 2006, 120 Stat. 817, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was a PBGC settlement plan as of such date, the amendments made by this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before January 1, 2014.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B), to a PBGC settlement plan for plan years beginning after December 31, 2007, and before January 1, 2014, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) PBGC SETTLEMENT PLAN.—For purposes of this section, the term 'PBGC settlement plan' means a defined benefit plan (other than a multiemployer plan) to which section 302 of such Act [29 U.S.C. 1082] and section 412 of such Code apply and—

''(1) which was sponsored by an employer which was in bankruptcy, giving rise to a claim by the Pension Benefit Guaranty Corporation of not greater than $150,000,000, and the sponsorship of which was assumed by another employer that was not a member of the same controlled group as the bankrupt sponsor and the claim of the Pension Benefit Guaranty Corporation was settled or withdrawn in connection with the assumption of the sponsorship, or

''(2) which, by agreement with the Pension Benefit Guaranty Corporation, was spun off from a plan subsequently terminated by such Corporation under section 4042 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1342].''

SPECIAL RULES FOR PLANS OF CERTAIN GOVERNMENT CONTRACTORS

Pub. L. 109–280, title I, §106, Aug. 17, 2006, 120 Stat. 817, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan is an eligible government contractor plan, this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, repealing sections 1057, 1082 to 1086 of Title 29, and enacting provisions set out as notes under this section and sections 1021, 1082, and 1083 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, enacting provisions set out as notes under sections 409A, 412, 430, and 436 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earliest of—

''(1) the first plan year for which the plan ceases to be an eligible government contractor plan,

''(2) the effective date of the Cost Accounting Standards Pension Harmonization Rule, or

''(3) January 1, 2011.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible government contractor plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) ELIGIBLE GOVERNMENT CONTRACTOR PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible government contractor plan if it is maintained by a corporation or a member of the same affiliated group (as defined by section 1504(a) of the Internal Revenue Code of 1986), whose primary source of revenue is derived from business performed under contracts with the United States that are subject to the Federal Acquisition Regulations (chapter 1 of title 48, CFR) and that are also subject to the Defense Federal Acquisition Regulation Supplement (chapter 2 of title 48, CFR), and whose revenue derived from such business in the previous fiscal year exceeded $5,000,000,000, and whose pension plan costs that are assignable under those contracts are subject to sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413).

''(d) COST ACCOUNTING STANDARDS PENSION HARMONIZATION RULE.—The Cost Accounting Standards Board shall review and revise sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413) to

harmonize the minimum required contribution under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] of eligible government contractor plans and government reimbursable pension plan costs not later than January 1, 2010. Any final rule adopted by the Cost Accounting Standards Board shall be deemed the Cost Accounting Standards Pension Harmonization Rule.''

APPLICATION OF EXTENDED AMORTIZATION PERIODS TO PLANS WITH DELAYED EFFECTIVE DATE

Pub. L. 109–280, title I, § 107, as added by Pub. L. 111–192, title II, § 202(a), June 25, 2010, 124 Stat. 1297, provided that:

''(a) IN GENERAL.—If the plan sponsor of a plan to which section 104, 105, or 106 of this Act [see notes above] applies elects to have this section apply for any eligible plan year (in this section referred to as an 'election year'), section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and section 412 of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle [subtitle A (§§ 101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§ 111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title]) shall apply to such year in the manner described in subsection (b) or (c), whichever is specified in the election. All references in this section to 'such Act' or 'such Code' shall be to such Act or such Code as in effect before the amendments made by this subtitle and subtitle B.

''(b) APPLICATION OF 2 AND 7 RULE.—In the case of an election year to which this subsection applies—

''(1) 2-YEAR LOOKBACK FOR DETERMINING DEFICIT REDUCTION CONTRIBUTIONS FOR CERTAIN PLANS.—For purposes of applying section 302(d)(9) of such Act [29 U.S.C. 1082(d)(9)] and section 412(*l*)(9) of such Code, the funded current liability percentage (as defined in subparagraph (C) thereof) for such plan for such plan year shall be such funded current liability percentage of such plan for the second plan year preceding the first election year of such plan.

''(2) CALCULATION OF DEFICIT REDUCTION CONTRIBUTION.—For purposes of applying section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(*l*) of such Code to a plan to which such sections apply (after taking into account paragraph (1))—

''(A) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act [29 U.S.C. 1082(d)(4)(C)] and section 412(*l*)(4)(C) of such Code shall be the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act [see notes above], and

''(B) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

''(c) APPLICATION OF 15-YEAR AMORTIZATION.—In the case of an election year to which this subsection applies, for purposes of applying section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(*l*) of such Code—

''(1) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act [29 U.S.C. 1082(d)(4)(C)] and section 412(*l*)(4)(C) of such Code for any pre-effective date plan year beginning with or after the first election year shall be the ratio of—

''(A) the annual installments payable in each year if the increased unfunded new liability for such plan year were amortized over 15 years, using an interest rate equal to the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, to

''(B) the increased unfunded new liability for such plan year, and

''(2) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

''(d) ELECTION.—

''(1) IN GENERAL.—The plan sponsor of a plan may elect to have this section apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan to which section 106 of this Act applies, the plan sponsor may only elect to have this section apply to 1 eligible plan year.

''(2) AMORTIZATION SCHEDULE.—Such election shall specify whether the rules under subsection (b) or (c) shall apply to an election year, except that if a plan sponsor elects to have this section apply to 2 eligible plan years, the plan sponsor must elect the same rule for both years.

''(3) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term 'eligible plan year' means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year beginning in 2008 shall only be treated as an eligible plan year if the due date for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this clause [June 25, 2010].

''(2) PRE-EFFECTIVE DATE PLAN YEAR.—The term 'pre-effective date plan year' means, with respect to a plan, any plan year prior to the first year in which the amendments made by this subtitle and subtitle B apply to the plan.

''(3) INCREASED UNFUNDED NEW LIABILITY.—The term 'increased unfunded new liability' means, with respect to a year, the excess (if any) of the unfunded new liability over the amount of unfunded new liability determined as if the value of the plan's assets determined under subsection 302(c)(2) of such Act [29 U.S.C. 1082(c)(2)] and section 412(c)(2) of such Code equaled the product of the current liability of the plan for the year multiplied by the funded current liability percentage (as defined in section 302(d)(8)(B) of such Act [29 U.S.C. 1082(d)(8)(B)] and 412(*l*)(8)(B) of such Code) of the plan for the second plan year preceding the first election year of such plan.

''(4) OTHER DEFINITIONS.—The terms 'unfunded new liability' and 'current liability' shall have the meanings set forth in section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(*l*) of such Code.''

GRANDFATHER RULE FOR CHURCH PLANS WHICH SELF-ANNUITIZE

Pub. L. 109–280, title VIII, § 865, Aug. 17, 2006, 120 Stat. 1025, provided that:

''(a) IN GENERAL.—In the case of any plan year ending after the date of the enactment of this Act [Aug. 17, 2006], annuity payments provided with respect to any account maintained for a participant or beneficiary under a qualified church plan shall not fail to satisfy the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 merely because the payments are not made under an annuity contract purchased from an insurance company if such payments would not fail such requirements if provided with respect to a retirement income account described in section 403(b)(9) of such Code.

''(b) QUALIFIED CHURCH PLAN.—For purposes of this section, the term 'qualified church plan' means any money purchase pension plan described in section 401(a) of such Code which—

''(1) is a church plan (as defined in section 414(e) of such Code) with respect to which the election pro-

vided by section 410(d) of such Code has not been made, and

''(2) was in existence on April 17, 2002.''

NEW TECHNOLOGIES IN RETIREMENT PLANS

Pub. L. 105–34, title XV, §1510, Aug. 5, 1997, 111 Stat. 1068, provided that:

''(a) IN GENERAL.—Not later than December 31, 1998, the Secretary of the Treasury and the Secretary of Labor shall each issue guidance which is designed to—

''(1) interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators while maintaining the protection of the rights of participants and beneficiaries, and

''(2) clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

''(b) APPLICABILITY OF FINAL REGULATIONS.—Final regulations applicable to the guidance regarding new technologies described in subsection (a) shall not be effective until the first plan year beginning at least 6 months after the issuance of such final regulations.''

TREATMENT OF QUALIFIED FOOTBALL COACHES PLAN

Pub. L. 104–188, title I, §1704(k), Aug. 20, 1996, 110 Stat. 1882, provided that:

''(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, a qualified football coaches plan—

''(A) shall be treated as a multiemployer collectively bargained plan, and

''(B) notwithstanding section 401(k)(4)(B) of such Code, may include a qualified cash and deferred arrangement under section 401(k) of such Code.

''(2) QUALIFIED FOOTBALL COACHES PLAN.—For purposes of this subsection, the term 'qualified football coaches plan' means any defined contribution plan which is established and maintained by an organization—

''(A) which is described in section 501(c) of such Code,

''(B) the membership of which consists entirely of individuals who primarily coach football as full-time employees of 4-year colleges or universities described in section 170(b)(1)(A)(ii) of such Code, and

''(C) which was in existence on September 18, 1986.

''(3) EFFECTIVE DATE.—This subsection shall apply to years beginning after December 22, 1987.''

APPLICABILITY OF SUBSECTION (a)(26)

Pub. L. 100–647, title VI, §6065, Nov. 10, 1988, 102 Stat. 3702, provided that: ''In the case of plan years beginning before January 1, 1993, section 401(a)(26) of the 1986 Code shall not apply to any governmental plan (within the meaning of section 414(d) of such Code) with respect to employees who were participants in such plan on July 14, 1988.''

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Pub. L. 100–203, title IX, §9343(a), Dec. 22, 1987, 101 Stat. 1330–372, provided that: ''Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq., 1301 et seq.] are not applicable in interpreting such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

Pub. L. 104–188, title I, §1465, Aug. 20, 1996, 110 Stat. 1825, provided that: ''If any amendment made by this subtitle [subtitle D (§§1401–1465) of title I of Pub. L. 104–188, see Tables for classification] requires 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 January 1, 1998, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan or contract is operated in accordance with the requirements of such amendment, and

''(2) such amendment applies retroactively to such period.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this section shall be applied by substituting '2000' for '1998'.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

Pub. L. 102–318, title V, §523, July 3, 1992, 106 Stat. 315, provided that: ''If any amendment made by this subtitle [subtitle B (§§521–523) of title V of Pub. L. 102–318, amending this section and sections 55, 62, 72, 219, 402 to 404, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3402, 3405, 4973, 4980A, 6047, 6652, and 7701 of this title] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

''(2) such plan amendment applies retroactively to such period.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

Pub. L. 99–514, title XI, §1140, Oct. 22, 1986, 100 Stat. 2489, as amended by Pub. L. 101–239, title VII, §7861(c), Dec. 19, 1989, 103 Stat. 2431; Pub. L. 104–188, title I, §1704(t)(27), Aug. 20, 1996, 110 Stat. 1888, provided that:

''(a) IN GENERAL.—If any amendment made by this subtitle, subtitle C [subtitles A (§§1101–1147) and C (§§1171–1177) of title XI of Pub. L. 99–514, enacting sections 2057, 4972, 4979, 4980, 4981A, and 6659A of this title, amending this section, sections 38, 56, 72, 106, 108, 117, 120, 127, 129, 132, 133, 219, 274, 402 to 404A, 406 to 411, 414 to 417, 423, 457, 501, 505, 818, 852, 3121, 3306, 3405, 4973 to 4975, 4979A, 6051, 6693, and 7701 of this title, and sections 1052 to 1055 and 1108 of Title 29, Labor, repealing sections 41 and 6699 of this title, and amending provisions set out as a note under section 1001 of Title 29], or title XVIII of this Act [see Tables for classification] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment or in accordance with an amendment prescribed by the Secretary and adopted by the plan, and

''(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this provision.

''(b) MODEL AMENDMENT.—

''(1) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment or amendments which allow a plan to meet the requirements of any amendment made by this subtitle or subtitle C—

''(A) which requires an amendment to such plan, and

''(B) is effective before the first plan year beginning after December 31, 1988.

''(2) ADOPTION BY PLAN.—If a plan adopts the amendment or amendments prescribed under paragraph (1) and operates in accordance with such amendment or amendments, such plan shall not be treated as failing to provide definitely determinable benefits or contributions or to be operated in accordance with the provisions of the plan.

''(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, subsection (a) shall be applied by substituting for the first plan year beginning on or after January 1, 1989, the first plan year beginning after the later of—

''(1) December 31, 1988, or

''(2) the earlier of—

''(A) December 31, 1990, or

''(B) the date on which the last of such collective bargaining agreements terminate (without regard to any extension after February 28, 1986).

For purposes of paragraph (1)(B) [(2)(B)] and any other provision of this title [see Tables for classification], an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act.''

SECRETARY TO ACCEPT APPLICATIONS WITH RESPECT TO SECTION 401(k) PLANS

Pub. L. 99–514, title XI, § 1142, Oct. 22, 1986, 100 Stat. 2490, provided that: ''The Secretary of the Treasury or his delegate shall, not later than May 1, 1987, begin accepting applications for opinion letters with respect to master and prototype plans for qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Code of 1986.''

TREATMENT OF INDIVIDUALS HAVING BEGINNING DATE AFFECTED BY PUB. L. 99–514

Pub. L. 99–514, title XVIII, § 1852(a)(4)(C), as added by Pub. L. 100–647, title I, § 1018(t)(3)(A), Nov. 10, 1988, 102 Stat. 3588, provided that: ''An individual whose required beginning date would, but for the amendment made by subparagraph (A) [amending this section], occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986.''

DISTRIBUTION REQUIREMENTS FOR ACCOUNTS AND ANNUITIES OF AN INSURER IN A REHABILITATION PROCEEDING

Pub. L. 98–369, div. A, title V, § 553, July 18, 1984, 98 Stat. 897, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of sections 401(a)(9), 408(a)(6) and (7), and 408(b)(3) and (4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) a trust, custodial account, or annuity or other contract forming part of a pension or profit-sharing plan, or a retirement annuity, or

''(2) a grantor of an individual retirement account or an individual retirement annuity,

shall not be treated as failing to meet the requirements of such sections if such account, annuity, or contract was issued by an insurance company which, on March 15, 1984, was a party to a rehabilitation proceeding under the applicable State insurance law.

''(b) LIMITATION.—Subsection (a) shall apply only during the period during which—

''(1) the insurance company continues to be a party to the proceeding described in subsection (a), and

''(2) distributions under the trust, custodial account, or annuity or other contract may not be made by reason of such proceeding.''

QUALIFICATION REQUIREMENTS MODIFIED IF REGULATIONS NOT ISSUED

Pub. L. 98–369, div. A, title V, § 524(e), July 18, 1984, 98 Stat. 872, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If the Secretary of the Treasury or his delegate does not publish final regulations under section 416 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) before January 1, 1985, the Secretary shall publish before such date plan amendment provisions which may be incorporated in a plan to meet the requirements of section 401(a)(10)(B)(ii) of such Code.

''(2) EFFECT OF INCORPORATION.—If a plan is amended to incorporate the plan amendment provisions described in paragraph (1), such plan shall be treated as meeting the requirements of section 401(a)(10)(B)(ii) of the Internal Revenue Code of 1986 during the period such amendment is in effect but not later than 6 months after the final regulations described in paragraph (1) are published.

''(3) FAILURE BY SECRETARY TO PUBLISH.—If the Secretary of the Treasury or his delegate does not publish plan amendment provisions described in paragraph (1), the plan shall be treated as meeting the requirements of section 401(a)(10)(B) of the Internal Revenue Code of 1986 if—

''(A) such plan is amended to incorporate such requirements by reference, except that

''(B) in the case of any optional requirement under section 416 of such Code, if such amendment does not specify the manner in which such requirement will be met, the employer shall be treated as having elected the requirement with respect to each employee which provides the maximum vested accrued benefit for such employee.''

TRANSITIONAL RULE

Pub. L. 95–600, title I, § 135(c)(2), Nov. 6, 1978, 92 Stat. 2787, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of cash or deferred arrangements in existence on June 27, 1974—

''(A) the qualification of the plan and the trust under section 401 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954];

''(B) the exemption of the trust under section 501(a) of such Code;

''(C) the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust; and

''(D) the excludability of the interest of the employee in the trust under sections 2039 and 2517 of such Code,

shall be determined for plan years beginning before January 1, 1980 in a manner consistent with Revenue Ruling 56–497 (1956–2 C.B. 284), Revenue Ruling 63–180 (1963–2 C.B. 189), and Revenue Ruling 68–89 (1968–1 C.B. 402).''

SALARY REDUCTION REGULATIONS

Pub. L. 93–406, title II, § 2006, Sept. 2, 1974, 88 Stat. 992, as amended by Pub. L. 94–455, title XV, § 1506, Oct. 4, 1976, 90 Stat. 1739; Pub. L. 95–615, § 5, Nov. 8, 1978, 92 Stat. 3097; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1980, to an employees' trust described in section 401(a), 403(a) or 405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the em-

ployee elects to receive a reduction in his compensation or to forego an increase in his compensation.

''(b) ADMINISTRATION IN THE CASE OF CERTAIN QUALIFIED PENSION OR PROFIT-SHARING PLANS, ETC., IN EXISTENCE ON JUNE 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1980, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

''(1) provided for contributions to an employee's trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1986 [subsec. (a) of this section, section 403(a) of this title, or section 405(a) of this title] which is exempt from tax under section 501(a) of such Code [section 501(a) of this title], or

''(2) was maintained as part of an arrangement under which an employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986 [this title].

''(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

''(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

''(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

''(B) in the manner in which such law was administered before January 1, 1972.

''(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

''(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

''(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

''(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

''(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1979—

''(1) for purposes of chapter 1 of the Internal Revenue Code of 1986 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1980; and

''(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

''(e) SALARY REDUCTION REGULATIONS DEFINED.—For purpose of this section, the term 'salary reduction regulations' means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a) [subsec. (a) of this section], or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986).''

[Pub. L. 95–615, §210(b), Nov. 8, 1978, 92 Stat. 3109, provided that: ''Section 5 of this Act [amending section 2006 of Pub. L. 93–406, set out above] shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978 [Pub. L. 95–600, see Short Title of 1978 Amendment note set out under section 1 of this title].'']

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in sections 25B, 45A, 219, 401, 402, 404, 408, 408A, 409, 414 to 416, 430, 432, 457, and 664 of this title for certain years were contained in the following:

2018—Internal Revenue Notice 2017–64.
2017—Internal Revenue Notice 2016–62.
2016—Internal Revenue Notice 2015–75.
2015—Internal Revenue Notice 2014–70.
2014—Internal Revenue Notice 2013–73.
2013—Internal Revenue Notice 2012–67.
2012—Internal Revenue Notice 2011–90.
2011—Internal Revenue Notice 2010–78.
2010—Internal Revenue Notice 2009–94.
2009—Internal Revenue Notice 2008–102.
2008—Internal Revenue Notice 2007–87.
2007—Internal Revenue Notice 2006–98.
2006—Internal Revenue Notice 2005–75.
2005—Internal Revenue Notice 2004–72.
2004—Internal Revenue Notice 2003–73.
2003—Internal Revenue Notice 2002–71.
2002—Internal Revenue Notice 2001–84.
2001—Internal Revenue Notice 2000–66.
2000—Internal Revenue Notice 99–55.
1999—Internal Revenue Notice 98–53.
1998—Internal Revenue Notice 97–58.
1997—Internal Revenue Notice 96–55.

§ 402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust

Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

(b) Taxability of beneficiary of nonexempt trust

(1) Contributions

Contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

(2) Distributions

The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

(3) Grantor trusts

A beneficiary of any trust described in paragraph (1) shall not be considered the owner of

any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

(4) Failure to meet requirements of section 410(b)

(A) Highly compensated employees

If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1) or (2) include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

(B) Failure to meet coverage tests

If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraphs (1) and (2) shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

(i) such taxable year, or

(ii) any preceding period for which service was creditable to such employee under the plan.

(C) Highly compensated employee

For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(c) Rules applicable to rollovers from exempt trusts

(1) Exclusion from income

If—

(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(2) Maximum amount which may be rolled over

In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). The preceding sentence shall not apply to such distribution to the extent—

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).

(3) Time limit on transfers

(A) In general

Except as provided in subparagraphs (B) and (C), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

(B) Hardship exception

The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(C) Rollover of certain plan loan offset amounts

(i) In general

In the case of a qualified plan loan offset amount, paragraph (1) shall not apply to any transfer of such amount made after the due date (including extensions) for filing the return of tax for the taxable year in which such amount is treated as distributed from a qualified employer plan.

(ii) Qualified plan loan offset amount

For purposes of this subparagraph, the term ''qualified plan loan offset amount'' means a plan loan offset amount which is treated as distributed from a qualified employer plan to a participant or beneficiary solely by reason of—

(I) the termination of the qualified employer plan, or

(II) the failure to meet the repayment terms of the loan from such plan because of the severance from employment of the participant.

(iii) Plan loan offset amount

For purposes of clause (ii), the term ''plan loan offset amount'' means the amount by which the participant's accrued benefit under the plan is reduced in order to repay a loan from the plan.

(iv) Limitation

This subparagraph shall not apply to any plan loan offset amount unless such plan loan offset amount relates to a loan to which section 72(p)(1) does not apply by reason of section 72(p)(2).

(v) Qualified employer plan

For purposes of this subsection, the term ''qualified employer plan'' has the meaning given such term by section 72(p)(4).

(4) Eligible rollover distribution

For purposes of this subsection, the term ''eligible rollover distribution'' means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made—

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.

(5) Transfer treated as rollover contribution under section 408

For purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

(6) Sales of distributed property

For purposes of this subsection—

(A) Transfer of proceeds from sale of distributed property treated as transfer of distributed property

The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

(B) Proceeds attributable to increase in value

The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(C) Designation where amount of distribution exceeds rollover contribution

In any case where part or all of the distribution consists of property other than money—

(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(D) Nonrecognition of gain or loss

No gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

(7) Special rule for frozen deposits

(A) In general

The 60-day period described in paragraph (3) shall not—

(i) include any period during which the amount transferred to the employee is a frozen deposit, or

(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

(B) Frozen deposits

For purposes of this subparagraph, the term ''frozen deposit'' means any deposit which may not be withdrawn because of—

(i) the bankruptcy or insolvency of any financial institution, or

(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

(8) Definitions

For purposes of this subsection—

(A) Qualified trust

The term ''qualified trust'' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(B) Eligible retirement plan

The term ''eligible retirement plan'' means—

(i) an individual retirement account described in section 408(a),

(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(iii) a qualified trust,

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

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible re-

tirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

(9) Rollover where spouse receives distribution after death of employee

If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

(10) Separate accounting

Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

(11) Distributions to inherited individual retirement plan of nonspouse beneficiary

(A) In general

If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

(i) the transfer shall be treated as an eligible rollover distribution,

(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries

For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(d) Taxability of beneficiary of certain foreign situs trusts

For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

(e) Other rules applicable to exempt trusts

(1) Alternate payees

(A) Alternate payee treated as distributee

For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

(B) Rollovers

If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

(2) Distributions by United States to nonresident aliens

The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term ''basic pay'' shall have the meaning provided in section 8331(3) of title 5, United States Code.

(3) Cash or deferred arrangements

For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) or which is part of a salary reduction agreement under section 403(b) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

(4) Net unrealized appreciation

(A) Amounts attributable to employee contributions

For purposes of subsection (a) and section 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(*o*)(5)). This subparagraph shall not apply to a distribution to which subsection (c) applies.

(B) Amounts attributable to employer contributions

For purposes of subsection (a) and section 72, in the case of any lump sum distribution

which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph apply to such distribution.

(C) Determination of amounts and adjustments

For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

(D) Lump-sum distribution

For purposes of this paragraph—

(i) In general

The term ''lump-sum distribution'' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(I) on account of the employee's death,

(II) after the employee attains age 59½,

(III) on account of the employee's separation from service, or

(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)).

(ii) Aggregation of certain trusts and plans

For purposes of determining the balance to the credit of an employee under clause (i)—

(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

(iii) Community property laws

The provisions of this paragraph shall be applied without regard to community property laws.

(iv) Amounts subject to penalty

This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

(v) Balance to credit of employee not to include amounts payable under qualified domestic relations order

For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

(vi) Transfers to cost-of-living arrangement not treated as distribution

For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

(vii) Lump-sum distributions of alternate payees

If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

(E) Definitions relating to securities

For purposes of this paragraph—

(i) Securities

The term ''securities'' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(ii) Securities of the employer

The term ''securities of the employer corporation'' includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424) of the employer corporation.

[(5) Repealed. Pub. L. 104–188, title I, § 1401(b)(13), Aug. 20, 1996, 110 Stat. 1789]

(6) Direct trustee-to-trustee transfers

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(f) Written explanation to recipients of distributions eligible for rollover treatment

(1) In general

The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient—

(A) of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B),

(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,

(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,

(D) if applicable, of the provisions of subsections (d) and (e) of this section, and

(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) Definitions

For purposes of this subsection—

(A) Eligible rollover distribution

The term ''eligible rollover distribution'' has the same meaning as when used in subsection (c) of this section, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16). Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.

(B) Eligible retirement plan

The term ''eligible retirement plan'' has the meaning given such term by subsection (c)(8)(B).

(g) Limitation on exclusion for elective deferrals

(1) In general

(A) Limitation

Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount. The preceding sentence shall not apply to the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.

(B) Applicable dollar amount

For purposes of subparagraph (A), the applicable dollar amount is $15,000.

(C) Catch-up contributions

In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

(2) Distribution of excess deferrals

(A) In general

If any amount (hereinafter in this paragraph referred to as ''excess deferrals'') is included in the gross income of an individual under paragraph (1) (or would be included but for the last sentence thereof) for any taxable year—

(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and

(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount through the end of such taxable year).

The distribution described in clause (ii) may be made notwithstanding any other provision of law.

(B) Treatment of distribution under section 401(k)

Except to the extent provided under rules prescribed by the Secretary, notwithstanding the distribution of any portion of an excess deferral from a plan under subparagraph (A)(ii), such portion shall, for purposes of applying section 401(k)(3)(A)(ii), be treated as an employer contribution.

(C) Taxation of distribution

In the case of a distribution to which subparagraph (A) applies—

(i) except as provided in clause (ii), such distribution shall not be included in gross income, and

(ii) any income on the excess deferral shall, for purposes of this chapter, be treated as earned and received in the taxable year in which such income is distributed.

No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.

(D) Partial distributions

If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income.

(3) Elective deferrals

For purposes of this subsection, the term ''elective deferrals'' means, with respect to any taxable year, the sum of—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (e)(3) (determined without regard to this subsection),

(B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B) (determined without regard to this subsection),

(C) any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), and

(D) any elective employer contribution under section 408(p)(2)(A)(i).

An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations.

(4) Cost-of-living adjustment

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(5) Disregard of community property laws

This subsection shall be applied without regard to community property laws.

(6) Coordination with section 72

For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

(7) Special rule for certain organizations

(A) In general

In the case of a qualified employee of a qualified organization, with respect to employer contributions described in paragraph (3)(C) made by such organization, the limitation of paragraph (1) for any taxable year shall be increased by whichever of the following is the least:

(i) $3,000,

(ii) $15,000 reduced by the sum of—

(I) the amounts not included in gross income for prior taxable years by reason of this paragraph, plus

(II) the aggregate amount of designated Roth contributions (as defined in section 402A(c)) permitted for prior taxable years by reason of this paragraph, or

(iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary).

(B) Qualified organization

For purposes of this paragraph, the term ''qualified organization'' means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(C) Qualified employee

For purposes of this paragraph, the term ''qualified employee'' means any employee who has completed 15 years of service with the qualified organization.

(D) Years of service

For purposes of this paragraph, the term ''years of service'' has the meaning given such term by section 403(b).

(8) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) for purposes of this title.

(h) Special rules for simplified employee pensions

For purposes of this chapter—

(1) In general

Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k))—

(A) shall not be treated as distributed or made available to the employee or as contributions made by the employee, and

(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to the simplified employee pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

(2) Limitations on employer contributions

Contributions made by an employer to a simplified employee pension with respect to an

employee for any year shall be treated as distributed or made available to such employee and as contributions made by the employee to the extent such contributions exceed the lesser of—

(A) 25 percent of the compensation (within the meaning of section 414(s)) from such employer includible in the employee's gross income for the year (determined without regard to the employer contributions to the simplified employee pension), or

(B) the limitation in effect under section 415(c)(1)(A), reduced in the case of any highly compensated employee (within the meaning of section 414(q)) by the amount taken into account with respect to such employee under section 408(k)(3)(D).

(3) Distributions

Any amount paid or distributed out of an individual retirement plan pursuant to a simplified employee pension shall be included in gross income by the payee or distributee, as the case may be, in accordance with the provisions of section 408(d).

(i) Treatment of self-employed individuals

For purposes of this section, except as otherwise provided in subparagraph (A) of subsection (d)(4),[1] the term ''employee'' includes a self-employed individual (as defined in section 401(c)(1)(B)) and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

(j) Effect of disposition of stock by plan on net unrealized appreciation

(1) In general

For purposes of subsection (e)(4), in the case of any transaction to which this subsection applies, the determination of net unrealized appreciation shall be made without regard to such transaction.

(2) Transaction to which subsection applies

This subsection shall apply to any transaction in which—

(A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or

(B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), except that this subparagraph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition.

(k) Treatment of simple retirement accounts

Rules similar to the rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a simple retirement account under section 408(p).

***(l)* Distributions from governmental plans for health and long-term care insurance**

(1) In general

In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan maintained by the employer described in paragraph (4)(B) to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums for such taxable year.

(2) Limitation

The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $3,000.

(3) Distributions must otherwise be includible

(A) In general

An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

(B) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(4) Definitions

For purposes of this subsection—

(A) Eligible retirement plan

For purposes of paragraph (1), the term ''eligible retirement plan'' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

(B) Eligible retired public safety officer

The term ''eligible retired public safety officer'' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

(C) Public safety officer

The term ''public safety officer'' shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control

[1] See References in Text note below.

and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)),[1] as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013.

(D) Qualified health insurance premiums

The term ''qualified health insurance premiums'' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents (as defined in section 152), by an accident or health plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

(5) Special rules

For purposes of this subsection—

(A) Direct payment to insurer required

Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

(B) Related plans treated as 1

All eligible retirement plans of an employer shall be treated as a single plan.

(6) Election described

(A) In general

For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

(B) Special rule

A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(7) Coordination with medical expense deduction

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(8) Coordination with deduction for health insurance costs of self-employed individuals

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(*l*).

(Aug. 16, 1954, ch. 736, 68A Stat. 135; Pub. L. 86–437, §§1, 2(a), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–792, §4(c), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §§221(c)(1), 232(e)(1)–(3), Feb. 26, 1964, 78 Stat. 75, 111; Pub. L. 91–172, title III, §321(b)(1), title V, §515(a)(1), Dec. 30, 1969, 83 Stat. 590, 643; Pub. L. 93–406, title II, §§2002(g)(5), 2005(a), (b)(1), (c)(1), (2), Sept. 2, 1974, 88 Stat. 968, 987, 990, 991: Pub. L. 94–267, §1(a), Apr. 15, 1976, 90 Stat. 365; Pub. L. 94–455, title XIV, §1402(b)(1)(C), (2), title XV, §1512(a), title XIX, §§1901(a)(57)(A)–(C)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1742, 1773, 1774, 1834; Pub. L. 95–30, title I, §102(b)(4), May 23, 1977, 91 Stat. 137; Pub. L. 95–458, §4(a), (c), Oct. 14, 1978, 92 Stat. 1257, 1259; Pub. L. 95–600, title I, §§101(d)(1), 135(b), 157(f)(1), (g)(1), (h)(1), Nov. 6, 1978, 92 Stat. 2770, 2787, 2806–2808; Pub. L. 96–222, title I, §101(a)(14)(C), (E)(i), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 96–608, §2(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title III, §§311(b)(2), (3)(A), (c), 314(c)(1), Aug. 13, 1981, 95 Stat. 280, 286; Pub. L. 97–448, title I, §§101(b), 103(c)(7), (8)(A), (12)(D), Jan. 12, 1983, 96 Stat. 2366, 2376, 2377; Pub. L. 98–369, div. A, title IV, §491(c)(2), (d)(9)–(11), title V, §522(a)(1), (b)–(d)(8), title VII, §713(c)(3), title X, §1001(b)(3), (e), July 18, 1984, 98 Stat. 848, 849, 868–870, 957, 1011, 1012; Pub. L. 98–397, title II, §§204(c)(1), (3), (4), 207(a), Aug. 23, 1984, 98 Stat. 1448, 1449; Pub. L. 99–272, title XI, §11012(c), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title I, §104(b)(5), title XI, §§1105(a), 1106(c)(2), 1108(b), 1112(c), 1121(c)(1), 1122(a), (b)(1)(A), (2), (e)(1), (2)(A), (g), title XVIII, §§1852(a)(5)(A), (b)(1)–(7), (c)(5), 1854(f)(2), 1875(c)(1)(A), 1898(a)(2), (3), (c)(1)(A), (7)(A)(i), (e), Oct. 22, 1986, 100 Stat. 2105, 2417, 2423, 2432, 2444, 2465, 2466, 2469, 2470, 2865–2867, 2881, 2894, 2942, 2943, 2951, 2954, 2955; Pub. L. 100–647, title I, §§1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), 1018(t)(8)(A), (C), (u)(1), (6), (7), title VI, §6068(a), Nov. 10, 1988, 102 Stat. 3457–3459, 3464, 3472–3474, 3476, 3589, 3590, 3703; Pub. L. 101–239, title VII, §7811(g)(2), (i)(13), Dec. 19, 1989, 103 Stat. 2409, 2411; Pub. L. 101–508, title XI, §11801(c)(9)(I), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 102–318, title V, §§521(a), (b)(9)–(11), 522(c)(1), July 3, 1992, 106 Stat. 300, 310, 311, 315; Pub. L. 103–465, title VII, §732(c), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1401(a)–(b)(2), (13), 1421(b)(3)(A), (9)(B), 1450(a)(2), 1704(t)(68), Aug. 20, 1996, 110 Stat. 1787–1789, 1796, 1798, 1814, 1891; Pub. L. 105–34, title XV, §1501(a), Aug. 5, 1997, 111 Stat. 1058; Pub. L. 105–206, title VI, §6005(c)(2)(A), July 22, 1998, 112 Stat. 800; Pub. L. 107–16, title VI, §§611(d)(1)–(3)(A), 617(b), (c), 632(a)(3)(G), 636(b)(1), 641(a)(2)(A), (B), (b)(2)–(d), (e)(4)–(6), 643(a), 644(a), 657(b), June 7, 2001, 115 Stat. 97, 98, 105, 114, 117, 119–123, 136; Pub. L. 107–147, title IV, §411(*l*)(3), (*o*)(1), (p)(6), (q)(2), Mar. 9, 2002, 116 Stat. 47, 48, 51; Pub. L. 109–135, title IV, §407(a), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 109–280, title VIII, §§822(a), 829(a)(1), 845(a), Aug. 17, 2006, 120 Stat. 998, 1001, 1013; Pub. L. 110–172, §8(a)(1), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–458, title I, §§108(f)(1)–(2)(B), (j), 109(b)(3), title II, §201(b), Dec. 23, 2008, 122 Stat. 5109–5111, 5117; Pub. L. 112–239, div. A, title X, §1086(b)(3)(A), Jan. 2, 2013, 126 Stat. 1968; Pub. L. 113–295, div. A, title II, §221(a)(57)(A), Dec. 19, 2014, 128 Stat. 4046; Pub. L. 115–97, title I, §13613(a), (b), Dec. 22, 2017, 131 Stat. 2166.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001), referred to in subsec. (g)(7)(B), means sec-

tion 415(c)(4) of this title prior to its repeal by Pub. L. 107–16, title VI, § 632(a)(3)(E), June 7, 2001, 115 Stat. 114.

Subsection (d), referred to in subsec. (i), was amended generally by Pub. L. 104–188, title I, § 1401(a), Aug. 20, 1996, 110 Stat. 1787, and as so amended, no longer contains a par. (4).

Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)), as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013, referred to in subsec. (*l*)(4)(C), means section 1204(9)(A) of Pub. L. 90–351 prior to its amendment by Pub. L. 112–239, div. A, title X, § 1086(b)(1)(E)(v)(I), Jan. 2, 2013, 126 Stat. 1967. Section 1204(9)(A) of Pub. L. 90–351 was classified to section 3796b(9)(A) of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as section 10284(9)(A) of Title 34, Crime Control and Law Enforcement.

AMENDMENTS

2017—Subsec. (c)(3). Pub. L. 115–97, § 13613(b)(1), substituted ''Time limit on transfers'' for ''Transfer must be made within 60 days of receipt'' in heading.

Subsec. (c)(3)(A). Pub. L. 115–97, § 13613(b)(2), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (c)(3)(C). Pub. L. 115–97, § 13613(a), added subpar. (C).

2014—Subsec. (g)(1)(B). Pub. L. 113–295 substituted ''is $15,000.'' for ''shall be the amount determined in accordance with the following table:'' and struck out table at end listing applicable dollar amounts for fiscal years 2002 to 2006 and thereafter.

2013—Subsec. (*l*)(4)(C). Pub. L. 112–239 inserted '', as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013'' before period at end.

2008—Subsec. (c)(4). Pub. L. 110–458, § 201(b), inserted concluding provisions.

Subsec. (c)(11)(A). Pub. L. 110–458, § 108(f)(1)(A), inserted ''described in paragraph (8)(B)(iii)'' after ''eligible retirement plan'' in introductory provisions.

Subsec. (c)(11)(A)(i). Pub. L. 110–458, § 108(f)(2)(B), struck out ''for purposes of this subsection'' after ''eligible rollover distribution''.

Subsec. (c)(11)(B). Pub. L. 110–458, § 108(f)(1)(B), struck out ''trust'' before ''designated beneficiary''.

Subsec. (f)(2)(A). Pub. L. 110–458, § 108(f)(2)(A), inserted at end ''Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.''

Subsec. (g)(2)(A)(ii). Pub. L. 110–458, § 109(b)(3), inserted ''through the end of such taxable year'' after ''such amount''.

Subsec. (*l*)(1). Pub. L. 110–458, § 108(j)(1)(A), inserted ''maintained by the employer described in paragraph (4)(B)'' after ''an eligible retirement plan'' and struck out ''of the employee, his spouse, or dependents (as defined in section 152)'' after ''qualified health insurance premiums''.

Subsec. (*l*)(3)(B). Pub. L. 110–458, § 108(j)(2), substituted ''all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72''.

Subsec. (*l*)(4)(D). Pub. L. 110–458, § 108(j)(1)(B), inserted ''(as defined in section 152)'' after ''dependents'' and substituted ''health plan'' for ''health insurance plan''.

Subsec. (*l*)(5)(A). Pub. L. 110–458, § 108(j)(1)(C), substituted ''health plan'' for ''health insurance plan''.

2007—Subsec. (g)(7)(A)(ii)(II). Pub. L. 110–172 substituted ''permitted for prior taxable years by reason of this paragraph'' for ''for prior taxable years''. Amendment was executed to subsec. (g)(7)(A)(ii) as amended by Pub. L. 109–135, § 407(a)(1), as the probable intent of Congress, notwithstanding Pub. L. 110–172, § 8(b), which provided that the amendment take effect as if included in the provisions of Pub. L. 107–16 to which it relates. See 2006 Amendment note and Effective Date of 2007 Amendment note below.

2006—Subsec. (c)(2)(A). Pub. L. 109–280, § 822(a), which directed the amendment of section 402(c)(2)(A) by substituting ''or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting'' for ''which is part of a plan which is a defined contribution plan and which agrees to separately account'' and inserting ''(and earnings thereon)'' after ''so transferred'', without specifying the act to be amended, was executed to this section, which is section 402(c)(2)(A) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (c)(11). Pub. L. 109–280, § 829(a)(1), added par. (11).

Subsec. (*l*). Pub. L. 109–280, § 845(a), added subsec. (*l*).

2005—Subsec. (g)(1)(A). Pub. L. 109–135, § 407(a)(2), inserted ''to'' after ''shall not apply''.

Subsec. (g)(7)(A)(ii). Pub. L. 109–135, § 407(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''$15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or''.

2002—Subsec. (c)(2). Pub. L. 107–147, § 411(q)(2), inserted at end: ''In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).''

Subsec. (g)(1)(C). Pub. L. 107–147, § 411(*o*)(1), added subpar. (C).

Subsec. (g)(7)(B). Pub. L. 107–147, § 411(p)(6), substituted ''2001).'' for ''2001.''

Subsec. (h)(2)(A). Pub. L. 107–147, § 411(*l*)(3), substituted ''25 percent'' for ''15 percent''.

2001—Subsec. (c)(2). Pub. L. 107–16, § 643(a), inserted at end ''The preceding sentence shall not apply to such distribution to the extent—

''(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

''(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).''

Subsec. (c)(3). Pub. L. 107–16, § 644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.''

Subsec. (c)(4)(C). Pub. L. 107–16, § 636(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any hardship distribution described in section 401(k)(2)(B)(i)(IV).''

Subsec. (c)(8)(B). Pub. L. 107–16, § 617(c), inserted concluding provisions.

Subsec. (c)(8)(B)(v). Pub. L. 107–16, § 641(a)(2)(A), added cl. (v).

Subsec. (c)(8)(B)(vi). Pub. L. 107–16, § 641(b)(2), added cl. (vi).

Subsec. (c)(9). Pub. L. 107–16, § 641(d), struck out before period at end ''; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution''.

Subsec. (c)(10). Pub. L. 107–16, § 641(a)(2)(B), added par. (10).

Subsec. (f)(1). Pub. L. 107–16, § 641(e)(5), struck out ''from an eligible retirement plan'' after ''rollover distribution'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 107–16, §657(b), inserted before comma at end ''and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B)''.

Pub. L. 107–16, §641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(B). Pub. L. 107–16, §641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(E). Pub. L. 107–16, §641(c), added subpar. (E).

Subsec. (f)(2)(A). Pub. L. 107–16, §641(e)(4), substituted '', paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)'' for ''or paragraph (4) of section 403(a)''.

Subsec. (g)(1). Pub. L. 107–16, §611(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000.''

Subsec. (g)(1)(A). Pub. L. 107–16, title VI, §617(b)(1), inserted at end ''The preceding sentence shall not apply the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.''

Subsec. (g)(2)(A). Pub. L. 107–16, title VI, §617(b)(2), inserted ''(or would be included but for the last sentence thereof)'' after ''paragraph (1)''.

Subsec. (g)(4). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C).''

Subsec. (g)(5). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 107–16, §611(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.''

Subsec. (g)(6). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (g)(7). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (8) as (7).

Subsec. (g)(7)(B). Pub. L. 107–16, §632(a)(3)(G), inserted ''(as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001'' before period at end.

Subsec. (g)(8), (9). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (9) as (8). Former par. (8) redesignated (7).

1998—Subsec. (c)(4)(C). Pub. L. 105–206 added subpar. (C).

1997—Subsec. (g)(9). Pub. L. 105–34 added par. (9).

1996—Subsec. (c)(10). Pub. L. 104–188, §1401(b)(2), struck out par. (10) which read as follows:

''(10) DENIAL OF AVERAGING FOR SUBSEQUENT DISTRIBUTIONS.—If paragraph (1) applies to any distribution paid to any employee, paragraphs (1) and (3) of subsection (d) shall not apply to any distribution (paid after such distribution) of the balance to the credit of the employee under the plan under which the preceding distribution was made (or under any other plan which, under subsection (d)(4)(C), would be aggregated with such plan).''

Subsec. (d). Pub. L. 104–188, §1401(a), amended subsec. (d) generally, substituting provisions relating to taxability of beneficiary of certain foreign situs trusts for former provisions relating to tax on lump sum distributions.

Subsec. (e)(3). Pub. L. 104–188, §1450(a)(2), inserted ''or which is part of a salary reduction agreement under section 403(b)'' after ''section 401(k)(2))''.

Subsec. (e)(4)(D). Pub. L. 104–188, §1401(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph, the term 'lump sum distribution' has the meaning given such term by subsection (d)(4)(A) (without regard to subsection (d)(4)(F)).''

Subsec. (e)(5). Pub. L. 104–188, §1401(b)(13), struck out par. (5) which read as follows:

''(5) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).''

Subsec. (g)(3)(A). Pub. L. 104–188, §1704(t)(68), substituted ''subsection (e)(3)'' for ''subsection (a)(8)''.

Subsec. (g)(3)(D). Pub. L. 104–188, §1421(b)(9)(B), added subpar. (D).

Subsec. (k). Pub. L. 104–188, §1421(b)(3)(A), added subsec. (k).

1994—Subsec. (g)(5). Pub. L. 103–465 inserted before period at end ''; except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500''.

1992—Subsecs. (a) to (d). Pub. L. 102–318, §521(a), amended subsecs. (a) to (d) generally, substituting present provisions for former provisions which in subsec. (a) related to taxability of beneficiaries of exempt trusts, in subsec. (b) related to taxability of beneficiaries of nonexempt trusts, in subsec. (c) related to taxability of beneficiaries of certain foreign situs trusts, and subsec. (d) which had been previously repealed.

Subsec. (e). Pub. L. 102–318, §521, amended subsec. (e) generally, substituting provisions relating to other rules applicable to exempt trusts for provisions relating to tax on lump sum distributions.

Subsec. (e)(6). Pub. L. 102–318, §522(c)(1), added par. (6).

Subsec. (f). Pub. L. 102–318, §521(a), amended subsec. (f) generally, substituting present provisions for provisions requiring a different time when explanation was to be provided and a different content of explanation to be given and using different definitions for ''eligible rollover distribution'' and ''eligible retirement plan''.

Subsec. (g)(1). Pub. L. 102–318, §521(b)(9), substituted ''subsections (e)(3)'' for ''subsections (a)(8)''.

Subsec. (i). Pub. L. 102–318, §521(b)(10), substituted ''subsection (d)(4)'' for ''subsection (e)(4)''.

Subsec. (j)(1). Pub. L. 102–318, §521(b)(11), substituted ''(e)(4)'' for ''(a)(1) or (e)(4)(J)''.

1990—Subsec. (a)(3)(B). Pub. L. 101–508, §11801(c)(9)(I)(i), substituted ''section 424'' for ''section 425''.

Subsec. (a)(6)(B)(i). Pub. L. 101–508, §11801(c)(9)(I)(ii), substituted ''section 424(f)'' for ''section 425(f)''.

1989—Subsec. (e)(7). Pub. L. 101–239, §7811(i)(13), added par. (7).

Subsec. (g)(3). Pub. L. 101–239, §7811(g)(2), inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1011A(b)(8)(A), substituted ''paragraph (4)'' for ''paragraphs (2) and (4)''.

Subsec. (a)(4). Pub. L. 100–647, §1011A(b)(8)(B), struck out ''or (2)'' after ''under paragraph (1)''.

Subsec. (a)(5)(D)(i). Pub. L. 100–647, §1011A(b)(4)(C), inserted at end ''Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II).''

Pub. L. 100–647, §1011A(b)(4)(A), repealed amendment by Pub. L. 99–514, §1122(e)(1), which had amended cl. (i) generally, and provided that the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted. See 1986 Amendment note and Effective Date of 1988 Amendment note below.

Subsec. (a)(5)(D)(i)(I). Pub. L. 100–647, §1011A(b)(4)(B), inserted ''is payable as provided in clause (i), (iii), or

(iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and'' after ''(I) such distribution''.

Subsec. (a)(5)(D)(iii). Pub. L. 100–647, §1011A(b)(4)(D), struck out ''10-year'' after ''Denial of'' in heading.

Subsec. (a)(5)(F). Pub. L. 100–647, §1011A(a)(1), substituted ''resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''described in subparagraph (A)''.

Subsec. (a)(6)(C). Pub. L. 100–647, §1011A(b)(8)(C), struck out ''paragraph (2) of subsection (a), and'' after ''paragraph (5)(A) applies,''.

Subsec. (a)(6)(E)(ii). Pub. L. 100–647, §1011A(b)(8)(D), substituted ''then paragraphs (1) and (3) of subsection (e) shall'' for ''then paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e), shall''.

Subsec. (a)(6)(G). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (a)(6)(H)(ii). Pub. L. 100–647, §1011A(b)(5), inserted at end ''A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence.''

Subsec. (a)(6)(I). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (b)(2)(A). Pub. L. 100–647, §1011(h)(4), added subpar. (A) and struck out former subpar. (A) which related to trust which is not exempt from tax under section 501(a) because plan fails to meet requirements of section 410(b).

Subsec. (b)(2)(B). Pub. L. 100–647, §1011(h)(4), added subpar. (B) and struck out former subpar. (B) which related to failure of plan to meet requirements of section 410(b) for more than 1 taxable year.

Subsec. (e)(1)(A). Pub. L. 100–647, §1011A(b)(8)(E), struck out ''ordinary income portion of a'' after ''subparagraph (B)) on the''.

Subsec. (e)(1)(B). Pub. L. 100–647, §1011A(b)(10), inserted at end ''For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof.''

Pub. L. 100–647, §1018(u)(1), made technical correction to directory language of Pub. L. 99–514, §104(b)(5). See 1986 Amendment note below.

Pub. L. 100–647, §1018(u)(6), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(B), see 1986 Amendment note below.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(7), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(C), see 1986 Amendment note below.

Subsec. (e)(4)(A). Pub. L. 100–647, §1011A(b)(8)(F), in concluding provisions, substituted ''A'' for ''Except for purposes of subsection (a)(2) and section 403(a)(2), a'', and struck out ''subsection (a)(2) of this section, and subsection (a)(2) of section 403,'' before ''the balance to''.

Subsec. (e)(4)(B)(i). Pub. L. 100–647, §1011A(b)(6), substituted ''employee'' for ''taxpayer''.

Subsec. (e)(4)(I). Pub. L. 100–647, §1011A(c)(9), struck out ''clause (ii) of'' after ''amounts described in''.

Subsec. (e)(4)(J). Pub. L. 100–647, §1011A(b)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(L). Pub. L. 100–647, §1011A(b)(8)(G), struck out subpar. (L) which related to election to treat pre-1974 participation as post-1973 participation.

Subsec. (e)(4)(M). Pub. L. 100–647, §1011A(b)(8)(H), struck out '', subsection (a)(2) of this section, and section 403(a)(2)'' after ''of this subsection''.

Subsec. (e)(4)(O). Pub. L. 100–647, §6068(a), added subpar. (O).

Subsec. (e)(5). Pub. L. 100–647, §1011A(b)(8)(I), struck out ''and paragraph (2) of subsection (a)'' after ''of this subsection''.

Subsec. (e)(6)(C). Pub. L. 100–647, §1011A(b)(8)(J), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

''(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

''(ii) is treated as long-term capital gain under subsection (a)(2) of this section or section 403(a)(2).''

Subsec. (f)(1). Pub. L. 100–647, §1018(t)(8)(C), substituted ''an eligible'' for ''a eligible''.

Subsec. (g). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (g)(2). Pub. L. 100–647, §1011(c)(2), substituted ''Distribution'' for ''Required distribution'' in heading.

Subsec. (g)(2)(C). Pub. L. 100–647, §1011(c)(1), struck out ''(and no tax shall be imposed under section 72(t))'' after ''in gross income'', in cl. (i), substituted ''such income is distributed'' for ''such excess deferral is made'' in cl. (ii), and inserted at end ''No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.''

Subsec. (g)(2)(D). Pub. L. 100–647, §1011(c)(3), added subpar. (D).

Subsec. (g)(3). Pub. L. 100–647, §1011(c)(4), substituted ''this subsection'' for ''this paragraph''.

Pub. L. 100–647, §1011(c)(11), inserted at end ''An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Subsec. (g)(8)(A)(iii). Pub. L. 100–647, §1011(c)(5)(A), inserted ''(determined in the manner prescribed by the Secretary)'' after ''prior taxable years''.

Subsec. (g)(8)(D). Pub. L. 100–647, §1011(c)(5)(B), added subpar. (D).

Subsec. (i). Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (j). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

1986—Subsec. (a)(2). Pub. L. 99–514, §1122(b)(1)(A), struck out par. (2) relating to capital gains treatment for portion of lump sum distribution.

Subsec. (a)(5)(D)(i). Pub. L. 99–514, §1122(e)(1), amended cl. (i) generally, to read as follows: ''Subparagraph (A) shall apply to a partial distribution only if the employee elects to have subparagraph (A) apply to such distribution and such distribution would be a lump sum distribution if subsection (e)(4)(A) were applied—

''(I) by substituting '50 percent of the balance to the credit of an employee' for 'the balance to the credit of an employee',

''(II) without regard to clause (ii) thereof, the second sentence thereof, and subparagraph (B) of subsection (e)(4).

Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of this clause.'' This amendment was repealed by Pub. L. 100–647, §1011A(b)(4)(A). See 1988 Amendment note above.

Pub. L. 99–514, §1852(b)(2), inserted at end ''For purposes of subclause (I), the balance to the credit of the employee shall not include any accumulated deductible employee contributions (within the meaning of section 72(*o*)(5)).''

Subsec. (a)(5)(D)(ii). Pub. L. 99–514, §1852(b)(5), substituted ''a trust or plan described in subclause (III) or (IV)'' for ''a plan described in subclause (IV) or (V)''.

Subsec. (a)(5)(D)(iii). Pub. L. 99–514, §1122(b)(2)(A), struck out ''and capital gains treatment'' in heading and amended text generally. Prior to amendment, cl.

(iii) read as follows: ''If an election under clause (i) is made with respect to any partial distribution paid to any employee—

''(I) paragraph (2) of this subsection,

''(II) paragraphs (1) and (3) of subsection (e), and

''(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan).''

Subsec. (a)(5)(E)(v). Pub. L. 99–514, §1852(b)(1), substituted ''of all or any portion of'' for ''of any portion of''.

Subsec. (a)(5)(F). Pub. L. 99–514, §1121(c)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) heading read ''Special rules'' and text read as follows: ''(i) Transfer treated as rollover contribution under section 408

''For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A) to an eligible retirement plan described in subclause (I) or (II) of subparagraph (E)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

''(ii) 5-percent owners

''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if the employee is a 5-percent owner at the time such distribution is made. For purposes of the preceding sentence, the term '5-percent owner' means any individual who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5 plan years preceding the plan year in which the distribution is made.''

Pub. L. 99–514, §1852(b)(6), in cl. (i) substituted ''a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''a transfer described in subparagraph (A)''.

Pub. L. 99–514, §1875(c)(1)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii), key employees, read as follows: ''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms 'key employee' and 'top-heavy plan' have the same respective meanings as when used in section 416.''

Subsec. (a)(5)(G). Pub. L. 99–514, §1852(a)(5)(A), added subpar. (G).

Subsec. (a)(6)(D)(v). Pub. L. 99–514, §1852(b)(7), substituted ''(7)'' for ''(7)(B)''.

Subsec. (a)(6)(F). Pub. L. 99–514, §1898(c)(7)(A)(i), substituted ''paragraph (5)'' for ''paragraph (5)(A)''.

Subsec. (a)(6)(G). Pub. L. 99–514, §1898(a)(3), added subpar. (G) relating to treatment of potential future vesting.

Pub. L. 99–272 added subpar. (G) relating to payments from certain pension plan termination trusts.

Subsec. (a)(6)(H). Pub. L. 99–514, §1122(e)(2)(A), added subpar. (H).

Subsec. (a)(7). Pub. L. 99–514, §1852(b)(4), inserted ''; except that a trust or plan described in subclause (III) or (IV) of paragraph (5)(E)(iv) shall not be treated as an eligible retirement plan with respect to such distribution'' after ''the spouse were the employee''.

Subsec. (a)(9). Pub. L. 99–514, §1898(c)(1)(A), substituted ''any alternate payee who is the spouse or former spouse of the participant shall be treated'' for ''the alternate payee shall be treated''.

Subsec. (b). Pub. L. 99–514, §1112(c), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Pub. L. 99–514, §1852(c)(5), substituted ''section 72(e)(5)'' for ''section 72(e)(1)''.

Subsec. (e)(1)(B). Pub. L. 99–514, §1122(b)(2)(B), and Pub. L. 100–647, §1018(u)(6), redesignated subpar. (C) as (B), substituted ''Amount of tax'' for ''Initial separate tax'' in heading and ''The amount of tax imposed by subparagraph (A)'' for ''The initial separate tax'', and struck out former subpar. (B) which related to computation of tax on lump sum distributions.

Pub. L. 99–514, §104(b)(5), as amended by Pub. L. 100–647, §1018(u)(1), struck out ''the zero bracket amount applicable to such individual for the taxable year plus'' after ''amount equal to''.

Pub. L. 99–514, §1122(a)(2)(A), (B), substituted ''5'' for ''10'' and ''⅕'' for ''one-tenth''.

Subsec. (e)(1)(C) to (E). Pub. L. 99–514, §1122(b)(2)(B)(i), redesignated subpars. (C) to (E) as (B) to (D), respectively.

Subsec. (e)(3). Pub. L. 99–514, §1122(b)(2)(C), and Pub. L. 100-647, §1018(u)(7), substituted ''total taxable amount'' for ''ordinary income portion''.

Subsec. (e)(4)(B). Pub. L. 99–514, §1122(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.''

Subsec. (e)(4)(E). Pub. L. 99–514, §1122(b)(2)(D), struck out subpar. (E) defining ''ordinary income portion'' with respect to a lump sum distribution.

Subsec. (e)(4)(F). Pub. L. 99–514, §1852(b)(3)(B), struck out subpar. (F) defining ''employee''. See subsec. (g) of this section relating to treatment of self-employed individuals.

Subsec. (e)(4)(H). Pub. L. 99–514, §1122(b)(2)(E), struck out ''(but not for purposes of subsection (a)(2) or section 403(a)(2)(A))'' after ''For purposes of this subsection''.

Subsec. (e)(4)(J). Pub. L. 99–514, §1122(g), inserted at end ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(N). Pub. L. 99–514, §1106(c)(2), added subpar. (N).

Subsec. (e)(6). Pub. L. 99–514, §1898(a)(2), added par. (6).

Subsec. (f)(1). Pub. L. 99–514, §1898(e)(1), substituted ''eligible rollover distribution'' for ''qualifying rollover distribution''.

Subsec. (f)(2). Pub. L. 99–514, §1898(e)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this subsection, the terms 'qualifying rollover distribution' and 'eligible retirement plan' have the respective meanings given such terms by subsection (a)(5)(E).''

Subsec. (g). Pub. L. 99–514, §1854(f)(2), added subsec. (g) relating to effect of disposition of stock by plan on net unrealized appreciation.

Pub. L. 99–514, §1852(b)(3)(A), added subsec. (g) relating to treatment of self-employed individuals.

Pub. L. 99–514, §1105(a), added subsec. (g) relating to limitation on exclusion for elective deferrals.

Subsec. (h). Pub. L. 99–514, §1108(b), added subsec. (h).

1984—Subsec. (a)(2). Pub. L. 98–369, §1001(b)(3), substituted ''6 months'' for ''1 year''.

Subsec. (a)(5)(A)(i). Pub. L. 98–369, §522(a)(1), substituted ''any portion of the balance to the credit of an employee in a qualified trust is paid to him'' for ''the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution''.

Subsec. (a)(5)(B). Pub. L. 98–369, § 522(d)(1)(A), (2), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and inserted ''In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A)).''

Subsec. (a)(5)(D). Pub. L. 98–369, § 522(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(5)(D)(iv)(III)–(V). Pub. L. 98–369, § 491(d)(9), struck out subcl. (III), which included a retirement bond described in section 409 within term ''eligible retirement plan'' and redesignated former subcls. (IV) and (V) and (III) and (IV), respectively.

Subsec. (a)(5)(E). Pub. L. 98–369, § 522(b), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(E)(i). Pub. L. 98–369, § 522(d)(1)(B), substituted ''qualified total distribution'' for ''qualifying rollover distribution'' in heading and text.

Subsec. (a)(5)(E)(ii)(II). Pub. L. 98–369, § 522(d)(3), substituted ''gross income (determined without regard to this paragraph)'' for ''gross income''.

Subsec. (a)(5)(E)(v). Pub. L. 98–369, § 522(d)(4), substituted provision dealing with partial distribution for provision dealing with rollover of partial distributions of deductible employee contributions permitted.

Subsec. (a)(5)(F). Pub. L. 98–369, § 522(b), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 98–369, § 522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, § 491(d)(10), substituted ''or (II)'' for '', (II), or (III)''.

Subsec. (a)(5)(F)(ii). Pub. L. 98–369, § 522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, § 491(d)(11), substituted ''(III) or (IV)'' for ''(IV) and (V)''.

Pub. L. 98–369, § 713(c)(3), substituted ''Key employees'' for ''Self-employed individuals and owner-employees'' in heading and ''attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan'' for ''attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan'' in text, and inserted sentence adopting the meaning of ''key employee'' and ''top-heavy plan'' used in section 416.

Subsec. (a)(6)(A), (B). Pub. L. 98–369, § 522(d)(6), substituted ''paragraph (5)(E)(i)'' for ''paragraph (5)(D)(i)''.

Subsec. (a)(6)(D)(iii), (iv). Pub. L. 98–369, § 522(d)(7), substituted ''employee contributions (or, in the case of a partial distribution, the amount not includible in gross income)'' for ''employee contributions''.

Subsec. (a)(6)(E)(i). Pub. L. 98–369, § 522(d)(1)(C), (8), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and ''paragraph (5)(D) or (5)(E)(i)(II)'' for ''paragraph (5)(D)(i)(II)''.

Subsec. (a)(6)(F). Pub. L. 98–397, § 204(c)(3), added subpar. (F).

Subsec. (a)(7). Pub. L. 98–369, § 522(c), substituted provisions relating to rollover where spouse receives distributions after death of employee for provisions dealing with rollover where spouse receives lump-sum distribution at death of employee.

Subsec. (a)(9). Pub. L. 98–397, § 204(c)(1), added par. (9).

Subsec. (e)(4)(L). Pub. L. 98–369, § 1001(b)(3), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (e)(4)(M). Pub. L. 98–397, § 204(c)(4), added subpar. (M).

Subsec. (e)(5). Pub. L. 98–369, § 491(c)(2), added par. (5).

Subsec. (f). Pub. L. 98–397, § 207(a), added subsec. (f).

1983—Subsec. (a)(5)(D)(v). Pub. L. 97–448, § 103(c)(8)(A), added cl. (v).

Subsec. (e)(1)(C). Pub. L. 97–448, § 101(b), substituted ''the zero bracket amount applicable to such an individual for the taxable year'' for ''$2,300''.

Subsec. (e)(4)(A). Pub. L. 97–448, § 103(c)(7), substituted ''this subsection, subsection (a)(2) of this section, and subsection (a)(2) of section 403'' for ''this section and section 403'' in last sentence.

Subsec. (e)(4)(J). Pub. L. 97–448, § 103(c)(12)(D), amended Pub. L. 97–34, § 311(c)(2) [see 1981 Amendment note below], by substituting ''section 72(*o*)(5)'' for ''section 77(*o*)(5)'' in last sentence of subpar. (j).

1981—Subsec. (a)(1). Pub. L. 97–34, § 311(c)(1), inserted ''(other than deductible employee contributions within the meaning of section 72(*o*)(5))''.

Pub. L. 97–34, § 314(c)(1), struck out ''or made available'' after ''distributed'' in three places.

Subsec. (a)(5). Pub. L. 97–34, § 311(b)(3)(A), inserted ''(other than accumulated deductible employee contributions within the meaning of section 72(*o*)(5))'' after ''contributions'' in subpar. (B) and added subcl. (III) in subpar. (D).

Subsec. (e)(4). Pub. L. 97–34, § 311(b)(2), (c)(2), added to subpar. (A) provision that for purposes of sections 402 and 403, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)), and added subpar. (J) provision making subpar. (J) inapplicable to distributions of accumulated deductible employee contributions (within the meaning of section 77(*o*)(5)). See 1983 Amendment note above.

1980—Subsec. (a)(6)(D)(iii). Pub. L. 96–222, § 101(a)(14)(E)(i), substituted ''may designate'' for ''many designate''.

Subsec. (a)(6)(E). Pub. L. 96–608 added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 96–222, § 101(a)(14)(C), substituted ''qualifying rollover distribution attributable to an employee is paid to the spouse of the employee after'' for ''lump-sum distribution from a qualified trust is paid to the spouse of the employee on account of''.

1978—Subsec. (a)(5). Pub. L. 95–458, § 4(a), among other changes, substituted provision permitting tax-free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5)(D)(i)(II). Pub. L. 95–600, § 157(h)(1), substituted ''subparagraphs (B) and (H) of subsection (e)(4)'' for ''subsection (e)(4)(B)''.

Subsec. (a)(6). Pub. L. 95–458, § 4(c), in provision preceding subpar. (A) struck out ''For purposes of paragraph (5)(A)(i)'', in subpar. (A) substituted ''For purposes of paragraph (5)(D)(i), a complete'' for ''A complete'', in subpar. (B) inserted ''For purposes of paragraph (5)(D)(i)—'' after ''assets.—'' in provision preceding cl. (i), and added subpar. (C).

Subsec. (a)(6)(D). Pub. L. 95–600, § 157(f)(1), added subpar. (D).

Subsec. (a)(7). Pub. L. 95–600, § 157(g)(1), added par. (7).

Subsec. (a)(8). Pub. L. 95–600, § 135(b), added par. (8).

Subsec. (e)(1)(C). Pub. L. 95–600, § 101(d)(1), substituted ''$2,300'' for ''$2,200''.

1977—Subsec. (e)(1)(C). Pub. L. 95–30 substituted ''amount equal to $2,200 plus one-tenth of the excess of'' for ''amount equal to one-tenth of the excess of'' in provisions preceding cl. (i).

1976—Subsec. (a)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1906(b)(13)(A), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(57)(A), substituted ''basic pay'' for ''basic salary'', ''civil service retirement laws'' for ''Civil Service Retirement Act (5 U.S.C. 2251)'', and ''section 8331(3) of title 5, United States Code'' for ''section 1(d) of such Act''.

Subsec. (a)(5). Pub. L. 94–267, § 1(a)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(5)(A). Pub. L. 94–267, § 1(a)(1), restructured provision by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(6). Pub. L. 94–267, §1(a)(3), added par. (6).

Subsec. (a)(6)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §1901(a)(57)(B), struck out subsec. (d) which related to certain trust agreements made before Oct. 21, 1942.

Subsec. (e)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(A). Pub. L. 94–455, §1901(a)(57)(C)(i), substituted ''Except for purposes of subsection (a)(2) and section 403(a)(2)'' for ''For purposes of this subparagraph''.

Subsec. (e)(4)(B), (J). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(L). Pub. L. 94–455, §1402(b)(2), substituted ''1 year'' for ''9 months''.

Pub. L. 94–455, §§1402(b)(1)(C), 1512(a), added subsec. (e)(4)(L) to be applicable to distributions and payments after Dec. 31, 1975, in taxable years beginning after Dec. 31, 1975, and provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1974—Subsec. (a)(2). Pub. L. 93–406, §2005(b)(1), substituted provisions covering capital gains treatment of portions of lump sum distributions determined through the application of a fraction formula susceptible of producing a phaseout of capital gains treatment for provisions covering capital gains treatment of portions of lump sum distributions determined on a fixed formula.

Subsec. (a)(3)(C). Pub. L. 93–406, §2005(c)(1), struck out subsec. (a)(3)(C) which defined ''total distribution payable''.

Subsec. (a)(5). Pub. L. 93–406, §§2002(g)(5), 2005(c)(2), substituted provisions covering rollover amounts for provisions covering limitation on capital gains treatment.

Subsec. (e). Pub. L. 93–406, §2005(a), substituted provisions covering tax on lump sum distributions for provisions covering plan termination distributions made after Dec. 31, 1953, and before Jan. 1, 1955.

1969—Subsec. (a)(5). Pub. L. 91–172, §515(a)(1), added par. (5).

Subsec. (b). Pub. L. 91–172, §321(b)(1), substituted provision for inclusion of contributions made by an employer to a nonexempt trust in the ''gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section'' for prior provision for inclusion in the ''gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made'', and provided that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(1) (relating to amount not received as annuities) and that a beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subch. J (relating to grantors and others treated as substantial owners).

1964—Subsec. (a)(1). Pub. L. 88–272, §232(e)(1), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

Subsec. (a)(3)(B). Pub. L. 88–272, §221(c)(1), substituted ''subsections (e) and (f) of section 425'' for ''section 421(d)(2) and (3)''.

Subsecs. (b), (d). Pub. L. 88–272, §232(e)(2), (3), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2). Pub. L. 87–792 inserted sentence providing that this paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

1960—Subsec. (a)(1). Pub. L. 86–437, §2(a), substituted ''paragraphs (2) and (4)'' for ''paragraph (2)''.

Subsec. (a)(4). Pub. L. 86–437, §1, added par. (4).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13613(c), Dec. 22, 2017, 131 Stat. 2166, provided that: ''The amendments made by this section [amending this section] shall apply to plan loan offset amounts which are treated as distributed in taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective Jan. 2, 2013, and applicable to matters pending on Jan. 2, 2013, or filed or accruing after that date, with certain exceptions, see section 1086(d) of Pub. L. 112–239, set out as a note under section 10251 of Title 34, Crime Control and Law Enforcement.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §108(f)(2)(C), Dec. 23, 2008, 122 Stat. 5109, provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to plan years beginning after December 31, 2009.''

Amendment by sections 108(f)(1)–(2)(B), (j) and 109(b)(3) of 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.

Amendment by section 201(b) of Pub. L. 110–458 applicable to calendar years beginning after December 31, 2008, with provisions relating to pension plan or contract amendments, see section 201(c) of Pub. L. 110–458, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §8(b), Dec. 29, 2007, 121 Stat. 2484, provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §822(b), Aug. 17, 2006, 120 Stat. 998, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title VIII, §829(b), Aug. 17, 2006, 120 Stat. 1002, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2006.''

Pub. L. 109–280, title VIII, §845(c), Aug. 17, 2006, 120 Stat. 1015, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions in taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §407(c), Dec. 21, 2005, 119 Stat. 2635, provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(1)–(3)(A) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §617(f), June 7, 2001, 115 Stat. 106, provided that: ''The amendments made by this section [enacting section 402A of this title and amending this section and sections 408A, 6047, and 6051 of this title] shall apply to taxable years beginning after December 31, 2005.''

Amendment by section 632(a)(3)(G) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §636(b)(2), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, §641(f), June 7, 2001, 115 Stat. 121, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 72, 219, 401, 403, 408, 415, 457, 3401, 3405, and 4973 of this title] shall apply to distributions after December 31, 2001.

''(2) REASONABLE NOTICE.—No penalty shall be imposed on a plan for the failure to provide the information required by the amendment made by subsection (c) [amending this section] with respect to any distribution made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor rollover notice after the date of the enactment of this Act [June 7, 2001], if the administrator of such plan makes a reasonable attempt to comply with such requirement.

''(3) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note below] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.''

Amendment by section 643(a) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, §644(c), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to distributions after December 31, 2001.''

Amendment by section 657(b) of Pub. L. 107–16 applicable to distributions made after Mar. 28, 2005, see section 657(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6005(c)(2)(C), July 22, 1998, 112 Stat. 800, provided that: ''The amendments made by this paragraph [amending this section and section 403 of this title] shall apply to distributions after December 31, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1501(c)(1), Aug. 5, 1997, 111 Stat. 1058, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1401(c), Aug. 20, 1996, 110 Stat. 1789, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 401, 406, 407, 691, 871, 877, and 4980A of this title] shall apply to taxable years beginning after December 31, 1999.

''(2) RETENTION OF CERTAIN TRANSITION RULES.—The amendments made by this section shall not apply to any distribution for which the taxpayer is eligible to elect the benefits of section 1122(h)(3) or (5) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out below]. Notwithstanding the preceding sentence, individuals who elect such benefits after December 31, 1999, shall not be eligible for 5-year averaging under section 402(d) of the Internal Revenue Code of 1986 (as in effect immediately before such amendments).''

Amendment by section 1421(b)(3)(A), (9)(B) of 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.

Amendment by section 1450(a)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1450(a)(3) of Pub. L. 104–188, set out in a Modifications of Subsection (b) of This Section note under section 403 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–318, title V, §521(e), July 3, 1992, 106 Stat. 313, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 72, 219, 401, 403, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3405, 4973, 4980A, and 7701 of this title] shall apply to distributions after December 31, 1992.

''(2) SPECIAL RULE FOR PARTIAL DISTRIBUTIONS.—For purposes of section 402(a)(5)(D)(i)(II) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section), a distribution before January 1, 1993, which is made before or at the same time as a series of periodic payments shall not be treated as one of such series if it is not substantially equal in amount to other payments in such series.''

Amendment by section 522(c)(1) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7811(i)(13), Dec. 19, 1989, 103 Stat. 2411, provided that the amendment made by that section is effective with respect to taxable years ending after Dec. 19, 1989 (or, at the election of the taxpayer, beginning after Dec. 31, 1986).

Amendment by section 7811(g)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), and 1018(t)(8)(A), (C), (u)(1), (6), (7) 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.

Pub. L. 100–647, title VI, §6068(b), Nov. 10, 1988, 102 Stat. 3704, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1984.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986,

see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title XI, §1105(c), Oct. 22, 1986, 100 Stat. 2419, as amended by Pub. L. 100–647, title I, §1011(c)(8), (9), Nov. 10, 1988, 102 Stat. 3458, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) DEFERRALS UNDER COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendment made by subsection (a) shall not apply to contributions made pursuant to such an agreement for taxable years beginning before the earlier of—

''(A) the date on which such agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1989.

Such contributions shall be taken into account for purposes of applying the amendment made by this section to other plans.

''(3) DISTRIBUTIONS MADE BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow the plan to make any distribution described in section 402(g)(2)(A)(ii) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note under section 401 of this title] shall be treated as made in accordance with the provisions of such plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 402(g)(2)(A)(ii) of such Code.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

''(4) SPECIAL RULE FOR TAXABLE YEARS OF PARTNERSHIPS WHICH INCLUDE JANUARY 1, 1987.—In the case of the taxable year of any partnership which begins before January 1, 1987, and ends after January 1, 1987, elective deferrals (within the meaning of section 402(g)(3) of the Internal Revenue Code of 1986) made on behalf of a partner for such taxable year shall, for purposes of section 402(g)(3) of such Code, be treated as having been made ratably during such taxable year.

''(5) CASH OR DEFERRED ARRANGEMENTS.—The amendments made by this section [amending this section and section 6051 of this title] shall not apply to employer contributions made during 1987 and attributable to services performed during 1986 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of such arrangement as in effect on August 16, 1986—

''(A) the employee makes an election with respect to such contribution before January 1, 1987, and

''(B) the employer identifies the amount of such contribution before January 1, 1987.

''(6) REPORTING REQUIREMENTS.—The amendments made by subsection (b) [amending section 6051 of this title] shall apply to calendar years beginning after December 31, 1986.''

Amendment by section 1106(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1106(i) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(b) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1121(c)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Pub. L. 99–514, title XI, §1122(h), Oct. 22, 1986, 100 Stat. 2470, as amended by Pub. L. 100–647, title I, §1011A(b)(11)–(15), Nov. 10, 1988, 102 Stat. 3474, 3475, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 72, 403, and 408 of this title] shall apply to amounts distributed after December 31, 1986, in taxable years ending after such date.

''(2) SUBSECTION (c).—

''(A) SUBSECTION (c)(1).—The amendment made by subsection (c)(1) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after July 1, 1986.

''(B) SUBSECTION (c)(2).—The amendment made by subsection (c)(2) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after December 31, 1986, except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986.

''(C) SPECIAL RULE FOR AMOUNTS NOT RECEIVED AS ANNUITIES.—In the case of any plan not described in section 72(e)(8)(D) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)), the amendments made by subsection (c)(3) [amending section 72 of this title] shall apply to amounts received after July 1, 1986.

''(3) SPECIAL RULE FOR INDIVIDUALS WHO ATTAINED AGE 50 BEFORE JANUARY 1, 1986.—

''(A) IN GENERAL.—In the case of a lump sum distribution to which this paragraph applies—

''(i) the existing capital gains provisions shall continue to apply, and

''(ii) the requirement of subparagraph (B) of section 402(e)(4) of the Internal Revenue Code of 1986 (as amended by subsection (a)) that the distribution be received after attaining age 59½ shall not apply.

''(B) COMPUTATION OF TAX.—If subparagraph (A) applies to any lump sum distribution of any taxpayer for any taxable year, the tax imposed by section 1 of the Internal Revenue Code of 1986 on such taxpayer for such taxable year shall be equal to the sum of—

''(i) the tax imposed by such section 1 on the taxable income of the taxpayer (reduced by the portion of such lump sum distribution to which clause (ii) applies), plus

''(ii) 20 percent of the portion of such lump sum distribution to which the existing capital gains provisions continue to apply by reason of this paragraph.

''(C) LUMP SUM DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any lump sum distribution if—

''(i) such lump sum distribution is received by an employee who has attained age 50 before January 1, 1986 or by an individual, estate, or trust with respect to such an employee, and

''(ii) the taxpayer makes an election under this paragraph.

Not more than 1 election may be made under this paragraph with respect to an employee. An election under this subparagraph shall be treated as an election under section 402(e)(4)(B) of such Code for purposes of such Code.

''(4) 5-YEAR PHASE-OUT OF CAPITAL GAINS TREATMENT.—

''(A) Notwithstanding the amendment made by subsection (b) [amending this section and section 403 of this title], if the taxpayer elects the application of

this paragraph with respect to any distribution after December 31, 1986, and before January 1, 1992, the phase-out percentage of the amount which would have been treated, without regard to this subparagraph, as long-term capital gain under the existing capital gains provisions shall be treated as long-term capital gain.

''(B) For purposes of this paragraph—

"In the case of distributions during calendar year:	The phase-out percentage is:
1987	100
1988	95
1989	75
1990	50
1991	25.

''(C) No more than 1 election may be made under this paragraph with respect to an employee. An election under this paragraph shall be treated as an election under section 402(e)(4)(B) of the Internal Revenue Code of 1986 for purposes of such Code.

''(5) ELECTION OF 10-YEAR AVERAGING.—An employee who has attained age 50 before January 1, 1986, and elects the application of paragraph (3) or section 402(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act) may elect to have such section applied by substituting '10 times' for '5 times' and '⅒' for '⅕' in subparagraph (B) thereof. For purposes of the preceding sentence, section 402(e)(1) of such Code shall be applied by using the rate of tax in effect under section 1 of the Internal Revenue Code of 1954 for taxable years beginning during 1986 and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years. This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph.

''(6) EXISTING CAPITAL GAIN PROVISIONS.—For purposes of paragraphs (3) and (4), the term 'existing capital gains provisions' means the provisions of paragraph (2) of section 402(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) and paragraph (2) of section 403(a) of such Code (as so in effect).

''(7) SUBSECTION (d).—The amendments made by subsection (d) [amending section 403 of this title] shall apply to taxable years beginning after December 31, 1985.

''(8) FROZEN DEPOSITS.—The amendments made by subsection (e)(2) [amending this section and section 408 of this title] shall apply to amounts transferred to an employee before, on, or after the date of the enactment of this Act [Oct. 22, 1986], except that in the case of an amount transferred on or before such date, the 60-day period referred to in section 402(a)(5)(C) of the Internal Revenue Code of 1986 shall not expire before the 60th day after the date of the enactment of this Act.

''(9) SPECIAL RULE FOR STATE PLANS.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

''(A) without regard to the phrase 'before separation from service' in paragraph (8)(D), and

''(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date.''

Amendment by section 1852(a)(5)(A), (b)(1)–(7), (c)(5) of 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.

Pub. L. 99–514, title XVIII, § 1854(f)(4)(C), Oct. 22, 1986, 100 Stat. 2882, as amended by Pub. L. 100–647, title I, § 1011(c)(6)(C), Nov. 10, 1988, 102 Stat. 3458, provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to any transaction occurring after December 31, 1984, except that in the case of any transaction occurring before the date of the enactment of this Act [Oct. 22, 1986], the period under which proceeds are required to be invested under section 402(j) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)) shall not end before the earlier of 1 year after the date of such transaction or 180 days after the date of the enactment of this Act.''

Pub. L. 99–514, title XVIII, § 1875(c)(1)(B), Oct. 22, 1986, 100 Stat. 2894, provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]. Such amendments shall apply also to distributions after 1983 and on or before the date of the enactment of this Act to individuals who are not 5-percent owners (as defined in section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by this paragraph)).''

Amendment by section 1898(a)(2), (3), (c)(7)(A)(i), (e) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1898(c)(1)(A) of Pub. L. 99–514 applicable to payments made after Oct. 22, 1986, see section 1898(c)(1)(C) of Pub. L. 99–514, set out as a note under section 72 of this title.

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 204 of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 207 of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(9)–(11) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Pub. L. 98–369, div. A, title IV, § 491(f)(2), July 18, 1984, 98 Stat. 853, provided that: ''The amendment made by subsection (c) [amending this section and section 405 of this title] shall apply to redemptions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Pub. L. 98–369, div. A, title V, § 522(e), July 18, 1984, 98 Stat. 871, as amended by Pub. L. 99–514, title XVIII, § 1852(b)(9), Oct. 22, 1986, 100 Stat. 2867, provided that: ''The amendments made by this section [amending this section and sections 403, 408, and 409 of this title] shall apply to distributions made after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

Pub. L. 98–369, div. A, title VII, § 713(c)(4), as added by Pub. L. 99–514, title XVIII, § 1875(c)(2), Oct. 22, 1986, 100 Stat. 2894, provided that: ''The amendment made by paragraph (3) [amending this section] shall apply to distributions after July 18, 1984.''

Amendment by section 1001(b)(3) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(b)(2), (3)(A), (c) of Pub. L. 97–34, applicable to taxable years beginning after Dec.

31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title III, §314(c)(2), Aug. 13, 1981, 95 Stat. 286, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–608, §2(b), Dec. 28, 1980, 94 Stat. 3551, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to payments made in taxable years beginning after December 31, 1978.

''(2) TRANSITIONAL RULE.—In the case of any payment made before January 1, 1982, in a taxable year beginning after December 31, 1978, which is treated as a qualifying rollover distribution (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) by reason of the amendment made by subsection (a), the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1981.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(d) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

Amendment by section 135(b) of Pub. L. 95–600 applicable to plan years beginning after December 31, 1979, see section 135(c)(1) of Pub. L. 95–600, set out as a note under section 401 of this title.

Pub. L. 95–600, title I, §157(f)(2), Nov. 6, 1978, 92 Stat. 2807, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to qualifying rollover distributions (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) completed after December 31, 1978, in taxable years ending after such date.''

Pub. L. 95–600, title I, §157(g)(4), Nov. 6, 1978, 92 Stat. 2808, provided that: ''The amendments made by this subsection [amending this section and sections 403 and 408 of this title] shall apply to lump-sum distributions completed after December 31, 1978, in taxable years ending after such date.''

Pub. L. 95–600, title I, §157(h)(3)(A), Nov. 6, 1978, 92 Stat. 2808, as amended by Pub. L. 96–222, title I, §101(a)(14)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this subsection [amending this section and section 408 of this title] shall apply to payments made in taxable years beginning after December 31, 1977.''

EFFECTIVE DATE OF 1978 AMENDMENT; CERTAIN ROLLOVERS VALIDATED

Pub. L. 95–458, §4(d), Oct. 14, 1978, 92 Stat. 1260, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 403 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

''(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

''(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before the date of the enactment of this Act, [Oct. 14, 1978], and

''(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XV, §1512(b), Oct. 4, 1976, 90 Stat. 1742, provided that: ''The amendment made by this section [amending this section] shall apply to distributions and payments made after December 31, 1975, in taxable years beginning after such date.''

Pub. L. 94–455, title XIX, §1901(a)(57)(C)(ii), Oct. 4, 1976, 90 Stat. 1774, provided that: ''The amendment made by clause (i) [amending this section] shall apply with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–406, title II, §2002(i)(3), Sept. 2, 1974, 88 Stat. 971, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (g)(5) and (6) [amending this section and section 403 of this title] shall apply on and after the date of enactment of this Act [Sept. 2, 1974] with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code.''

Pub. L. 93–406, title II, §2005(d), Sept. 2, 1974, 88 Stat. 992, provided that: ''The amendments made by this section [amending this section and sections 46, 50A, 56, 62, 72, 101, 122, 403, 405, 406, 407, 871, 877, 901, 1304, and 1348 of this title] shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(1) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Pub. L. 91–172, title V, §515(d), Dec. 30, 1969, 83 Stat. 646, provided that: ''The amendments made by this section [amending this section and sections 72, 403, 405, 406, 407 and 1304 of this title] shall apply to taxable years ending after December 31, 1969.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 221(c)(1) of Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see

section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

Amendment by section 232(e)(1)–(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–437, § 3, Apr. 22, 1960, 74 Stat. 79, provided that: ''The amendments made by this Act [amending this section and section 871 of this title] shall apply only with respect to taxable years beginning after December 31, 1959.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF DISQUALIFICATION RULES RELATING TO ACCEPTANCE OF ROLLOVER CONTRIBUTIONS

Pub. L. 105–34, title XV, § 1509, Aug. 5, 1997, 111 Stat. 1068, provided that: ''The Secretary of the Treasury or his delegate shall clarify that, under the Internal Revenue Service regulations protecting pension plans from disqualification by reason of the receipt of invalid rollover contributions under section 402(c) of the Internal Revenue Code of 1986, in order for the administrator of the plan receiving any such contribution to reasonably conclude that the contribution is a valid rollover contribution it is not necessary for the distributing plan to have a determination letter with respect to its status as a qualified plan under section 401 of such Code.''

MODEL EXPLANATION

Pub. L. 102–318, title V, § 521(d), July 3, 1992, 106 Stat. 313, provided that: ''The Secretary of the Treasury or his delegate shall develop a model explanation which a plan administrator may provide to a recipient in order to meet the requirements of section 402(f) of the Internal Revenue Code of 1986.''

INCORPORATION BY REFERENCE OF SUBSECTION (g) LIMITATIONS

Pub. L. 100–647, title I, § 1011(c)(10), Nov. 10, 1988, 102 Stat. 3459, provided that: ''Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 402(g) of the Internal Revenue Code of 1986.''

APPLICABILITY OF SUBSECTION (a)(5)(F)(ii)

Pub. L. 100–647, title I, § 1011A(a)(5), Nov. 10, 1988, 102 Stat. 3472, provided that: ''Section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 shall not apply to distributions after October 22, 1986, and before the 1st taxable year beginning after 1986 which are attributable to benefits which accrued before January 1, 1985.''

APPLICABILITY OF SUBSECTION (a)(5)(D)(i)(II)

Pub. L. 100–647, title I, § 1011A(b)(4)(E), Nov. 10, 1988, 102 Stat. 3473, provided that: ''Section 402(a)(5)(D)(i)(II) of the 1986 Code (as in effect after the amendment made by subparagraph (A)) shall not apply to distributions after December 31, 1986, and before March 31, 1988.''

ELECTION TO TREAT CERTAIN LUMP SUM DISTRIBUTIONS RECEIVED DURING 1987 AS RECEIVED DURING 1986

Pub. L. 99–514, title XI, § 1124, Oct. 22, 1986, 100 Stat. 2475, as amended by Pub. L. 100–647, title I, § 1011A(d), Nov. 10, 1988, 102 Stat. 3476, provided that:

''(a) IN GENERAL.—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986.

''(b) SPECIAL RULE FOR TERMINATED PLAN.—In the case of an individual, estate, or trust who receives with respect to an employee a distribution from a terminated plan which was maintained by a corporation organized under the laws of the State of Nevada, the principal place of business of which is Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986, the individual, estate, or trust may treat a lump sum distribution received from such plan before June 30, 1987, as if it were received in 1986.

''(c) LUMP SUM DISTRIBUTION.—For purposes of this section, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such Code.''

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, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

TREATMENT OF CERTAIN DISTRIBUTIONS FROM QUALIFIED TERMINATED PLAN

Pub. L. 98–369, div. A, title V, § 551, July 18, 1984, 98 Stat. 896, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code [of] 1986 [formerly I.R.C. 1954], if—

''(1) a distribution was made from a qualified terminated plan to an employee on December 16, 1976, and on January 6, 1977, such employee transferred all of the property received in such distribution to an individual retirement account (within the meaning of

section 408(a) of such Code) established for the benefit of such employee, and

''(2) the remaining balance to the credit of such employee in such qualified terminated plan was distributed to such employee on January 21, 1977, and all the property received by such employee in such distribution was transferred by such employee to such individual retirement account on January 21, 1977,

then such distributions shall be treated as qualifying rollover distributions (within the meaning of section 402(a)(5) of such Code) and shall not be includible in the gross income of such employee for the taxable year in which paid.

''(b) QUALIFIED TERMINATED PLAN.—For purposes of this section, the term 'qualified terminated plan' means a pension plan—

''(1) with respect to which a notice of sufficiency was issued by the Pension Benefit Guaranty Corporation on December 2, 1976, and

''(2) which was terminated by corporate action on February 20, 1976.

''(c) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Pub. L. 95–600, title I, §157(h)(3)(B), Nov. 6, 1978, 92 Stat. 2808, as amended by Pub. L. 96–222, title I, §101(a)(14)(A), (D), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 which is described in section 402(a)(5)(A) or 403(a)(4)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendments made by this subsection [amending sections 402 and 408 of this title], the applicable period specified in section 402(a)(5)(C) of such Code (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B) of such code) shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULES RELATING TO PERIOD FOR ROLLOVER CONTRIBUTION

Pub. L. 94–267, §1(d), Apr. 15, 1976, 90 Stat. 367, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—

''(A) PERIOD FOR ROLLOVER CONTRIBUTION.—In the case of a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] or section 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to distributions of the balance to the credit of the employee) which is contributed by an employee after the date of the enactment of this Act [Apr. 15, 1976] to a trust, plan, account, annuity, or bond described in section 402(a)(5)(B) or 403(a)(4)(B) of such Code, the applicable period specified in section 402(a)(5)(B) or 403(a)(4)(B) of such Code (relating to rollover distributions to another plan or retirement account) shall not expire before December 31, 1976.

''(B) TIME OF CONTRIBUTION.—

(i) GENERAL RULE.—If the initial portion of a payment the applicable period for which is determined under subparagraph (A) is contributed before December 31, 1976, by an individual to a trust, plan, account, annuity, or bond described in subparagraph (A) and the remaining portion of such payment is contributed by such individual to such a trust, plan, account, annuity, or bond not later than 30 days after the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 of the Internal Revenue Code of 1986 with respect to the contribution, then, for purposes of subparagraph (A) and sections 402(a)(5) and 403(a)(4) of such Code, at the election of the individual (made in accordance with regulations prescribed by the Secretary or his delegate), such remaining portion shall be considered to have been contributed on the date the initial portion of the payment was contributed. For purposes of this subparagraph, the initial portion of a payment is the amount by which such payment exceeds the amount of the tax imposed on such payment by chapter 1 of such Code (determined without regard to this subparagraph). [chapter 1 of this title]

''(ii) REGULATIONS.—For purposes of this subparagraph, the tax imposed on a payment by chapter 1 of the Internal Revenue Code of 1986, and the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 with respect to a contribution, shall be determined under regulations prescribed by the Secretary of the Treasury or his delegate.

''(C) PERIOD OF LIMITATIONS.—If an individual has made the election provided by subparagraph (B), then—

''(i) the period provided by the Internal Revenue Code of 1986 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Secretary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

''(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) of such Code or the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(2) ROLLOVER CONTRIBUTION FOR CERTAIN PROPERTY SOLD.—Sections 402(a)(5)(C) and 403(a)(4)(C) of the Internal Revenue Code of 1986 (relating to the requirement that rollover amount must consist of property received in a distribution) shall not apply with respect to that portion of the property received in a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] or 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] of such Code which is sold or exchanged by the employee on or before the date of the enactment of this Act, [Apr. 15, 1976], if the employee transfers an amount of cash equal to the proceeds received from the sale or exchange of such property in excess of the amount considered contributed by the employee (within the meaning of section 402(a)(4)(D)(i) of such Code).

''(3) NONRECOGNITION OF GAIN OR LOSS.—For purposes of the Internal Revenue Code of 1986 [this title] no gain or loss shall be recognized with respect to the sale or exchange of property described in paragraph

(2) if the proceeds of such sale or exchange are transferred by an employee in accordance with this subsection and the applicable provisions of section 402(a)(5) or 403(a)(4) of such Code.''

§ 402A. Optional treatment of elective deferrals as Roth contributions

(a) General rule

If an applicable retirement plan includes a qualified Roth contribution program—

(1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) Qualified Roth contribution program

For purposes of this section—

(1) In general

The term ''qualified Roth contribution program'' means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

(2) Separate accounting required

A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

(A) establishes separate accounts (''designated Roth accounts'') for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and

(B) maintains separate recordkeeping with respect to each account.

(c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

(1) Designated Roth contribution

The term ''designated Roth contribution'' means any elective deferral which—

(A) is excludable from gross income of an employee without regard to this section, and

(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

(2) Designation limits

The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

(3) Rollover contributions

(A) In general

A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to—

(i) another designated Roth account of the individual from whose account the payment or distribution was made, or

(ii) a Roth IRA of such individual.

(B) Coordination with limit

Any rollover contribution to a designated Roth account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

(4) Taxable rollovers to designated Roth accounts

(A) In general

Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

(B) Distributions to which paragraph applies

In the case of an applicable retirement plan which includes a qualified Roth contribution program, this paragraph shall apply to a distribution from such plan other than from a designated Roth account which is contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to the designated Roth account maintained under such plan for the benefit of the individual to whom the distribution is made.

(C) Coordination with limit

Any distribution to which this paragraph applies shall not be taken into account for purposes of paragraph (1).

(D) Other rules

The rules of subparagraphs (D), (E), and (F) of section 408A(d)(3) (as in effect for taxable years beginning after 2009) shall apply for purposes of this paragraph.

(E) Special rule for certain transfers

In the case of an applicable retirement plan which includes a qualified Roth contribution program—

(i) the plan may allow an individual to elect to have the plan transfer any amount not otherwise distributable under the plan to a designated Roth account maintained for the benefit of the individual,

(ii) such transfer shall be treated as a distribution to which this paragraph ap-

plies which was contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to such account, and

(iii) the plan shall not be treated as violating the provisions of section 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), or 457(d)(1)(A), or of section 8433 of title 5, United States Code, solely by reason of such transfer.

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a designated Roth account shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

(B) Distributions within nonexclusion period

A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

(i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or

(ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

(C) Distributions of excess deferrals and contributions and earnings thereon

The term ''qualified distribution'' shall not include any distribution of any excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

(3) Treatment of distributions of certain excess deferrals

Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

(A) not be treated as investment in the contract, and

(B) be included in gross income for the taxable year in which such excess is distributed.

(4) Aggregation rules

Section 72 shall be applied separately with respect to distributions and payments from a designated Roth account and other distributions and payments from the plan.

(e) Other definitions

For purposes of this section—

(1) Applicable retirement plan

The term ''applicable retirement plan'' means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b), and

(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(2) Elective deferral

The term ''elective deferral'' means—

(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(Added Pub. L. 107–16, title VI, §617(a), June 7, 2001, 115 Stat. 103; amended Pub. L. 111–240, title II, §§2111(a), (b), 2112(a), Sept. 27, 2010, 124 Stat. 2565, 2566; Pub. L. 112–240, title IX, §902(a), Jan. 2, 2013, 126 Stat. 2371; Pub. L. 113–295, div. A, title II, §220(k), Dec. 19, 2014, 128 Stat. 4036.)

AMENDMENTS

2014—Subsec. (c)(4)(E)(iii). Pub. L. 113–295 substituted ''403(b)(7)(A)(ii)'' for ''403(b)(7)(A)(i)''.

2013—Subsec. (c)(4)(E). Pub. L. 112–240 added subpar. (E).

2010—Subsec. (c)(4). Pub. L. 111–240, §2112(a), added par. (4).

Subsec. (e)(1)(C). Pub. L. 111–240, §2111(a), added subpar. (C).

Subsec. (e)(2). Pub. L. 111–240, §2111(b), amended par. (2) generally. Prior to amendment, text read as follows: ''The term 'elective deferral' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IX, §902(b), Jan. 2, 2013, 126 Stat. 2371, provided that: ''The amendment made by this section [amending this section] shall apply to transfers after December 31, 2012, in taxable years ending after such date.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2111(c), Sept. 27, 2010, 124 Stat. 2566, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

Pub. L. 111–240, title II, §2112(b), Sept. 27, 2010, 124 Stat. 2566, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Sept. 27, 2010].''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

(1) Distributee taxable under section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Self-employed individuals

For purposes of this subsection, the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(5) Direct trustee-to-trustee transfer

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

(1) General rule

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and additions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Includible compensation

For purposes of this subsection, the term ''includible compensation'' means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes—

(A) any elective deferral (as defined in section 402(g)(3)), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(4) Years of service

In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract

If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

[(6) Repealed. Pub. L. 107–147, title IV, § 411(p)(2), Mar. 9, 2002, 116 Stat. 50]

(7) Custodial accounts for regulated investment company stock

(A) Amounts paid treated as contributions

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before the employee dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), encounters financial hardship.

(B) Account treated as plan

For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company

For purposes of this paragraph, the term ''regulated investment company'' means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

(9) Retirement income accounts provided by churches, etc.

(A) Amounts paid treated as contributions

For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account

For purposes of this paragraph, the term ''retirement income account'' means a defined contribution program established or maintained by a church, or a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) Distribution requirements

Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.

(11) Requirement that distributions not begin before age 59½, severance from employment, death, or disability

This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)),

(B) in the case of hardship, or

(C) for distributions to which section 72(t)(2)(G) applies.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12) Nondiscrimination requirements

(A) In general

For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

(B) Church

For purposes of paragraph (1)(D), the term ''church'' has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) State and local governmental plans

For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

(13) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(14) Death benefits under USERRA-qualified active military service

This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations

Premiums paid by an employer for an annuity contract which is not subject to subsection (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

(Aug. 16, 1954, ch. 736, 68A Stat. 137; Pub. L. 85–866, title I, § 23(a)–(c), Sept. 2, 1958, 72 Stat. 1620–1622; Pub. L. 87–370, § 3(a), Oct. 4, 1961, 75 Stat. 801; Pub. L. 87–792, § 4(d), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, § 232(e)(4)–(6), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, § 321(b)(2), title V, § 515(a)(2), Dec. 30, 1969, 83 Stat. 591, 644; Pub. L. 93–406, title II, §§ 1022(e), 2002(g)(6), 2004(c)(4), 2005(b)(2), Sept. 2, 1974, 88 Stat. 940, 969, 986, 991; Pub. L. 94–267, § 1(b), Apr. 15, 1976, 90 Stat. 366; Pub. L. 94–455, title XIV, § 1402(b)(1)(D), (2), title XV, § 1504(a), title XIX, §§ 1901(a)(58), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1738, 1774, 1794, 1834; Pub. L. 95–458, § 4(b), Oct. 14, 1978, 92 Stat. 1259; Pub. L. 95–600, title I, §§ 154(a), 156(a), (b), 157(g)(2), Nov. 6, 1978, 92 Stat. 2801, 2802, 2808; Pub. L. 96–222,

title I, §101(a)(12), (13)(C), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(b)(3)(B), Aug. 13, 1981, 95 Stat. 280; Pub. L. 97–248, title II, §251(a), (b), (c)(3), Sept. 3, 1982, 96 Stat. 529–531; Pub. L. 97–448, title I, §103(c)(8)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–21, title I, §122(c)(4), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title IV, §491(d)(12), title V, §§521(c), 522(a)(2), (3), (d)(9)–(11), title X, §1001(b)(4), (e), July 18, 1984, 98 Stat. 849, 867, 869–871, 1011, 1012; Pub. L. 99–514, title XI, §§1120(a), (b), 1122(b)(1)(B), (d), 1123(c), title XVIII, §1852(a)(3)(A), (B), (5)(B), (b)(10), Oct. 22, 1986, 100 Stat. 2463, 2466, 2469, 2474, 2865, 2867; Pub. L. 100–647, title I, §1011(c)(7)(B), (12), (m)(1), (2), title VI, §6052(a)(1), Nov. 10, 1988, 102 Stat. 3458, 3459, 3471, 3696; Pub. L. 101–508, title XI, §11701(k), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 102–318, title V, §§521(b)(12), (13), 522(a)(3), (c)(2), (3), July 3, 1992, 106 Stat. 311, 314, 315; Pub. L. 104–188, title I, §§1450(c)(1), 1704(t)(69), Aug. 20, 1996, 110 Stat. 1815, 1891; Pub. L. 105–34, title XV, §§1504(a)(1), 1505(c), title XVI, §1601(d)(6)(B), Aug. 5, 1997, 111 Stat. 1063, 1064, 1090; Pub. L. 105–206, title VI, §6005(c)(2)(B), July 22, 1998, 112 Stat. 800; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§632(a)(2), 641(b)(1), (e)(7), 642(b)(1), 646(a)(2), 647(a), June 7, 2001, 115 Stat. 113, 120, 121, 126, 127; Pub. L. 107–147, title IV, §411(p)(1)–(3), Mar. 9, 2002, 116 Stat. 49, 50; Pub. L. 108–311, title IV, §§404(e), 408(a)(11), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–135, title IV, §412(w), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title VIII, §§827(b)(2), (3), 829(a)(2), (3), 845(b)(1), (2), Aug. 17, 2006, 120 Stat. 1000, 1002, 1015; Pub. L. 110–245, title I, §104(c)(2), June 17, 2008, 122 Stat. 1627.)

AMENDMENTS

2008—Subsec. (b)(14). Pub. L. 110–245 added par. (14).

2006—Subsec. (a)(2). Pub. L. 109–280, §845(b)(1), added par. (2).

Subsec. (a)(4)(B). Pub. L. 109–280, §829(a)(2), inserted ''and (11)'' after ''(7)''.

Subsec. (b)(2). Pub. L. 109–280, §845(b)(2), added par. (2).

Subsec. (b)(7)(A)(ii). Pub. L. 109–280, §827(b)(2), inserted ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

Subsec. (b)(8)(B). Pub. L. 109–280, §829(a)(3), substituted '', (9), and (11)'' for ''and (9)''.

Subsec. (b)(11)(C). Pub. L. 109–280, §827(b)(3), added subpar. (C).

2005—Subsec. (b)(9)(B). Pub. L. 109–135 inserted ''or'' before ''a convention''.

2004—Subsec. (a)(4)(B). Pub. L. 108–311, §404(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).''

Subsec. (b)(7)(A)(ii). Pub. L. 108–311, §408(a)(11), substituted ''3121(a)(5)(D)'' for ''3121(a)(1)(D)''.

2002—Subsec. (b)(1). Pub. L. 107–147, §411(p)(1), inserted concluding provisions and struck out former concluding provisions which read as follows: ''then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.''

Subsec. (b)(3). Pub. L. 107–147, §411(p)(3), in first sentence, inserted '', and which precedes the taxable year by no more than five years'' before period at end and, in second sentence, struck out ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' after ''this subsection applies''.

Subsec. (b)(6). Pub. L. 107–147, §411(p)(2), struck out heading and text of par. (6). Text read as follows: ''For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.''

2001—Subsec. (b)(1). Pub. L. 107–16, §642(b)(1), substituted ''section 408(d)(3)(A)(ii)'' for ''section 408(d)(3)(A)(iii)'' in concluding provisions.

Pub. L. 107–16, §632(a)(2)(A), substituted ''the applicable limit under section 415'' for ''the exclusion allowance for such taxable year'' in concluding provisions.

Subsec. (b)(2). Pub. L. 107–16, §632(a)(2)(B), struck out par. (2), which described exclusion allowance for purposes of subsec. (b) providing general criteria, determination under section 415 rules, number of years of service for duly ordained, commissioned, or licensed ministers or lay employees, and alternative exclusion allowance for such ministers or lay employees.

Subsec. (b)(3). Pub. L. 107–16, §632(a)(2)(C), inserted ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' before period at end of second sentence.

Subsec. (b)(7)(A)(ii). Pub. L. 107–16, §646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(8)(A)(ii). Pub. L. 107–16, §641(b)(1), substituted ''such distribution to an eligible retirement plan described in section 402(c)(8)(B), and'' for ''such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and''.

Subsec. (b)(8)(B). Pub. L. 107–16, §641(e)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A).''

Subsec. (b)(11). Pub. L. 107–16, §646(a)(2)(B), substituted ''severance from employment'' for ''separation from service'' in heading.

Subsec. (b)(11)(A). Pub. L. 107–16, §646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(13). Pub. L. 107–16, §647(a), added par. (13).

2000—Subsec. (b)(3)(B). Pub. L. 106–554 substituted ''section 125, 132(f)(4), or'' for ''section 125 or''.

1998—Subsec. (b)(8)(B). Pub. L. 105–206 inserted ''(including paragraph (4)(C) thereof)'' after ''section 402(c)''.

1997—Subsec. (b)(1)(A)(iii). Pub. L. 105–34, §1601(d)(6)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 105–34, §1504(a)(1), inserted at end ''Such term includes—'' and subpars. (A) and (B).

Subsec. (b)(12)(C). Pub. L. 105–34, §1505(c), added subpar. (C).

1996—Subsec. (b)(1)(E). Pub. L. 104–188, §1450(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''in the case of a contract

purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),''.

Subsec. (b)(10). Pub. L. 104–188, § 1704(t)(69), substituted ''a direct'' for ''an direct'' in last sentence.

1992—Subsec. (a)(4)(A)(i). Pub. L. 102–318, § 521(b)(12)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (a)(4)(B). Pub. L. 102–318, § 521(b)(12)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).''

Subsec. (a)(5). Pub. L. 102–318, § 522(c)(2), added par. (5).

Subsec. (b)(8)(A)(i). Pub. L. 102–318, § 521(b)(13)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (b)(8)(B) to (D). Pub. L. 102–318, § 521(b)(13)(B), added subpar. (B) and struck out former subpars. (B) to (D), which related to special rules for partial distributions, applicability of certain similar rules, and eligibility for rollover treatment of required distributions.

Subsec. (b)(10). Pub. L. 102–318, § 522(a)(3), (c)(3), substituted ''sections 401(a)(9) and 401(a)(31)'' for ''section 401(a)(9)'' and inserted at end ''Any amount transferred in an direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.''

1990—Subsec. (b)(12)(A). Pub. L. 101–508 inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in second sentence.

1988—Subsec. (b)(1)(D). Pub. L. 100–647, § 1011(m)(1)(B), substituted ''paragraph (12)'' for ''paragraph (10)''.

Subsec. (b)(1)(E). Pub. L. 100–647, § 1011(c)(7)(B), added subpar. (E).

Subsec. (b)(10). Pub. L. 100–647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12). Pub. L. 100–647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12)(A). Pub. L. 100–647, § 1011(m)(2), inserted ''(17),'' after ''paragraphs (4), (5),'' and '', section 401(m),'' after ''of section 401(a)'' in cl. (i).

Pub. L. 100–647, § 1011(c)(12), inserted after cl. (ii) ''For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Pub. L. 100–647, § 6052(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded.''

1986—Subsec. (a)(1). Pub. L. 99–514, § 1122(d)(1), substituted ''Distributee taxable under section 72'' for ''General rule'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).''

Subsec. (a)(2). Pub. L. 99–514, § 1122(b)(1)(B), struck out par. (2) which read as follows:

''(A) General rule

''If—

''(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

''(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

''(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

''(B) Cross reference

''For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).''

Subsec. (a)(4)(B). Pub. L. 99–514, § 1852(a)(5)(B)(i), substituted ''through (G)'' for ''through (F)''.

Subsec. (b)(1). Pub. L. 99–514, § 1122(d)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)''.

Subsec. (b)(1)(D). Pub. L. 99–514, § 1120(a), added subpar. (D).

Subsec. (b)(7)(A)(ii). Pub. L. 99–514, § 1123(c)(2), inserted ''in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)),'' after ''section 72(m)(7)), or''.

Subsec. (b)(7)(D). Pub. L. 99–514, § 1852(a)(3)(B), struck out subpar. (D) ''Distribution requirements'' which read as follows: ''For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract.''

Subsec. (b)(8)(C). Pub. L. 99–514, § 1852(b)(10), inserted ''and'' before ''(F)(i)''.

Subsec. (b)(8)(D). Pub. L. 99–514, § 1852(a)(5)(B)(ii), added subpar. (D).

Subsec. (b)(10). Pub. L. 99–514, § 1120(b), added par. (10) relating to nondiscrimination requirements.

Pub. L. 99–514, § 1852(a)(3)(A), added par. (10) relating to distribution requirements.

Subsec. (b)(11). Pub. L. 99–514, § 1123(c)(1), added par. (11).

Subsec. (c). Pub. L. 99–514, § 1122(d)(3), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities).''

1984—Subsec. (a)(2)(A). Pub. L. 98–369, § 1001(b)(4), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (a)(4)(A)(i). Pub. L. 98–369, § 522(a)(2), substituted ''any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,'' for ''the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.''

Subsec. (a)(4)(B). Pub. L. 98–369, § 522(d)(9), substituted ''(B) through (F)'' for ''(B) through (E)''.

Subsec. (b)(1). Pub. L. 98–369, § 491(d)(12), struck out ''or 409(b)(3)(C)'' after ''408(d)(3)(A)(iii)''.

Subsec. (b)(7)(D). Pub. L. 98–369, § 521(c), added subpar. (D).

Subsec. (b)(8)(A)(i). Pub. L. 98–369, § 522(a)(3), substituted ''any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him'' for ''the balance to the credit

of an employee is paid to him in a qualifying distribution''.

Subsec. (b)(8)(B). Pub. L. 98–369, §522(d)(10), substituted provisions relating to special rules for partial distributions for provisions relating to definition of qualifying distributions.

Subsec. (b)(8)(C). Pub. L. 98–369, §522(d)(11), substituted ''(F)(i)'' for ''(D)(v), and (E)(i)''.

1983—Subsec. (b)(3). Pub. L. 98–21 substituted ''section 911'' for ''sections 105(d) and 911''.

Subsec. (b)(8)(C). Pub. L. 97–448 substituted ''subparagraphs (B), (C), (D)(v), and (E)(i) of section 402(a)(5)'' for ''subparagraphs (B), (C), and (E)(i) of section 402(a)(5)''.

1982—Subsec. (b)(2)(B). Pub. L. 97–248, §251(a)(1), (c)(3), substituted ''home health service agencies, and certain churches, etc.'' for ''and home health service agencies'', and ''(under section 415 without regard to section 415(c)(8))'' for ''(under section 415)''.

Subsec. (b)(2)(C), (D). Pub. L. 97–248, §251(a)(2), added subpars. (C) and (D).

Subsec. (b)(9). Pub. L. 97–248, §251(b), added par. (9).

1981—Subsec. (b)(8)(B)(i). Pub. L. 97–34 inserted '', or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(*o*)(5))'' after ''subsection (a)''.

1980—Subsec. (b). Pub. L. 96–222 substituted in par. (1) ''409(b)(3)(C)'' for ''409(d)(3)(C)'', and in par. (7)(A) ''which satisfies'' for ''which satisfied''.

1978—Subsec. (a)(4). Pub. L. 95–600, §157(g)(2), in subpar. (B) substituted ''paragraphs (6) and (7)'' for ''paragraph (6)''.

Pub. L. 95–458, among other changes, substituted provision permitting tax free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5). Pub. L. 95–458 struck out par. (5) which related to special rules concerning time of termination of a profit-sharing plan and the treatment of the sale of a corporate subsidiary or assets as payment or distribution on account of termination of a plan of which an annuity trust was a part.

Subsec. (b)(1). Pub. L. 95–600, §156(b), inserted provision relating to application of rules of this subsection to amounts contributed by an employer for a taxable year.

Subsec. (b)(7)(A). Pub. L. 95–600, §154(a), struck out ''the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account'' after ''contract for his employee if'', and added cls. (i) and (ii).

Subsec. (b)(8). Pub. L. 95–600, §156(a), added par. (8).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b) (1)(D), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (a)(4). Pub. L. 94–455, §1901(a)(58), reenacted provisions following subpar. (C) without substantive change.

Pub. L. 94–267, §1(b)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(4)(A). Pub. L. 94–267, §1(b)(1), restructured provisions by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Pub. L. 94–267, §1(b)(3), added par. (5).

Subsec. (b)(1)(A)(ii). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))''.

Subsec. (b)(4)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(7)(C). Pub. L. 94–455, §1504(a), struck out '', and which issues only redeemable stock'' after ''regulated investment company within the meaning of section 851(a)''.

1974—Subsec. (a)(2). Pub. L. 93–406, §2005(b)(2), substituted ''a lump sum distribution (as defined in section 4002(e)(4)(A)) is paid to the recipient'' for ''the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee'' as cl. (iii) of subpar. (A), substituted ''so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph'' for ''then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1)'' following cl. (iii) of subpar. (A), substituted provisions setting out a cross reference to section 402(e) for provisions defining ''total amounts'' as subpar. (B), and struck out subpar. (C) setting out limitations on capital gains treatment.

Subsec. (a)(4). Pub. L. 93–406, §2002(g)(6), added par. (4).

Subsec. (b)(2). Pub. L. 93–406, §2004(c)(4), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 93–406, §1022(e), added par. (7).

1969—Subsec. (a)(2)(C). Pub. L. 91–172, §515(a)(2), added subpar. (C).

Subsec. (c). Pub. L. 91–172, §321(b)(2), consolidated provisions of subsec. (c) providing for taxability of beneficiary under a nonqualified annuity, the employees gross income to include amount contributed by employer for annuity contract in the year in which amount is contributed, the amount to be included as provided in section 72 of this title and of subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, the gross income to include amount contributed by employer after Dec. 31, 1957, in the year of change from forfeitable to nonforfeitable rights, the new provisions including premiums paid by an employer in accordance with section 83, except that value of the contract shall be substituted for fair market value of the property for purposes of applying such section 83, such provision not to be applicable to that portion of premiums paid which is excluded from gross income under subsec. (b) of this section.

Subsec. (d). Pub. L. 91–172, §321(b)(2), struck out subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, gross income of the employee to include (amount contributed by employer after Dec. 31, 1957), in year of change from forfeitable to nonforfeitable rights. See subsec. (c) of this section.

1964—Subsecs. (a)(1), (b)(1), (c). Pub. L. 88–272, §232(e)(4)–(6), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2)(A). Pub. L. 87–792, §4(d)(1), (2), substituted ''described in paragraph (1)'' for ''which meets the requirements of section 401(a)(3), (4), (5), and (6)'' in cl. (i), and inserted sentence at end thereof pro-

viding that this subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

Subsec. (a)(3). Pub. L. 87–792, § 4(d)(3), added par. (3).

1961—Subsec. (b). Pub. L. 87–370, § 3(a)(3), inserted ''or public school'' in heading.

Subsec. (b)(1)(A). Pub. L. 87–370, § 3(a)(1), included annuity contracts purchased for an employee, other than one described in clause (i) of this subpar., who performs services for an educational institution, as defined in section 151(e)(4) of this title, by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of either.

Subsec. (b)(3). Pub. L. 87–370, § (3)(a)(2), substituted ''the employer described in paragraph (1)(A)'' for ''the employer described in section 501(c)(3) and exempt from tax under section 501(a)''.

1958—Subsec. (a)(1). Pub. L. 85–866, § 23(b), substituted ''which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section),'' for ''with respect to which the employer's contribution is deductible under section 404(a)(2), or if an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),''.

Subsecs. (b) to (d). Pub. L. 85–866, § 23(a), added subsec. (b), redesignated former subsec. (b) as (c), and added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 827(b)(2), (3) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Amendment by section 829(a)(2), (3) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(1), (2) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(e) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, 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 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 632(a)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Amendment by section 641(b)(1), (e)(7) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Amendment by section 642(b)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 642(c) of Pub. L. 107–16, set out as a note under section 408 of this title.

Amendment by section 646(a)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, § 647(c), June 7, 2001, 115 Stat. 127, provided that: ''The amendments made by this section [amending this section and section 457 of this title] shall apply to trustee-to-trustee transfers after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, § 314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6005 of Pub. L. 105–206 applicable to distributions after Dec. 31, 1998, see section 6005(c)(2)(C) of Pub. L. 105–206, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, § 1504(a)(2), Aug. 5, 1997, 111 Stat. 1063, provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1505(c) of Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(6)(B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, § 1450(c)(2), Aug. 20, 1996, 110 Stat. 1815, provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1995, except a contract shall not be required to meet any change in any requirement by reason of such amendment before the 90th day after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(12), (13) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Amendment by section 522(a)(3), (c)(2), (3) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(B) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of

Pub. L. 100–647, set out as a note under section 401 of this title.

Amendment by section 1011(c)(12), (m)(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.

Pub. L. 100–647, title VI, §6052(a)(2), Nov. 10, 1988, 102 Stat. 3696, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment made by section 1120(b) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1120(c), Oct. 22, 1986, 100 Stat. 2464, as amended by Pub. L. 100–647, title I, §1011(m)(3), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) January 1, 1991, or

''(B) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).''

Amendment by section 1122(b)(1)(B), (d) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, but only with respect to distributions from contracts described in subsec. (b) of this section which are attributable to assets other than assets held as of the close of the last year beginning before Jan. 1, 1989, with certain exceptions and transition rule, see section 1123(e) of Pub. L. 99–514, as amended, set out as a note under section 72 of this title.

Pub. L. 99–514, title XVIII, §1852(a)(3)(C), Oct. 22, 1986, 100 Stat. 2865, provided that: ''The amendments made by this paragraph [amending this section] shall apply to benefits accruing after December 31, 1986, in taxable years ending after such date.''

Amendment by section 1852(a)(5)(B), (b)(10) of 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 OF 1984 AMENDMENT

Amendment by section 491(d)(12) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(c) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522 of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 1001(b)(4) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §251(e), Sept. 3, 1982, 96 Stat. 531, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 114–113, div. Q, title III, §336(b)(1), Dec. 18, 2015, 129 Stat. 3110, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 415 of this title, and enacting a provision set out as a note below] shall apply to taxable years beginning after December 31, 1981.

''(2) RETIREMENT INCOME ACCOUNTS.—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1974.

''(3) SECTION 415 AMENDMENTS.—The amendments made by subsection (c) [amending section 415 of this title] shall apply to years beginning after December 31, 1981.

''(4) CORRECTION PERIOD.—The amendment made by subsection (d) [enacting provisions set out below] shall take effect on July 1, 1982.

''(5) SPECIAL RULE FOR EXISTING DEFINED BENEFIT ARRANGEMENTS.—Any defined benefit arrangement which is established by a church or a convention or association of churches (including an organization described in section 414(e)(3)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and which is in effect on the date of the enactment of this Act [Sept. 3, 1982] shall not be treated as failing to meet the requirements of section 403(b) of such Code merely because it is a defined benefit arrangement, and shall be subject to the applicable limitations of section 415(b) of such Code as if it were a defined benefit plan under section 401(a) of such Code (and not to the limitations of section 415(c) of such Code)..[sic]''

[Pub. L. 114–113, div. Q, title III, §336(b)(2), Dec. 18, 2015, 129 Stat. 3110, provided that: ''The amendments made by this subsection [amending section 251(e)(5) of Pub. L. 97–248, set out above] shall apply to years beginning before, on, or after the date of the enactment of this Act [Dec. 18, 2015].'']

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §154(b), Nov. 6, 1978, 92 Stat. 2801, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Pub. L. 95–600, title I, §156(d), Nov. 6, 1978, 92 Stat. 2803, as amended by Pub. L. 96–222, title I, §101(a)(13)(A),

Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this section [amending this section and sections 219, 220, 408, 409, 2039, and 4973] shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after such date.''

Amendment by section 157(g)(2) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by Pub. L. 95–458 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 4(d) of Pub. L. 95–458, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, § 1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XIV, § 1504(b), Oct. 4, 1976, 90 Stat. 1738, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(58), (b)(8)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–406, title II, § 1022(e), Sept. 2, 1974, 88 Stat. 940, provided that the amendment made by that section is effective Jan. 1, 1974.

Amendment by section 2002(g)(6) of Pub. L. 93–406 applicable on and after Sept. 2, 1974, with respect to contributions to an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a), see section 2002(i)(3) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2004(c)(4) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 2005(b)(2) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(2) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Amendment by section 515(a)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–370, § 3(b), Oct. 4, 1961, 75 Stat. 801, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATES OF 1958 AMENDMENT

Pub. L. 85–866, § 23(g), Sept. 2, 1958, 72 Stat. 1623, provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 101 of this title] shall apply with respect to taxable years beginning after December 31, 1957. The amendments made by subsection (e) [amending section 2039 of this title] shall apply with respect to estates of decedents dying after December 31, 1957. The amendments made by subsection (f) [amending section 2517 of this title] shall apply with respect to calendar years after 1957.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1120 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

ELECTION TO MODIFY SECTION 403(b) EXCLUSION ALLOWANCE TO CONFORM TO SECTION 415 MODIFICATION

Pub. L. 107–16, title VI, § 632(b)(3), June 7, 2001, 115 Stat. 115, provided that: ''In the case of taxable years beginning after December 31, 1999, and before January 1, 2002, a plan may disregard the requirement in the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance.''

MODIFICATIONS OF SUBSECTION (b) OF THIS SECTION

Pub. L. 105–34, title XVI, § 1601(d)(4), Aug. 5, 1997, 111 Stat. 1089, as amended by Pub. L. 105–206, title VI, § 6016(a)(2), July 22, 1998, 112 Stat. 822, provided that:

''(A) Paragraphs (7)(A)(ii) and (11) of section 403(b) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act [Pub. L. 104–188, set out below] to the extent that such distribution is not includible in income by reason of—

''(i) in the case of distributions before January 1, 1998, section 403(b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act [Pub. L. 104–188, set out below]), and

''(ii) in the case of distributions on and after such date, such section 403(b)(10).

''(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below].''

Pub. L. 104–188, title I, § 1450(a), (b), Aug. 20, 1996, 110 Stat. 1814, provided that:

''(a) MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED.—

''(1) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

''(2) CONSTRUCTIVE RECEIPT.—[Amended section 402 of this title.]

''(3) EFFECTIVE DATE.—This subsection shall apply to taxable years beginning after December 31, 1995.

''(b) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—

''(1) IN GENERAL.—In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal

Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

''(2) ROLLOVERS.—Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code.''

SAMPLING TO DETERMINE WHETHER PLAN MEETS SUBSECTION (b)(12) REQUIREMENTS

Pub. L. 100–647, title VI, §6052(b), Nov. 10, 1988, 102 Stat. 3696, provided that: ''In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

''(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

''(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.''

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, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

CORRECTION PERIOD FOR CHURCH PLANS

Pub. L. 97–248, title II, §251(d), Sept. 3, 1982, 96 Stat. 531, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be treated as not meeting the requirements of section 401 or 403 of such Code if—

''(1) by reason of any change in any law, regulation, ruling, or otherwise such plan is required to be amended to meet such requirements, and

''(2) such plan is so amended at the next earliest church convention or such other time as the Secretary of the Treasury or his delegate may prescribe.''

TRANSITIONAL RULE FOR MAKING SECTION 403(b)(8) ROLLOVER IN THE CASE OF PAYMENTS DURING 1978

Pub. L. 96–222, title I, §101(a)(13)(B), Apr. 1, 1980, 94 Stat. 204, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 in a qualifying distribution described in section 403(b)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Applicable period specified in section 402(a)(5)(C) of this title shall not expire before close of Dec. 31, 1980 in case of any payment described in subsec. (a)(4)(A) of this section or section 402(a)(5)(A) of this title, see section 157(h)(3)(B) of Pub. L. 95–600, set out as a note under section 402 of this title.

§ 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) Pension trusts

(A) In general

In the taxable year when paid, if the contributions are paid into a pension trust (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (*o*), and in the case of any other plan in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years,

(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 431, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 431.

(B) Special rule in case of certain amendments

In the case of a multiemployer plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary), if the full funding limitation determined under section 431(c)(6) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 431(c)(6)(A)(ii) exceeds the amount determined under section 431(c)(6)(A)(i), and if the funding method and the actuarial assumptions used are those used for such year under section 431, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying section 431(c)(6) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary to carry out the purposes of this subparagraph.

(C) Certain collectively-bargained plans

In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 168(i)(10)(C), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words ''plan amendment'' the words ''plan amendment or increase in benefits payable under title II of the Social Security Act''. For the purposes of this subparagraph, the term ''controlled group'' has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

(D) Amount determined on basis of unfunded current liability

In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—

(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over

(ii) the value of the plan's assets determined under section 431(c)(2).

(E) Carryover

Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.

(2) Employees' annuities

In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17),[1] (19), (20), (22), (26), (27), (31), and (37) and, if applicable, the requirements of section 401(a)(10) and of section 401(d), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) Stock bonus and profit-sharing trusts

(A) Limits on deductible contributions

(i) In general

In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of—

(I) 25 percent of the compensation otherwise paid or accrued during the tax-

[1] See References in Text note below.

able year to the beneficiaries under the stock bonus or profit-sharing plan, or

(II) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.

(ii) Carryover of excess contributions

Any amount paid into the trust in any taxable year in excess of the limitation of clause (i) (or the corresponding provision of prior law) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this clause in any 1 such succeeding taxable year together with the amount allowable under clause (i) shall not exceed the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.

(iii) Certain retirement plans excluded

For purposes of this subparagraph, the term ''stock bonus or profit-sharing trust'' shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1).

(iv) 2 or more trusts treated as 1 trust

If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

(v) Defined contribution plans subject to the funding standards

Except as provided by the Secretary, a defined contribution plan which is subject to the funding standards of section 412 shall be treated in the same manner as a stock bonus or profit-sharing plan for purposes of this subparagraph.

(B) Profit-sharing plan of affiliated group

In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) Trusts created or organized outside the United States

If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501(a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) Other plans

If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee. For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.

(6) Time when contributions deemed made

For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) Limitation on deductions where combination of defined contribution plan and defined benefit plan

(A) In general

If amounts are deductible under the foregoing paragraphs of this subsection (other than paragraph (5)) in connection with 1 or more defined contribution plans and 1 or more defined benefit plans or in connection with trusts or plans described in 2 or more of such paragraphs, the total amount deductible in a taxable year under such plans shall not exceed the greater of—

(i) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, or

(ii) the amount of contributions made to or under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions nec-

essary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans for the plan year which ends with or within such taxable year (or for any prior plan year).

A defined contribution plan which is a pension plan shall not be treated as failing to provide definitely determinable benefits merely by limiting employer contributions to amounts deductible under this section. In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3)).

(B) Carryover of contributions in excess of the deductible limit

Any amount paid under the plans in any taxable year in excess of the limitation of subparagraph (A) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this subparagraph in any 1 such succeeding taxable year together with the amount allowable under subparagraph (A) shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plans.

(C) Paragraph not to apply in certain cases

(i) Beneficiary test

This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.

(ii) Elective deferrals

If, in connection with 1 or more defined contribution plans and 1 or more defined benefit plans, no amounts (other than elective deferrals (as defined in section 402(g)(3))) are contributed to any of the defined contribution plans for the taxable year, then subparagraph (A) shall not apply with respect to any of such defined contribution plans and defined benefit plans.

(iii) Limitation

In the case of employer contributions to 1 or more defined contribution plans—

(I) if such contributions do not exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, this paragraph shall not apply to such contributions or to employer contributions to the defined benefit plans to which this paragraph would otherwise apply by reason of contributions to the defined contribution plans, and

(II) if such contributions exceed 6 percent of such compensation, this paragraph shall be applied by only taking into account such contributions to the extent of such excess.

For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions plans to the extent attributable to employer contributions to such plans in such preceding taxable years.

(iv) Guaranteed plans

In applying this paragraph, any single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 shall not be taken into account.

(v) Multiemployer plans

In applying this paragraph, any multiemployer plan shall not be taken into account.

(D) Insurance contract plans

For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.

(8) Self-employed individuals

In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

(A) the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

(B) the term ''earned income'' has the meaning assigned to it by section 401(c)(2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual (determined without regard to the deductions allowed by this section) derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) Certain contributions to employee stock ownership plans

(A) Principal payments

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4975(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6), applied by the plan to the repayment of the principal of a loan incurred for

the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6). The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan. Any amount paid into such trust in any taxable year in excess of the amount deductible under this paragraph shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the preceding sentence.

(B) Interest payment

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied by the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6).

(C) S corporations

This paragraph shall not apply to an S corporation.

(D) Qualified gratuitous transfers

A qualified gratuitous transfer (as defined in section 664(g)(1)) shall have no effect on the amount or amounts otherwise deductible under paragraph (3) or (7) or under this paragraph.

(10) Contributions by certain ministers to retirement income accounts

In the case of contributions made by a minister described in section 414(e)(5) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions—

(A) shall be treated as made to a trust which is exempt from tax under section 501(a) and which is part of a plan which is described in section 401(a), and

(B) shall be deductible under this subsection to the extent such contributions do not exceed the limit on elective deferrals under section 402(g) or the limit on annual additions under section 415.

For purposes of this paragraph, all plans in which the minister is a participant shall be treated as one plan.

(11) Determinations relating to deferred compensation

For purposes of determining under this section—

(A) whether compensation of an employee is deferred compensation; and

(B) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

(12) Definition of compensation

For purposes of paragraphs (3), (7), (8), and (9) and subsection (h)(1)(C), the term ''compensation'' shall include amounts treated as ''participant's compensation'' under subparagraph (C) or (D) of section 415(c)(3).

(b) Method of contributions, etc., having the effect of a plan; certain deferred benefits

(1) Method of contributions, etc., having the effect of a plan

If—

(A) there is no plan, but

(B) there is a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation (including a plan described in paragraph (2)),

subsection (a) shall apply as if there were such a plan.

(2) Plans providing certain deferred benefits

(A) In general

For purposes of this section, any plan providing for deferred benefits (other than compensation) for employees, their spouses, or their dependents shall be treated as a plan deferring the receipt of compensation. In the case of such a plan, for purposes of this section, the determination of when an amount is includible in gross income shall be made without regard to any provisions of this chapter excluding such benefits from gross income.

(B) Exception

Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e)).

(c) Certain negotiated plans

If contributions are paid by an employer—

(1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, or pensions on retirement or death of employees; and

(2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service cov-

ered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection. The first and third sentences of this subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a).

(d) Deductibility of payments of deferred compensation, etc., to independent contractors

If a plan would be described in so much of subsection (a) as precedes paragraph (1) thereof (as modified by subsection (b)) but for the fact that there is no employer-employee relationship, the contributions or compensation—

(1) shall not be deductible by the payor thereof under this chapter, but

(2) shall (if they would be deductible under this chapter but for paragraph (1)) be deductible under this subsection for the taxable year in which an amount attributable to the contribution or compensation is includible in the gross income of the persons participating in the plan.

(e) Contributions allocable to life insurance protection for self-employed individuals

In the case of a self-employed individual described in section 401(c)(1), contributions which are allocable (determined under regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance shall not be taken into account under paragraph (1), (2), or (3) of subsection (a).

[(f) Repealed. Pub. L. 98–369, div. A, title VII, § 713(b)(3), July 18, 1984, 98 Stat. 957]

(g) Certain employer liability payments considered as contributions

(1) In general

For purposes of this section, any amount paid by an employer under section 4041(b), 4062, 4063, or 4064, or part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

(2) Controlled group deductions

In the case of a payment described in paragraph (1) made by an entity which is liable because it is a member of a commonly controlled group of corporations, trades, or businesses, within the meaning of subsection (b) or (c) of section 414, the fact that the entity did not directly employ participants of the plan with respect to which the liability payment was made shall not affect the deductibility of a payment which otherwise satisfies the conditions of section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income).

(3) Timing of deduction of contributions

(A) In general

Except as otherwise provided in this paragraph, any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.

(B) Contributions under standard terminations

Subparagraph (A) shall not apply (and subsection (a)(1)(A) shall apply) to any payments described in paragraph (1) which are paid to terminate a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 to the extent such payments result in the assets of the plan being in excess of the total amount of benefits under such plan which are guaranteed by the Pension Benefit Guaranty Corporation under section 4022 of such Act.

(C) Contributions to certain trusts

Subparagraph (A) shall not apply to any payment described in paragraph (1) which is made under section 4062(c) of such Act and such payment shall be deductible at such time as may be prescribed in regulations which are based on principles similar to the principles of subsection (a)(1)(A).

(4) References to Employee Retirement Income Security Act of 1974

For purposes of this subsection, any reference to a section of the Employee Retirement Income Security Act of 1974 shall be treated as a reference to such section as in effect on the date of the enactment of the Retirement Protection Act of 1994.

(h) Special rules for simplified employee pensions

(1) In general

Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) Contributions made for a year are deductible—

(i) in the case of a simplified employee pension maintained on a calendar year basis, for the taxable year with or within which the calendar year ends, or

(ii) in the case of a simplified employee pension which is maintained on the basis of the taxable year of the employer, for such taxable year.

(B) Contributions shall be treated for purposes of this subsection as if they were made for a taxable year if such contributions are made on account of such taxable year and are made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed 25 percent of the compensation paid to the employees during the calendar year ending with or within the taxable year (or during the taxable year in the case of a taxable year described in subparagraph (A)(ii)). The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the 25 percent limit of the preceding sentence.

(2) Effect on certain trusts

For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable limitations in subsection (a)(3)(A) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the trust subject to subsection (a)(3)(A).

(3) Coordination with subsection (a)(7)

For purposes of subsection (a)(7), a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust.

[(i) Repealed. Pub. L. 99–514, title XI, § 1171(b)(6), Oct. 22, 1986, 100 Stat. 2513]

(j) Special rules relating to application with section 415

(1) No deduction in excess of section 415 limitation

In computing the amount of any deduction allowable under paragraph (1), (2), (3), (4), (7), or (9) of subsection (a) for any year—

(A) in the case of a defined benefit plan, there shall not be taken into account any benefits for any year in excess of any limitation on such benefits under section 415 for such year, or

(B) in the case of a defined contribution plan, the amount of any contributions otherwise taken into account shall be reduced by any annual additions in excess of the limitation under section 415 for such year.

(2) No advance funding of cost-of-living adjustments

For purposes of clause (i), (ii) or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, there shall not be taken into account any adjustments under section 415(d)(1) for any year before the year for which such adjustment first takes effect.

(k) Deduction for dividends paid on certain employer securities

(1) General rule

In the case of a C corporation, there shall be allowed as a deduction for a taxable year the amount of any applicable dividend paid in cash by such corporation with respect to applicable employer securities. Such deduction shall be in addition to the deductions allowed under subsection (a).

(2) Applicable dividend

For purposes of this subsection—

(A) In general

The term ''applicable dividend'' means any dividend which, in accordance with the plan provisions—

(i) is paid in cash to the participants in the plan or their beneficiaries,

(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid,

(iii) is, at the election of such participants or their beneficiaries—

(I) payable as provided in clause (i) or (ii), or

(II) paid to the plan and reinvested in qualifying employer securities, or

(iv) is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

(B) Limitation on certain dividends

A dividend described in subparagraph (A)(iv) which is paid with respect to any employer security which is allocated to a participant shall not be treated as an applicable dividend unless the plan provides that employer securities with a fair market value of not less than the amount of such dividend are allocated to such participant for the year which (but for subparagraph (A)) such dividend would have been allocated to such participant.

(3) Applicable employer securities

For purposes of this subsection, the term ''applicable employer securities'' means, with respect to any dividend, employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by—

(A) the corporation paying such dividend, or

(B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 409(*l*)(4)) which includes such corporation.

(4) Time for deduction

(A) In general

The deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which the dividend is paid or distributed to a participant or his beneficiary.

(B) Reinvestment dividends

For purposes of subparagraph (A), an applicable dividend reinvested pursuant to clause (iii)(II) of paragraph (2)(A) shall be treated as paid in the taxable year of the corporation in which such dividend is reinvested in qualifying employer securities or in which the election under clause (iii) of paragraph (2)(A) is made, whichever is later.

(C) Repayment of loans

In the case of an applicable dividend described in clause (iv) of paragraph (2)(A), the deduction under paragraph (1) shall be allowable in the taxable year of the corporation

in which such dividend is used to repay the loan described in such clause.

(5) Other rules

For purposes of this subsection—

(A) Disallowance of deduction

The Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance or evasion of taxation.

(B) Plan qualification

A plan shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7), or as engaging in a prohibited transaction for purposes of section 4975(d)(3), merely by reason of any payment or distribution described in paragraph (2)(A).

(6) Definitions

For purposes of this subsection—

(A) Employer securities

The term ''employer securities'' has the meaning given such term by section 409(*l*).

(B) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7). Such term includes a tax credit employee stock ownership plan (as defined in section 409).

(7) Full vesting

In accordance with section 411, an applicable dividend described in clause (iii)(II) of paragraph (2)(A) shall be subject to the requirements of section 411(a)(1).

(*l*) Limitation on amount of annual compensation taken into account

For purposes of applying the limitations of this section, the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.

(m) Special rules for simple retirement accounts

(1) In general

Employer contributions to a simple retirement account shall be treated as if they are made to a plan subject to the requirements of this section.

(2) Timing

(A) Deduction

Contributions described in paragraph (1) shall be deductible in the taxable year of the employer with or within which the calendar year for which the contributions were made ends.

(B) Contributions after end of year

For purposes of this subsection, contributions shall be treated as made for a taxable year if they are made on account of the taxable year and are made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof).

(n) Elective deferrals not taken into account for purposes of deduction limits

Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a) or paragraph (1)(C) of subsection (h) and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.

(*o*) Deduction limit for single-employer plans

For purposes of subsection (a)(1)(A)—

(1) In general

In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the greater of—

(A) the sum of the amounts determined under paragraph (2) with respect to each plan year ending with or within the taxable year, or

(B) the sum of the minimum required contributions under section 430 for such plan years.

(2) Determination of amount

(A) In general

The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

(i) the sum of—

(I) the funding target for the plan year,

(II) the target normal cost for the plan year, and

(III) the cushion amount for the plan year, over

(ii) the value (determined under section 430(g)(3)) of the assets of the plan which are held by the plan as of the valuation date for the plan year.

(B) Special rule for certain employers

If section 430(i) does not apply to a plan for a plan year, the amount determined under subparagraph (A)(i) for the plan year shall in no event be less than the sum of—

(i) the funding target for the plan year (determined as if section 430(i) applied to the plan), plus

(ii) the target normal cost for the plan year (as so determined).

(3) Cushion amount

For purposes of paragraph (2)(A)(i)(III)—

(A) In general

The cushion amount for any plan year is the sum of—

(i) 50 percent of the funding target for the plan year, and

(ii) the amount by which the funding target for the plan year would increase if the plan were to take into account—

(I) increases in compensation which are expected to occur in succeeding plan years, or

(II) if the plan does not base benefits for service to date on compensation, increases in benefits which are expected to occur in succeeding plan years (determined on the basis of the average annual increase in benefits over the 6 immediately preceding plan years).

(B) Limitations

(i) In general

In making the computation under subparagraph (A)(ii), the plan's actuary shall assume that the limitations under subsection (*l*) and section 415(b) shall apply.

(ii) Expected increases

In the case of a plan year during which a plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, the plan's actuary may, notwithstanding subsection (*l*), take into account increases in the limitations which are expected to occur in succeeding plan years.

(4) Special rules for plans with 100 or fewer participants

(A) In general

For purposes of determining the amount under paragraph (3) for any plan year, in the case of a plan which has 100 or fewer participants for the plan year, the liability of the plan attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years shall not be taken into account in determining the target liability.

(B) Rule for determining number of participants

For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(d)(3)) shall be treated as one plan, but only participants of such member or employer shall be taken into account.

(5) Special rule for terminating plans

In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

(6) Actuarial assumptions

Any computation under this subsection for any plan year shall use the same actuarial assumptions which are used for the plan year under section 430 (determined by not taking into account any adjustment under clause (iv) of subsection (h)(2)(C) thereof).

(7) Definitions

Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.

(8) CSEC plans

Solely for purposes of this subsection, a CSEC plan shall be treated as though section 430 applied to such plan and the minimum required contribution for any plan year shall be the amount described in section 412(a)(2)(D).

(Aug. 16, 1954, ch. 736, 68A Stat. 138; Pub. L. 85–866, title I, §24, Sept. 2, 1958, 72 Stat. 1623; Pub. L. 87–792, §3, Oct. 10, 1962, 76 Stat. 819; Pub. L. 87–863, §2(b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 89–809, title II, §204(a), (b)(2), (3), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 91–172, title III, §321(b)(3), Dec. 30, 1969, 83 Stat. 591; Pub. L. 93–406, title II, §§1013(c), 1016(a)(3), 2001(a), (g)(2)(E), (F), 2004(b), (c)(1), 2007(a), (b), title IV, §4401(a), formerly §4081(a), Sept. 2, 1974, 88 Stat. 921, 929, 952, 957, 986, 993, 994, 1033, renumbered §4401(a), Pub. L. 96–364, title I, §108(a), Sept. 26, 1980, 94 Stat. 1267; Pub. L. 94–267, §1(c)(3), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XV, §1502(a)(2), title XIX, §§1901(a)(59), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1737, 1774, 1834; Pub. L. 95–600, title I, §§133(a), (b), 141(f)(9), 152(f), Nov. 6, 1978, 92 Stat. 2783, 2795, 2799; Pub. L. 96–222, title I, §101(a)(10)(E), (J)(ii), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 96–364, title II, §205, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 97–34, title III, §§312(a), 331(b), 333(a), Aug. 13, 1981, 95 Stat. 283, 293, 296; Pub. L. 97–248, title II, §§235(f), 237(e)(2), 238(a), 253(b), Sept. 3, 1982, 96 Stat. 507, 512, 533; Pub. L. 98–369, div. A, title IV, §474(r)(14), title V, §§512(a), 542(a), title VII, §713(b)(3), (d)(4)(A), (5), (6), (9), July 18, 1984, 98 Stat. 842, 862, 890, 957, 958; Pub. L. 99–272, title XI, §11011(c)(1), (2), Apr. 7, 1986, 100 Stat. 257, 258; Pub. L. 99–514, title XI, §§1106(d)(2), 1108(c), 1112(d)(2), 1131(a), (b), 1136(b), 1171(b)(6), 1173(a), title XVIII, §§1848(c), 1851(b)(2)(A)–(C)(ii), 1854(b)(2)–(5), 1875(c)(7), Oct. 22, 1986, 100 Stat. 2424, 2433, 2445, 2476, 2477, 2486, 2513, 2515, 2857, 2863, 2878, 2895; Pub. L. 100–203, title IX, §9307(c), (d), title X, §10201(b)(2), (3), Dec. 22, 1987, 101 Stat. 1330–357, 1330–387; Pub. L. 100–647, title I, §§1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), 1018(t)(4)(A), (5), title II, §2005(b), Nov. 10, 1988, 102 Stat. 3459, 3463, 3478, 3491, 3492, 3588, 3589, 3610; Pub. L. 101–239, title VII, §§7302(a), 7841(b)(1), Dec. 19, 1989, 103 Stat. 2351, 2428; Pub. L. 101–508, title XI, §11812(b)(7), Nov. 5, 1990, 104 Stat. 1388–535; Pub. L. 102–318, title V, §522(a)(2), July 3, 1992, 106 Stat. 314; Pub. L. 103–66, title XIII, §13212(c)(1), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, §751(a)(11), Dec. 8, 1994, 108 Stat. 5022; Pub. L. 104–188, title I, §§1316(d)(1), (2), 1421(b)(2), 1431(b)(3), 1461(b), 1704(q)(1), (t)(76), Aug. 20, 1996, 110 Stat. 1786, 1795, 1803, 1823, 1887, 1891; Pub. L. 105–34, title XV, §1530(c)(2), title XVI, §1601(d)(2)(C), Aug. 5, 1997, 111 Stat. 1078, 1088; Pub. L. 105–206, title VI, §6015(d), title VII, §7001(a), July 22, 1998, 112 Stat. 821, 827; Pub. L. 107–16, title VI, §§611(c)(1), 614(a), 616(a)–(b)(2)(A), 632(a)(3)(B), 652(a), 662(a), (b), June 7, 2001, 115 Stat. 97, 102, 103, 114, 129, 142; Pub. L. 107–147, title IV, §411(*l*)(1), (2), (4), (s), (w), Mar. 9, 2002, 116 Stat. 47, 51, 52; Pub. L. 108–218, title I, §101(b)(5), Apr. 10, 2004, 118 Stat. 598; Pub. L. 109–280, title VIII, §§801(a)–(c)(3), (d), 802(a), 803(a), (b), Aug. 17, 2006, 120 Stat. 992–996; Pub. L. 110–245, title I, §104(c)(1), June 17, 2008, 122 Stat. 1627; Pub. L. 110–458, title I, §108(a)–(c), Dec. 23, 2008, 122 Stat. 5108; Pub. L. 112–141, div. D, title

II, §40211(a)(2)(A), July 6, 2012, 126 Stat. 847; Pub. L. 113–97, title II, §202(c)(6), Apr. 7, 2014, 128 Stat. 1136.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 401(a)(17), referred to in subsec. (a)(2), was repealed by Pub. L. 97–248, title II, §237(b), Sept. 3, 1982, 96 Stat. 511. A new section 401(a)(17) was added by Pub. L. 99–514, title XI, §1106(d)(1), Oct. 22, 1986, 100 Stat. 2423.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(3)(A)(v)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(1)(D)(iv), (7)(C)(iv), (g)(1), (3)(B), (C), (4), and (*o*)(3)(B)(ii), (5), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 4021, 4022, 4041, 4062, 4063, and 4064 of the Employee Retirement Income Security Act of 1974 are classified to sections 1321, 1322, 1341, 1362, 1363, and 1364, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Retirement Protection Act of 1994, referred to in subsec. (g)(4), is the date of enactment of subtitle F (§§750–781) of title VII of Pub. L. 103–465, which was approved Dec. 8, 1994.

AMENDMENTS

2014—Subsec. (*o*)(8). Pub. L. 113–97 added par. (8).

2012—Subsec. (*o*)(6). Pub. L. 112–141 inserted ''(determined by not taking into account any adjustment under clause (iv) of subsection (h)(2)(C) thereof)'' before period at end.

2008—Subsec. (a)(1)(D)(i). Pub. L. 110–458, §108(b), substituted ''431(c)(6)(D)'' for ''431(c)(6)(C)''.

Subsec. (a)(2). Pub. L. 110–245 substituted ''(31), and (37)'' for ''and (31)''.

Subsec. (a)(7)(A). Pub. L. 110–458, §108(a)(2), in concluding provisions, substituted ''the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3))'' for ''the plan's funding shortfall determined under section 430'' in last sentence and struck out second sentence which read as follows: ''For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(*l*).''

Subsec. (a)(7)(C)(iii). Pub. L. 110–458, §108(c), amended cl. (iii) generally. Prior to amendment, text read as follows: ''In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''

Subsec. (*o*)(2)(A)(ii). Pub. L. 110–458, §108(a)(1)(A), substituted ''430(g)(3)'' for ''430(g)(2)''.

Subsec. (*o*)(4)(B). Pub. L. 110–458, §108(a)(1)(B), substituted ''412(d)(3)'' for ''412(f)(4)''.

2006—Subsec. (a)(1)(A). Pub. L. 109–280, §801(a)(1), (c)(1), inserted ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (*o*), and in the case of any other plan'' after ''section 501(a),'' in introductory provisions and substituted ''431'' for ''412'' in two places in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 109–280, §801(c)(2), in introductory provisions, substituted ''In the case of a multiemployer plan'' for ''In the case of a plan'', ''431(c)(6)'' for ''412(c)(7)'', ''431(c)(6)(A)(ii)'' for ''412(c)(7)(B)'', ''431(c)(6)(A)(i)'' for ''412(c)(7)(A)'', and ''431'' for ''412'', and, in cl. (i), substituted ''431(c)(6)'' for ''412(c)(7)''.

Subsec. (a)(1)(D). Pub. L. 109–280, §802(a), amended heading and text of subpar. (D) generally, substituting provisions relating to maximum amount deductible in the case of a defined benefit plan which is a multiemployer plan for provisions relating to maximum amount deductible in the case of any defined benefit plan and stating rule for plans with 100 or less participants, rule for determining number of participants, and rule for terminating plans.

Subsec. (a)(1)(D)(i). Pub. L. 109–280, §801(d)(1), substituted ''section 412(*l*)(8)(A), except that section 412(*l*)(8)(A) shall be applied for purposes of this clause by substituting '150 percent (140 percent in the case of a multiemployer plan) of current liability' for 'the current liability' in clause (i).'' for ''section 412(*l*)''.

Subsec. (a)(1)(F). Pub. L. 109–280, §801(d)(2), struck out heading and text of subpar. (F). Text read as follows: ''An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (*l*)(7)(C)(i)(IV) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this paragraph.''

Subsec. (a)(7)(A). Pub. L. 109–280, §801(c)(3)(A), inserted at end ''In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the plan's funding shortfall determined under section 430.''

Subsec. (a)(7)(C)(iii). Pub. L. 109–280, §803(a), added cl. (iii).

Subsec. (a)(7)(C)(iv). Pub. L. 109–280, §801(b), added cl. (iv).

Subsec. (a)(7)(C)(v). Pub. L. 109–280, §803(b), added cl. (v).

Subsec. (a)(7)(D). Pub. L. 109–280, §801(c)(3)(B), added subpar. (D) and struck out heading and text of former subpar. (D). Former text read as follows: ''For purposes of this paragraph, any plan described in section 412(i) shall be treated as a defined benefit plan.''

Subsec. (*o*). Pub. L. 109–280, §801(a)(2), added subsec. (*o*).

2004—Subsec. (a)(1)(F). Pub. L. 108–218 added subpar. (F).

2002—Subsec. (a)(1)(D)(iv). Pub. L. 107–147, §411(s), substituted ''Special rule for terminating plans'' for ''Plans maintained by professional service employers'' in heading.

Subsec. (a)(7)(C). Pub. L. 107–147, §411(*l*)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.''

Subsec. (a)(12). Pub. L. 107–147, §411(*l*)(1), substituted ''(9) and subsection (h)(1)(C),'' for ''(9),''.

Subsec. (k)(1). Pub. L. 107–147, §411(w)(1)(A), struck out ''during the taxable year'' after ''such corporation''.

Subsec. (k)(2)(B). Pub. L. 107–147, §411(w)(1)(B), substituted ''(A)(iv)'' for ''(A)(iii)''.

Subsec. (k)(4)(B), (C). Pub. L. 107–147, §411(w)(1)(C), (D), substituted ''clause (iv)'' for ''clause (iii)'' in subpar. (B), added a new subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (k)(7). Pub. L. 107–147, §411(w)(2), added par. (7).

Subsec. (n). Pub. L. 107–147, §411(*l*)(2), substituted ''subsection (a) or paragraph (1)(C) of subsection (h)'' for ''subsection (a),''.

2001—Subsec. (a)(1)(A). Pub. L. 107–16, §616(a)(2)(B)(i), inserted ''(other than a trust to which paragraph (3) applies)'' after ''pension trust'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 107–16, §652(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(*l*). For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(*l*)(8)(C))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account.''

Subsec. (a)(3)(A)(i)(I). Pub. L. 107–16, §616(a)(1)(A), substituted ''25 percent'' for ''15 percent''.

Subsec. (a)(3)(A)(v). Pub. L. 107–16, §616(a)(2)(A), amended cl. (v) generally, substituting present provisions for provisions which directed that the limitation of cl. (i) for any taxable year would be increased by the unused pre-87 limitation carryforwards and defined ''unused pre-87 limitation carryforwards''.

Subsec. (a)(3)(B). Pub. L. 107–16, §616(b)(2)(A), struck out at end ''The term 'compensation otherwise paid or accrued during the taxable year to all employees' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.''

Subsec. (a)(10)(B). Pub. L. 107–16, §632(a)(3)(B), struck out '', the exclusion allowance under section 403(b)(2),'' after ''deferrals under section 402(g)''.

Subsec. (a)(12). Pub. L. 107–16, §616(b)(1), added par. (12).

Subsec. (h)(1)(C). Pub. L. 107–16, §616(a)(1)(B), substituted ''25 percent'' for ''15 percent'' in two places.

Subsec. (h)(2). Pub. L. 107–16, §616(a)(2)(B)(ii), (iii), substituted ''certain trusts'' for ''stock bonus and profit-sharing trust'' in heading and ''trust subject to subsection (a)(3)(A)'' for ''stock bonus or profit-sharing trust'' in text.

Subsec. (k)(2)(A)(iii), (iv). Pub. L. 107–16, §662(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (k)(5)(A). Pub. L. 107–16, §662(b), inserted ''avoidance or'' before ''evasion''.

Subsec. (*l*). Pub. L. 107–16, §611(c)(1), substituted ''$200,000'' for ''$150,000'' in two places.

Subsec. (n). Pub. L. 107–16, §614(a), added subsec. (n).

1998—Subsec. (a)(9)(C), (D). Pub. L. 105–206, §6015(d), redesignated subpar. (C), relating to qualified gratuitous transfers, as (D) and inserted heading.

Subsec. (a)(11). Pub. L. 105–206, §7001(a), added par. (11).

1997—Subsec. (a)(3)(A)(i). Pub. L. 105–34, §1601(d)(2)(C)(i), substituted ''not in excess of the greater of—'' and subcls. (I) and (II) for ''not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan.''

Subsec. (a)(3)(A)(ii). Pub. L. 105–34, §1601(d)(2)(C)(ii), substituted ''the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.'' for ''15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.''

Subsec. (a)(9)(C). Pub. L. 105–34, §1530(c)(2), added subpar. (C) relating to qualified gratuitous transfers.

1996—Subsec. (a)(2). Pub. L. 104–188, §1704(t)(76), struck out ''(18),'' after ''(17),''.

Subsec. (a)(9)(C). Pub. L. 104–188, §1316(d)(1), added subpar. (C) relating to S corporations.

Subsec. (a)(10). Pub. L. 104–188, §1461(b), added par. (10).

Subsec. (j)(1). Pub. L. 104–188, §1704(q)(1), substituted ''(9)'' for ''(10)'' in introductory provisions.

Subsec. (k)(1). Pub. L. 104–188, §1316(d)(2), substituted ''a C corporation'' for ''a corporation''.

Subsec. (*l*). Pub. L. 104–188, §1431(b)(3), struck out at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (m). Pub. L. 104–188, §1421(b)(2), added subsec. (m).

1994—Subsec. (g)(4). Pub. L. 103–465 substituted ''the Retirement Protection Act of 1994'' for ''the Single-Employer Pension Plan Amendments Act of 1986''.

1993—Subsec. (*l*). Pub. L. 103–66 substituted ''$150,000'' for ''$200,000'' in first sentence and ''The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B).'' for ''The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).''

1992—Subsec. (a)(2). Pub. L. 102–318 substituted ''(27), and (31)'' for ''and (27)''.

1990—Subsec. (a)(1)(C). Pub. L. 101–508 substituted ''section 168(i)(10)(C)'' for ''section 167(*l*)(3)(A)(iii)''.

1989—Subsec. (g)(1). Pub. L. 101–239, §7841(b)(1), inserted ''4041(b),'' after ''under section''.

Subsec. (k). Pub. L. 101–239, §7302(a), amended subsec. (k) generally, substituting ''Deduction for dividends paid on certain employer securities'' for ''Dividends paid deductions'' in heading and pars. (1) to (6) for former pars. (1) and (2) and concluding provisions.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §2005(b)(3), struck out ''(without regard to any reduction by the credit balance in the funding standard account)'' after ''under section 412(*l*)''.

Pub. L. 100–647, §2005(b)(1), substituted ''For purposes of determining whether a plan has more than 100 participants'' for ''For purposes of this subparagraph''.

Subsec. (a)(7)(A). Pub. L. 100–647, §2005(b)(2), inserted at end ''For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(*l*).''

Pub. L. 100–647, §1011A(e)(4)(A), in introductory provisions, substituted ''foregoing paragraphs'' for ''foregoing provisions'' and inserted ''or in connection with trusts or plans described in 2 or more of such paragraphs'' after ''defined benefit plans''.

Subsec. (a)(8)(D). Pub. L. 100–647, §1018(t)(5), made technical correction to Pub. L. 99–514, §1875(c)(7)(B), see 1986 Amendment note below.

Subsec. (h)(1)(C). Pub. L. 100–647, §1011(f)(6), inserted ''(or during the taxable year in the case of a taxable year described in subparagraph (A)(ii))'' after ''within the taxable year''.

Subsec. (h)(3). Pub. L. 100–647, §1011A(e)(4)(B), substituted ''Coordination with subsection (a)(7)'' for ''Effect on limit on deductions'' in heading and amended text generally. Prior to amendment, text read as follows: ''For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable 25 percent limitations in subsection (a)(7) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the stock bonus or profit-sharing trust.''

Subsec. (k). Pub. L. 100–647, § 1011B(h)(3)(A), inserted ''(whether or not allocated to participants)'' after ''to employer securities'' in par. (2)(C).

Pub. L. 100–647, § 1011B(h)(6), substituted ''or as engaging in a prohibited transaction for purposes of section 4975(d)(3) merely by reason of any distribution or payment'' for ''merely by reason of any distribution'' in third sentence.

Pub. L. 100–647, § 1018(t)(4)(A), substituted ''evasion of taxation'' for ''avoidance of taxation'' in fourth sentence.

Pub. L. 100–647, § 1011B(h)(3)(B), inserted at end ''Paragraph (2)(C) shall not apply to dividends from employer securities which are allocated to any participant unless the plan provides that employer securities with a fair market value not less than the amount of such dividends are allocated to such participant for the year which (but for paragraph (2)(C)) such dividends would have been allocated to such participant.''

Subsec. (*l*). Pub. L. 100–647, § 1011(d)(4), inserted at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Pub. L. 100–647, § 1011(d)(1), inserted at end ''For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.''

1987—Subsec. (a)(1)(A)(iii). Pub. L. 100–203, § 9307(d), inserted ''the unfunded costs attributable to'' after ''to amortize''.

Subsec. (a)(1)(D), (E). Pub. L. 100–203, § 9307(c), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(5). Pub. L. 100–203, § 10201(b)(3), inserted at end ''For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.''

Subsec. (b)(2)(B). Pub. L. 100–203, § 10201(b)(2), substituted ''Exception'' for ''Exception for certain benefits'' in heading and amended text generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply to—

''(i) any benefit provided through a welfare benefit fund (as defined in section 419(e)), or

''(ii) any benefit with respect to which an election under section 463 applies.''

1986—Subsec. (a). Pub. L. 99–514, § 1851(b)(2)(C)(i), substituted ''this chapter; but, if they would otherwise be deductible'' for ''section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections''.

Subsec. (a)(2). Pub. L. 99–514, § 1136(b), substituted ''(26), and (27)'' for ''and (26)''.

Pub. L. 99–514, § 1112(d)(2), substituted ''(22), and (26)'' for ''and (22)''.

Subsec. (a)(3)(A). Pub. L. 99–514, § 1131(a), amended subpar. (A) generally, revising and restating as cls. (i) to (v) provisions formerly contained in single paragraph.

Subsec. (a)(7). Pub. L. 99–514, § 1131(b), amended par. (7) generally, revising and restating as subpars. (A) to (C) provisions formerly contained in single paragraph, and adding subpar. (D).

Subsec. (a)(8)(C). Pub. L. 99–514, § 1875(c)(7)(A), inserted ''(determined without regard to the deductions allowed by this section)''.

Subsec. (a)(8)(D). Pub. L. 99–514, § 1875(c)(7)(B), as amended by Pub. L. 100–647, § 1018(t)(5), struck out ''(determined without regard to the deductions allowed by this section)'' after ''earned income of such individual''.

Pub. L. 99–514, § 1848(c), substituted ''the deduction allowed by this section'' for ''the deductions allowed by this section and section 405(c)''.

Subsec. (b). Pub. L. 99–514, § 1851(b)(2)(B)(i), substituted ''certain'' for ''unfunded'' in heading.

Subsec. (b)(2). Pub. L. 99–514, § 1851(b)(2)(A), (B)(ii), substituted ''certain'' for ''unfunded'' in heading, and in subpar. (B)(ii), substituted ''any benefit'' for ''to any benefit''.

Subsec. (d). Pub. L. 99–514, § 1851(b)(2)(C)(ii), substituted ''under this chapter'' for ''under section 162 or 212'' in pars. (1) and (2).

Subsec. (g)(3). Pub. L. 99–272, § 11011(c)(1), amended par. (3) generally. Prior to the amendment, par. (3), coordination with subsection (a), read as follows: ''Any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.''

Subsec. (g)(4). Pub. L. 99–272, § 11011(c)(2), added par. (4).

Subsec. (h)(1)(A), (B). Pub. L. 99–514, § 1108(c), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) Contributions made for a calendar year are deductible for the taxable year with which or within which the calendar year ends.

''(B) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year.''

Subsec. (i). Pub. L. 99–514, § 1171(b)(6), struck out subsec. (i) relating to the deductibility of unused portions of employee stock ownership credit.

Subsec. (k). Pub. L. 99–514, § 1854(b)(2)(B), struck out ''during the taxable year'' after ''cash by such corporation'' in introductory provisions.

Pub. L. 99–514, § 1854(b)(4), inserted ''The Secretary may disallow the deduction under this subsection for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance of taxation.''

Pub. L. 99–514, § 1854(b)(3), inserted ''A plan to which this subsection applies shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7) merely by reason of any distribution described in paragraph (2).''

Pub. L. 99–514, § 1854(b)(2)(A), inserted ''Any deduction under subparagraph (A) or (B) of paragraph (2) shall be allowed in the taxable year of the corporation in which the dividend is paid or distributed to the participant under paragraph (2).''

Pub. L. 99–514, § 1173(a)(2), inserted ''Any deduction under paragraph (2)(C) shall be allowable in the taxable year of the corporation in which the dividend is used to repay the loan described in such paragraph.''

Subsec. (k)(2)(A), (B). Pub. L. 99–514, § 1854(b)(5), inserted ''or their beneficiaries''.

Subsec. (k)(2)(C). Pub. L. 99–514, § 1173(a)(1), added subpar. (C).

Subsec. (*l*). Pub. L. 99–514, § 1106(d)(2), added subsec. (*l*).

1984—Subsec. (a)(8)(D). Pub. L. 98–369, § 713(d)(6), inserted ''(determined without regard to the deductions allowed by this section and section 405(c))''.

Subsec. (a)(9), (10). Pub. L. 98–369, § 713(d)(4)(A), struck out par. (9) relating to plans benefiting self-employed individuals and redesignated par. (10) as (9).

Subsec. (b). Pub. L. 98–369, § 512(a), amended subsec. (b) generally, inserting heading, redesignating former heading as par. (1) heading, designating existing provisions as par. (1), and in par. (1) as so designated, inserted ''(including a plan described in paragraph (2))'' after ''compensation'' and adding par. (2).

Subsec. (e). Pub. L. 98–369, § 713(d)(9), substituted ''under paragraph (1), (2), or (3) of subsection (a)'' for ''under this section''.

Subsec. (f). Pub. L. 98–369, § 713(b)(3), repealed subsec. (f) which related to certain loan repayments considered as contributions.

Subsec. (h)(4). Pub. L. 98–369, § 713(d)(5), repealed par. (4) which related to effect on self-employed individuals or shareholder-employees.

Subsec. (i). Pub. L. 98–369, § 474(r)(14), in par. (1), substituted ''If any portion of the employee stock owner-

ship credit determined under section 41 for any taxable year has not, after the application of section 38(c), been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39'' for ''There shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which an unused employee stock ownership credit carryover (within the meaning of section 44G(b)(2)(A)) may be carried, an amount equal to the portion of such unused credit carryover which expires at the close of such taxable year'', and in par. (2), substituted references to section 41 and 41(c)(3) for references to section 44G and 44G(c)(3), respectively.

Subsec. (k). Pub. L. 98–369, §542(a), added subsec. (k).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(2), substituted ''(8), (9)'' for ''(8)'', and ''401(a)(10) and of section 401(d)'' for ''401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1))''.

Subsec. (a)(3)(B). Pub. L. 97–248, §253(b), inserted provision that ''compensation otherwise paid or accrued during the taxable year to all employees'' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.

Subsec. (e). Pub. L. 97–248, §238(a), amended subsec. (e) generally, substituting provisions relating to contributions allocable to life insurance protection for self-employed individuals, for provisions relating to general requirements, contributions made under more than one plan, contributions allocable to insurance protection, and limitations of not lower than $750 or 100 percent of earned income with respect to special limitations for self-employed individuals.

Subsec. (j). Pub. L. 97–248, §235(f), added subsec. (j).

1981—Subsec. (a)(10). Pub. L. 97–34, §333(a), added par. (10).

Subsec. (e). Pub. L. 97–34, §312(a), substituted in pars. (1) and (2)(A) ''$15,000'' for ''$7,500''.

Subsec. (i). Pub. L. 97–34, §331(b), added subsec. (i).

1980—Subsec. (g). Pub. L. 96–364 redesignated existing provisions as par. (1), inserted applicability to part 1 of subtitle E of title IV of Employee Retirement Income Security Act of 1974, and added pars. (2) and (3).

Subsec. (h). Pub. L. 96–222 inserted ''or shareholder employees'' after ''individuals'' in heading, and in par. (4) ''or described in section 1379(b)(1)'' after ''of subsection (e)'' and ''or a shareholder-employee (as defined in section 1379(d))'' after ''section 401(c)(1)'' and substituted in pars. (2) to (4) ''paragraph (1)'' for ''subparagraph (1)''.

1978—Subsec. (a)(2). Pub. L. 95–600, §141(f)(9), substituted ''(20), and (22)'' for ''and (20)''.

Subsec. (b). Pub. L. 95–600, §133(b), substituted ''other plan'' for ''similar plan''.

Subsec. (d). Pub. L. 95–600, §133(a), added subsec. (d).

Subsec. (h). Pub. L. 95–600, §152(f), added subsec. (h).

1976—Subsecs. (a)(1)(B), (8)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–267 substituted ''(19), and (20)'' for ''and (19)''.

Subsec. (d). Pub. L. 94–455, §1901(a)(59), struck out subsec. (d) which related to the taxability of the beneficiary under certain forfeitable contracts purchased by exempt organizations.

Subsecs. (e)(2)(B), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4). Pub. L. 94–455, §1502(a)(2), inserted provisions following subpar. (B).

1974—Subsec. (a)(1). Pub. L. 93–406, §1013(c)(1), expanded subpars. (A), (B), and (C) to accommodate the increased minimum funding standards required by section 412.

Subsec. (a)(2). Pub. L. 93–406, §§1016(a)(3), 2001(g)(2)(E), 2004(c)(1), inserted references to the requirements of section 401(a)(11), (12), (13), (14), (15), (16), (17), (18), and (19), and, if applicable, the requirements of section 401(a)(17) and (18).

Subsec. (a)(3)(A). Pub. L. 93–406, §2004(b), inserted '', but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan'' after ''If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan''.

Subsec. (a)(6). Pub. L. 93–406, §1013(c)(2), substituted provisions covering only taxpayers operating on the accrual basis for provisions covering the time when contributions shall be deemed made.

Subsec. (a)(7). Pub. L. 93–406, §1013(c)(3), inserted reference to the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standards provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year) and substituted ''25 percent'' for ''30 percent'' in provision covering amounts paid into trusts or under an annuity plan in any taxable year in excess of the amount allowable with respect to such year.

Subsec. (a)(9)(B)(ii). Pub. L. 93–406, §2001(g)(2)(F), substituted ''the second sentence of paragraph (3)'' for ''paragraph (1)(D), the second and third sentences of paragraph (3), and the second sentence of paragraph (7)''.

Subsec. (c). Pub. L. 93–406, §2008(a), (b), substituted ''or pensions'' for ''and pensions'' in par. (1), substituted ''The first and third sentences of this subsection'' for ''This subsection'' in provisions covering amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a), inserted provisions setting out specified treatment to be accorded individuals who before July 1, 1974, were participants in plans described in the subsections, and inserted provision that section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in the subsection.

Subsec. (e)(1). Pub. L. 93–406, §2001(a)(1), substituted ''subject to paragraphs (2) and (4), not exceed $7,500, or 15 percent'' for ''subject to the provisions of paragraph (2), not exceed $2,500, or 10 percent''.

Subsec. (e)(2)(A). Pub. L. 93–406, §2001(a)(2), substituted ''shall (subject to paragraph (4)) not exceed $7,500, or 15 percent'' for ''shall not exceed $2,500 or 10 percent''.

Subsec. (e)(4). Pub. L. 93–406, §2001(a)(3), added par. (4).

Subsec. (g). Pub. L. 93–406, §4081(a), added subsec. (g).

1969—Subsec. (a)(5). Pub. L. 91–172 substituted ''If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee'' for ''In the taxable year when paid, if the plan is not one included in paragraph (1), (2), or (3), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid''.

1966—Subsec. (a). Pub. L. 89–809, §204(a), repealed par. (10) which provided for a special limitation on the amount allowed as a deduction for self-employed individuals.

Subsec. (e). Pub. L. 89–809, § 204(b)(2), (3), struck out references to par. (10) of subsec. (a) wherever appearing.

1962—Subsec. (a)(2). Pub. L. 87–863 inserted '', or retirement annuities and medical benefits as described in section 401(h),'' after ''purchase of retirement annuities'', and '', or such retirement annuities and medical benefits'' after ''such retirement annuities.''

Pub. L. 87–792, § 3(a)(1), substituted ''(5), (6), (7), and (8), and, if applicable, the requirements of section 401(a)(9) and (10) and of section 401(d) (other than paragraph (1)),'' for ''(5), and (6),''.

Subsecs. (a)(8) to (10). Pub. L. 87–792, § 3(a)(2), added pars. (8) to (10).

Subsecs. (e), (f). Pub. L. 87–792, § 3(b), added subsecs. (e) and (f).

1958—Subsec. (a). Pub. L. 85–866 substituted ''income); but, if'' for ''income) but if'' preceding par. (1).

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 2012 AMENDMENT

Pub. L. 112–141, div. D, title II, § 40211(c), July 6, 2012, 126 Stat. 850, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, sections 417, 420 and 430 of this title, and sections 1021, 1055, 1083, 1306, and 1310 of Title 29, Labor, and enacting provisons set out as a note under section 1021 of Title 29] shall apply with respect to plan years beginning after December 31, 2011.

''(2) RULES WITH RESPECT TO ELECTIONS.—

''(A) ADJUSTED FUNDING TARGET ATTAINMENT PERCENTAGE.—A plan sponsor may elect not to have the amendments made by this section apply to any plan year beginning before January 1, 2013, either (as specified in the election)—

''(i) for all purposes for which such amendments apply, or

''(ii) solely for purposes of determining the adjusted funding target attainment percentage under sections 436 of the Internal Revenue Code of 1986 and 206(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1056(g)] for such plan year.

A plan shall not be treated as failing to meet the requirements of sections 204(g) of such Act [29 U.S.C. 1054(g)] and 411(d)(6) of such Code solely by reason of an election under this paragraph.

''(B) OPT OUT OF EXISTING ELECTIONS.—If, on the date of the enactment of this Act [July 6, 2012], an election is in effect with respect to any plan under sections 303(h)((2)(D)(ii) [sic] of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(h)(2)(D)(ii)] and 430(h)((2)(D)(ii) [sic] of the Internal Revenue Code of 1986, then, notwithstanding the last sentence of each such section, the plan sponsor may revoke such election without the consent of the Secretary of the Treasury. The plan sponsor may make such revocation at any time before the date which is 1 year after such date of enactment and such revocation shall be effective for the 1st plan year to which the amendments made by this section apply and all subsequent plan years. Nothing in this subparagraph shall preclude a plan sponsor from making a subsequent election in accordance with such sections.''

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.

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 801(e), Aug. 17, 2006, 120 Stat. 995, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 404A of this title] shall apply to years beginning after December 31, 2007.

''(2) SPECIAL RULES.—The amendments made by subsection (d) [amending this section] shall apply to years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, § 802(b), Aug. 17, 2006, 120 Stat. 996, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2007.''

Pub. L. 109–280, title VIII, § 803(d), Aug. 17, 2006, 120 Stat. 996, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to contributions for taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–218, title I, § 101(d), Apr. 10, 2004, 118 Stat. 599, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 412 and 415 of this title, and sections 1082 and 1306 of Title 29, Labor] shall apply to plan years beginning after December 31, 2003.

''(2) LOOKBACK RULES.—For purposes of applying subsections (d)(9)(B)(ii) and (e)(1) of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(9)(B)(ii), (e)(1)] and subsections (*l*)(9)(B)(ii) and (m)(1) of [former] section 412 of the Internal Revenue Code of 1986 to plan years beginning after December 31, 2003, the amendments made by this section may be applied as if such amendments had been in effect for all prior plan years. The Secretary of the Treasury may prescribe simplified assumptions which may be used in applying the amendments made by this section to such prior plan years.

''(3) TRANSITION RULE FOR SECTION 415 LIMITATION.—In the case of any participant or beneficiary receiving a distribution after December 31, 2003[,] and before January 1, 2005, the amount payable under any form of benefit subject to section 417(e)(3) of the Internal Revenue Code of 1986 and subject to adjustment under section 415(b)(2)(B) of such Code shall not, solely by reason of the amendment made by subsection (b)(4) [amending section 415 of this title], be less than the amount that would have been so payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 1, 2004.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, § 614(b), June 7, 2001, 115 Stat. 102, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 616(c), June 7, 2001, 115 Stat. 103, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to years beginning after December 31, 2001.''

Amendment by section 632(a)(3)(B) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, § 652(c), June 7, 2001, 115 Stat. 130, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to plan years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 662(c), June 7, 2001, 115 Stat. 142, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6015(d) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, § 7001(b), July 22, 1998, 112 Stat. 827, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by subsection (a) [amending this section] to change its method of accounting for its first taxable year ending after the date of the enactment of this Act [July 22, 1998]—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 3-taxable year period beginning with such first taxable year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1530(c)(2) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(2)(C) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(1), (2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1421(b)(2) of 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.

Amendment by section 1431(b)(3) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1431(d)(2) of Pub. L. 104–188, set out as a note under section 414 of this title.

Pub. L. 104–188, title I, § 1461(c), Aug. 20, 1996, 110 Stat. 1824, provided that: ''The amendments made by this section [amending this section and section 1414 of this title] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, § 1704(q)(2), Aug. 20, 1996, 110 Stat. 1887, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 713(d)(4)(A) of the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, § 7302(b), Dec. 19, 1989, 103 Stat. 2352, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to employer securities acquired after August 4, 1989.

''(2) SECURITIES ACQUIRED WITH CERTAIN LOANS.—The amendment made by this section shall not apply to employer securities acquired after August 4, 1989, which are acquired—

''(A) with the proceeds of any loan which was made pursuant to a binding written commitment in effect on August 4, 1989, and at all times thereafter before such loan is made, and

''(B) pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on August 4, 1989, and at all times thereafter before such securities are acquired.''

Pub. L. 101–239, title VII, § 7841(b)(2), Dec. 19, 1989, 103 Stat. 2428, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), and 1018(t)(4)(A), (5) 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.

Pub. L. 100–647, title II, § 2005(e), Nov. 10, 1988, 102 Stat. 3612, as amended by Pub. L. 101–239, title VII, § 7812(d), Dec. 19, 1989, 103 Stat. 2412, provided that: ''The amendments made by this section [amending this section and sections 412, 414, and 4972 of this title and section 1082 of Title 29, Labor] shall take effect as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] to which it relates, except that the amendment made by subsection (a)(1) [amending section 4972 of this title] shall take effect as if included in the amendment made by section 1131(c) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, § 9307(f), Dec. 22, 1987, 101 Stat. 1330–359, as amended by Pub. L. 101–239, title VII, § 7881(d)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 412 of this title and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

''(2) AMORTIZATION OF GAINS AND LOSSES.—Sections 412(b)(2)(B)(iv) and 412(b)(3)(B)(ii) of the Internal Revenue Code of 1986 and sections 302(b)(2)(B)(iv) and 302(b)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(2)(B)(iv), (3)(B)(ii)]

(as amended by paragraphs (1)(A) and (2)(A) of subsection (a)) shall apply to gains and losses established in years beginning after December 31, 1987. For purposes of the preceding sentence, any gain or loss determined by a valuation occurring as of January 1, 1988, shall be treated as established in years beginning before 1988, or at the election of the employer, shall be amortized in accordance with Internal Revenue Service Notice 89–52.''

Pub. L. 100–203, title X, § 10201(c)(1), Dec. 22, 1987, 101 Stat. 1330–388, provided that: ''The amendments made by this section [amending this section and sections 419 and 461 of this title, and repealing sections 81 and 463 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1106(d)(2) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(d)(2) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Pub. L. 99–514, title XI, § 1131(d), Oct. 22, 1986, 100 Stat. 2478, as amended by Pub. L. 100–647, title I, § 1011A(e)(3), Nov. 10, 1988, 102 Stat. 3478, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 4972 of this title and amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULES FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to contributions pursuant to any such agreement for taxable years beginning before the earlier of—

''(A) January 1, 1989, or

''(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).''

Amendment by section 1171(b)(6) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, but this section 404(i) of this title to continue to apply with respect to credits under section 41 of this title attributable to compensation paid or accrued before Jan. 1, 1987 (or under section 38 of this title with respect to qualified investment before Jan. 1, 1983), see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Pub. L. 99–514, title XI, § 1173(c)(1), Oct. 22, 1986, 100 Stat. 2516, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to dividends paid in taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by sections 1848(c), 1851(b)(2)(A)–(C)(ii), and 1854(b)(3)–(5) of 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.

Amendment by section 1854(b)(2) of Pub. L. 99–514 not applicable to dividends paid before Jan. 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendment on a return filed with the Secretary before Oct. 22, 1986, see section 1854(b)(6) of Pub. L. 99–514, set out as a note under section 72 of this title.

Pub. L. 99–514, title XVIII, § 1875(c)(7)(B), Oct. 22, 1986, 100 Stat. 2895, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1984.

Pub. L. 99–272, title XI, § 11011(c)(3), Apr. 7, 1986, 100 Stat. 258, provided that: ''The amendments made by this subsection [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(14) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title V, § 512(c), July 18, 1984, 98 Stat. 863, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 162 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) EXCEPTION FOR CERTAIN EXTENDED VACATION PAY PLANS.—In the case of any extended vacation pay plan maintained pursuant to a collective bargaining agreement—

''(A) between employee representatives and 1 or more employers, and

''(B) in effect on June 22, 1984,

the amendments made by this section shall not apply before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof agreed to after June 22, 1984). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

Pub. L. 98–369, div. A, title V, § 542(d), July 18, 1984, 98 Stat. 891, provided that: ''The amendments made by this section [amending this section and sections 116 and 3405 of this title] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984].''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, § 253(c), Sept. 3, 1982, 96 Stat. 533, provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to taxable years beginning after December 31, 1981.''

Amendment by section 235(f) of Pub. L. 97–248, in the case of any plan which is not in existence on July 1, 1982, applicable to years ending after July 1, 1982, and in the case of any plan which is in existence on July 1, 1982, applicable to years beginning after Dec. 31, 1982, see section 235(g)(1) of Pub. L. 97–248, set out as a note under section 415 of this title.

Amendment by sections 237 and 238 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(a) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) of this title with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Pub. L. 97–34, title III, § 331(f)(2), Aug. 13, 1981, 95 Stat. 295, provided that: ''The amendments made by sub-

sections (b) and (c) [amending this section and sections 56, 409A, and 6699 of this title] shall apply to taxable years ending after December 31, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

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.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §133(c), Nov. 6, 1978, 92 Stat. 2783, as amended by Pub. L. 96–222, title I, §101(a)(5), Apr. 1, 1980, 94 Stat. 196; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to deductions for taxable years beginning after December 31, 1978.

''(2) SPECIAL RULE FOR CERTAIN TITLE INSURANCE COMPANIES.—

''(A) IN GENERAL.—In the case of a qualified title insurance company plan, the amendment made by subsection (a) [amending this section] shall apply to deductions for taxable years beginning after December 31, 1979.

''(B) QUALIFIED TITLE INSURANCE COMPANY PLAN.—For purposes of subparagraph (A), the term 'qualified title insurance company plan' means a plan of a qualified title insurance company—

''(i) which defers the payment of amounts credited by such company to separate accounts for members of such company in consideration of their issuance of policies of title insurance, and

''(ii) under which no part of such amounts is payable to or withdrawable by the members until after the period for the adverse possession of real property under applicable State law.

''(C) QUALIFIED TITLE INSURANCE COMPANY.—For purposes of subparagraph (B), the term 'qualified title insurance company' means an unincorporated title insurance company organized as a business trust—

''(i) which is engaged in the business of providing title insurance coverage on interests in and liens upon real property obtained by clients of the members of such company, and

''(ii) which is subject to tax under section 831 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Amendment by section 141(f)(9) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Amendment by section 152(f) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 1502(a)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1975, see section 1502(b) of Pub. L. 94–455, set out as a note under section 415 of this title.

Amendment by section 1901(a)(59) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1013(c) and 1016(a)(3) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1013(c) and 1016(a)(3) of Pub. L. 93–406 applicable 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.

Pub. L. 93–406, title II, §2001(i)(1), Sept. 2, 1974, 88 Stat. 957, provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 1379 of this title] apply to taxable years beginning after December 31, 1973.''

Amendment by section 2001(g)(2)(E), (F) of Pub. L. 93–406 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(5) of Pub. L. 93–406, set out as a note under section 72 of this title.

Pub. L. 93–406, title II, §2008(c), Sept. 2, 1974, 88 Stat. 994, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending on or after June 30, 1972.''

Amendment by section 2004(b), (c)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 4081(a) of Pub. L. 93–406 effective on Sept. 2, 1974, with exceptions specified in section 1461(b), (c) of Title 29, Labor, see section 1461(a) of Title 29.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1967, see section 204(d) of Pub. L. 89–809, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–863 applicable to taxable years beginning after Oct. 23, 1962, see section 2(c) of Pub. L. 87–863, set out as a note under section 401 of this title.

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF TREATMENT OF CONTRIBUTIONS TO MULTIEMPLOYER PLAN

Pub. L. 107–16, title VI, §658, June 7, 2001, 115 Stat. 137, provided that:

''(a) NOT CONSIDERED METHOD OF ACCOUNTING.—For purposes of section 446 of the Internal Revenue Code of 1986, a determination under section 404(a)(6) of such Code regarding the taxable year with respect to which a contribution to a multiemployer pension plan is deemed made shall not be treated as a method of accounting of the taxpayer. No deduction shall be allowed for any taxable year for any contribution to a multiemployer pension plan with respect to which a deduction was previously allowed.

''(b) REGULATIONS.—The Secretary of the Treasury shall promulgate such regulations as necessary to clarify that a taxpayer shall not be allowed an aggregate amount of deductions for contributions to a multiemployer pension plan which exceeds the amount of such contributions made or deemed made under section 404(a)(6) of the Internal Revenue Code of 1986 to such plan.

''(c) EFFECTIVE DATE.—Subsection (a), and any regulations promulgated under subsection (b), shall be effective for years ending after the date of the enactment of this Act [June 7, 2001].''

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, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Pub. L. 98–369, div. A, title VII, § 713(d)(8), July 18, 1984, 98 Stat. 958, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Sections 404(e) and 1379(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Sept. 3, 1982]) shall not apply to any plan to which section 401(j) of such Code applies (or would apply but for its repeal).''

DEDUCTIBILITY OF PAYMENTS TO PLAN BY CORPORATION OPERATING PUBLIC TRANSPORTATION SYSTEM ACQUIRED BY STATE

Pub. L. 96–364, title IV, § 408, Sept. 26, 1980, 94 Stat. 1307, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) For purposes of subsection (g) of section 404 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to certain employer liability payments considered as contributions), as amended by section 205 of this Act, any payment made to a plan covering employees of a corporation operating a public transportation system shall be treated as a payment described in paragraph (1) of such subsection if—

''(1) such payment is made to fund accrued benefits under the plan in conjunction with an acquisition by a State (or agency or instrumentality thereof) of the stock or assets of such corporation, and

''(2) such acquisition is pursuant to a State public transportation law enacted after June 30, 1979, and before January 1, 1980.

''(b) The provisions of this section shall apply to payments made after June 29, 1980.''

YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW

Pub. L. 93–406, title II, § 1022(j), Sept. 2, 1974, 88 Stat. 942, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Effective for taxable years beginning after December 31, 1973, if—

''(1) an employer is engaged in a trade or business in a foreign country,

''(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

''(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees.''

§ 404A. Deduction for certain foreign deferred compensation plans

(a) General rule

Amounts paid or accrued by an employer under a qualified foreign plan—

(1) shall not be allowable as a deduction under this chapter, but

(2) if they would otherwise be deductible, shall be allowed as a deduction under this section for the taxable year for which such amounts are properly taken into account under this section.

(b) Rules for qualified funded plans

For purposes of this section—

(1) In general

Except as otherwise provided in this section, in the case of a qualified funded plan contributions are properly taken into account for the taxable year in which paid.

(2) Payment after close of taxable year

For purposes of paragraph (1), a payment made after the close of a taxable year shall be treated as made on the last day of such year if the payment is made—

(A) on account of such year, and

(B) not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(3) Limitations

In the case of a qualified funded plan, the amount allowable as a deduction for the taxable year shall be subject to—

(A) in the case of—

(i) a plan under which the benefits are fixed or determinable, limitations similar

to those contained in clauses (ii) and (iii) of subparagraph (A) of section 404(a)(1) (determined without regard to the last sentence of such subparagraph (A)), or

(ii) any other plan, limitations similar to the limitations contained in paragraph (3) of section 404(a), and

(B) limitations similar to those contained in paragraph (7) of section 404(a).

(4) Carryover

If—

(A) the aggregate of the contributions paid during the taxable year reduced by any contributions not allowable as a deduction under paragraphs (1) and (2) of subsection (g), exceeds

(B) the amount allowable as a deduction under subsection (a) (determined without regard to subsection (d)),

such excess shall be treated as an amount paid in the succeeding taxable year.

(5) Amounts must be paid to qualified trust, etc.

In the case of a qualified funded plan, a contribution shall be taken into account only if it is paid—

(A) to a trust (or the equivalent of a trust) which meets the requirements of section 401(a)(2),

(B) for a retirement annuity, or

(C) to a participant or beneficiary.

(c) Rules relating to qualified reserve plans

For purposes of this section—

(1) In general

In the case of a qualified reserve plan, the amount properly taken into account for the taxable year is the reasonable addition for such year to a reserve for the taxpayer's liability under the plan. Unless otherwise required or permitted in regulations prescribed by the Secretary, the reserve for the taxpayer's liability shall be determined under the unit credit method modified to reflect the requirements of paragraphs (3) and (4). All benefits paid under the plan shall be charged to the reserve.

(2) Income item

In the case of a plan which is or has been a qualified reserve plan, an amount equal to that portion of any decrease for the taxable year in the reserve which is not attributable to the payment of benefits shall be included in gross income.

(3) Rights must be nonforfeitable, etc.

In the case of a qualified reserve plan, an item shall be taken into account for a taxable year only if—

(A) there is no substantial risk that the rights of the employee will be forfeited, and

(B) such item meets such additional requirements as the Secretary may by regulations prescribe as necessary or appropriate to ensure that the liability will be satisfied.

(4) Spreading of certain increases and decreases in reserves

There shall be amortized over a 10-year period any increase or decrease to the reserve on account of—

(A) the adoption of the plan or a plan amendment,

(B) experience gains and losses, and[1]

(C) any change in actuarial assumptions,

(D) changes in the interest rate under subsection (g)(3)(B), and

(E) such other factors as may be prescribed by regulations.

(d) Amounts taken into account must be consistent with amounts allowed under foreign law

(1) General rule

In the case of any plan, the amount allowed as a deduction under subsection (a) for any taxable year shall equal—

(A) the lesser of—

(i) the cumulative United States amount, or

(ii) the cumulative foreign amount, reduced by

(B) the aggregate amount determined under this section for all prior taxable years.

(2) Cumulative amounts defined

For purposes of paragraph (1)—

(A) Cumulative United States amount

The term ''cumulative United States amount'' means the aggregate amount determined with respect to the plan under this section for the taxable year and for all prior taxable years to which this section applies. Such determination shall be made for each taxable year without regard to the application of paragraph (1).

(B) Cumulative foreign amount

The term ''cumulative foreign amount'' means the aggregate amount allowed as a deduction under the appropriate foreign tax laws for the taxable year and all prior taxable years to which this section applies.

(3) Effect on earnings and profits, etc.

In determining the earnings and profits and accumulated profits of any foreign corporation with respect to a qualified foreign plan, except as provided in regulations, the amount determined under paragraph (1) with respect to any plan for any taxable year shall in no event exceed the amount allowed as a deduction under the appropriate foreign tax laws for such taxable year.

(e) Qualified foreign plan

For purposes of this section, the term ''qualified foreign plan'' means any written plan of an employer for deferring the receipt of compensation but only if—

(1) such plan is for the exclusive benefit of the employer's employees or their beneficiaries,

(2) 90 percent or more of the amounts taken into account for the taxable year under the plan are attributable to services—

(A) performed by nonresident aliens, and

(B) the compensation for which is not subject to tax under this chapter, and

(3) the employer elects (at such time and in such manner as the Secretary shall by regula-

[1] So in original. The word ''and'' probably should not appear.

tions prescribe) to have this section apply to such plan.

(f) Funded and reserve plans

For purposes of this section—

(1) Qualified funded plan

The term ''qualified funded plan'' means a qualified foreign plan which is not a qualified reserve plan.

(2) Qualified reserve plan

The term ''qualified reserve plan'' means a qualified foreign plan with respect to which an election made by the taxpayer is in effect for the taxable year. An election under the preceding sentence shall be made in such manner and form as the Secretary may by regulations prescribe and, once made, may be revoked only with the consent of the Secretary.

(g) Other special rules

(1) No deduction for certain amounts

Except as provided in section 404(a)(5), no deduction shall be allowed under this section for any item to the extent such item is attributable to services—

(A) performed by a citizen or resident of the United States who is a highly compensated employee (within the meaning of section 414(q)), or

(B) performed in the United States the compensation for which is subject to tax under this chapter.

(2) Taxpayer must furnish information

(A) In general

No deduction shall be allowed under this section with respect to any plan for any taxable year unless the taxpayer furnishes to the Secretary with respect to such plan (at such time as the Secretary may by regulations prescribe)—

(i) a statement from the foreign tax authorities specifying the amount of the deduction allowed in computing taxable income under foreign law for such year with respect to such plan,

(ii) if the return under foreign tax law shows the deduction for plan contributions or reserves as a separate, identifiable item, a copy of the foreign tax return for the taxable year, or

(iii) such other statement, return, or other evidence as the Secretary prescribes by regulation as being sufficient to establish the amount of the deduction under foreign law.

(B) Redetermination where foreign tax deduction is adjusted

If the deduction under foreign tax law is adjusted, the taxpayer shall notify the Secretary of such adjustment on or before the date prescribed by regulations, and the Secretary shall redetermine the amount of the tax for the year or years affected. In any case described in the preceding sentence, rules similar to the rules of subsection (c) of section 905 shall apply.

(3) Actuarial assumptions must be reasonable; full funding

(A) In general

Except as provided in subparagraph (B), principles similar to those set forth in paragraphs (3) and (6) of section 431(c) shall apply for purposes of this section.

(B) Interest rate for reserve plan

(i) In general

In the case of a qualified reserve plan, in lieu of taking rates of interest into account under subparagraph (A), the rate of interest for the plan shall be the rate selected by the taxpayer which is within the permissible range.

(ii) Rate remains in effect so long as it falls within permissible range

Any rate selected by the taxpayer for the plan under this subparagraph shall remain in effect for such plan until the first taxable year for which such rate is no longer within the permissible range. At such time, the taxpayer shall select a new rate of interest which is within the permissible range applicable at such time.

(iii) Permissible range

For purposes of this subparagraph, the term ''permissible range'' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average rate of interest for long-term corporate bonds in the appropriate country for the 15-year period ending on the last day before the beginning of the taxable year.

(4) Accounting method

Any change in the method (but not the actuarial assumptions) used to determine the amount allowed as a deduction under subsection (a) shall be treated as a change in accounting method under section 446(e).

(5) Section 481 applies to election

For purposes of section 481, any election under this section shall be treated as a change in the taxpayer's method of accounting. In applying section 481 with respect to any such election, the period for taking into account any increase or decrease in accumulated profits, earnings and profits or taxable income resulting from the application of section 481(a)(2) shall be the year for which the election is made and the fourteen succeeding years.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section (including regulations providing for the coordination of the provisions of this section with section 404 in the case of a plan which has been subject to both of such sections).

(Added Pub. L. 96–603, § 2(a), Dec. 28, 1980, 94 Stat. 3505; amended Pub. L. 99–514, title XI, § 1114(b)(8), title XVIII, § 1851(b)(2)(C)(iii), Oct. 22, 1986, 100 Stat. 2451, 2863; Pub. L. 100–647, title I, § 1012(b)(4), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 109–280, title VIII, § 801(c)(4), Aug. 17, 2006, 120 Stat. 995.)

AMENDMENTS

2006—Subsec. (g)(3)(A). Pub. L. 109–280 substituted ''paragraphs (3) and (6) of section 431(c)'' for ''paragraphs (3) and (7) of section 412(c)''.

1988—Subsec. (d)(3). Pub. L. 100–647 inserted ''except as provided in regulations,'' after ''qualified foreign plan,''.

1986—Subsec. (a). Pub. L. 99–514, §1851(b)(2)(C)(iii), substituted ''under this chapter'' for ''under section 162, 212, or 404'' in par. (1) and ''they would otherwise be deductible'' for ''they satisfy the conditions of section 162'' in par. (2).

Subsec. (g)(1)(A). Pub. L. 99–514, §1114(b)(8), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or highly compensated''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning after Dec. 31, 2007, see section 801(e)(1) of Pub. L. 109–280, set out as a note under section 404 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 OF 1986 AMENDMENT

Amendment by section 1114(b)(8) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1851(b)(2)(C)(iii) of 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

Pub. L. 96–603, §2(e), Dec. 28, 1980, 94 Stat. 3510, as amended by Pub. L. 97–448, title III, §305(a), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] shall apply with respect to employer contributions or accruals for taxable years beginning after December 31, 1979.

''(2) ELECTION TO APPLY AMENDMENTS RETROACTIVELY WITH RESPECT TO FOREIGN SUBSIDIARIES.—

''(A) IN GENERAL.—The taxpayer may elect to have the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] apply retroactively with respect to its foreign subsidiaries.

''(B) SCOPE OF RETROACTIVE APPLICATION.—Any election made under this paragraph shall apply with respect to all foreign subsidiaries of the taxpayer for the taxpayer's open period.

''(C) DISTRIBUTIONS BY FOREIGN SUBSIDIARY MUST BE OUT OF POST-1971 EARNINGS AND PROFITS.—The election under this paragraph shall apply to distributions made by a foreign subsidiary only if made out of accumulated profits (or earnings and profits) earned after December 31, 1970.

''(D) REVOCATION ONLY WITH CONSENT.—An election under this paragraph may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(E) OPEN PERIOD.—For purposes of this subsection, the term 'open period' means, with respect to any taxpayer, all taxable years which begin before January 1, 1980, and which begin after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was not barred by any law or rule of law.

''(3) ALLOWANCE OF PRIOR DEDUCTIONS IN CASE OF CERTAIN FUNDED BRANCH PLANS.—

''(A) IN GENERAL.—If—

''(i) the taxpayer elects to have this paragraph apply, and

''(ii) the taxpayer agrees to the assessment of all deficiencies (including interest thereon) arising from all erroneous deductions,

then an amount equal to 1/15th of the aggregate of the prior deductions which would have been allowable if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980, shall be allowed as a deduction for the taxpayer's first taxable year beginning in 1980, and an equal amount shall be allowed for each of the succeeding 14 taxable years.

''(B) PRIOR DEDUCTION.—For purposes of subparagraph (A), the term 'prior deduction' means a deduction with respect to a qualified funded plan (within the meaning of section 404A(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of the taxpayer—

''(i) which the taxpayer claimed for a taxable year (or could have claimed if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980) beginning before January 1, 1980,

''(ii) which was not allowable, and

''(iii) with respect to which, on December 1, 1980, the assessment of a deficiency was not barred by any law or rule of law.

''(4) TIME AND MANNER FOR MAKING ELECTIONS.—

''(A) TIME.—An election under paragraph (2) or (3) may be made only on or before the due date (including extensions) for filing the taxpayer's return of tax under chapter 1 of the Internal Revenue Code of 1986 [section 1 et seq. of this title] for its first taxable year ending on or after December 31, 1980.

''(B) MANNER.—An election under paragraph (2) may be made only by a statement attached to the taxpayer's return for its first taxable year ending on or after December 31, 1980. An election under paragraph (3) may be made only if the taxpayer, on or before the last day for making the election, files with the Secretary of the Treasury or his delegate such amended return and such other information as the Secretary of the Treasury or his delegate may require, and agrees to the assessment of a deficiency for any closed year falling within the open period, to the extent such deficiency is attributable to the operation of such election.''

[Pub. L. 97–448, title III, §311(c)(1), Jan. 12, 1983, 96 Stat. 2411, provided that: ''The amendment made by subsection (a) of section 305 [amending par. (2)(E) of this note] shall take effect on December 28, 1980.'']

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, 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.

[§ 405. Repealed. Pub. L. 98–369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848]

Section, added Pub. L. 87–792, § 5(a), Oct. 10, 1962, 76 Stat. 826; amended Pub. L. 89–97, title I, § 106(d)(5), July 30, 1965, 79 Stat. 337; Pub. L. 91–172, title V, § 515(c)(1), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§ 2004(c)(2), 2005(c)(11), Sept. 2, 1974, 88 Stat. 986, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, § 313(a), (b)(1), Aug. 13, 1981, 95 Stat. 285, 286; Pub. L. 97–452, § 2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, § 42(a)(6), July 18, 1984, 98 Stat. 557, related to qualified bond purchase plans.

EFFECTIVE DATE OF REPEAL

Repeal applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 62 of this title.

ROLLOVER OF EXISTING BONDS INTO QUALIFIED EMPLOYER PLANS

Pub. L. 98–369, div. A, title IV, § 491(c)(1), (f)(2), July 18, 1984, 98 Stat. 848, 853, provided that, applicable to redemptions after July 18, 1984, in taxable years ending after such date, subsec. (d)(3)(A) of this section, as in effect before its repeal, is amended to read as follows:

''(A) IN GENERAL.—If—

''(i) any qualified bond is redeemed,

''(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and

''(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated as a rollover contribution described in section 408(d)(3).''

BONDS UNDER QUALIFIED BOND PURCHASE PLANS REDEEMABLE AT ANY TIME AFTER JULY 18, 1984

Pub. L. 98–369, div. A, title IV, § 491(f)(4), July 18, 1984, 98 Stat. 853, provided that: ''Notwithstanding—

''(A) subparagraph (D) of section 405(b)(1) of the Internal Revenue Code of 1954 (as in effect before its repeal by this section) [see above], and

''(B) the terms of any bond described in subsection (b) of such section 405,

such a bond may be redeemed at any time after the date of the enactment of this Act [July 18, 1984] in the same manner as if the individual redeeming the bond had attained age 59½.''

§ 406. Employees of foreign affiliates covered by section 3121(*l*) agreements

(a) Treatment as employees of American employer

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of an American employer (as defined in section 3121(h)), an individual who is a citizen or resident of the United States and who is an employee of a foreign affiliate (as defined in section 3121(*l*)(6)) of such American employer shall be treated as an employee of such American employer, if—

(1) such American employer has entered into an agreement under section 3121(*l*) which applies to the foreign affiliate of which such individual is an employee;

(2) the plan of such American employer expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its foreign affiliates to which an agreement entered into by such American employer under section 3121(*l*) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign affiliate.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such American employer; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such American employer and by determining such individual's status with regard to such American employer.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign affiliate which would constitute his total compensation if his services had been performed for such American employer, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary; and

(B) such individual shall be treated as having paid the amount paid by such American employer which is equivalent to the tax imposed by section 3101.

[(c) Repealed. Pub. L. 104–188, title I, § 1401(b)(7), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by an American employer, or by another taxpayer which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such American employer under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such American employer or to any other taxpayer which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign affiliate of which such individual is

an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the American employer if he were an employee of the American employer, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign affiliate under this subsection shall be deductible for its taxable year with or within which the taxable year of such American employer ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of an American employer under subsection (a) shall also be treated as an employee of such American employer, with respect to the plan described in subsection (a)(2), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, §220(a), Feb. 26, 1964, 78 Stat. 58; amended Pub. L. 91–172, title V, §515(c)(2), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§1016(a)(4), 2005(c)(12), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, §321(c), (e)(2)(A)–(D)(i), Apr. 20, 1983, 97 Stat. 119, 120; Pub. L. 98–369, div. A, title IV, §491(d)(13)–(15), July 18, 1984, 98 Stat. 849; Pub. L. 99–514, title XI, §§1112(d)(3), 1114(b)(9)(A), (C), title XVIII, §1852(e)(2)(C), Oct. 22, 1986, 100 Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, §1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§7811(g)(3), 7831(f), title X, §10201(b)(1), (2), Dec. 19, 1989, 103 Stat. 2409, 2427, 2472; Pub. L. 102–318, title V, §521(b)(14), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§1401(b)(7), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, §1401(b)(7), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, §1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Section 101(b) (relating to employees' death benefits).''

1992—Subsec. (c). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

1989—Subsec. (a). Pub. L. 101–239, §10201(b)(1), substituted ''3121(*l*)(6)'' for ''3121(*l*)(8)''.

Subsec. (b)(1)(A). Pub. L. 101–239, §7831(f), made technical correction to Pub. L. 99–514, §1114(b)(9)(A), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, §7811(g)(3), substituted ''purposes of limitation'' for ''purposes limitation'' in heading.

Subsec. (c)(3). Pub. L. 101–239, §10201(b)(2), substituted ''3121(*l*)(6)(B)'' for ''3121(*l*)(8)(B)''.

1988—Subsec. (c). Pub. L. 100–647, §1011A(b)(16), struck out ''of capital gain provisions and'' after ''service for purposes'' in heading and substituted ''applying section 402(e)'' for ''applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)'' in text.

Subsec. (e). Pub. L. 100–647, §1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''Section 72(d) (relating to employees' annuities).''

1986—Subsec. (b)(1). Pub. L. 99–514, §1112(d)(3), struck out ''(without regard to paragraph (1)(A) thereof)'' after ''section 410(b)'' in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, §1114(b)(9)(A), as amended by Pub. L. 101–239, §7831(f), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign affiliate of such American employer''.

Subsec. (b)(1)(B). Pub. L. 99–514, §1114(b)(9)(C), inserted ''(as so defined)'' after ''employee''.

Subsec. (e)(5). Pub. L. 99–514, §1852(e)(2)(C), struck out par. (5) which read as follows: ''Section 2517 (relating to certain annuities under qualified plans).''

1984—Subsec. (a). Pub. L. 98–369, §491(d)(13), substituted in introductory provision ''or an annuity plan described in section 403(a)'' for '', an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)''.

Subsec. (a)(3). Pub. L. 98–369, §491(d)(14), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

Subsec. (d). Pub. L. 98–369, §491(d)(15)(A), (B), substituted in introductory provision ''section 404'' for ''sections 404 and 405(c)'', and ''or annuity'' for ''annuity, or bond purchase''.

Subsec. (d)(2). Pub. L. 98–369, §491(d)(15)(C), struck out ''(or section 405(c))'' after ''section 404''.

1983—Pub. L. 98–21, §321(e)(2)(D)(i), substituted ''Employees of foreign affiliates covered by section 3121(*l*) agreements'' for ''Certain employees of foreign subsidiaries'' in section catchline.

Subsec. (a). Pub. L. 98–21, §321(c), amended subsec. (a) generally, substituting ''American employer'' for ''domestic corporation'' in heading and in text wherever appearing, inserting reference to section 3121(h) of this title, inserting ''or resident'' after ''citizen'' wherever appearing, substituting ''foreign affiliate'' for ''foreign subsidiary'' wherever appearing, and ''foreign affiliates'' for ''foreign subsidiaries''.

Subsec. (b). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing.

Subsec. (c). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing in provisions preceding par. (1) and in pars. (1) and (2).

Subsec. (c)(3). Pub. L. 98–21, §321(e)(2)(A), (B), substituted ''foreign affiliate by reason of which he is treated as an employee of such American employer, if he becomes an employee of another entity in which such American employer has not less than a 10-percent interest (within the meaning of section 3121(*l*)(8)(B)'' for ''foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation''.

Subsec. (d). Pub. L. 98–21, §321(e)(2)(A), (C), substituted references to an American employer for references to a domestic corporation and reference to an affiliate for a reference to a subsidiary wherever appearing, substituted ''another taxpayer'' for ''another corporation'' in provisions preceding par. (1), and substituted ''any other taxpayer'' for ''any other corporation'' in par. (1).

Subsec. (e). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation wherever appearing in provisions preceding par. (1).

1976—Subsec. (b)(2)(A). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b)(1). Pub. L. 93–406, §1016(a)(4), substituted ''section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''paragraphs (3)(B) and (4) of section 401(a)''.

Subsec. (c). Pub. L. 93–406, §2005(c)(12), substituted ''subsections (a)(2) and (e) of section 402'' for ''section 72(n), section 402(a)(2)''.

1969—Subsec. (c). Pub. L. 91–172 substituted ''provisions and limitation of tax'' for ''provisions'' in heading, and substituted ''section 72(n), section 402(a)(2),'' for ''section 402(a)(2)'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(7) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–239, title X, § 10201(c), Dec. 19, 1989, 103 Stat. 2472, provided that: ''The amendments made by this section [amending this section, section 3121 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to any agreement in effect under section 3121(*l*) of the Internal Revenue Code of 1986 on or after June 15, 1989, with respect to which no notice of termination is in effect on such date.''

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 OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(A), (C) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XVIII, § 1852(e)(2)(E), Oct. 22, 1986, 100 Stat. 2868, provided that: ''The amendments made by this paragraph [amending this section and section 407 of this title and repealing section 2517 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title III, § 321(f), Apr. 20, 1983, 97 Stat. 120, provided that:

''(1)(A) The amendments made by this section [amending this section and sections 407, 1402, 3121, and 6413 of this title and section 410 of Title 42, The Public Health and Welfare] (other than subsection (d) [amending section 407 of this title]) shall apply to agreements entered into after the date of the enactment of this Act [Apr. 20, 1983].

''(B) At the election of any American employer, the amendments made by this section (other than subsection (d)) shall also apply to any agreement entered into on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

''(2)(A) The amendments made by subsection (d) [amending section 407 of this title] shall apply to plans established after the date of the enactment of this Act [Apr. 20, 1983].

''(B) At the election of any domestic parent corporation the amendments made by subsection (d) shall also apply to any plan established on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(4) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transition of Rules note under section 410 of this title.

Amendment by section 2005(c)(12) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Pub. L. 88–272, title II, § 220(d), Feb. 26, 1964, 78 Stat. 63, provided that: ''The amendments made by subsections (a) [enacting this section], (b) [enacting section 407 of this title], and (c)(1) [amending the analysis preceding section 401 of this title] shall apply to taxable years ending after December 31, 1963. The amendments made by subsections (c)(2) [amending section 3121 of this title] and (3) [amending section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1962.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, 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, 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, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L.

102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

§ 407. Certain employees of domestic subsidiaries engaged in business outside the United States

(a) Treatment as employees of domestic parent corporation

(1) In general

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of a domestic parent corporation, an individual who is a citizen or resident of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions

For purposes of this section—

(A) Domestic subsidiary

A corporation shall be treated as a domestic subsidiary for any taxable year only if—

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence), was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation

The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such domestic parent corporation.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary.

[(c) Repealed. Pub. L. 104–188, title I, § 1401(b)(8), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the

amount which (but for paragraph (1)) would be deductible under section 404 by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a)(1)(A), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, § 220(b), Feb. 26, 1964, 78 Stat. 60; amended Pub. L. 91–172, title V, § 515(c)(3), Dec. 30, 1969, 83 Stat. 646; Pub. L. 93–406, title II, §§ 1016(a)(5), 2005(c)(13), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, § 321(d), Apr. 20, 1983, 97 Stat. 119; Pub. L. 98–369, div. A, title IV, § 491(d)(16)–(18), July 18, 1984, 98 Stat. 850; Pub. L. 99–514, title XI, §§ 1112(d)(3), 1114(b)(9)(B), (C), title XVIII, § 1852(e)(2)(D), Oct. 22, 1986, 100 Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, § 1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§ 7811(g)(3), 7831(f), Dec. 19, 1989, 103 Stat. 2409, 2427; Pub. L. 102–318, title V, § 521(b)(15), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§ 1401(b)(8), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, § 1401(b)(8), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, § 1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Section 101(b) (relating to employees' death benefits).''

1992—Subsec. (c). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

1989—Subsec. (b)(1)(A). Pub. L. 101–239, § 7831(f), made technical correction to Pub. L. 99–514, § 1114(b)(9)(B), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, § 7811(g)(3), substituted ''purposes of limitation'' for ''purposes limitation'' in heading.

1988—Subsec. (c). Pub. L. 100–647, § 1011A(b)(16), struck out ''of capital gain provisions and'' after ''service for purposes'' in heading and substituted ''applying section 402(e)'' for ''applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)'' in text.

Subsec. (e). Pub. L. 100–647, § 1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''Section 72(d) (relating to employees' annuities).''

1986—Subsec. (b)(1). Pub. L. 99–514, § 1112(d)(3), struck out ''(without regard to paragraph (1)(A) thereof)'' after ''section 410(b)'' in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, § 1114(b)(9)(B), as amended by Pub. L. 101–239, § 7831(f), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a domestic subsidiary''.

Subsec. (b)(1)(B). Pub. L. 99–514, § 1114(b)(9)(C), inserted ''(as so defined)'' after ''employee''.

Subsec. (e)(5). Pub. L. 99–514, § 1852(e)(2)(D), struck out par. (5) which read as follows: ''Section 2517 (relating to certain annuities under qualified plans).''

1984—Subsec. (a)(1). Pub. L. 98–369, § 491(d)(16), substituted ''or an annuity plan described in section 403(a)'' for '', an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)''.

Subsec. (a)(1)(B). Pub. L. 98–369, § 491(d)(17), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

Subsec. (d). Pub. L. 98–369, § 491(d)(18)(A), (B), substituted in introductory provision ''section 404'' for ''sections 404 and 405(a)'', and ''or annuity'' for ''annuity, or bond purchase''.

Subsec. (d)(2). Pub. L. 98–369, § 491(d)(18)(C), struck out ''(or section 405(c))'' after ''section 404''.

1983—Subsec. (a)(1). Pub. L. 98–21 inserted ''or resident'' after ''citizen'', and inserted ''or residents'' after ''citizens'' in subpar. (A).

1976—Subsec. (b)(2). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b)(1). Pub. L. 93–406, § 1016(a)(5), substituted ''section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''paragraphs (3)(B) and (4) of section 401(a)''.

Subsec. (c). Pub. L. 93–406, § 2005(c)(13), substituted ''subsections (a)(2) and (e) of section 402'' for ''section 72(n), section 402(a)(2)''.

1969—Subsec. (c). Pub. L. 91–172 substituted ''provisions and limitation of tax'' for ''provisions'' in heading, and substituted ''section 72(n), section 402(a)(2),'' for ''section 402(a)(2)'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(8) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 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 OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements

ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(B), (C) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1852(e)(2)(D) of Pub. L. 99–514 applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99–514, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to plans established after Apr. 20, 1983, except that at the election of any domestic parent corporation such amendment shall also apply to any plan established on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(5) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable 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.

Amendment by section 2005(c)(13) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 220(d) of Pub. L. 88–272, set out as a note under section 406 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, 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, 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, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

§ 408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term ''individual retirement account'' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in[1] section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(b) Individual retirement annuity

For purposes of this section, the term ''individual retirement annuity'' means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A), and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section

[1] So in original.

401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed the dollar amount in effect under section 219(b)(1)(A).

(c) Accounts established by employers and certain associations of employees

A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

(1) The trust satisfies the requirements of paragraphs (1) through (6) of subsection (a).

(2) There is a separate accounting for the interest of each employee or member (or spouse of an employee or member).

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

(d) Tax treatment of distributions

(1) In general

Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

(2) Special rules for applying section 72

For purposes of applying section 72 to any amount described in paragraph (1)—

(A) all individual retirement plans shall be treated as 1 contract,

(B) all distributions during any taxable year shall be treated as 1 distribution, and

(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.

(3) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term ''eligible retirement plan'' means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

(B) Limitation

This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general

In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity

An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained ac-

quired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted

(i) In general

If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan

For purposes of clause (i), the term ''eligible plan'' means any account, annuity, contract, or plan referred to in subparagraph (A).

(E) Denial of rollover treatment for required distributions

This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

(F) Frozen deposits

For purposes of this paragraph, rules similar to the rules of section 402(c)(7) (relating to frozen deposits) shall apply.

(G) Simple retirement accounts

In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.

(H) Application of section 72

(i) In general

If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) Applicable rules

In the case of a distribution described in clause (i)—

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) Waiver of 60-day requirement

The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Contributions returned before due date of return

Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

(5) Distributions of excess contributions after due date for taxable year and certain excess rollover contributions

(A) In general

In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under section 219(b)(1)(A), paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or the dollar limitation in effect under section 415(c)(1)(A) for such taxable year.

(B) Excess rollover contributions attributable to erroneous information

If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

For purposes of this paragraph, the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(6)[2] Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

(7) Special rules for simplified employee pensions or simple retirement accounts

(A) Transfer or rollover of contributions prohibited until deferral test met

Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

(B) Certain exclusions treated as deductions

For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) or 402(k) shall be treated as an amount allowable or allowed as a deduction under section 219.

(8) Distributions for charitable purposes

(A) In general

So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed $100,000 shall not be includible in gross income of such taxpayer for such taxable year.

(B) Qualified charitable distribution

For purposes of this paragraph, the term ''qualified charitable distribution'' means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A).

(C) Contributions must be otherwise deductible

For purposes of this paragraph, a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) Application of section 72

Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction

Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170.

(9) Distribution for health savings account funding

(A) In general

In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

(B) Qualified HSA funding distribution

For purposes of this paragraph, the term ''qualified HSA funding distribution'' means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

[2] See Amendment of Subsection (d)(6) note below.

(C) Limitations

(i) Maximum dollar limitation

The amount excluded from gross income by subparagraph (A) shall not exceed the excess of—

(I) the annual limitation under section 223(b) computed on the basis of the type of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over

(II) in the case of a distribution described in clause (ii)(II), the amount of the earlier qualified HSA funding distribution.

(ii) One-time transfer

(I) In general

Except as provided in subclause (II), an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

(II) Conversion from self-only to family coverage

If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

(D) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then the aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A)—

(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term ''testing period'' means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A), the aggregate amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(e) Tax treatment of accounts and annuities

(1) Exemption from tax

Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Loss of exemption of account where employee engages in prohibited transaction

(A) In general

If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

(i) the individual for whose benefit any account was established is treated as the creator of such account, and

(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

(B) Account treated as distributing all its assets

In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

(3) Effect of borrowing on annuity contract

If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

(4) Effect of pledging account as security

If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) Purchase of endowment contract by individual retirement account

If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

(6) Commingling individual retirement account amounts in certain common trust funds and common investment funds

Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

[(f) Repealed. Pub. L. 99–514, title XI, § 1123(d)(2), Oct. 22, 1986, 100 Stat. 2475]

(g) Community property laws

This section shall be applied without regard to any community property laws.

(h) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(i) Reports

The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating $10 or more in any calendar year, and such other matters as the Secretary may require. The reports required by this subsection—

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 31 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.

(j) Increase in maximum limitations for simplified employee pensions

In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) Simplified employee pension defined

(1) In general

For purposes of this title, the term ''simplified employee pension'' means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) Participation requirements

This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $450 in compensation (within the meaning of section 414(q)(4)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general

The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).

(B) Special rules

For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).

(C) Contributions must bear uniform relationship to total compensation

For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity

For purposes of subparagraph (C), the rules of section 401(*l*)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) Withdrawals must be permitted

A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Employee may elect salary reduction arrangement

(A) Arrangements which qualify

(i) In general

A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect

Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage

Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals

Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) Exception where more than 25 employees

This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions

(i) In general

Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) Excess contribution

For purposes of clause (i), the term ''excess contribution'' means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) Deferral percentage

For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000) for the year.

(E) Exception for State and local and tax-exempt pensions

This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions

This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee

For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(H) Termination

This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A).

(7) Definitions

For purposes of this subsection and subsection (*l*)—

(A) Employee, employer, or owner-employee

The terms ''employee'', ''employer'', and ''owner-employee'' shall have the respective meanings given such terms by section 401(c).

(B) Compensation

Except as provided in paragraph (2)(C), the term ''compensation'' has the meaning given such term by section 414(s).

(C) Year

The term ''year'' means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

(8) Cost-of-living adjustment

The Secretary shall adjust the $450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B); except that any increase in the $450 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

(9) Cross reference

For excise tax on certain excess contributions, see section 4979.

(*l*) Simplified employer reports

(1) In general

An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

(2) Simple retirement accounts

(A) No employer reports

Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

(B) Summary description

The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) and the issuer of an annuity established under such an arrangement shall provide to the employer maintaining the arrangement, each year a description containing the following information:

(i) The name and address of the employer and the trustee or issuer.

(ii) The requirements for eligibility for participation.

(iii) The benefits provided with respect to the arrangement.

(iv) The time and method of making elections with respect to the arrangement.

(v) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

(C) Employee notification

The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B).

(m) Investment in collectibles treated as distributions

(1) In general

The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) Collectible defined

For purposes of this subsection, the term ''collectible'' means—

(A) any work of art,

(B) any rug or antique,

(C) any metal or gem,
(D) any stamp or coin,
(E) any alcoholic beverage, or
(F) any other tangible personal property specified by the Secretary for purposes of this subsection.

(3) Exception for certain coins and bullion

For purposes of this subsection, the term ''collectible'' shall not include—
(A) any coin which is—
(i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,
(ii) a silver coin described in section 5112(e) of title 31, United States Code,
(iii) a platinum coin described in section 5112(k) of title 31, United States Code, or
(iv) a coin issued under the laws of any State, or

(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7)[3] requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is in the physical possession of a trustee described under subsection (a) of this section.

(n) Bank

For purposes of subsection (a)(2), the term ''bank'' means—
(1) any bank (as defined in section 581),
(2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and
(3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(*o*) Definitions and rules relating to nondeductible contributions to individual retirement plans

(1) In general

Subject to the provisions of this subsection, designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

(2) Limits on amounts which may be contributed

(A) In general

The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

(B) Nondeductible limit

For purposes of this paragraph—

(i) In general

The term ''nondeductible limit'' means the excess of—
(I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g)), over
(II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g)).

(ii) Taxpayer may elect to treat deductible contributions as nondeductible

If a taxpayer elects not to deduct an amount which (without regard to this clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

(C) Designated nondeductible contributions

(i) In general

For purposes of this paragraph, the term ''designated nondeductible contribution'' means any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219.

(ii) Designation

Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

(3) Time when contributions made

In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f)(3) shall apply.

(4) Individual required to report amount of designated nondeductible contributions

(A) In general

Any individual who—
(i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or
(ii) receives any amount from any individual retirement plan for any taxable year,

shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B).

(B) Information required to be supplied

The following information is described in this subparagraph:
(i) The amount of designated nondeductible contributions for the taxable year.
(ii) The amount of distributions from individual retirement plans for the taxable year.
(iii) The excess (if any) of—
(I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over
(II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.

(iv) The aggregate balance of all individual retirement plans of the individual as of

[3] See References in Text note below.

the close of the calendar year in which the taxable year begins.

(v) Such other information as the Secretary may prescribe.

(C) Penalty for reporting contributions not made

For penalty where individual reports designated nondeductible contributions not made, see section 6693(b).

(p) Simple retirement accounts

(1) In general

For purposes of this title, the term ''simple retirement account'' means an individual retirement plan (as defined in section 7701(a)(37))—

(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met; and

(B) except in the case of a rollover contribution described in subsection (d)(3)(G) or a rollover contribution otherwise described in subsection (d)(3) or in section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), which is made after the 2-year period described in section 72(t)(6), with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

(2) Qualified salary reduction arrangement

(A) In general

For purposes of this subsection, the term ''qualified salary reduction arrangement'' means a written arrangement of an eligible employer under which—

(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

(II) to the employee directly in cash,

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of the applicable dollar amount for any year,

(iii) the employer is required to make a matching contribution to the simple retirement account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

(iv) no contributions may be made other than contributions described in clause (i) or (iii).

(B) Employer may elect 2-percent nonelective contribution

(i) In general

An employer shall be treated as meeting the requirements of subparagraph (A)(iii) for any year if, in lieu of the contributions described in such clause, the employer elects to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C).

(ii) Compensation limitation

The compensation taken into account under clause (i) for any year shall not exceed the limitation in effect for such year under section 401(a)(17).

(C) Definitions

For purposes of this subsection—

(i) Eligible employer

(I) In general

The term ''eligible employer'' means, with respect to any year, an employer which had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year.

(II) 2-year grace period

An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

(ii) Applicable percentage

(I) In general

The term ''applicable percentage'' means 3 percent.

(II) Election of lower percentage

An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C). An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

(III) Special rule for years arrangement not in effect

If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

(D) Arrangement may be only plan of employer

(i) In general

An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

(ii) Qualified plan

For purposes of this subparagraph, the term ''qualified plan'' means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

(E) Applicable dollar amount; cost-of-living adjustment

(i) In general

For purposes of subparagraph (A)(ii), the applicable amount is $10,000.

(ii) Cost-of-living adjustment

In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(3) Vesting requirements

The requirements of this paragraph are met with respect to a simple retirement account if the employee's rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k)(4) shall apply.

(4) Participation requirements

(A) In general

The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

(i) received at least $5,000 in compensation from the employer during any 2 preceding years, and

(ii) are reasonably expected to receive at least $5,000 in compensation during the year,

are eligible to make the election under paragraph (2)(A)(i) or receive the nonelective contribution described in paragraph (2)(B).

(B) Excludable employees

An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b)(3).

(5) Administrative requirements

The requirements of this paragraph are met with respect to any simple retirement account if, under the qualified salary reduction arrangement—

(A) an employer must—

(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

(ii) make the matching contributions under paragraph (2)(A)(iii) or the nonelective contributions under paragraph (2)(B) not later than the date described in section 404(m)(2)(B),

(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year (and the 60-day period before the first day such employee is eligible to participate), to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

(6) Definitions

For purposes of this subsection—

(A) Compensation

(i) In general

The term ''compensation'' means amounts described in paragraphs (3) and (8) of section 6051(a). For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).

(ii) Self-employed

In the case of an employee described in subparagraph (B), the term ''compensation'' means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. The preceding sentence shall be applied as if the term ''trade or business'' for purposes of section 1402 included service described in section 1402(c)(6).

(B) Employee

The term ''employee'' includes an employee as defined in section 401(c)(1).

(C) Year

The term ''year'' means the calendar year.

(7) Use of designated financial institution

A plan shall not be treated as failing to satisfy the requirements of this subsection or any other provision of this title merely because

the employer makes all contributions to the individual retirement accounts or annuities of a designated trustee or issuer. The preceding sentence shall not apply unless each plan participant is notified in writing (either separately or as part of the notice under subsection (*l*)(2)(C)) that the participant's balance may be transferred without cost or penalty to another individual account or annuity in accordance with subsection (d)(3)(G).

(8) Coordination with maximum limitation under subsection (a)

In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting ''the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection, whichever is applicable'' for ''the dollar amount in effect under section 219(b)(1)(A)''.

(9) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.

(10) Special rules for acquisitions, dispositions, and similar transactions

(A) In general

An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II); and

(ii) the qualified salary reduction arrangement maintained by the employer would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

(B) Applicable requirement

For purposes of this paragraph, the term ''applicable requirement'' means—

(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer;

(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer; and

(iii) the participation requirements under paragraph (4).

(C) Transition period

For purposes of this paragraph, the term ''transition period'' means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.

(q) Deemed IRAs under qualified employer plans

(1) General rule

If—

(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B), the requirements of subsection (a)(5) shall not apply.

(2) Special rules for qualified employer plans

For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1).

(3) Definitions

For purposes of this subsection—

(A) Qualified employer plan

The term ''qualified employer plan'' has the meaning given such term by section 72(p)(4)(A)(i); except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(B) Voluntary employee contribution

The term ''voluntary employee contribution'' means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C))—

(i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1), and

(ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.

(r) Cross references

(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4973.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.

(Added Pub. L. 93–406, title II, § 2002(b), Sept. 2, 1974, 88 Stat. 959; amended Pub. L. 94–455, title XV, § 1501(b)(2), (5), (10), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1735–1737, 1834; Pub. L. 95–600, title I, §§ 152(a), (b), 156(c)(1), (3), 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2), title VII, § 703(c)(4), Nov. 6, 1978, 92 Stat. 2797, 2802, 2803, 2805, 2806, 2808, 2939; Pub. L. 96–222, title I, § 101(a)(10)(A), (C), (F), (G), (J)(i), (14)(B), (E)(ii), Apr. 1, 1980, 94 Stat. 201–205; Pub. L. 96–605, title II, § 225(b)(3), (4), Dec. 28, 1980, 94 Stat. 3529; Pub.

L. 97–34, title III, §§311(g)(1)(A)–(C), (2), (h)(2), 312(b)(2), (c)(5), 313(b)(2), 314(b)(1), Aug. 13, 1981, 95 Stat. 281–284, 286; Pub. L. 97–248, title II, §§237(e)(3), 238(d)(3), (4), 243(a), (b)(1)(A), title III, §335(a)(1), Sept. 3, 1982, 96 Stat. 512, 513, 521, 522, 628; Pub. L. 97–448, title I, §103(d)(1), (e), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 98–369, div. A, title I, §147(a), title IV, §491(d)(19)–(24), title V, §§521(b), 522(d)(12), title VII, §713(c)(2)(B), (f)(2), (5)(B), (g)(2), (j), July 18, 1984, 98 Stat. 687, 850, 867, 871, 957, 959, 960; Pub. L. 99–514, title XI, §§1102(a), (b)(2), (c), (e)(2), 1108(a), (d)–(g)(1), (4), (6), 1121(c)(2), 1122(e)(2)(B), 1123(d)(2), 1144(a), title XVIII, §§1852(a)(1), (5)(C), (7)(A), 1875(c)(6)(A), (8), 1898(a)(5), Oct. 22, 1986, 100 Stat. 2414–2416, 2431, 2433, 2434, 2465, 2470, 2475, 2490, 2864–2866, 2895, 2944; Pub. L. 100–647, title I, §§1011(b)(1)–(3), (c)(7)(C), (f)(1)–(5), (10), (i)(5), 1011A(a)(2)(A), 1018(t)(3)(D), title VI, §6057(a), Nov. 10, 1988, 102 Stat. 3456, 3458, 3461–3463, 3468, 3472, 3588, 3698; Pub. L. 101–239, title VII, §§7811(m)(7), 7841(a)(1), Dec. 19, 1989, 103 Stat. 2412, 2427; Pub. L. 102–318, title V, §521(b)(16)–(19), July 3, 1992, 106 Stat. 311; Pub. L. 103–66, title XIII, §13212(b), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, §732(d), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1421(a), (b)(3)(B), (5), (6), (c), 1427(b)(3), 1431(c)(1)(B), 1455(b)(1), Aug. 20, 1996, 110 Stat. 1792, 1796–1798, 1802, 1803, 1817; Pub. L. 105–34, title III, §§302(d), 304(a), title XV, §1501(b), title XVI, §1601(d)(1)(A)–(C)(i), (D)–(G), Aug. 5, 1997, 111 Stat. 829, 831, 1058, 1087, 1088; Pub. L. 105–206, title VI, §§6015(a), 6016(a)(1), 6018(b), July 22, 1998, 112 Stat. 820–822; Pub. L. 106–554, §1(a)(7) [title III, §319(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title VI, §§601(b), 602(a), 611(c)(1), (f)(1), (2), (g)(2), 641(e)(8), 642(a), (b)(2), (3), 643(c), 644(b), June 7, 2001, 115 Stat. 95, 97, 99, 121–123; Pub. L. 107–147, title IV, §411(i)(1), (j)(1), Mar. 9, 2002, 116 Stat. 46, 47; Pub. L. 108–311, title IV, §§404(d), 408(a)(12), (13), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–280, title XII, §1201(a), Aug. 17, 2006, 120 Stat. 1063; Pub. L. 109–432, div. A, title III, §307(a), Dec. 20, 2006, 120 Stat. 2951; Pub. L. 110–172, §3(a), Dec. 29, 2007, 121 Stat. 2474; Pub. L. 110–343, div. C, title II, §205(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, §725(a), Dec. 17, 2010, 124 Stat. 3316; Pub. L. 112–240, title II, §208(a), Jan. 2, 2013, 126 Stat. 2324; Pub. L. 113–295, div. A, title I, §108(a), title II, §221(a)(53), Dec. 19, 2014, 128 Stat. 4013, 4045; Pub. L. 114–113, div. Q, title I, §112(a), title III, §306(a), Dec. 18, 2015, 129 Stat. 3047, 3089; Pub. L. 115–97, title I, §11051(b)(3)(G), Dec. 22, 2017, 131 Stat. 2090.)

AMENDMENT OF SUBSECTION (d)(6)

Pub. L. 115–97, title I, §11051(b)(3)(G), (c), Dec. 22, 2017, 131 Stat. 2090, amended subsection (d)(6) of this section, applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115–97 applies to such modification. After amendment, subsection (d)(6) reads as follows:

(6) Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in clause (i) of section 121(d)(3)(C) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

See 2017 Amendment note below.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 7 of the Commodity Exchange Act, referred to in subsec. (m)(3)(B), is classified to section 11 of Title 7, Agriculture, and relates to vacation on request of designation as ''contract market''. Section 5 of the Commodity Exchange Act, which is classified to section 7 of Title 7, relates to designation of boards of trade as ''contract markets''.

Paragraph (6) or (7) of section 101 of the Federal Credit Union Act, referred to in subsec. (n)(2), is classified to section 1752(6), (7) of Title 12, Banks and Banking.

AMENDMENTS

2017—Subsec. (d)(6). Pub. L. 115–97 substituted ''clause (i) of section 121(d)(3)(C)'' for ''subparagraph (A) of section 71(b)(2)''.

2015—Subsec. (d)(8)(F). Pub. L. 114–113, §112(a), struck out subpar. (F). Text read as follows: ''This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2014.''

Subsec. (p)(1)(B). Pub. L. 114–113, §306(a), inserted ''except in the case of a rollover contribution described in subsection (d)(3)(G) or a rollover contribution otherwise described in subsection (d)(3) or in section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), which is made after the 2-year period described in section 72(t)(6),'' before ''with respect to which the only contributions allowed''.

2014—Subsec. (d)(8)(F). Pub. L. 113–295, §108(a), substituted ''December 31, 2014'' for ''December 31, 2013''.

Subsec. (p)(2)(E)(i). Pub. L. 113–295, §221(a)(53), amended cl. (i) generally. Prior to amendment, cl. (i) listed applicable dollar amounts for subsec. (p)(2)(A)(ii) for calendar years 2002 to 2005 and thereafter.

2013—Subsec. (d)(8)(F). Pub. L. 112–240 substituted ''December 31, 2013'' for ''December 31, 2011''.

2010—Subsec. (d)(8)(F). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (d)(8)(F). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2007—Subsec. (d)(8)(D). Pub. L. 110–172 substituted ''all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72''.

2006—Subsec. (d)(8). Pub. L. 109–280, which directed the amendment of section 408(d) by adding par. (8), without specifying the act to be amended, was executed by making the addition to this section, which is section 408 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (d)(9). Pub. L. 109–432 added par. (9).

2004—Subsec. (a)(1). Pub. L. 108–311, §408(a)(12), substituted ''457(e)(16),'' for ''457(e)(16)''.

Subsec. (n)(2). Pub. L. 108–311, §408(a)(13), substituted ''paragraph (6) or (7) of section 101'' for ''section 101(6)''.

Subsec. (p)(6)(A)(i). Pub. L. 108–311, § 404(d), inserted at end ''For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).''

2002—Subsec. (k)(2)(C). Pub. L. 107–147, § 411(j)(1)(A), substituted ''$450'' for ''$300''.

Subsec. (k)(8). Pub. L. 107–147, § 411(j)(1)(B), substituted ''$450'' for ''$300'' in two places.

Subsec. (q)(3)(A). Pub. L. 107–147, § 411(i)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'qualified employer plan' has the meaning given such term by section 72(p)(4); except such term shall not include a government plan which is not a qualified plan unless the plan is an eligible deferred compensation plan (as defined in section 457(b)).''

2001—Subsec. (a)(1). Pub. L. 107–16, § 641(e)(8), substituted ''403(b)(8), or 457(e)(16)'' for ''or 403(b)(8),''.

Pub. L. 107–16, § 601(b)(1), substituted ''on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)'' for ''in excess of $2,000 on behalf of any individual''.

Subsec. (b). Pub. L. 107–16, § 601(b)(3), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000'' in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 107–16, § 601(b)(2), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000''.

Subsec. (d)(3)(A). Pub. L. 107–16, § 642(a), inserted ''or'' at end of cl. (i), added cl. (ii) and concluding provisions, and struck out former cls. (ii) and (iii) which read as follows:

''(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or

''(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

''(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

''(III) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution.''

Subsec. (d)(3)(D)(i). Pub. L. 107–16, § 642(b)(2), substituted ''(i) or (ii)'' for ''(i), (ii), or (iii)''.

Subsec. (d)(3)(G). Pub. L. 107–16, § 642(b)(3), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, text read as follows: ''This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in subsection (p)) unless—

''(i) it is paid into another simple retirement account, or

''(ii) in the case of any payment or distribution to which section 72(t)(6) does not apply, it is paid into an individual retirement plan.''

Subsec. (d)(3)(H). Pub. L. 107–16, § 643(c), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 107–16, § 644(b), added subpar. (I).

Subsec. (j). Pub. L. 107–16, § 601(b)(4), struck out ''$2,000'' before ''amounts''.

Subsec. (k)(3)(C), (6)(D)(ii), (8). Pub. L. 107–16, § 611(c)(1), substituted ''$200,000'' for ''$150,000''.

Subsec. (p)(2)(A)(ii). Pub. L. 107–16, § 611(f)(1), substituted ''the applicable dollar amount'' for ''$6,000''.

Subsec. (p)(2)(E). Pub. L. 107–16, § 611(f)(2), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1996, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.''

Subsec. (p)(6)(A)(ii). Pub. L. 107–16, § 611(g)(2), inserted at end ''The preceding sentence shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).''

Subsec. (p)(8). Pub. L. 107–16, § 601(b)(5), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000''.

Subsecs. (q), (r). Pub. L. 107–16, § 602(a), added subsec. (q) and redesignated former subsec. (q) as (r).

2000—Subsec. (d)(5). Pub. L. 106–554 amended heading generally. Prior to amendment, heading read as follows: ''Certain distributions of excess contributions after due date for taxable year''.

1998—Subsec. (d)(7). Pub. L. 105–206, § 6018(b)(2), inserted ''or simple retirement accounts'' after ''pensions'' in heading.

Subsec. (d)(7)(B). Pub. L. 105–206, § 6018(b)(1), inserted ''or 402(k)'' after ''section 402(h)''.

Subsec. (p)(2)(C)(i)(II). Pub. L. 105–206, § 6016(a)(1)(C)(i), substituted ''the preceding sentence shall not apply'' for ''the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)'' in last sentence.

Subsec. (p)(2)(D)(i). Pub. L. 105–206, § 6016(a)(1)(A), struck out ''or (B)'' after ''(A)'' in last sentence.

Subsec. (p)(2)(D)(iii). Pub. L. 105–206, § 6016(a)(1)(C)(ii), struck out heading and text of cl. (iii). Text read as follows: ''In the case of an employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to meet any requirement of this subsection for any subsequent year due to any acquisition, disposition, or similar transaction involving another such employer, rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this subsection.''

Subsec. (p)(8), (9). Pub. L. 105–206, § 6015(a), redesignated par. (8), relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions, as (9).

Subsec. (p)(10). Pub. L. 105–206, § 6016(a)(1)(B), added par. (10).

1997—Subsec. (i). Pub. L. 105–34, § 1601(d)(1)(A), substituted ''31 days'' for ''30 days'' in concluding provisions.

Pub. L. 105–34, § 302(d), struck out ''under regulations'' after ''may require'' in introductory provisions and struck out ''in such regulations'' after ''prescribes'' in pars. (1) and (2)(B).

Subsec. (k)(6)(H). Pub. L. 105–34, § 1601(d)(1)(B), substituted ''of an employer if the terms of simplified employee pensions of such employer'' for ''if the terms of such pension''.

Subsec. (*l*)(2)(B). Pub. L. 105–34, § 1601(d)(1)(C)(i), inserted ''and the issuer of an annuity established under such an arrangement'' after ''under subsection (p)'' in introductory provisions and ''or issuer'' after ''trustee'' in cl. (i).

Subsec. (m)(3). Pub. L. 105–34, § 304(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of an individual retirement account, paragraph (2) shall not apply to—

''(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

''(B) any silver coin described in section 5112(e) of title 31, or

''(C) any coin issued under the laws of any State.''

Subsec. (p)(2)(D)(i). Pub. L. 105–34, § 1601(d)(1)(E), inserted at end ''If only individuals other than employees described in subparagraph (A) or (B) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.''

Subsec. (p)(2)(D)(iii). Pub. L. 105–34, §1601(d)(1)(F), added cl. (iii).

Subsec. (p)(5). Pub. L. 105–34, §1601(d)(1)(G), substituted ''simple'' for ''simplified'' in introductory provisions.

Subsec. (p)(8). Pub. L. 105–34, §1601(d)(1)(D), added par. (8) relating to coordination with maximum limitation under subsection (a).

Pub. L. 105–34, §1501(b), added par. (8) relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions.

1996—Subsec. (d)(3)(G). Pub. L. 104–188, §1421(b)(3)(B), added subpar. (G).

Subsec. (d)(5)(A). Pub. L. 104–188, §1427(b)(3), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,250'' in introductory provisions.

Subsec. (i). Pub. L. 104–188, §1455(b)(1), inserted ''aggregating $10 or more in any calendar year'' after ''distributions'' in introductory provisions.

Pub. L. 104–188, §1421(b)(6), inserted at end ''In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.''

Subsec. (k)(2)(C). Pub. L. 104–188, §1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

Subsec. (k)(6)(H). Pub. L. 104–188, §1421(c), added subpar. (H).

Subsec. (*l*). Pub. L. 104–188, §1421(b)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsecs. (p), (q). Pub. L. 104–188, §1421(a), added subsec. (p) and redesignated former subsec. (p) as (q).

1994—Subsec. (k)(8). Pub. L. 103–465 inserted before period at end ''; except that any increase in the $300 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50''.

1993—Subsec. (k)(3)(C), (6)(D)(ii). Pub. L. 103–66, §13212(b)(1), substituted ''$150,000'' for ''$200,000''.

Subsec. (k)(8). Pub. L. 103–66, §13212(b)(2), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $300 amount in paragraph (2)(C) and the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time and in the same manner as under section 415(d), except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17).''

1992—Subsec. (a)(1). Pub. L. 102–318, §521(b)(16), substituted ''402(c)'' for ''402(a)(5), 402(a)(7)''.

Subsec. (d)(3)(A)(ii). Pub. L. 102–318, §521(b)(17), amended clause (ii) generally. Prior to amendment, clause (ii) read as follows: ''the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or''.

Subsec. (d)(3)(B). Pub. L. 102–318, §521(b)(18), struck out at end ''Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).''

Subsec. (d)(3)(F). Pub. L. 102–318, §521(b)(19), substituted ''402(c)(7)'' for ''402(a)(6)(H)''.

1989—Subsecs. (a)(6), (b)(3). Pub. L. 101–239, §7811(m)(7), struck out ''(without regard to subparagraph (C)(ii) thereof)'' after ''section 401(a)(9)''.

Subsec. (d)(6). Pub. L. 101–239, §7841(a)(1), substituted ''his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2)'' for ''his former spouse under a divorce decree or under a written instrument incident to such divorce''.

1988—Subsec. (d)(2)(C). Pub. L. 100–647, §1011(b)(1), substituted ''in which the taxable year begins'' for ''with or within which the taxable year ends''.

Subsec. (d)(3)(A). Pub. L. 100–647, §1011A(a)(2)(A), struck out at end ''Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).''

Subsec. (d)(3)(E). Pub. L. 100–647, §1018(t)(3)(D), substituted ''paragraph'' for ''subparagraph''.

Subsec. (d)(4). Pub. L. 100–647, §1011(b)(2), substituted ''Contributions'' for ''Excess contributions'' in heading, struck out ''to the extent that such contribution exceeds the amount allowable as a deduction under section 219'' after ''individual retirement annuity'' in introductory provisions, and substituted ''such contribution'' for ''such excess contribution'' in subpars. (B) and (C) and in last sentence.

Subsec. (d)(5). Pub. L. 100–647, §1011(b)(3), substituted ''shall be computed without regard to section 219(g)'' for ''(after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B)'' in last sentence.

Subsec. (d)(7). Pub. L. 100–647, §1011(f)(5), added par. (7).

Subsec. (k)(3)(B). Pub. L. 100–647, §1011(i)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A)—

''(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

''(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.''

Subsec. (k)(3)(C). Pub. L. 100–647, §1011(f)(3)(C), struck out ''total'' before ''compensation''.

Subsec. (k)(6)(A). Pub. L. 100–647, §1011(f)(1), substituted ''Arrangements which qualify'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension—

''(i) an employee may elect to have the employer make payments—

''(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

''(II) to the employee directly in cash,

''(ii) an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer, and

''(iii) the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product derived by multiplying the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate by 1.25.''

Subsec. (k)(6)(A)(iv). Pub. L. 100–647, §1011(c)(7)(C), added cl. (iv).

Subsec. (k)(6)(B). Pub. L. 100–647, §1011(f)(2), inserted ''who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)'' after ''than 25 employees''.

Subsec. (k)(6)(D)(ii). Pub. L. 100–647, §1011(f)(3)(A), substituted ''(not in excess of the first $200,000)'' for ''(within the meaning of section 414(s))''.

Subsec. (k)(6)(F), (G). Pub. L. 100–647, §1011(f)(4), added subpar. (f) and redesignated former subpar. (F) as (G).

Subsec. (k)(7)(B). Pub. L. 100–647, §1011(f)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'compensation' means, in the case of an employee within the meaning of section 401(c)(1), earned income within the meaning of section 401(c)(2).''

Subsec. (k)(8). Pub. L. 100–647, §1011(f)(3)(D), (10), substituted ''paragraphs (3)(C) and (6)(D)(ii)'' for ''paragraph (3)(C)'' and inserted '', except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)'' after ''under section 415(d)''.

Subsec. (m)(3). Pub. L. 100–647, §6057(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31.''

Subsec. (*o*)(4)(B)(iv). Pub. L. 100–647, §1011(b)(1), substituted ''in which the taxable year begins'' for ''with or within which the taxable year ends''.

1986—Subsecs. (a)(6), (b)(3). Pub. L. 99–514, §1852(a)(1), substituted ''(without regard to subparagraph (C)(ii) thereof) and the incidental death benefit requirements of section 401(a)'' for ''(relating to required distributions)''.

Subsec. (c)(1). Pub. L. 99–514, §1852(a)(7)(A), substituted ''paragraphs (1) through (6)'' for ''paragraphs (1) through (7)''.

Subsec. (d)(1). Pub. L. 99–514, §1102(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. Notwithstanding any other provision of this title (including chapters 11 and 12), the basis any person in such an account or annuity is zero.''

Subsec. (d)(2). Pub. L. 99–514, §1102(c), substituted ''Special rules for applying section 72'' for ''Distributions of annuity contracts'' in heading and amended par. generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero.''

Subsec. (d)(3)(A). Pub. L. 99–514, §1875(c)(8)(C), inserted at end ''Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).''

Subsec. (d)(3)(A)(ii). Pub. L. 99–514, §1875(c)(8)(A), (B), struck out ''(other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)'' after ''section 501(a)'' and struck out ''(other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)'' after ''section 403(a)''.

Pub. L. 99–514, §1121(c)(2), made amendment identical to Pub. L. 99–514, §1875(c)(8)(A), (B), see above.

Subsec. (d)(3)(E). Pub. L. 99–514, §1852(a)(5)(C), added subpar. (E).

Subsec. (d)(3)(F). Pub. L. 99–514, §1122(e)(2)(B), added subpar. (F).

Subsec. (d)(5). Pub. L. 99–514, §1102(b)(2), inserted at end ''For purposes of this paragraph, the amount allowable as a deduction under section 219 (after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B).''

Subsec. (d)(5)(A). Pub. L. 99–514, §1875(c)(6)(A), substituted ''the dollar limitation in effect under section 415(c)(1)(A) for such taxable year'' for ''$15,000''.

Subsec. (f). Pub. L. 99–514, §1123(d)(2), struck out subsec. (f) which related to additional tax on certain amounts included in gross income before age 59½.

Subsec. (i). Pub. L. 99–514, §1102(e)(2), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.''

Subsec. (k)(2). Pub. L. 99–514, §1108(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

''(A) has attained age 21, and

''(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).''

Subsec. (k)(2)(A). Pub. L. 99–514, §1898(a)(5), substituted ''age 21'' for ''age 25''.

Subsec. (k)(3)(A). Pub. L. 99–514, §1108(g)(4), substituted ''year'' for ''calendar year''.

Pub. L. 99–514, §1108(g)(1)(A), substituted ''any highly compensated employee (within the meaning of section 414(q))'' for ''any employee who is—

''(i) an officer,

''(ii) a shareholder,

''(iii) a self-employed individual, or

''(iv) highly compensated''.

Subsec. (k)(3)(C). Pub. L. 99–514, §1108(g)(1)(B), inserted ''and except as provided in subparagraph (D),'' and ''(other than contributions under an arrangement described in paragraph (6))'', and struck out end sentence which read as follows: ''The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).''

Subsec. (k)(3)(D), (E). Pub. L. 99–514, §1108(g)(1)(C), added subpar. (D) and struck out former subpar. (D), treatment of certain contributions and taxes, which read ''Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contribution Act), title II of the Social Security Act, or any other Federal or State law. If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(*l*)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension.'', and former subpar. (E), integrated plan defined, which read ''For purposes of subparagraph (D), the term 'integrated plan' means a plan which meets the requirements of section 401(a) or 403(a) but would not meet such requirements if contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account.''

Subsec. (k)(6). Pub. L. 99–514, §1108(a), added par. (6).

Subsec. (k)(7)(C). Pub. L. 99–514, §1108(f), added subpar. (C).

Subsec. (k)(8). Pub. L. 99–514, §1108(e), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, §1108(g)(6), added par. (9).

Subsec. (m)(3). Pub. L. 99–514, §1144(a), added par. (3).

Subsecs. (*o*), (p). Pub. L. 99–514, §1102(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1984—Subsec. (a)(1). Pub. L. 98–369, §491(d)(19), substituted ''or 403(b)(8)'' for ''403(b)(8), 405(d)(3), or 409(b)(3)(C)''.

Subsec. (a)(6). Pub. L. 98–369, §521(b)(1), added par. (6) and struck out former par. (6) which provided that the entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary, over (A) the life of such individual or the lives of such individual and his spouse, or (B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

Subsec. (a)(7). Pub. L. 98–369, §521(b)(1), struck out par. (7) which provided that if (A) an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

Subsec. (b)(3). Pub. L. 98–369, §521(b)(2), added par. (3) and struck out former par. (3) which provided that the entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary, over (A) the life of such owner or the lives of such owner and his spouse, or (B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

Subsec. (b)(4), (5). Pub. L. 98–369, §521(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided that if (A) the owner dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

Subsec. (d)(3)(A)(i). Pub. L. 98–369, §491(d)(20), struck out ''or retirement bond'' before ''for the benefit''.

Subsec. (d)(3)(A)(ii). Pub. L. 98–369, §522(d)(12), substituted ''rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust'' for ''rollover contribution from an employee's trust''.

Subsec. (d)(3)(B). Pub. L. 98–369, §491(d)(21), substituted ''or an individual retirement annuity'' for '', individual retirement annuity, or a retirement bond''.

Subsec. (d)(3)(C), (D). Pub. L. 98–369, §713(g)(2), designated the subpar. (C), as added by section 335(a)(1) of Pub. L. 97–248, relating to permitting partial rollovers, as subpar. (D).

Subsec. (d)(3)(D)(ii). Pub. L. 98–369, §491(d)(22), struck out ''bond,'' after ''annuity,''.

Subsec. (d)(6). Pub. L. 98–369, §491(d)(23), substituted ''or an individual retirement annuity'' for '', individual retirement annuity, or retirement bond'', and ''or annuity'' for '', annuity, or bond''.

Subsec. (h). Pub. L. 98–369, §713(c)(2)(B), substituted ''(as defined in subsection (n))'' for ''(as defined in section 401(d)(1))''.

Subsec. (i). Pub. L. 98–369, §147(a), inserted ''(and the years to which they relate)''.

Subsec. (k)(1). Pub. L. 98–369, §713(f)(2), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (k)(3)(C). Pub. L. 98–369, §713(f)(5)(B), inserted provision which required annual adjustment of the $200,000 amount concurrently with the dollar amount adjustment in section 415(c)(1)(A).

Subsec. (k)(3)(D). Pub. L. 98–369, §713(j), substituted in penultimate sentence ''OASDI contributions (as defined in section 401(*l*)(2)'' for ''taxes paid under section 3111 (relating to tax on employers) with respect to an employee'' and ''as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension'' for ''as a contribution by the employer to an employee's simplified pension'' and struck out third sentence which provided ''If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees.''

Subsec. (k)(3)(E). Pub. L. 98–369, §491(d)(24), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

1983—Subsec. (j). Pub. L. 97–448, §103(d)(1)(B), substituted ''$17,000'' for ''$15,000'' in provisions preceding par. (1).

Subsec. (k)(3)(C)(ii). Pub. L. 97–448, §103(d)(1)(A), inserted ''(other than an employee within the meaning of section 401(c)(1))'' after ''a simplified employee pension on behalf of each employee''.

Subsecs. (m), (n). Pub. L. 97–448, §103(e)(1), amended directory language of Pub. L. 97–34, §314(b)(1), thereby correcting subsec. designations. See 1981 Amendment note below for subsecs. (m) and (n).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(3)(A), substituted reference to subsection (n) of this section, for reference to section 401(d)(1).

Subsec. (a)(7). Pub. L. 97–248, §243(a)(1), amended par. (7) generally, designating existing provisions as subpars. (A) and (B), in subpar. (B), as so designated, striking out ''if'' before ''distribution'', in provisions following subpar. (B) substituting ''will be distributed within 5 years after his death (or the death of the surviving spouse)'' for ''will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries'', and substituting ''shall not apply'' for ''does not apply''.

Subsec. (b)(4). Pub. L. 97–248, §243(a)(2), amended par. (4) generally, designating existing provisions, as subpars. (A) and (B), in subpar. (B), as so redesignated, striking out ''if'' before ''distribution'', in provisions following subpar. (B) substituting ''will be distributed within 5 years after his death (or the death of the surviving spouse)'' for ''will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries'', and substituting ''shall not apply'' for ''shall have no application''.

Subsec. (d)(3)(C). Pub. L. 97–248, §243(b)(1)(A), added subpar. (C) relating to denial of rollover treatment for inherited accounts.

Pub. L. 97–248, § 335(a)(1), added subpar. (C) relating to permitting partial rollovers.

Subsec. (j). Pub. L. 97–248, § 238(d)(3), amended subsec. (j) generally, substituting provisions increasing amount by the amount of the limitation in effect under section 415(c)(1)(A), for provisions increasing amount by substituting ''$15,000'' for ''$2,000''.

Subsec. (k)(1). Pub. L. 97–248, § 238(d)(4)(B), struck out reference to par. (6) of this subsection.

Subsec. (k)(3)(C). Pub. L. 97–248, § 238(d)(4)(C), amended subpar. (C) generally, striking out cl. ''(i)'' designation and cl. (ii) which related to taking into account compensation in excess of $100,000 with respect to a simplified employee pension.

Subsec. (k)(6). Pub. L. 97–248, § 238(d)(4)(A), struck out par. (6) which related to prohibition on employer maintaining plan to which section 401(j) applies.

Subsecs. (n), (*o*). Pub. L. 97–248, § 237(e)(3)(B), added subsec. (n) and redesignated former subsec. (n) as (*o*).

1981—Subsec. (a)(1). Pub. L. 97–34, § 313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97–34, § 311(g)(1)(A), substituted ''$2,000'' for ''$1,500''.

Subsec. (b). Pub. L. 97–34, § 311(g)(1)(B), substituted in par. (2)(B) and provision following par. (5) ''$2,000'' for ''$1,500''.

Subsec. (d)(4). Pub. L. 97–34, § 311(h)(2), substituted section ''219'' for ''219 or 220'' in provision preceding subpar. (A) and in subpar. (B).

Subsec. (d)(5)(A). Pub. L. 97–34, § 312(c)(5), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, § 311(g)(2), (h)(2), substituted ''$2,250'' for ''$1,750'' and ''219'' for ''219 or 220'' in two places.

Subsec. (j). Pub. L. 97–34, § 312(c)(5), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, § 311(g)(1)(C), substituted ''$2,000'' for ''$1,500''.

Subsec. (k)(3)(C). Pub. L. 97–34, § 312(b)(2), designated provision relating to compensation bearing a uniform relationship to total compensation as cl. (i), and in cl. (i) as so designated, substituted ''$200,000'' for ''$100,000'', and added cl. (ii).

Subsecs. (m), (n). Pub. L. 97–34, § 314(b)(1), as amended by Pub. L. 97–448, § 103(e)(1), added subsec. (m) and redesignated former subsec. (m) as (n).

1980—Subsec. (a)(1). Pub. L. 96–222, § 101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (d)(5). Pub. L. 96–222, § 101(a)(10)(C), (14)(E)(ii), in subpar. (A) inserted provisions requiring that if employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar amount of the preceding sentence be increased by the lessor of the amount of such contributions or $7,500 and restructured subpar. (B).

Subsec. (j)(3). Pub. L. 96–222, § 101(a)(10)(J)(i), struck out par. (3) which made reference to paragraph (5) of subsection (b).

Subsec. (k). Pub. L. 96–222, § 101(a)(10)(A), (F), (G), substituted in par. (1) ''(5), and (6)'' for ''and (5)'' and in par. (3)(D) ''If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid'' for ''Taxes paid'', inserted in par. (2) provisions requiring that for purposes of this paragraph there be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(2) and pars. (3)(E) and (6), and redesignated former par. (6) as (7).

Subsec. (k)(2), (3)(B)(i). Pub. L. 96–605, § 225(b)(3), (4), substituted ''section 410(b)(3)'' for ''section 410(b)(2)''.

1978—Subsec. (a)(1). Pub. L. 95–600, § 156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95–600, § 157(d)(1), (e)(1)(A), designated existing provisions as subpars. (B) and (C) and added subpar. (A), and in subpar. (B) as so designated, inserted ''on behalf of any individual'' after ''annual premium'', respectively.

Subsec. (d)(3)(A)(iii). Pub. L. 95–600, § 156(c)(1), added cl. (iii).

Subsec. (d)(3)(B). Pub. L. 95–600, § 157(g)(3), (h)(2), inserted provision relating to the applicability of clause (ii) of subparagraph (A) to any amount paid or distributed out of an individual retirement account or annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) and substituted ''1-year period'' for ''3-year period''.

Subsec. (d)(4). Pub. L. 95–600, § 703(c)(4), amended Pub. L. 94–455, § 1501(b)(5). See 1976 Amendment note below.

Subsec. (d)(5), (6). Pub. L. 95–600, § 157(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (j) to (m). Pub. L. 95–600, § 152(a), added subsecs. (j) to (*l*) and redesignated former subsec. (j) as (m).

1976—Subsecs. (a)(2), (6), (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, § 1501(b)(2), substituted ''member (or spouse of an employee or member)'' for ''member''.

Subsec. (d)(1). Pub. L. 94–455, § 1501(b)(10), substituted ''Notwithstanding any other provision of this title (including chapters 11 and 12), the basis'' for ''The basis''.

Subsec. (d)(4). Pub. L. 94–455, § 1501(b)(5), as amended by Pub. L. 95–600, § 703(c)(4), inserted reference to section 220 and substituted ''In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such excess contribution is made'' for ''Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received''.

Subsecs. (h), (i). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115–97 applies to such modification, see section 11051(c) of Pub. L. 115–97, set out as a note under section 61 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, § 112(b), Dec. 18, 2015, 129 Stat. 3047, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2014.''

Pub. L. 114–113, div. Q, title III, § 306(b), Dec. 18, 2015, 129 Stat. 3089, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after the date of the enactment of this Act [Dec. 18, 2015].''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, § 108(b), Dec. 19, 2014, 128 Stat. 4014, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2013.''

Amendment by section 221(a)(53) of Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, § 208(b), Jan. 2, 2013, 126 Stat. 2324, provided that:

''(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2011.

''(2) SPECIAL RULES.—For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury)—

''(A) any qualified charitable distribution made after December 31, 2012, and before February 1, 2013, shall be deemed to have been made on December 31, 2012, and

''(B) any portion of a distribution from an individual retirement account to the taxpayer after November 30, 2012, and before January 1, 2013, may be treated as a qualified charitable distribution to the extent that—

''(i) such portion is transferred in cash after the distribution to an organization described in section 408(d)(8)(B)(i) before February 1, 2013, and

''(ii) such portion is part of a distribution that would meet the requirements of section 408(d)(8) but for the fact that the distribution was not transferred directly to an organization described in section 408(d)(8)(B)(i).''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §725(b), Dec. 17, 2010, 124 Stat. 3316, provided that:

''(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2009.

''(2) SPECIAL RULE.—For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury) any qualified charitable distribution made after December 31, 2010, and before February 1, 2011, shall be deemed to have been made on December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §205(b), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 31, 2006, see section 307(c) of Pub. L. 109–432, set out as a note under section 223 of this title.

Pub. L. 109–280, title XII, §1201(c)(1), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(d) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, 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 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 601(b) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–16, set out as a note under section 219 of this title.

Pub. L. 107–16, title VI, §602(c), June 7, 2001, 115 Stat. 96, provided that: ''The amendments made by this section [amending this section and section 1003 of Title 29, Labor] shall apply to plan years beginning after December 31, 2002.''

Amendment by section 611(c)(1), (f)(1), (2), (g)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(8) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §642(c), June 7, 2001, 115 Stat. 122, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 403 of this title] shall apply to distributions after December 31, 2001.

''(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note under section 402 of this title] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.''

Amendment by section 643(c) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Amendment by section 644(b) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 644(c) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018(b) of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

Amendment by sections 6015(a) and 6016(a)(1) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 302(d) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as a note under section 219 of this title.

Pub. L. 105–34, title III, §304(b), Aug. 5, 1997, 111 Stat. 831, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Pub. L. 105–34, title XV, §1501(c)(2), Aug. 5, 1997, 111 Stat. 1058, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1996.''

Amendment by section 1601(d)(1)(A)–(C)(i), (D)–(G) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(a), (b)(3)(B), (5), (6), (c) of 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.

Amendment by section 1427(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1427(c) of Pub. L. 104–188, set out as a note under section 219 of this title.

Amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

Pub. L. 104–188, title I, § 1455(e), Aug. 20, 1996, 110 Stat. 1818, provided that: ''The amendments made by this section [amending this section and sections 6047, 6652, 6693, and 6724 of this title] shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(m)(7) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–239, title VII, § 7841(a)(3), Dec. 19, 1989, 103 Stat. 2428, provided that: ''The amendments made by this subsection [amending this section and section 414 of this title] shall apply to transfers after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(C) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Pub. L. 100–647, title I, § 1011A(a)(2)(B), Nov. 10, 1988, 102 Stat. 3472, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to rollover contributions made in taxable years beginning after December 31, 1986.''

Amendment by sections 1011(b)(1)–(3), (f)(1)–(5), (10), (i)(5) and 1018(t)(3)(D) 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.

Pub. L. 100–647, title VI, § 6057(b), Nov. 10, 1988, 102 Stat. 3698, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(a), (b)(2), (c), (e)(2) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1108(a), (d)–(g)(1), (4), (6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, except that section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954 (as in effect before the amendments made by section 1108 of Pub. L. 99–514) shall continue to apply for years beginning after Dec. 31, 1986, and before Jan. 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by section 1108 of Pub. L. 99–514) may not be integrated under section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954, see section 1108(h) of Pub. L. 99–514, as amended, set out as a note under section 219 of this title.

Amendment by section 1121(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1122(e)(2)(B) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(d)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1123(e) of Pub. L. 99–514, set out as a note under section 72 of this title.

Pub. L. 99–514, title XI, § 1144(b), Oct. 22, 1986, 100 Stat. 2490, provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions after December 31, 1986.''

Amendment by sections 1852(a)(1), (5)(C), (7)(A) and 1875(c)(8) of 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.

Amendment by section 1875(c)(6)(A) of Pub. L. 99–514 effective as if included in the amendments made by section 238 of Pub. L. 97–248, see section 1875(c)(12) of Pub. L. 99–514, set out as a note under section 62 of this title.

Pub. L. 99–514, title XVIII, § 1898(a)(5), Oct. 22, 1986, 100 Stat. 2944, provided that the amendment made by that section is effective with respect to plan years beginning after Oct. 22, 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 147(a) of Pub. L. 98–369 applicable to contributions made after Dec. 31, 1984, see section 147(d)(1) of Pub. L. 98–369, set out as a note under section 219 of this title.

Amendment by section 491(d)(19)–(24) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(b) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522(d)(12) of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981,

Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by sections 237 and 238 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

Pub. L. 97–248, title II, §243(c), Sept. 3, 1982, 96 Stat. 523, as amended by Pub. L. 98–369, div. A, title VII, §713(g)(1), July 18, 1984, 98 Stat. 960, provided that: ''The amendments made by this section [amending this section and sections 219 and 409 of this title] shall apply with respect to individuals dying after December 31, 1983.''

Pub. L. 97–248, title III, §335(b), Sept. 3, 1982, 96 Stat. 628, provided that: ''The amendments made by subsection (a) [amending this section and section 409 of this title] shall apply to distributions made after December 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(1)(A)–(C), (2), (h)(2) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 312(b)(2), (c)(5) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) with respect to taxable years beginning after Dec. 31, 1981, see section 312(f) of Pub. L. 97–34, set out as a note under section 72 of this title.

Amendment by section 313(b)(2) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title III, §314(b)(2), Aug. 13, 1981, 95 Stat. 286, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to property acquired after December 31, 1981, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after Dec. 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §152(h), Nov. 6, 1978, 92 Stat. 2800, provided that: ''The amendments made by this section [amending this section and sections 219, 401, 404, 414, and 415 of this title] shall apply to taxable years beginning after December 31, 1978.''

Amendment by section 156(c)(1), (3) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a note under section 403 of this title.

Pub. L. 95–600, title I, §157(c)(2)(A), Nov. 6, 1978, 92 Stat. 2805, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to distributions in taxable years beginning after December 31, 1975.''

Pub. L. 95–600, title I, §157(d)(2), Nov. 6, 1978, 92 Stat. 2806, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts issued after the date of the enactment of this Act [Nov. 6, 1978].''

Amendment by section 157(h)(2) of Pub. L. 95–600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95–600, set out as a note under section 402 of this title.

Pub. L. 95–600, title I, §157(e)(2), Nov. 6, 1978, 92 Stat. 2806, provided that: ''The amendments made by paragraph (1) [amending this section and section 409 of this title] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 157(g)(3) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by section 703(c)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1976, see section 703(c)(5) of Pub. L. 95–600, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(2), (5), (10) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93–406, set out as a note under section 219 of this title.

ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE CARRIER BANKRUPTCY

Pub. L. 112–95, title XI, §1106, Feb. 14, 2012, 126 Stat. 152, as amended by Pub. L. 113–243, §1, Dec. 18, 2014, 128 Stat. 2863; Pub. L. 114–113, div. Q, title III, §307(a), Dec. 18, 2015, 129 Stat. 3089, provided that:

''(a) GENERAL RULES.—

''(1) ROLLOVER OF AIRLINE PAYMENT AMOUNT.—If a qualified airline employee receives any airline payment amount and transfers any portion of such amount to a traditional IRA within 180 days of receipt of such amount (or, if later, within 180 days of the date of the enactment of this Act [Feb. 14, 2012]), then such amount (to the extent so transferred) shall be treated as a rollover contribution described in section 402(c) of the Internal Revenue Code of 1986. A qualified airline employee making such a transfer may exclude from gross income the amount transferred, in the taxable year in which the airline payment amount was paid to the qualified airline employee by the commercial passenger airline carrier.

''(2) TRANSFER OF AMOUNTS ATTRIBUTABLE TO AIRLINE PAYMENT AMOUNT FOLLOWING ROLLOVER TO ROTH IRA.—A qualified airline employee who has contributed an airline payment amount to a Roth IRA that is treated as a qualified rollover contribution pursuant to section 125 of the Worker, Retiree, and Employer Recovery Act of 2008 [Pub. L. 110–458, 26 U.S.C. 408A note], may transfer to a traditional IRA, in a trustee-to-trustee transfer, all or any part of the contribution (together with any net income allocable to such contribution), and the transfer to the traditional IRA will be deemed to have been made at the time of the rollover to the Roth IRA, if such transfer is made within 180 days of the date of the enactment of this Act. A qualified airline employee making such a transfer may exclude from gross income the airline payment amount previously rolled over to the Roth IRA, to the extent an amount attributable to the previous rollover was transferred to a traditional IRA, in the taxable year in which the airline payment amount was paid to the qualified airline employee by the commercial passenger airline carrier. No amount so transferred to a traditional IRA may be treated as a qualified rollover contribution with respect to a Roth IRA within the 5-taxable year period beginning with the taxable year in which such transfer was made.

''(3) EXTENSION OF TIME TO FILE CLAIM FOR REFUND.—A qualified airline employee who excludes an amount from gross income in a prior taxable year under paragraph (1) or (2) may reflect such exclusion in a claim for refund filed within the period of limitation under

section 6511(a) of such Code (or, if later, April 15, 2015).

''(4) OVERALL LIMITATION ON AMOUNTS TRANSFERRED TO TRADITIONAL IRAS.—

''(A) IN GENERAL.—The aggregate amount of airline payment amounts which may be transferred to 1 or more traditional IRAs under paragraphs (1) and (2) with respect to any qualified employee for any taxable year shall not exceed the excess (if any) of—

''(i) 90 percent of the aggregate airline payment amounts received by the qualified airline employee during the taxable year and all preceding taxable years, over

''(ii) the aggregate amount of such transfers to which paragraphs (1) and (2) applied for all preceding taxable years.

''(B) SPECIAL RULES.—For purposes of applying the limitation under subparagraph (A)—

''(i) any airline payment amount received by the surviving spouse of any qualified employee, and any amount transferred to a traditional IRA by such spouse under subsection (d), shall be treated as an amount received or transferred by the qualified employee, and

''(ii) any amount transferred to a traditional IRA which is attributable to net income described in paragraph (2) shall not be taken into account.

''(5) COVERED EXECUTIVES NOT ELIGIBLE TO MAKE TRANSFERS.—Paragraphs (1) and (2) shall not apply to any transfer by a qualified airline employee (or any transfer authorized under subsection (d) by a surviving spouse of the qualified airline employee) if at any time during the taxable year of the transfer or any preceding taxable year the qualified airline employee held a position described in subparagraph (A) or (B) of section 162(m)(3) [probably means section 162(m)(3) of the Internal Revenue Code of 1986] with the commercial passenger airline carrier from whom the airline payment amount was received.

''(6) SPECIAL RULE FOR CERTAIN AIRLINE PAYMENT AMOUNTS.—In the case of any amount which became an airline payment amount by reason of the amendments made by section 1(b) of Public Law 113–243 (26 U.S.C. 408 note), paragraph (1) shall be applied by substituting '(or, if later, within the period beginning on December 18, 2014, and ending on the date which is 180 days after the date of enactment of the Protecting Americans from Tax Hikes Act of 2015 [Dec. 18, 2015])' for '(or, if later, within 180 days of the date of the enactment of this Act [Feb. 14, 2012])'.

''(b) TREATMENT OF AIRLINE PAYMENT AMOUNTS AND TRANSFERS FOR EMPLOYMENT TAXES.—For purposes of chapter 21 of the Internal Revenue Code of 1986 and section 209 of the Social Security Act [42 U.S.C. 409], an airline payment amount shall not fail to be treated as a payment of wages by the commercial passenger airline carrier to the qualified airline employee in the taxable year of payment because such amount is excluded from the qualified airline employee's gross income under subsection (a).

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) AIRLINE PAYMENT AMOUNT.—

''(A) IN GENERAL.—The term 'airline payment amount' means any payment of any money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee—

''(i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, or filed on November 29, 2011, and

''(ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount.

The amount of such payment shall be determined without regard to any requirement to deduct and withhold tax from such payment under sections 3102(a) of the Internal Revenue Code of 1986 and 3402(a) of such Code.

''(B) EXCEPTION.—An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits.

''(2) QUALIFIED AIRLINE EMPLOYEE.—The term 'qualified airline employee' means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which—

''(A) is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, and

''(B) was terminated, became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006 [Pub. L. 109–280, 26 U.S.C. 430 note], or was frozen effective November 1, 2012.

''(3) TRADITIONAL IRA.—The term 'traditional IRA' means an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) which is not a Roth IRA.

''(4) ROTH IRA.—The term 'Roth IRA' has the meaning given such term by section 408A(b) of such Code.

''(d) SURVIVING SPOUSE.—If a qualified airline employee died after receiving an airline payment amount, or if an airline payment amount was paid to the surviving spouse of a qualified airline employee in respect of the qualified airline employee, the surviving spouse of the qualified airline employee may take all actions permitted under section 125 of the Worker, Retiree and Employer Recovery Act of 2008 [Pub. L. 110–458, 26 U.S.C. 408A note], or under this section, to the same extent that the qualified airline employee could have done had the qualified airline employee survived.

''(e) EFFECTIVE DATE.—This section shall apply to transfers made after the date of the enactment of this Act [Feb. 14, 2012] with respect to airline payment amounts paid before, on, or after such date.''

[Pub. L. 114–113, div. Q, title III, § 307(b), Dec. 18, 2015, 129 Stat. 3089, provided that: ''The amendment made by this section [amending section 1106 of Pub. L. 112–95, set out above] shall take effect as if included in Public Law 113–243 (26 U.S.C. 408 note).'']

DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS

Pub. L. 109–280, title VIII, § 830, Aug. 17, 2006, 120 Stat. 1002, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

''(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 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.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

TRANSITIONAL RULE FOR CONTRIBUTIONS FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1978

Pub. L. 95–600, title I, § 157(c)(2)(B), Nov. 6, 1978, 92 Stat. 2805, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of contributions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied as if such paragraph did not contain any dollar limitation.''

EXCHANGE OF FIXED PREMIUM ANNUITY OR ENDOWMENT CONTRACT ISSUED ON OR BEFORE NOV. 6, 1978, FOR INDIVIDUAL RETIREMENT ANNUITY

Pub. L. 95–600, title I, § 157(d)(3), Nov. 6, 1978, 92 Stat. 2806, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any annuity or endowment contract issued on or before the date of the enactment of this Act [Nov. 6, 1978] which would be an individual retirement annuity within the meaning of section 408(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (1) [amending subsec. (b)(2) of this section]) but for the fact that the premiums under the contract are fixed, at the election of the taxpayer an exchange before January 1, 1981, of that contract for an individual retirement annuity within the meaning of such section 408(b) (as amended by paragraph (1)) shall be treated as a nontaxable exchange which does not constitute a distribution.''

§ 408A. Roth IRAs

(a) General rule

Except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

(b) Roth IRA

For purposes of this title, the term ''Roth IRA'' means an individual retirement plan (as defined in section 7701(a)(37)) which is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as a Roth IRA. Such designation shall be made in such manner as the Secretary may prescribe.

(c) Treatment of contributions

(1) No deduction allowed

No deduction shall be allowed under section 219 for a contribution to a Roth IRA.

(2) Contribution limit

The aggregate amount of contributions for any taxable year to all Roth IRAs maintained for the benefit of an individual shall not exceed the excess (if any) of—

(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year (computed without regard to subsection (d)(1) or (g) of such section), over

(B) the aggregate amount of contributions for such taxable year to all other individual retirement plans (other than Roth IRAs) maintained for the benefit of the individual.

(3) Limits based on modified adjusted gross income

(A) Dollar limit

The amount determined under paragraph (2) for any taxable year shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced (but not below zero) by the amount which bears the same ratio to such amount as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) $15,000 ($10,000 in the case of a joint return or a married individual filing a separate return).

The rules of subparagraphs (B) and (C) of section 219(g)(2) shall apply to any reduction under this subparagraph.

(B) Definitions

For purposes of this paragraph—

(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and

(ii) the applicable dollar amount is—

(I) in the case of a taxpayer filing a joint return, $150,000,

(II) in the case of any other taxpayer (other than a married individual filing a separate return), $95,000, and

(III) in the case of a married individual filing a separate return, zero.

(C) Marital status

Section 219(g)(4) shall apply for purposes of this paragraph.

(D) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amounts in subclauses (I) and (II) of subparagraph (B)(ii) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2005'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(4) Contributions permitted after age 70½

Contributions to a Roth IRA may be made even after the individual for whom the account is maintained has attained age 70½.

(5) Mandatory distribution rules not to apply before death

Notwithstanding subsections (a)(6) and (b)(3) of section 408 (relating to required distribu-

tions), the following provisions shall not apply to any Roth IRA:

(A) Section 401(a)(9)(A).

(B) The incidental death benefit requirements of section 401(a).

(6) Rollover contributions

(A) In general

No rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

(B) Coordination with limit

A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

(7) Time when contributions made

For purposes of this section, the rule of section 219(f)(3) shall apply.

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a Roth IRA shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' means any payment or distribution—

(i) made on or after the date on which the individual attains age 59½,

(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

(iv) which is a qualified special purpose distribution.

(B) Distributions within nonexclusion period

A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual.

(C) Distributions of excess contributions and earnings

The term ''qualified distribution'' shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution.

(3) Rollovers from an eligible retirement plan other than a Roth IRA

(A) In general

Notwithstanding sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

(B) Distributions to which paragraph applies

This paragraph shall apply to a distribution from an eligible retirement plan (as defined by section 402(c)(8)(B)) maintained for the benefit of an individual which is contributed to a Roth IRA maintained for the benefit of such individual in a qualified rollover contribution. This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)[1]

(C) Conversions

The conversion of an individual retirement plan (other than a Roth IRA) to a Roth IRA shall be treated for purposes of this paragraph as a distribution to which this paragraph applies.

(D) Additional reporting requirements

Trustees of Roth IRAs, trustees of individual retirement plans, persons subject to section 6047(d)(1), or all of the foregoing persons, whichever is appropriate, shall include such additional information in reports required under section 408(i) or 6047 as the Secretary may require to ensure that amounts required to be included in gross income under subparagraph (A) are so included.

(E) Special rules for contributions to which 2-year averaging applies

In the case of a qualified rollover contribution to a Roth IRA of a distribution to which subparagraph (A)(iii) applied, the following rules shall apply:

(i) Acceleration of inclusion

(I) In general

The amount otherwise required to be included in gross income for any taxable year beginning in 2010 or the first taxable year in the 2-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

(II) Limitation on aggregate amount included

The amount required to be included in gross income for any taxable year under

[1] So in original. Probably should be followed by a period.

subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 2-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

(ii) Death of distributee

(I) In general

If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

(II) Special rule for surviving spouse

If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year which includes the date of death.

(F) Special rule for applying section 72

(i) In general

If—

(I) any portion of a distribution from a Roth IRA is properly allocable to a qualified rollover contribution described in this paragraph; and

(II) such distribution is made within the 5-taxable year period beginning with the taxable year in which such contribution was made,

then section 72(t) shall be applied as if such portion were includible in gross income.

(ii) Limitation

Clause (i) shall apply only to the extent of the amount of the qualified rollover contribution includible in gross income under subparagraph (A)(i).

(4) Aggregation and ordering rules

(A) Aggregation rules

Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

(B) Ordering rules

For purposes of applying this section and section 72 to any distribution from a Roth IRA, such distribution shall be treated as made—

(i) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA; and

(ii) from such contributions in the following order:

(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under clause (ii)(II) shall be allocated first to the portion of such contribution required to be included in gross income.

(5) Qualified special purpose distribution

For purposes of this section, the term ''qualified special purpose distribution'' means any distribution to which subparagraph (F) of section 72(t)(2) applies.

(6) Taxpayer may make adjustments before due date

(A) In general

Except as provided by the Secretary, if, on or before the due date for any taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then, for purposes of this chapter, such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).

(B) Special rules

(i) Transfer of earnings

Subparagraph (A) shall not apply to the transfer of any contribution unless such transfer is accompanied by any net income allocable to such contribution.

(ii) No deduction

Subparagraph (A) shall apply to the transfer of any contribution only to the extent no deduction was allowed with respect to the contribution to the transferor plan.

(iii) Conversions

Subparagraph (A) shall not apply in the case of a qualified rollover contribution to which subsection (d)(3) applies (including by reason of subparagraph (C) thereof).

(7) Due date

For purposes of this subsection, the due date for any taxable year is the date prescribed by law (including extensions of time) for filing the taxpayer's return for such taxable year.

(e) Qualified rollover contribution

For purposes of this section—

(1) In general

The term ''qualified rollover contribution'' means a rollover contribution—

(A) to a Roth IRA from another such account,

(B) from an eligible retirement plan, but only if—

(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

(2) Military death gratuity

(A) In general

The term ''qualified rollover contribution'' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

(B) Annual limit on number of rollovers not to apply

Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the[2] subparagraph (A).

(C) Application of section 72

For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

(f) Individual retirement plan

For purposes of this section—

(1) a simplified employee pension or a simple retirement account may not be designated as a Roth IRA; and

(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(2)(B).

(Added Pub. L. 105–34, title III, § 302(a), Aug. 5, 1997, 111 Stat. 825; amended Pub. L. 105–206, title VI, § 6005(b)(1)–(7), (9), title VII, § 7004(a), July 22, 1998, 112 Stat. 796–800, 833; Pub. L. 105–277, div. J, title IV, § 4002(j), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title VI, § 617(e)(1), June 7, 2001, 115 Stat. 106; Pub. L. 109–222, title V, § 512(a), (b), May 17, 2006, 120 Stat. 365; Pub. L. 109–280, title VIII, §§ 824(a), (b), 833(c), Aug. 17, 2006, 120 Stat. 998, 1004; Pub. L. 110–245, title I, § 109(a), (b), June 17, 2008, 122 Stat. 1631, 1632; Pub. L. 110–458, title I, § 108(d), (h), Dec. 23, 2008, 122 Stat. 5109; Pub. L. 115–97, title I, §§ 11002(d)(1)(W), 13611(a), Dec. 22, 2017, 131 Stat. 2060, 2165.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2017—Subsec. (c)(3)(D)(ii). Pub. L. 115–97, § 11002(d)(1)(W), substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

Subsec. (d)(6)(B)(iii). Pub. L. 115–97, § 13611(a), added cl. (iii).

2008—Subsec. (c)(3)(B). Pub. L. 110–458, § 108(d)(1), in introductory provisions, struck out second ''an'' before ''eligible'' and ''other than a Roth IRA'' before ''during any taxable year'', and inserted as concluding provisions ''This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A).''

Subsec. (c)(3)(C), (E). Pub. L. 110–458, § 108(h)(1), redesignated subpar. (C) relating to inflation adjustment as subpar. (E).

Subsec. (d)(3)(B). Pub. L. 110–458, § 108(d)(2), struck out ''(other than a Roth IRA)'' after ''section 402(c)(8)(B))'' and inserted at end ''This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)''.

Subsec. (e). Pub. L. 110–245, § 109(b), amended subsec. (e), as in effect after amendment by section 824(a) of Pub. L. 109–280, by amending text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution—

''(1) to a Roth IRA from another such account,

''(2) from an eligible retirement plan, but only if—

''(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

''(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.''

Pub. L. 110–245, § 109(a), amended subsec. (e), as in effect before amendment by section 824(a) of Pub. L. 109–280, by reenacting heading without change and amending text to read as follows: ''For purposes of this section—

''(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

''(2) MILITARY DEATH GRATUITY.—

''(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

''(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

[2] So in original. The word ''the'' probably should not appear.

''(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

''(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by subparagraph (A).

''(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.'' See 2006 Amendment note below.

2006—Subsec. (c)(3)(B). Pub. L. 109–222, §512(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B). Prior to amendment, text read as follows: ''A taxpayer shall not be allowed to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if, for the taxable year of the distribution to which such contribution relates—

''(i) the taxpayer's adjusted gross income exceeds $100,000, or

''(ii) the taxpayer is a married individual filing a separate return.

This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A).'' See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, §824(b)(1), substituted ''eligible retirement plan'' for ''IRA'' in heading and ''an eligible retirement plan (as defined by section 402(c)(8)(B))'' for ''individual retirement plan'' in introductory provisions. See Effective Date of 2006 Amendment note below.

Subsec. (c)(3)(B)(i). Pub. L. 109–222, §512(a)(2), substituted ''except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and'' for ''except that—

''(I) any amount included in gross income under subsection (d)(3) shall not be taken into account; and

''(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i), and''.

Subsec. (c)(3)(C). Pub. L. 109–222, §512(a)(1), redesignated subpar. (D), relating to marital status, as (C). Former subpar. (C) redesignated (B). See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, §833(c), added subpar. (C) relating to inflation adjustment.

Subsec. (c)(3)(D), (E). Pub. L. 110–458, §108(h)(2), redesignated subpar. (E) as (D) and substituted ''subparagraph (B)(ii)'' for ''subparagraph (C)(ii)''.

Subsec. (d)(3). Pub. L. 109–280, §824(b)(2)(E), substituted ''an eligible retirement plan'' for ''an IRA'' in heading.

Subsec. (d)(3)(A). Pub. L. 109–280, §824(b)(2)(A), substituted ''sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16)'' for ''section 408(d)(3)'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 109–222, §512(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any distribution before January 1, 1999, shall be so included ratably over the 4-taxable year period beginning with such taxable year.''

Subsec. (d)(3)(B). Pub. L. 109–280, §824(b)(2)(B), substituted ''eligible retirement plan (as defined by section 402(c)(8)(B))'' for ''individual retirement plan''.

Subsec. (d)(3)(D). Pub. L. 109–280, §824(b)(2)(C), (D), substituted ''persons subject to section 6047(d)(1), or all of the foregoing persons'' for ''or both'' and inserted ''or 6047'' after ''408(i)''.

Subsec. (d)(3)(E). Pub. L. 109–222, §512(b)(2)(B), substituted ''2-year'' for ''4-year'' in heading.

Subsec. (d)(3)(E)(i). Pub. L. 109–222, §512(b)(2)(A), amended cl. (i) generally. Prior to amendment, text read as follows:

''(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3 taxable years in the 4-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

''(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.''

Subsec. (e). Pub. L. 109–280, §824(a), reenacted heading without change and amended text of subsec. (e) generally. Prior to amendments by Pub. L. 109–280, §824(a), and Pub. L. 110–245, §109(a), text read as follows: ''For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.'' See 2008 Amendment note above.

2001—Subsec. (e). Pub. L. 107–16 inserted ''Such term includes a rollover contribution described in section 402A(c)(3)(A).'' after first sentence.

1998—Subsec. (c)(3)(A). Pub. L. 105–206, §6005(b)(1), substituted ''shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced'' for ''shall be reduced'' in introductory provisions.

Subsec. (c)(3)(A)(ii). Pub. L. 105–206, §6005(b)(2)(A), inserted ''or a married individual filing a separate return'' after ''joint return''.

Subsec. (c)(3)(B). Pub. L. 105–206, §6005(b)(2)(B)(i), inserted '', for the taxable year of the distribution to which such contribution relates'' after ''if'' in introductory provisions.

Subsec. (c)(3)(B)(i). Pub. L. 105–206, §6005(b)(2)(B)(ii), struck out ''for such taxable year'' after ''gross income''.

Subsec. (c)(3)(C)(i). Pub. L. 105–206, §7004(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and''.

Pub. L. 105–206, §6005(b)(2)(C), struck out ''and the deduction under section 219 shall be taken into account'' after ''taken into account''.

Subsec. (c)(3)(C)(i)(II). Pub. L. 105–277 substituted '', and'' for period at end.

Subsec. (d)(1). Pub. L. 105–206, §6005(b)(5)(B), substituted ''Exclusion'' for ''General rules'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) EXCLUSIONS FROM GROSS INCOME.—Any qualified distribution from a Roth IRA shall not be includible in gross income.

''(B) NONQUALIFIED DISTRIBUTIONS.—In applying section 72 to any distribution from a Roth IRA which is not a qualified distribution, such distribution shall be treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate amount of contributions to the Roth IRA.''

Subsec. (d)(2)(B). Pub. L. 105–206, §6005(b)(3)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''A payment or distribution shall not be treated as a qualified distribution under subparagraph (A) if—

''(i) it is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual, or

''(ii) in the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary) to a qualified rollover contribution from an individual retirement plan other than a Roth IRA (or income allocable thereto), it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.''

Subsec. (d)(2)(C). Pub. L. 105–206, § 6005(b)(3)(B), added subpar. (C).

Subsec. (d)(3)(A). Pub. L. 105–206, § 6005(b)(4)(A), added cl. (iii) and concluding provisions and struck out former cl. (iii) which read as follows: ''in the case of a distribution before January 1, 1999, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the 4-taxable year period beginning with the taxable year in which the payment or distribution is made.''

Subsec. (d)(3)(D). Pub. L. 105–206, § 6005(b)(6)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''If, no later than the due date for filing the return of tax for any taxable year (without regard to extensions), an individual transfers, from an individual retirement plan (other than a Roth IRA), contributions for such taxable year (and any earnings allocable thereto) to a Roth IRA, no such amount shall be includible in gross income to the extent no deduction was allowed with respect to such amount.''

Subsec. (d)(3)(E). Pub. L. 105–206, § 6005(b)(6)(B), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (d)(3)(F). Pub. L. 105–206, § 6005(b)(6)(B), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 105–206, § 6005(b)(4)(B), added subpar. (F).

Subsec. (d)(3)(G). Pub. L. 105–206, § 6005(b)(6)(B), redesignated subpar. (G) as (F).

Pub. L. 105–206, § 6005(b)(4)(B), added subpar. (G).

Subsec. (d)(4). Pub. L. 105–206, § 6005(b)(5)(A), substituted ''Aggregation and ordering rules'' for ''Coordination with individual retirement accounts'' in heading and amended text generally. Prior to amendment, text read as follows: ''Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.''

Subsec. (d)(6). Pub. L. 105–206, § 6005(b)(6)(A), added par. (6).

Subsec. (d)(7). Pub. L. 105–206, § 6005(b)(7), added par. (7).

Subsec. (f). Pub. L. 105–206, § 6005(b)(9), added subsec. (f).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(1)(W) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

Pub. L. 115–97, title I, § 13611(b), Dec. 22, 2017, 131 Stat. 2165, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 108(h)(2), Dec. 23, 2008, 122 Stat. 5109, amended this section ''[i]n the case of taxable years beginning after December 31, 2009''.

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.

Pub. L. 110–245, title I, § 109(d), June 17, 2008, 122 Stat. 1633, provided that:

''(1) IN GENERAL.—Except as provided by paragraphs (2) and (3), the amendments made by this section [amending this section and section 530 of this title] shall apply with respect to deaths from injuries occurring on or after the date of the enactment of this Act [June 17, 2008].

''(2) APPLICATION OF AMENDMENTS TO DEATHS FROM INJURIES OCCURRING ON OR AFTER OCTOBER 7, 2001, AND BEFORE ENACTMENT.—The amendments made by this section shall apply to any contribution made pursuant to section 408A(e)(2) or 530(d)(5) of the Internal Revenue Code of 1986, as amended by this Act, with respect to amounts received under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, for deaths from injuries occurring on or after October 7, 2001, and before the date of the enactment of this Act if such contribution is made not later than 1 year after the date of the enactment of this Act.

''(3) PENSION PROTECTION ACT CHANGES.—Section 408A(e)(1) of the Internal Revenue Code of 1986 (as in effect after the amendments made by subsection (b)) shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 824(b)(1), Aug. 17, 2006, 120 Stat. 998, provided that the amendment made by section 824(b)(1) amends this section as in effect before the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222. See below.

Pub. L. 109–280, title VIII, § 824(c), Aug. 17, 2006, 120 Stat. 999, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 2007.''

Amendment by section 833(c) of Pub. L. 109–280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109–280, set out as a note under section 25B of this title.

Pub. L. 109–222, title V, § 512(c), May 17, 2006, 120 Stat. 366, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Amendment by section 6005(b)(1)–(7), (9) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, § 7004(b), July 22, 1998, 112 Stat. 833, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 219 of this title.

ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE CARRIER BANKRUPTCY TO ROTH IRAS

Pub. L. 110–458, title I, § 125, Dec. 23, 2008, 122 Stat. 5115, provided that:

''(a) GENERAL RULE.—If a qualified airline employee receives any airline payment amount and transfers any

portion of such amount to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of the date of the enactment of this Act [Dec. 23, 2008]), then such amount (to the extent so transferred) shall be treated as a qualified rollover contribution described in section 408A(e) of the Internal Revenue Code of 1986, and the limitations described in section 408A(c)(3) of such Code shall not apply to any such transfer.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) AIRLINE PAYMENT AMOUNT.—

''(A) IN GENERAL.—The term 'airline payment amount' means any payment of any money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee—

''(i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, and

''(ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount.

The amount of such payment shall be determined without regard to any requirement to deduct and withhold tax from such payment under sections 3102(a) and 3402(a).

''(B) EXCEPTION.—An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits.

''(2) QUALIFIED AIRLINE EMPLOYEE.—The term 'qualified airline employee' means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which—

''(A) is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, and

''(B) was terminated or became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006 [Pub. L. 109–280, 26 U.S.C. 430 note].

''(3) REPORTING REQUIREMENTS.—If a commercial passenger airline carrier pays 1 or more airline payment amounts, the carrier shall, within 90 days of such payment (or, if later, within 90 days of the date of the enactment of this Act [Dec. 23, 2008]), report—

''(A) to the Secretary of the Treasury, the names of the qualified airline employees to whom such amounts were paid, and

''(B) to the Secretary and to such employees, the years and the amounts of the payments.

Such reports shall be in such form, and contain such additional information, as the Secretary may prescribe.

''(c) EFFECTIVE DATE.—This section shall apply to transfers made after the date of the enactment of this Act [Dec. 23, 2008] with respect to airline payment amounts paid before, on, or after such date.''

§ 409. Qualifications for tax credit employee stock ownership plans

(a) Tax credit employee stock ownership plan defined

Except as otherwise provided in this title, for purposes of this title, the term ''tax credit employee stock ownership plan'' means a defined contribution plan which—

(1) meets the requirements of section 401(a),

(2) is designed to invest primarily in employer securities, and

(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), (h), and (*o*) of this section.

(b) Required allocation of employer securities

(1) In general

A plan meets the requirements of this subsection if—

(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section 41(c)(1)(B))[1] to the accounts of all participants who are entitled to share in such allocation, and

(B) for the plan year the allocation to each participant so entitled is an amount which bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

(2) Compensation in excess of $100,000 disregarded

For purposes of paragraph (1), compensation of any participant in excess of the first $100,000 per year shall be disregarded.

(3) Determination of compensation

For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

(4) Suspension of allocation in certain cases

Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic employee plan credit or the credit allowed under section 41[1] (relating to the employee stock ownership credit) may be extended over whatever period may be necessary to comply with the requirements of section 415.

(c) Participants must have nonforfeitable rights

A plan meets the requirements of this subsection only if it provides that each participant has a nonforfeitable right to any employer security allocated to his account.

(d) Employer securities must stay in the plan

A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participant's account under subsection (b) (or allocated to a participant's account in connection with matched employer and employee contributions) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of—

(1) death, disability, separation from service, or termination of the plan;

(2) a transfer of a participant to the employment of an acquiring employer from the employment of the selling corporation in the case of a sale to the acquiring corporation of substantially all of the assets used by the selling corporation in a trade or business conducted by the selling corporation, or

[1] See References in Text note below.

(3) with respect to the stock of a selling corporation, a disposition of such selling corporation's interest in a subsidiary when the participant continues employment with such subsidiary.

This subsection shall not apply to any distribution required under section 401(a)(9) or to any distribution or reinvestment required under section 401(a)(28).

(e) Voting rights

(1) In general

A plan meets the requirements of this subsection if it meets the requirements of paragraph (2) or (3), whichever is applicable.

(2) Requirements where employer has a registration-type class of securities

If the employer has a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which securities of the employer which are entitled to vote and are allocated to the account of such participant or beneficiary are to be voted.

(3) Requirement for other employers

If the employer does not have a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which voting rights under securities of the employer which are allocated to the account of such participant or beneficiary are to be exercised with respect to any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations.

(4) Registration-type class of securities defined

For purposes of this subsection, the term, ''registration-type class of securities'' means—

(A) a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934, and

(B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such section 12.

(5) 1 vote per participant

A plan meets the requirements of paragraph (3) with respect to an issue if—

(A) the plan permits each participant 1 vote with respect to such issue, and

(B) the trustee votes the shares held by the plan in the proportion determined after application of subparagraph (A).

(f) Plan must be established before employer's due date

(1) In general

A plan meets the requirements of this subsection only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(2) Special rule for first year

A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because it was not established by the close of the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(g) Transferred amounts must stay in plan even though investment credit is redetermined or recaptured

A plan meets the requirement of this subsection only if it provides that amounts which are transferred to the plan (because of the requirements of section 48(n)(1) or 41(c)(1)(B))[1] shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the employee plan credit or the credit allowed under section 41[1] (relating to employee stock ownership credit) is recaptured or redetermined. For purposes of the preceding sentence, the references to section 48(n)(1)[1] and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

(h) Right to demand employer securities; put option

(1) In general

A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

(A) has a right to demand that his benefits be distributed in the form of employer securities, and

(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

(2) Plan may distribute cash in certain cases

(A) In general

A plan which otherwise meets the requirements of this subsection or of section 4975(e)(7) shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities.

(B) Exception for certain plans restricted from distributing securities

(i) In general

A plan to which this subparagraph applies shall not be treated as failing to meet the requirements of this subsection or section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that the participant entitled to a distribution has a right to receive the distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms

which meet the requirements of paragraph (1)(B).

(ii) Applicable plans

This subparagraph shall apply to a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) and which is established and maintained by—

(I) an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), or

(II) an S corporation.

(3) Special rule for banks

In the case of a plan established and maintained by a bank (as defined in section 581) which is prohibited by law from redeeming or purchasing its own securities, the requirements of paragraph (1)(B) shall not apply if the plan provides that participants entitled to a distribution from the plan shall have a right to receive a distribution in cash.

(4) Put option period

An employer shall be deemed to satisfy the requirements of paragraph (1)(B) if it provides a put option for a period of at least 60 days following the date of distribution of stock of the employer and, if the put option is not exercised within such 60-day period, for an additional period of at least 60 days in the following plan year (as provided in regulations promulgated by the Secretary).

(5) Payment requirement for total distribution

If an employer is required to repurchase employer securities which are distributed to the employee as part of a total distribution, the requirements of paragraph (1)(B) shall be treated as met if—

(A) the amount to be paid for the employer securities is paid in substantially equal periodic payments (not less frequently than annually) over a period beginning not later than 30 days after the exercise of the put option described in paragraph (4) and not exceeding 5 years, and

(B) there is adequate security provided and reasonable interest paid on the unpaid amounts referred to in subparagraph (A).

For purposes of this paragraph, the term ''total distribution'' means the distribution within 1 taxable year to the recipient of the balance to the credit of the recipient's account.

(6) Payment requirement for installment distributions

If an employer is required to repurchase employer securities as part of an installment distribution, the requirements of paragraph (1)(B) shall be treated as met if the amount to be paid for the employer securities is paid not later than 30 days after the exercise of the put option described in paragraph (4).

(7) Exception where employee elected diversification

Paragraph (1)(A) shall not apply with respect to the portion of the participant's account which the employee elected to have reinvested under section 401(a)(28)(B) or subparagraph (B) or (C) of section 401(a)(35).

(i) Reimbursement for expenses of establishing and administering plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

(1) Expenses of establishing plan

As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

(A) 10 percent of the first $100,000 which the employer is required to transfer to the plan for that taxable year under section 41(c)(1)(B),[1] and

(B) 5 percent of any amount so required to be transferred in excess of the first $100,000; and

(2) Administrative expenses

As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

(A) the sum of—

(i) 10 percent of the first $100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

(ii) 5 percent of the amount of such dividends in excess of $100,000 or

(B) $100,000.

(j) Conditional contributions to the plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to satisfy such requirements (or as failing to satisfy the requirements of section 401(a) of this title or of section 403(c)(1) of the Employee Retirement Income Security Act of 1974) merely because of the return of a contribution (or a provision permitting such a return) if—

(1) the contribution to the plan is conditioned on a determination by the Secretary that such plan meets the requirements of this section,

(2) the application for a determination described in paragraph (1) is filed with the Secretary not later than 90 days after the date on which an employee plan credit is claimed, and

(3) the contribution is returned within 1 year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this section.

(k) Requirements relating to certain withdrawals

Notwithstanding any other law or rule of law—

(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for

purposes of the matching employee plan credit shall not be considered to make the benefits forfeitable, and

(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries,

if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974. For purposes of this subsection, the reference to the matching employee plan credit shall refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

(*l*) Employer securities defined

For purposes of this section—

(1) In general

The term ''employer securities'' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

(2) Special rule where there is no readily tradable common stock

If there is no common stock which meets the requirements of paragraph (1), the term ''employer securities'' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

(3) Preferred stock may be issued in certain cases

Noncallable preferred stock shall be treated as employer securities if such stock is convertible at any time into stock which meets the requirements of paragraph (1) or (2) (whichever is applicable) and if such conversion is at a conversion price which (as of the date of the acquisition by the tax credit employee stock ownership plan) is reasonable. For purposes of the preceding sentence, under regulations prescribed by the Secretary, preferred stock shall be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

(4) Application to controlled group of corporations

(A) In general

For purposes of this subsection, the term ''controlled group of corporations'' has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

(B) Where common parent owns at least 50 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

(C) Where common parent owns 100 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier subsidiary were the common parent) shall be treated as includible corporations.

(5) Nonvoting common stock may be acquired in certain cases

Nonvoting common stock of an employer described in the second sentence of section 401(a)(22) shall be treated as employer securities if an employer has a class of nonvoting common stock outstanding and the specific shares that the plan acquires have been issued and outstanding for at least 24 months.

(m) Nonrecognition of gain or loss on contribution of employer securities to tax credit employee stock ownership plan

No gain or loss shall be recognized to the taxpayer with respect to the transfer of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer to the extent that such transfer is required under section 41(c)(1)(B),[1] or subparagraph (A) or (B) of section 48(n)(1).[1]

(n) Securities received in certain transactions

(1) In general

A plan to which section 1042 applies and an eligible worker-owned cooperative (within the meaning of section 1042(c)) shall provide that no portion of the assets of the plan or cooperative attributable to (or allocable in lieu of) employer securities acquired by the plan or cooperative in a sale to which section 1042 applies may accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a))—

(A) during the nonallocation period, for the benefit of—

(i) any taxpayer who makes an election under section 1042(a) with respect to employer securities,,,[2]

(ii) any individual who is related to the taxpayer (within the meaning of section 267(b)), or

[2] So in original.

(B) for the benefit of any other person who owns (after application of section 318(a)) more than 25 percent of—

(i) any class of outstanding stock of the corporation which issued such employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of subsection (*l*)(4)) as such corporation, or

(ii) the total value of any class of outstanding stock of any such corporation.

For purposes of subparagraph (B), section 318(a) shall be applied without regard to the employee trust exception in paragraph (2)(B)(i).

(2) Failure to meet requirements

If a plan fails to meet the requirements of paragraph (1)—

(A) the plan shall be treated as having distributed to the person described in paragraph (1) the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation,

(B) the provisions of section 4979A shall apply, and

(C) the statutory period for the assessment of any tax imposed by section 4979A shall not expire before the date which is 3 years from the later of—

(i) the 1st allocation of employer securities in connection with a sale to the plan to which section 1042 applies, or

(ii) the date on which the Secretary is notified of such failure.

(3) Definitions and special rules

For purposes of this subsection—

(A) Lineal descendants

Paragraph (1)(A)(ii) shall not apply to any individual if—

(i) such individual is a lineal descendant of the taxpayer, and

(ii) the aggregate amount allocated to the benefit of all such lineal descendants during the nonallocation period does not exceed more than 5 percent of the employer securities (or amounts allocated in lieu thereof) held by the plan which are attributable to a sale to the plan by any person related to such descendants (within the meaning of section 267(c)(4)) in a transaction to which section 1042 applied.

(B) 25-percent shareholders

A person shall be treated as failing to meet the stock ownership limitation under paragraph (1)(B) if such person fails such limitation—

(i) at any time during the 1-year period ending on the date of sale of qualified securities to the plan or cooperative, or

(ii) on the date as of which qualified securities are allocated to participants in the plan or cooperative.

(C) Nonallocation period

The term ''nonallocation period'' means the period beginning on the date of the sale of the qualified securities and ending on the later of—

(i) the date which is 10 years after the date of sale, or

(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.

(*o*) Distribution and payment requirements

A plan meets the requirements of this subsection if—

(1) Distribution requirement

(A) In general

The plan provides that, if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant's spouse elects, the distribution of the participant's account balance in the plan will commence not later than 1 year after the close of the plan year—

(i) in which the participant separates from service by reason of the attainment of normal retirement age under the plan, disability, or death, or

(ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service, except that this clause shall not apply if the participant is reemployed by the employer before distribution is required to begin under this clause.

(B) Exception for certain financed securities

For purposes of this subsection, the account balance of a participant shall not include any employer securities acquired with the proceeds of the loan described in section 404(a)(9) until the close of the plan year in which such loan is repaid in full.

(C) Limited distribution period

The plan provides that, unless the participant elects otherwise, the distribution of the participant's account balance will be in substantially equal periodic payments (not less frequently than annually) over a period not longer than the greater of—

(i) 5 years, or

(ii) in the case of a participant with an account balance in excess of $800,000, 5 years plus 1 additional year (but not more than 5 additional years) for each $160,000 or fraction thereof by which such balance exceeds $800,000.

(2) Cost-of-living adjustment

The Secretary shall adjust the dollar amounts under paragraph (1)(C) at the same time and in the same manner as under section 415(d).

(p) Prohibited allocations of securities in an S corporation

(1) In general

An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of

section 401(a)) for the benefit of any disqualified person.

(2) Failure to meet requirements

(A) In general

If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

(B) Cross reference

For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

(3) Nonallocation year

For purposes of this subsection—

(A) In general

The term ''nonallocation year'' means any plan year of an employee stock ownership plan if, at any time during such plan year—

(i) such plan holds employer securities consisting of stock in an S corporation, and

(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

(B) Attribution rules

For purposes of subparagraph (A)—

(i) In general

The rules of section 318(a) shall apply for purposes of determining ownership, except that—

(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

(II) paragraph (4) thereof shall not apply.

(ii) Deemed-owned shares

Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), an individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

(4) Disqualified person

For purposes of this subsection—

(A) In general

The term ''disqualified person'' means any person if—

(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

(B) Treatment of family members

In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

(C) Deemed-owned shares

(i) In general

The term ''deemed-owned shares'' means, with respect to any person—

(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

(ii) Person's share of unallocated stock

For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

(D) Member of family

For purposes of this paragraph, the term ''member of the family'' means, with respect to any individual—

(i) the spouse of the individual,

(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

(5) Treatment of synthetic equity

For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

(A) the treatment of any person as a disqualified person, or

(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

(6) Definitions

For purposes of this subsection—

(A) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7).

(B) Employer securities

The term ''employer security'' has the meaning given such term by section 409(*l*).

(C) Synthetic equity

The term ''synthetic equity'' means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

(7) Regulations and guidance

(A) In general

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(B) Avoidance or evasion

The Secretary may, by regulation or other guidance of general applicability, provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of this subsection.

(Added Pub. L. 95–600, title I, §141(a), Nov. 6, 1978, 92 Stat. 2787, §409A; amended Pub. L. 96–222, title I, §101(a)(7)(D)–(F), (I), (J), (L)(i)(VI), (ii)(I), (II), (iii)(V), (v)(VI), (VII), Apr. 1, 1980, 94 Stat. 198–200; Pub. L. 96–605, title II, §224(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§331(c)(1), 334, 336, 337(a), Aug. 13, 1981, 95 Stat. 293, 297, 298; Pub. L. 97–448, title I, §103(h), (i), Jan. 12, 1983, 96 Stat. 2379; renumbered §409 and amended Pub. L. 98–369, div. A, title IV, §§474(r)(15), 491(e)(1), July 18, 1984, 98 Stat. 843, 852; Pub. L. 99–514, title XI, §§1172(b)(1), 1174(a)(1), (b)(1), (2), (c)(1)(A), 1176(b), title XVIII, §§1852(a)(4)(B), 1854(a)(3)(A), (f)(1), (3)(C), 1899A(11), Oct. 22, 1986, 100 Stat. 2514, 2516, 2517, 2520, 2865, 2873, 2881, 2882, 2958; Pub. L. 100–647, title I, §§1011B(g)(1), (2), (i)(1), (3), (j)(3), (5), (k)(3), 1018(t)(4)(B), (C), (H), Nov. 10, 1988, 102 Stat. 3490, 3492, 3493, 3588, 3589; Pub. L. 101–239, title VII, §§7304(a)(2)(A), (B), 7811(h)(1), Dec. 19, 1989, 103 Stat. 2352, 2353, 2409; Pub. L. 105–34, title XV, §1506(a), Aug. 5, 1997, 111 Stat. 1064; Pub. L. 107–16, title VI, §656(a), June 7, 2001, 115 Stat. 131; Pub. L. 107–147, title IV, §411(j)(2), Mar. 9, 2002, 116 Stat. 47; Pub. L. 109–280, title IX, §901(a)(2)(B), Aug. 17, 2006, 120 Stat. 1029; Pub. L. 113–295, div. A, title II, §221(a)(54), Dec. 19, 2014, 128 Stat. 4045.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 41, referred to in subsecs. (b)(1)(A), (4), (g), (i)(1)(A), and (m), which related to employee stock ownership credit, was repealed by Pub. L. 99–514, title XI, §1171(a), Oct. 22, 1986, 100 Stat. 2513. Section 30 of this title, relating to credit for increasing research activities, was renumbered section 41.

Section 12 of the Securities Exchange Act of 1934, referred to in subsec. (e)(4), is classified to section 78*l* of Title 15, Commerce and Trade.

Section 403(c)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (j) and (k), is classified to section 1103(c)(1) of Title 29, Labor.

The enactment of the Tax Reform Act of 1984, referred to in subsecs. (g) and (k), means the enactment of div. A of Pub. L. 98–369, which was approved July 18, 1984.

Subsec. (n) of section 48, referred to in subsecs. (g) and (m), was repealed by section 474(*o*)(15) of Pub. L. 98–369.

PRIOR PROVISIONS

A prior section 409, added Pub. L. 93–406, title II, §2002(c), Sept. 2, 1974, 88 Stat. 964; amended Pub. L. 94–455, title XV, §1501(b)(6), title XIX, §§1901(a)(60), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1774, 1834; Pub. L. 95–600, title I, §§156(c)(2), (3), 157(e)(1)(B), Nov. 6, 1978, 92 Stat. 2803, 2806; Pub. L. 96–222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(g)(1)(D), (3), Aug. 13, 1981, 95 Stat. 281; Pub. L. 97–248, title II, §243(b)(1)(B), title III, §335(a)(2), Sept. 3, 1982, 96 Stat. 523, 628; Pub. L. 97–452, §2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, §42(a)(7), title V, §522(d)(13), July 18, 1984, 98 Stat. 557, 871, related to retirement bonds, prior to repeal by Pub. L. 98–369, div. A, title IV, §491(b), (f)(1), July 18, 1984, 98 Stat. 848, 853, applicable to obligations issued after Dec. 31, 1983.

AMENDMENTS

2014—Subsec. (q). Pub. L. 113–295 struck out subsec. (q) which related to cross-references.

2006—Subsec. (h)(7). Pub. L. 109–280 inserted ''or subparagraph (B) or (C) of section 401(a)(35)'' before period at end.

2002—Subsec. (*o*)(1)(C)(ii). Pub. L. 107–147 substituted ''$800,000'' for ''$500,000'' in two places and ''$160,000'' for ''$100,000''.

2001—Subsecs. (p), (q). Pub. L. 107–16 added subsec. (p) and redesignated former subsec. (p) as (q).

1997—Subsec. (h)(2). Pub. L. 105–34 designated existing provisions as subpar. (A), inserted subpar. heading, struck out ''In the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) shall not be considered to have failed to meet the requirements of this subsection or of section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that participants entitled to a distribution from the plan shall have a right to receive such distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).'' after ''employer securities.'', and added subpar. (B).

1989—Subsec. (*l*)(5). Pub. L. 101–239, §7811(h)(1), substituted ''the second sentence'' for ''the last sentence''.

Subsec. (n)(1). Pub. L. 101–239, §7304(a)(2)(A)(i), struck out ''or section 2057'' after ''section 1042'' in two places in introductory provisions.

Subsec. (n)(1)(A)(i). Pub. L. 101–239, §7304(a)(2)(A)(ii), struck out ''or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies'' after ''employer securities,''.

Subsec. (n)(1)(A)(ii). Pub. L. 101–239, §7304(a)(2)(A)(iii), struck out ''or the decedent'' after ''the taxpayer''.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 101–239, § 7304(a)(2)(B), struck out ''or section 2057'' after ''section 1042''.

1988—Subsec. (d). Pub. L. 100–647, § 1011B(j)(3), inserted ''or to any distribution or reinvestment required under section 401(a)(28)'' after ''under section 401(a)(9)''.

Subsec. (e)(5). Pub. L. 100–647, § 1018(t)(4)(H), substituted ''paragraph (3)'' for ''paragraph (2) or (3)''.

Subsec. (h)(2). Pub. L. 100–647, § 1018(t)(4)(B), substituted ''paragraph (1)(B)'' for ''section 409(*o*)''.

Subsec. (h)(7). Pub. L. 100–647, § 1011B(j)(5), added par. (7).

Subsec. (*l*)(4), (5). Pub. L. 100–647, § 1011B(k)(3), redesignated par. (4), relating to nonvoting common stock may be acquired in certain cases, as (5).

Subsec. (n)(1). Pub. L. 100–647, § 1011B(g)(1), made technical amendment to directory language of Pub. L. 99–514, § 1172(b)(1). See 1986 Amendment note below.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 100–647, § 1011B(g)(2), inserted ''or section 2057'' after ''which section 1042''.

Subsec. (n)(3)(C). Pub. L. 100–647, § 1018(t)(4)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The term 'nonallocation period' means the 10-year period beginning on the later of—

''(i) the date of the sale of the qualified securities, or

''(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.''

Subsec. (*o*)(1)(A). Pub. L. 100–647, § 1011B(i)(3), substituted ''if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant's spouse elects'' for ''unless the participant otherwise elects''.

Subsec. (*o*)(1)(A)(ii). Pub. L. 100–647, § 1011B(i)(1), substituted ''distribution is required to begin under this clause'' for ''such year''.

1986—Subsec. (a)(3). Pub. L. 99–514, § 1174(b)(2), inserted reference to subsec. (*o*).

Subsec. (d). Pub. L. 99–514, § 1899A(11), substituted ''participant's'' for ''participants's''.

Pub. L. 99–514, § 1852(a)(4)(B), inserted at end ''This subsection shall not apply to any distribution required under section 401(a)(9).''

Subsec. (d)(1). Pub. L. 99–514, § 1174(a)(1), substituted ''separation from service, or termination of the plan'' for ''or separation from service''.

Subsec. (e)(2). Pub. L. 99–514, § 1854(f)(1)(C), (D), inserted ''or beneficiary'' after ''participant'' in two places and substituted ''securities of the employer'' for ''employer securities''.

Subsec. (e)(3). Pub. L. 99–514, § 1854(f)(1)(B)–(D), inserted ''or beneficiary'' after ''participant'' in two places and substituted ''securities of the employer'' for ''employer securities'' and ''any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations'' for ''a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares voted''.

Subsec. (e)(5). Pub. L. 99–514, § 1854(f)(1)(A), added par. (5).

Subsec. (h)(2). Pub. L. 99–514, § 1854(f)(3)(C), inserted '', except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of section 409(*o*)''.

Subsec. (h)(5), (6). Pub. L. 99–514, § 1174(c)(1)(A), added pars. (5) and (6).

Subsec. (*l*)(4). Pub. L. 99–514, § 1176(b), added par. (4) relating to acquisition of nonvoting common stock.

Subsec. (n). Pub. L. 99–514, § 1854(a)(3)(A), added subsec. (n). Former subsec. (n) redesignated (*o*).

Subsec. (n)(1). Pub. L. 99–514, § 1172(b)(1), as amended by Pub. L. 100–647, § 1011B(g)(1), inserted ''or section 2057'' in two places in introductory provisions, ''or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies,'' in subpar. (A)(i), and ''or the decedent'' in subpar. (A)(ii).

Subsec. (*o*). Pub. L. 99–514, § 1174(b)(1), added subsec. (*o*). Former subsec. (*o*) redesignated (p).

Pub. L. 99–514, § 1854(a)(3)(A), redesignated former subsec. (n) as (*o*).

Subsec. (p). Pub. L. 99–514, § 1174(b)(1), redesignated former subsec. (*o*) as (p).

1984—Subsec. (b)(1)(A). Pub. L. 98–369, § 474(r)(15)(A), (B), substituted ''41'' for ''44G'' and struck out ''48(n)(1)(A) or'' after ''requirements of section''.

Subsec. (b)(4). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

Subsec. (g). Pub. L. 98–369, § 474(r)(15)(A), (C), substituted ''41'' for ''44G'' in two places, and inserted provision directing that, for purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (i)(1)(A). Pub. L. 98–369, § 474(r)(15)(A), (D), substituted ''41'' for ''44G'', and struck out ''48(n)(1) or'' after ''taxable year under section''.

Subsec. (k). Pub. L. 98–369, § 474(r)(15)(E), inserted provision requiring that, for purposes of this subsection, the reference to the matching employee plan credit refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (m). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

Subsec. (n)(3). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

1983—Subsec. (d)(2). Pub. L. 97–448, § 103(i), struck out provisions covering the sale of substantially all of the stock of a subsidiary of the employer.

Subsec. (h)(2). Pub. L. 97–448, § 103(h), substituted ''the requirements of this subsection or of section 401(a)'' for ''the requirements of section 401(a)''.

1981—Subsec. (b). Pub. L. 97–34, § 331(c)(1)(A), (B), inserted in par. (1)(A) reference to section 44G(c)(1)(B), and inserted in par. (4) ''or the credit allowed under section 44G (relating to the employee stock ownership credit)'' after ''basic employee plan credit''.

Subsec. (d). Pub. L. 97–34, § 337, designated provision relating to death, disability, or separation from service as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 97–34, § 331(c)(1)(C), (D), inserted reference to section 44G(c)(1)(B) and inserted ''or the credit allowed under section 44G (relating to employee stock ownership credit)'' after ''employee plan credit''.

Subsec. (h)(2). Pub. L. 97–34, § 334, substituted ''this subsection'' for ''this section'' and inserted provision respecting receipt of distributions in cash where employer's charter or bylaws restrict ownership of substantially all outstanding employer securities to employees or to a section 401(a) trust where a participant is not permitted to exercise the right described in par. (1)(A).

Subsec. (h)(3), (4). Pub. L. 97–34, § 336, added pars. (3) and (4).

Subsec. (i)(1)(A). Pub. L. 97–34, § 331(c)(1)(E), inserted reference to section 44G(c)(1)(B).

Subsec. (m). Pub. L. 97–34, § 331(c)(1)(F), inserted reference to section 44G(c)(1)(B).

Subsec. (n)(2), (3). Pub. L. 97–34, § 331(c)(1)(G), (H), inserted ''or employee stock ownership credit'' after ''employee plan credit'' in par. (2) and added par. (3).

1980—Pub. L. 96–222, § 101(a)(7)(L)(v)(VII), substituted ''tax credit employee stock ownership plans'' for ''ESOPS'' in section catchline.

Subsec. (a). Pub. L. 96–222, § 101(a)(7)(L)(ii)(I), (v)(VI), substituted in heading and in text ''tax credit employee stock ownership plan'' for ''ESOP''.

Subsec. (b)(4). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (d). Pub. L. 96–222, § 101(a)(7)(F), inserted ''(or allocated to a participant's account in connection with matched employer and employee contributions)'' after ''under subsection (b)''.

Subsec. (f)(1). Pub. L. 96–222, §101(a)(7)(I)(i), substituted ''only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan'' for ''for a plan year only if it is established on or before the due date for the filing of the employer's tax return for the taxable year (including any extension of such date) in which or with which the plan year ends''.

Subsec. (f)(2). Pub. L. 96–222, §101(a)(7)(I)(ii), (L)(v)(VII), substituted ''employee plan'' for ''ESOP'' and inserted ''with respect to the plan'' after ''by the employer''.

Subsec. (g). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (h)(2). Pub. L. 96–222, §101(a)(7)(E), inserted ''or of section 4975(e)(7)'' after ''the requirements of this section''.

Subsecs. (j)(2), (k)(1). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (*l*)(2)(B). Pub. L. 96–222, §101(a)(7)(J)(i), substituted ''class of common stock'' for ''class of stock''.

Subsec. (*l*)(3). Pub. L. 96–222, §101(a)(7)(J)(ii), (L)(ii)(II), substituted ''as employer securities'' for ''as meeting the requirements of paragraph (1)'', ''paragraph (1) or (2)'' for ''paragraph (2)'', and ''tax credit employee stock ownership plan'' for ''ESOP'' and inserted provisions requiring preferred stock to be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

Subsec. (*l*)(4). Pub. L. 96–605 substituted in heading ''Application to controlled group of corporations'' for ''Controlled group of corporations defined'' and in subpar. (B) heading ''Where common parent owns at least'' for ''Common parent may own only'' and added subpar. (C).

Subsec. (m). Pub. L. 96–222, §101(a)(7)(D), (L)(i), substituted provisions relating to nonrecognition of gain or loss on contribution of employer securities to a tax credit employee stock ownership plan for provisions relating to contributions of stock of a controlling corporation.

Subsec. (n). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit'' in pars. (1) and (2).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §656(d), June 7, 2001, 115 Stat. 135, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4975 and 4979A of this title] shall apply to plan years beginning after December 31, 2004.

''(2) EXCEPTION FOR CERTAIN PLANS.—In the case of any—

''(A) employee stock ownership plan established after March 14, 2001, or

''(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after March 14, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title I, §1506(c), Aug. 5, 1997, 111 Stat. 1066, provided that: ''The amendments made by this section [amending this section, section 4975 of this title, and section 1108 of Title 29, Labor] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7304(a)(3), Dec. 19, 1989, 103 Stat. 2353, provided that: ''The amendments made by this subsection [amending this section and sections 4978 and 4979A of this title and repealing sections 2057 and 4978A of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by section 7811(h)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 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 OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1172(c), Oct. 22, 1986, 100 Stat. 2515, provided that: ''The amendments made by this section [enacting section 2057 of this title and amending this section and section 4979A of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986] with respect to which an election is made by the executor of an estate who is required to file the return of the tax imposed by the Internal Revenue Code of 1986 on a date (including extensions) after the date of the enactment of this Act.''

Pub. L. 99–514, title XI, §1174(a)(2), Oct. 22, 1986, 100 Stat. 2516, as amended by Pub. L. 100–647, title I, §1011B(i)(2), Nov. 10, 1988, 102 Stat. 3492, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions after December 31, 1984.''

Pub. L. 99–514, title XI, §1174(b)(3), Oct. 22, 1986, 100 Stat. 2517, provided that: ''The amendments made by this subsection [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986.''

Pub. L. 99–514, title XI, §1174(c)(1)(B), Oct. 22, 1986, 100 Stat. 2518, provided that: ''The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986, except that a plan may elect to have such amendment apply to all distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1176(b) of Pub. L. 99–514 applicable to acquisitions of securities after Dec. 31, 1986, see section 1176(c) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(4)(B) of 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.

Pub. L. 99–514, title XVIII, §1854(a)(3)(C), Oct. 22, 1986, 100 Stat. 2874, as amended by Pub. L. 100–647, title I, §1018(t)(4)(G), Nov. 10, 1988, 102 Stat. 3588, provided that:

''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986].

''(ii) A taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subparagraph (B)) apply to sales before the date of the enactment of this Act as if such section included the last sentence of section 409(n)(1) of the Internal Revenue Code of 1986 (as added by subparagraph (A)).''

Pub. L. 99–514, title XVIII, §1854(f)(4)(A), (B), Oct. 22, 1986, 100 Stat. 2882, provided that:

''(A) The amendments made by paragraph (1)(A) and (3) [amending this section and sections 1042 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

''(B) The amendments made by subparagraphs (B), (C), and (D) of paragraph (1) [amending this section] shall apply after December 31, 1986, to stock acquired after December 31, 1979.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(15) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Redesignation of section 409A as 409 by section 491(e)(1) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 331(c)(1) of Pub. L. 97–34 applicable to taxable years ending after Dec. 31, 1982, see section 331(f)(2) of Pub. L. 97–34, set out as a note under section 404 of this title.

Pub. L. 97–34, title III, §337(b), Aug. 13, 1981, 95 Stat. 298, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to distributions described in section 409A(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or any corresponding provision of prior law) made after March 29, 1975.''

Amendment by sections 334 and 336 of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–605, title II, §224(b), Dec. 28, 1980, 94 Stat. 3529, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title I, §141(g), Nov. 6, 1978, 92 Stat. 2795, as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (h) [set out as an Effective Date of 1978 Amendment note under section 4975 of this title], the amendments made by this section [enacting sections 409A [now 409] and 6699 of this title and amending sections 46, 48, 56, 401, 404, 415, 805, 1504, and 4975 of this title] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.

''(2) ELECTION TO HAVE AMENDMENTS APPLY DURING 1978.—At the election of the taxpayer, paragraph (1) shall be applied by substituting 'December 31, 1977' for 'December 31, 1978'; except that in the case of a plan in existence before December 31, 1978, any such election shall not affect the required allocation of employer securities attributable to qualified investment for taxable years beginning before January 1, 1979. An election under the preceding sentence shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made, shall be irrevocable.

''(3) VOTING RIGHT PROVISIONS.—Section 409A(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) [now section 409] shall apply to plans to which section 409A of such Code applies, beginning with the first day of such application.

''(4) RIGHT TO DEMAND EMPLOYER SECURITIES, ETC.—Paragraphs (1)(A) and (2) of section 409A(h) of the Internal Revenue Code of 1986 (as added by subsection (a)) [now section 409] shall apply to distributions after December 31, 1978, made by a plan to which section 409A of such Code applies.

''(5) SUBSECTION (f)(7).—The amendment made by subsection (f)(7) [amending section 415 of this title] shall apply to years beginning after December 31, 1978.

''(6) RETROACTIVE APPLICATION OF AMENDMENT MADE BY SUBSECTION (d).—In determining the regular tax deduction under [former] section 56(c) of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1979, the amount of the credit allowable under section 38 of such Code shall be determined without regard to section 46(a)(2)(B) of such Code (as in effect before the enactment of the Energy Tax Act of 1978 [Nov. 9, 1978]).''

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.

§ 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans

(a) Rules relating to constructive receipt

(1) Plan failures

(A) Gross income inclusion

(i) In general

If at any time during a taxable year a nonqualified deferred compensation plan—

(I) fails to meet the requirements of paragraphs (2), (3), and (4), or

(II) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

(ii) Application only to affected participants

Clause (i) shall only apply with respect to all compensation deferred under the plan for participants with respect to whom the failure relates.

(B) Interest and additional tax payable with respect to previously deferred compensation

(i) In general

If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year shall be increased by the sum of—

(I) the amount of interest determined under clause (ii), and

(II) an amount equal to 20 percent of the compensation which is required to be included in gross income.

(ii) Interest

For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(2) Distributions

(A) In general

The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

(iii) death,

(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

(vi) the occurrence of an unforeseeable emergency.

(B) Special rules

(i) Specified employees

In the case of any specified employee, the requirement of subparagraph (A)(i) is met only if distributions may not be made before the date which is 6 months after the date of separation from service (or, if earlier, the date of death of the employee). For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise.

(ii) Unforeseeable emergency

For purposes of subparagraph (A)(vi)—

(I) In general

The term ''unforeseeable emergency'' means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

(II) Limitation on distributions

The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

(C) Disabled

For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

(3) Acceleration of benefits

The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

(4) Elections

(A) In general

The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

(B) Initial deferral decision

(i) In general

The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations.

(ii) First year of eligibility

In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

(iii) Performance-based compensation

In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of the period.

(C) Changes in time and form of distribution

The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

(ii) in the case of an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

(b) Rules relating to funding

(1) Offshore property in a trust

In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

(A) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or

(B) at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

(2) Employer's financial health

In the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

(B) the date on which assets are so restricted,

whether or not such assets are available to satisfy claims of general creditors.

(3) Treatment of employer's defined benefit plan during restricted period

(A) In general

If—

(i) during any restricted period with respect to a single-employer defined benefit plan, assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary) or transferred to such a trust or other arrangement for purposes of paying deferred compensation of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor, or

(ii) a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor provides that assets will become restricted to the provision of benefits under the plan to an applicable covered employee in connection with such restricted period (or other similar financial measure determined by the Secretary) with respect to the defined benefit plan, or assets are so restricted,

such assets shall, for purposes of section 83, be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Clause (i) shall not apply with respect to any assets which are so set aside before the restricted period with respect to the defined benefit plan.

(B) Restricted period

For purposes of this section, the term ''restricted period'' means, with respect to any plan described in subparagraph (A)—

(i) any period during which the plan is in at-risk status (as defined in section 430(i));[1]

(ii) any period the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, and

(iii) the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the ter-

[1] So in original. The semicolon probably should be a comma.

mination date, the plan is not sufficient for benefit liabilities (within the meaning of section 4041 of the Employee Retirement Income Security Act of 1974).

(C) Special rule for payment of taxes on deferred compensation included in income

If an employer provides directly or indirectly for the payment of any Federal, State, or local income taxes with respect to any compensation required to be included in gross income by reason of this paragraph—

(i) interest shall be imposed under subsection (a)(1)(B)(i)(I) on the amount of such payment in the same manner as if such payment was part of the deferred compensation to which it relates,

(ii) such payment shall be taken into account in determining the amount of the additional tax under subsection (a)(1)(B)(i)(II) in the same manner as if such payment was part of the deferred compensation to which it relates, and

(iii) no deduction shall be allowed under this title with respect to such payment.

(D) Other definitions

For purposes of this section—

(i) Applicable covered employee

The term ''applicable covered employee'' means any—

(I) covered employee of a plan sponsor,

(II) covered employee of a member of a controlled group which includes the plan sponsor, and

(III) former employee who was a covered employee at the time of termination of employment with the plan sponsor or a member of a controlled group which includes the plan sponsor.

(ii) Covered employee

The term ''covered employee'' means an individual described in section 162(m)(3) or an individual subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

(4) Income inclusion for offshore trusts and employer's financial health

For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1), (2), or (3), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

(5) Interest on tax liability payable with respect to transferred property

(A) In general

If amounts are required to be included in gross income by reason of paragraph (1), (2), or (3) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

(i) the amount of interest determined under subparagraph (B), and

(ii) an amount equal to 20 percent of the amounts required to be included in gross income.

(B) Interest

For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1), (2), or (3) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

(c) No inference on earlier income inclusion or requirement of later inclusion

Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

(d) Other definitions and special rules

For purposes of this section:

(1) Nonqualified deferred compensation plan

The term ''nonqualified deferred compensation plan'' means any plan that provides for the deferral of compensation, other than—

(A) a qualified employer plan, and

(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

(2) Qualified employer plan

The term ''qualified employer plan'' means—

(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) (without regard to subparagraph (A)(iii)),

(B) any eligible deferred compensation plan (within the meaning of section 457(b)), and

(C) any plan described in section 415(m).

(3) Plan includes arrangements, etc.

The term ''plan'' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

(4) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(5) Treatment of earnings

References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

(6) Aggregation rules

Except as provided by the Secretary, rules similar to the rules of subsections (b) and (c) of section 414 shall apply.

(7) Treatment of qualified stock

An arrangement under which an employee may receive qualified stock (as defined in sec-

tion 83(i)(2)) shall not be treated as a nonqualified deferred compensation plan with respect to such employee solely because of such employee's election, or ability to make an election, to defer recognition of income under section 83(i).

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

(4) defining financial health for purposes of subsection (b)(2), and

(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.

(Added Pub. L. 108–357, title VIII, § 885(a), Oct. 22, 2004, 118 Stat. 1634; amended Pub. L. 109–135, title IV, § 403(hh)(2), Dec. 21, 2005, 119 Stat. 2631; Pub. L. 109–280, title I, § 116(a), (b), Aug. 17, 2006, 120 Stat. 856, 858; Pub. L. 110–458, title I, § 101(e), Dec. 23, 2008, 122 Stat. 5100; Pub. L. 115–97, title I, § 13603(c)(2), Dec. 22, 2017, 131 Stat. 2164.)

REFERENCES IN TEXT

Section 4041 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(3)(B)(iii), is classified to section 1341 of Title 29, Labor.

Section 16(a) of the Securities Exchange Act of 1934, referred to in subsec. (b)(3)(D)(ii), is classified to section 78p(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 409A was renumbered section 409 of this title.

AMENDMENTS

2017—Subsec. (d)(7). Pub. L. 115–97 added par. (7).

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–458 inserted ''to an applicable covered employee'' after ''under the plan''.

2006—Subsec. (b)(3). Pub. L. 109–280, § 116(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 109–280 redesignated pars. (3) and (4) as (4) and (5), respectively, and substituted ''paragraph (1), (2), or (3)'' for ''paragraph (1) or (2)'' wherever appearing.

2005—Subsec. (a)(4)(C)(ii). Pub. L. 109–135 struck out ''first'' after ''requires that the''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to stock attributable to options exercised, or restricted stock units settled, after Dec. 31, 2017, see section 13603(f)(1) of Pub. L. 115–97, set out as a note under section 83 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

Pub. L. 109–280, title I, § 116(c), Aug. 17, 2006, 120 Stat. 858, provided that: ''The amendments made by this section [amending this section] shall apply to transfers or other reservation of assets after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 109–135, title IV, § 403(hh)(3)(A), Dec. 21, 2005, 119 Stat. 2631, provided that: ''Notwithstanding section 885(d)(1) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, set out below], subsection (b) of section 409A of the Internal Revenue Code of 1986 shall take effect on January 1, 2005.''

Pub. L. 108–357, title VIII, § 885(d), Oct. 22, 2004, 118 Stat. 1640, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 3401, 6041, and 6051 of this title] shall apply to amounts deferred after December 31, 2004.

''(2) SPECIAL RULES.—

''(A) EARNINGS.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

''(B) MATERIAL MODIFICATIONS.—For purposes of this subsection, amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, unless such modification is pursuant to the guidance issued under subsection (f) [set out as a note below].

''(3) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—The amendments made by this section shall not apply to any nonelective deferred compensation to which section 457 of the Internal Revenue Code of 1986 does not apply by reason of section 457(e)(12) of such Code, but only if such compensation is provided under a nonqualified deferred compensation plan—

''(A) which was in existence on May 1, 2004,

''(B) which was providing nonelective deferred compensation described in such section 457(e)(12) on such date, and

''(C) which is established or maintained by an organization incorporated on July 2, 1974.

If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.''

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.

GUIDANCE RELATING TO CONFORMANCE WITH FUNDING RULES

Pub. L. 109–135, title IV, § 403(hh)(3)(B), Dec. 21, 2005, 119 Stat. 2631, provided that: ''Not later than 90 days after the date of the enactment of this Act [Dec. 21,

2005], the Secretary of the Treasury shall issue guidance under which a nonqualified deferred compensation plan which is in violation of the requirements of section 409A(b) of such Code shall be treated as not having violated such requirements if such plan comes into conformance with such requirements during such limited period as the Secretary may specify in such guidance.''

GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL

Pub. L. 108–357, title VIII, §885(e), Oct. 22, 2004, 118 Stat. 1640, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.''

GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS

Pub. L. 108–357, title VIII, §885(f), Oct. 22, 2004, 118 Stat. 1641, as amended by Pub. L. 109–135, title IV, §403(hh)(4), Dec. 21, 2005, 119 Stat. 2632, provided that: ''Not later than 60 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before January 1, 2005, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), be amended—

''(1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with regard to amounts deferred after December 31, 2004, but only if amounts subject to the termination or cancellation are includible in income of the participant as earned (or, if later, when no longer subject to substantial risk of forfeiture), and

''(2) to conform to the requirements of such section 409A with regard to amounts deferred after December 31, 2004.''

SUBPART B—SPECIAL RULES

Sec.
410. Minimum participation standards.
411. Minimum vesting standards.
412. Minimum funding standards.
413. Collectively bargained plans.[1]
414. Definitions and special rules.
415. Limitations on benefits and contribution under qualified plans.
416. Special rules for top-heavy plans.
417. Definitions and special rules for purposes of minimum survivor annuity requirements.

AMENDMENTS

1984—Pub. L. 98–397, title II, §203(c), Aug. 23, 1984, 98 Stat. 1445, added item 417.

1982—Pub. L. 97–248, title II, §240(d), Sept. 3, 1982, 96 Stat. 520, added item 416.

1974—Pub. L. 93–406, title II, §1011, Sept. 2, 1974, 88 Stat. 898, added subpart heading and analysis of sections.

§410. Minimum participation standards

(a) Participation

(1) Minimum age and service conditions

(A) General rule

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 21; or

(ii) the date on which he completes 1 year of service.

(B) Special rules for certain plans

(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting ''2 years of service'' for ''1 year of service''.

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii)) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting ''26'' for ''21''. This clause shall not apply to any plan to which clause (i) applies.

(2) Maximum age conditions

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age.

(3) Definition of year of service

(A) General rule

For purposes of this subsection, the term ''year of service'' means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, under regulations prescribed by the Secretary of Labor, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term ''year of service'' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(C) Hours of service

For purposes of this subsection, the term ''hour of service'' means a time of service determined under regulations prescribed by the Secretary of Labor.

[1] So in original. Does not conform to section catchline.

(D) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out this subparagraph.

(4) Time of participation

A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(5) Breaks in service

(A) General rule

Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

(B) Employees under 2-year 100 percent vesting

In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(C) 1-year break in service

In computing an employee's period of service for purposes of paragraph (1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

(D) Nonvested participants

(i) In general

For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) Years of service not taken into account

If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined

For purposes of clause (i), the term ''nonvested participant'' means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service (as defined in section 411(a)(6)(A)) has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited

The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined

For purposes of this subparagraph, the term ''year'' means the period used in computations pursuant to paragraph (3).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be

given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(b) Minimum coverage requirements

(1) In general

A trust shall not constitute a qualified trust under section 401(a) unless such trust is designated by the employer as part of a plan which meets 1 of the following requirements:

(A) The plan benefits at least 70 percent of employees who are not highly compensated employees.

(B) The plan benefits—

(i) a percentage of employees who are not highly compensated employees which is at least 70 percent of

(ii) the percentage of highly compensated employees benefiting under the plan.

(C) The plan meets the requirements of paragraph (2).

(2) Average benefit percentage test

(A) In general

A plan shall be treated as meeting the requirements of this paragraph if—

(i) the plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees, and

(ii) the average benefit percentage for employees who are not highly compensated employees is at least 70 percent of the average benefit percentage for highly compensated employees.

(B) Average benefit percentage

For purposes of this paragraph, the term ''average benefit percentage'' means, with respect to any group, the average of the benefit percentages calculated separately with respect to each employee in such group (whether or not a participant in any plan).

(C) Benefit percentage

For purposes of this paragraph—

(i) In general

The term ''benefit percentage'' means the employer-provided contribution or benefit of an employee under all qualified plans maintained by the employer, expressed as a percentage of such employee's compensation (within the meaning of section 414(s)).

(ii) Period for computing percentage

At the election of an employer, the benefit percentage for any plan year shall be computed on the basis of contributions or benefits for—

(I) such plan year, or

(II) any consecutive plan year period (not greater than 3 years) which ends with such plan year and which is specified in such election.

An election under this clause, once made, may be revoked or modified only with the consent of the Secretary.

(D) Employees taken into account

For purposes of determining who is an employee for purposes of determining the average benefit percentage under subparagraph (B)—

(i) except as provided in clause (ii), paragraph (4)(A) shall not apply, or

(ii) if the employer elects, paragraph (4)(A) shall be applied by using the lowest age and service requirements of all qualified plans maintained by the employer.

(E) Qualified plan

For purposes of this paragraph, the term ''qualified plan'' means any plan which (without regard to this subsection) meets the requirements of section 401(a).

(3) Exclusion of certain employees

For purposes of this subsection, there shall be excluded from consideration—

(A) employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Subparagraph (A) shall not apply with respect to coverage of employees under a plan pursuant to an agreement under such subparagraph. For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).

(4) Exclusion of employees not meeting age and service requirements

(A) In general

If a plan—

(i) prescribes minimum age and service requirements as a condition of participation, and

(ii) excludes all employees not meeting such requirements from participation,

then such employees shall be excluded from consideration for purposes of this subsection.

(B) Requirements may be met separately with respect to excluded group

If employees not meeting the minimum age or service requirements of subsection (a)(1) (without regard to subparagraph (B) thereof) are covered under a plan of the employer which meets the requirements of paragraph (1) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets the requirements of paragraph (1).

(C) Requirements not treated as being met before entry date

An employee shall not be treated as meeting the age and service requirements described in this paragraph until the first date on which, under the plan, any employee with the same age and service would be eligible to commence participation in the plan.

(5) Line of business exception

(A) In general

If, under section 414(r), an employer is treated as operating separate lines of business for a year, the employer may apply the requirements of this subsection for such year separately with respect to employees in each separate line of business.

(B) Plan must be nondiscriminatory

Subparagraph (A) shall not apply with respect to any plan maintained by an employer unless such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees.

(6) Definitions and special rules

For purposes of this subsection—

(A) Highly compensated employee

The term ''highly compensated employee'' has the meaning given such term by section 414(q).

(B) Aggregation rules

An employer may elect to designate—

(i) 2 or more trusts,

(ii) 1 or more trusts and 1 or more annuity plans, or

(iii) 2 or more annuity plans,

as part of 1 plan intended to qualify under section 401(a) to determine whether the requirements of this subsection are met with respect to such trusts or annuity plans. If an employer elects to treat any trusts or annuity plans as 1 plan under this subparagraph, such trusts or annuity plans shall be treated as 1 plan for purposes of section 401(a)(4).

(C) Special rules for certain dispositions or acquisitions

(i) In general

If a person becomes, or ceases to be, a member of a group described in subsection (b), (c), (m), or (o) of section 414, then the requirements of this subsection shall be treated as having been met during the transition period with respect to any plan covering employees of such person or any other member of such group if—

(I) such requirements were met immediately before each such change, and

(II) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members of a group) or such plan meets such other requirements as the Secretary may prescribe by regulation.

(ii) Transition period

For purposes of clause (i), the term ''transition period'' means the period—

(I) beginning on the date of the change in members of a group, and

(II) ending on the last day of the 1st plan year beginning after the date of such change.

(D) Special rule for certain employee stock ownership plans

A trust which is part of a tax credit employee stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of this subsection if—

(i) such plan benefits 50 percent or more of all the employees who are eligible under a nondiscriminatory classification under the plan, and

(ii) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year.

(E) Eligibility to contribute

In the case of contributions which are subject to section 401(k) or 401(m), employees who are eligible to contribute (or elect to have contributions made on their behalf) shall be treated as benefiting under the plan (other than for purposes of paragraph (2)(A)(ii)).

(F) Employers with only highly compensated employees

A plan maintained by an employer which has no employees other than highly compensated employees for any year shall be treated as meeting the requirements of this subsection for such year.

(G) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Application of participation standards to certain plans

(1) The provisions of this section (other than paragraph (2) of this subsection) shall not apply to—

(A) a governmental plan (within the meaning of section 414(d)),

(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by subsection (d) of this section has not been made,

(C) a plan which has not at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall apply only if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).

(d) Election by church to have participation, vesting, funding, etc., provisions apply

(1) In general

If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner as the Secretary may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

(2) Election irrevocable

An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable.

(Added Pub. L. 93–406, title II, §1011, Sept. 2, 1974, 88 Stat. 898; amended Pub. L. 94–455, title XIX, §§1901(a)(61), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1774, 1834; Pub. L. 96–605, title II, §225(a), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–397, title II, §202(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1436–1438; Pub. L. 99–509, title IX, §9203(a)(2), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99–514, title XI, §§1112(a), 1113(c), (d)(A), Oct. 22, 1986, 100 Stat. 2440, 2447; Pub. L. 100–647, title I, §1011(h)(1), (2), (11), title III, §3021(a)(13)(B), Nov. 10, 1988, 102 Stat. 3464, 3467, 3631; Pub. L. 101–239, title VII, §7841(d)(6), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105–34, title XV, §1505(a)(3), Aug. 5, 1997, 111 Stat. 1063; Pub. L. 109–280, title IV, §402(h)(1), Aug. 17, 2006, 120 Stat. 927.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b)(3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title II of the Railway Labor Act was added by act Apr. 10, 1936, ch. 166, 49 Stat. 1189, and is classified generally to subchapter II (§181 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–280, in concluding provisions, substituted ''For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).'' for ''Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.''

1997—Subsec. (c)(2). Pub. L. 105–34 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the requirements of section 401(a)(3) as in effect on September 1, 1974.''

1989—Subsec. (a)(2). Pub. L. 101–239 struck out comma before period at end.

1988—Subsec. (b)(4)(B). Pub. L. 100–647, §1011(h)(1), substituted ''not meeting'' for ''do not meet'' and struck out ''and'' before ''are covered''.

Subsec. (b)(4)(C). Pub. L. 100–647, §1011(h)(11), added subpar. (C).

Subsec. (b)(6)(C)(i)(II). Pub. L. 100–647, §3021(a)(13)(B), inserted ''or such plan meets such other requirements as the Secretary may prescribe by regulation'' after ''of a group)''.

Subsec. (b)(6)(F), (G). Pub. L. 100–647, §1011(h)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

1986—Subsec. (a)(1)(B)(i). Pub. L. 99–514, §1113(c), substituted ''2 years of service'' for ''3 years of service'' in two places.

Subsec. (a)(2). Pub. L. 99–509 substituted a period for ''unless—

''(A) the plan is a—

''(i) defined benefit plan, or

''(ii) target benefit plan (as defined under regulations prescribed by the Secretary), and

''(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.''

Subsec. (a)(5)(B). Pub. L. 99–514, §1113(d)(A), substituted ''2-year'' for ''3-year'' in heading.

Subsec. (b). Pub. L. 99–514, §1112(a), substituted ''Minimum coverage requirements'' for ''Eligibility'' as subsec. (b) heading and amended subsec. generally, revising and restating as pars. (1) to (6) provisions formerly contained in pars. (1) to (3).

1984—Subsec. (a)(1)(A)(i). Pub. L. 98–397, §202(a)(1), substituted ''21'' for ''25''.

Subsec. (a)(1)(B)(ii). Pub. L. 98–397, §202(a)(2), substituted '' '26' for '21' '' for '' '30' for '25' ''.

Subsec. (a)(5)(D). Pub. L. 98–397, §202(d)(1), amended subpar. (D) generally.

Subsec. (a)(5)(E). Pub. L. 98–397, §202(e)(1), added subpar. (E).

1981—Subsec. (b)(3)(C). Pub. L. 97–34 substituted ''section 911(d)(2)'' for ''section 911(b)''.

1980—Subsec. (b)(2), (3). Pub. L. 96–605 added par. (2), redesignated former par. (2) as (3) and substituted ''paragraphs (1) and (2)'' for ''paragraph (1)''.

1976—Subsec. (a)(2)(A)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(5)(C), (D). Pub. L. 94–455, §1901(a)(61)(A), substituted ''purposes of paragraph (1)'' for ''purposes of subsection (a)(1)''.

Subsec. (b)(1)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1)(C). Pub. L. 94–455, §1901(a)(61)(B), substituted ''September 2, 1974,'' for ''the date of the en-

actment of the Employee Retirement Income Security Act of 1974''.

Subsec. (c)(2). Pub. L. 94–455, § 1901(a)(61)(C), substituted ''September 1, 1974'' for ''the day before the date of the enactment of this section''.

Subsec. (d)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning before, on, or after Aug. 17, 2006, see section 402(h)(2) of Pub. L. 109–280, set out as a Special Funding Rules for Certain Plans Maintained by Commercial Airlines note under section 430 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(1), (2), (11) 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)(13)(B) 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 AMENDMENTS

Amendment by section 1112(a) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1113(c), (d)(A) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99–514, as amended, set out as a note under section 411 of this title.

Amendment by Pub. L. 99–509 applicable only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date, see section 9204(b) of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after December 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(61) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE; TRANSITIONAL RULES

Pub. L. 93–406, title II, § 1017, Sept. 2, 1974, 88 Stat. 932, as amended by Pub. L. 94–12, title IV, § 402, Mar. 29, 1975, 89 Stat. 47; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part [part 1 (§§ 1011–1017) of subtitle A of title II of Pub. L. 93–406, enacting this section and sections 411, 412, 413, 414, and 4971 of this title, amending sections 275, 401, 404, 406, 407, 805, 6161, 6201, 6204, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6512, 6601, 6653, 6659 [now 6662], 6676, 6677, 6679, 6682, 6688, 6861, 6862, and 7422 of this title and enacting provisions set out as notes under this section and sections 411 and 412 of this title] shall apply for plan years beginning after the date of the enactment of this Act [Sept. 2, 1974].

''(b) EXISTING PLANS.—Except as otherwise provided in subsections (c) through (i), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

''(c) EXISTING PLANS UNDER COLLECTIVE BARGAINING AGREEMENTS.—

''(1) APPLICATION OF VESTING RULES TO CERTAIN PLAN PROVISIONS.—

''(A) WAIVER OF APPLICATION.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b)(1) or (2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)).

''(B) SPECIAL TEMPORARY WAIVER PERIOD.—For purposes of this paragraph, the term 'special temporary waiver period' means plan years beginning after December 31, 1975, and before the earlier of—

''(i) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Sept. 2, 1974]), or

''(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act [see Short Title note set out under section 1001 of Title 29, Labor] shall not be treated as a termination of such collective bargaining agreement.

''(C) DETERMINATION BY SECRETARY OF LABOR REQUIRED.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act [Sept. 2, 1974] are not less favorable to the employees, in the aggregate than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1986.

''(D) SUPPLEMENTARY OR SPECIAL PLAN PROVISIONS.—For purposes of this paragraph, the term 'supplementary or special plan provision' means any plan provision which—

''(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

''(ii) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

''(2) APPLICATION OF FUNDING RULES.—

''(A) IN GENERAL.—In the case of a plan maintained on January 1, 1974, pursuant to one or more

agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1986, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1)(B)).

''(B) WAIVER OF UNDERFUNDING.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a)(7) of the Internal Revenue Code of 1986 apply without regard to the amendment of such section 401(a)(7) by section 1016(a)(2)(C) of this Act [Pub. L. 93–406], the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act [enacting this section and section 411 of this title] or related amendments made by this part.

''(C) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization, which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1986 exclusively for the benefit of its employees and their beneficiaries, section 412 of such Code and other amendments made by this part to the extent such amendments relate to such section 412, shall be applied by substituting for the term 'December 31, 1975' in subsection (b), the earlier of—

''(i) the date on which the second convention of such labor organization held after the date of the enactment of this Act [Sept. 2, 1974] ends, or

''(ii) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subparagraph (A) or (B) be substituted.

''(d) EXISTING PLANS MAY ELECT NEW PROVISIONS.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1986 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act [Sept. 2, 1974] but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

''(e) CERTAIN DEFINITIONS AND SPECIAL RULES.—Section 414 of the Internal Revenue Code of 1986 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act [Pub. L. 93–406], shall take effect on the date of the enactment of this Act [Sept. 2, 1974].

''(f) TRANSITIONAL RULES WITH RESPECT TO BREAKS IN SERVICE.—

''(1) PARTICIPATION.—In the case of a plan to which section 410 of the Internal Revenue Code of 1986 [this section] applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 410 first becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—

''(A) the date on which his participation would commence under the break in service rules of section 410(a)(5) of such Code, or

''(B) the date on which his participation would commence under the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

''(2) VESTING.—In the case of a plan to which section 411 of the Internal Revenue Code of 1986 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 411 first becomes effective with respect to such plan) provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

''(A) the break in service rules of section 411(a)(6) of such Code, or

''(B) the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

''(g) 3-YEAR DELAY FOR CERTAIN PROVISIONS.—Subparagraphs (B) and (C) of section 404(a)(1) shall apply only in the case of plan years beginning on or after 3 years after the date of the enactment of this Act [Sept. 2, 1974].

''(h)(1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1986 shall apply to plan years beginning after December 31, 1953.

''(2)(A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting '401(a)(3)' for '410'.

''(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b)(2) of such section 413 shall be applied by substituting '401(a)(7)' for '411(d)(3)'.

''(C)(i) The provisions of subsection (b)(4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

''(ii) The provisions of subsection (b)(5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

''(i) CONTRIBUTIONS TO H.R. 10 PLANS.—Notwithstanding subsections (b) and (c)(2), in the case of a plan in existence on January 1, 1974, the amendment made by section 1013(c)(2) of this Act [amending section 404(a)(6) of this title] shall apply, with respect to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1986, for plan years beginning after December 31, 1974, but only if the employer (within the meaning of section 401(c)(4) of such Code) elects in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe, to have such amendment so apply. Any election made under this subsection, once made, shall be irrevocable.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1113 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission shall each issue before Feb. 1, 1988, final regulations to carry out amendments made by section 9203 of Pub. L. 99–509, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

DEEMED ELECTION

Pub. L. 113–97, title I, §103(c), Apr. 7, 2014, 128 Stat. 1120, provided that: ''For purposes of the Internal Revenue Code of 1986, sections 4(b)(2) and 4021(b)(3) of the Employee Retirement Income Security Act of 1974 [29

U.S.C. 1003(b)(2), 1321(b)(3)], and all other purposes, a plan shall be deemed to have made an irrevocable election under section 410(d) of the Internal Revenue Code of 1986 if—

''(1) the plan was established before January 1, 2014;

''(2) the plan falls within the definition of a CSEC plan;

''(3) the plan sponsor does not make an election under section 210(f)(3)(A) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1060(f)(3)(A)] and section 414(y)(3)(A) of the Internal Revenue Code of 1986, as added by this Act; and

''(4) the plan, plan sponsor, administrator, or fiduciary remits one or more premium payments for the plan to the Pension Benefit Guaranty Corporation for a plan year beginning after December 31, 2013.''

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.

For provisions directing that if any amendments made by section 9203(a)(2) of Pub. L. 99–509 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 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

§ 411. Minimum vesting standards

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) Employee contributions

A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) Employer contributions

(A) Defined benefit plans

(i) In general

In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) 5-year vesting

A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) 3 to 7 year vesting

A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

(B) Defined contribution plans

(i) In general

In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) 3-year vesting

A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) 2 to 6 year vesting

A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.

(3) Certain permitted forfeitures, suspensions, etc.

For purposes of this subsection—

(A) Forfeiture on account of death

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

(B) Suspension of benefits upon reemployment of retiree

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multi-employer plan, by the employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area cov-

ered by the plan as when such benefits commenced.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term ''employed''.

(C) Effect of retroactive plan amendments

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(d)(2).

(D) Withdrawal of mandatory contribution

(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant before September 2, 1974 if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19).

(E) Cessation of contributions under a multiemployer plan

A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(F) Reduction and suspension of benefits by a multiemployer plan

A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

(i) the plan is amended to reduce benefits under section 418D[1] or under section 4281 of the Employee Retirement Income Security Act of 1974, or

(ii) benefit payments under the plan may be suspended under section 418E or under section 4281 of the Employee Retirement Income Security Act of 1974.

(G) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

A matching contribution (within the meaning of section 401(m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(4) Service included in determination of nonforfeitable percentage

In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,[2]

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

[1] See References in Text note below.

[2] So in original. The comma probably should be a semicolon.

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary);

(D) service not required to be taken into account under paragraph (6);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974), or

(II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act in conjunction with the decertification of the collective bargaining representative, and

(ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act.

(5) Year of service

(A) General rule

For purposes of this subsection, except as provided in subparagraph (C), the term ''year of service'' means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.

(B) Hours of service

For purposes of this subsection, the term ''hours of service'' has the meaning provided by section 410(a)(3)(C).

(C) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term ''year of service'' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(D) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

(6) Breaks in service

(A) Definition of 1-year break in service

For purposes of this paragraph, the term ''1-year break in service'' means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.

(B) 1 year of service after 1-year break in service

For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) 5 consecutive 1-year breaks in service under defined contribution plan

For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D) Nonvested participants

(i) In general

For purposes of paragraph (4), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) Years of service not taken into account

If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined

For purposes of clause (i), the term ''nonvested participant'' means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited

The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined

For purposes of this subparagraph, the term ''year'' means the period used in computations pursuant to paragraph (5).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(7) Accrued benefit

(A) In general

For purposes of this section, the term ''accrued benefit'' means—

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

(B) Effect of certain distributions

Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 411(a)(11)(A)) permitted under regulations prescribed by the Secretary, or

(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(C) Repayment of subparagraph (B) distributions

For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(D) Accrued benefit attributable to employee contributions

The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions.

(8) Normal retirement age

For purposes of this section, the term ''normal retirement age'' means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

(9) Normal retirement benefit

For purposes of this section, the term ''normal retirement benefit'' means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act become payable which—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(10) Changes in vesting schedule

(A) General rule

A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) Election of former schedule

A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(11) Restrictions on certain mandatory distributions

(A) In general

If the present value of any nonforfeitable accrued benefit exceeds $5,000, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

(B) Determination of present value

For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3).

(C) Dividend distributions of ESOPS arrangement

This paragraph shall not apply to any distribution of dividends to which section 404(k) applies.

(D) Special rule for rollover contributions

A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term ''rollover contributions'' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

[(12) Repealed. Pub. L. 109–280, title IX, § 904(a)(2), Aug. 17, 2006, 120 Stat. 1049]

(13) Special rules for plans computing accrued benefits by reference to hypothetical account balance or equivalent amounts

(A) In general

An applicable defined benefit plan shall not be treated as failing to meet—

(i) subject to subparagraph (B), the requirements of subsection (a)(2), or

(ii) the requirements of subsection (a)(11) or (c), or the requirements of section 417(e), with respect to accrued benefits derived from employer contributions,

solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in the hypothetical account described in subparagraph (C) or as an accumulated percentage of the participant's final average compensation.

(B) 3-year vesting

In the case of an applicable defined benefit plan, such plan shall be treated as meeting the requirements of subsection (a)(2) only if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(C) Applicable defined benefit plan and related rules

For purposes of this subsection—

(i) In general

The term ''applicable defined benefit plan'' means a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.

(ii) Regulations to include similar plans

The Secretary shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan.

(b) Accrued benefit requirements

(1) Defined benefit plans

(A) 3-percent method

A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) 133⅓ percent rule

A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) Fractional rule

A defined benefits plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Accrual for service before effective date

Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) First two years of service

Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term ''years of service'' has the meaning provided by section 410(a)(3)(A).

(F) Certain insured defined benefit plans

Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of subparagraphs (B) and (C) of section 412(e)(3) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of subparagraphs (D), (E), and (F) of section 412(e)(3) were satisfied.

(G) Accrued benefit may not decrease on account of increasing age or service

Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(H) Continued accrual beyond normal retirement age

(i) In general

Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

(ii) Certain limitations permitted

A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(iii) Adjustments under plan for delayed retirement taken into account

In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of inservice distribution of benefits, and

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

(iv) Disregard of subsidized portion of early retirement benefit

A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(v) Coordination with other requirements

The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.

(2) Defined contribution plans

(A) In general

A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

(B) Application to target benefit plans

The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.

(C) Coordination with other requirements

The Secretary may provide by regulation for the coordination of the requirements of this paragraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.

(3) Separate accounting required in certain cases

A plan satisfies the requirements of this paragraph if—

(A) in the case of the defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(4) Year of participation

(A) Definition

For purposes of determining an employee's accrued benefit, the term ''year of participation'' means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5), determined without regard to section 410(a)(5)(E)) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

(B) Less than full time service

For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) Less than 1,000 hours of service during year

For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.

(D) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term ''year of participation'' shall be such period as determined under regulations prescribed by the Secretary of Labor.

(E) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

(5) Special rules relating to age

(A) Comparison to similarly situated younger individual

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated

For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits

In determining the accrued benefit as of any date for purposes of this subparagraph, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit

For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans

(i) Interest credits

(I) In general

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the plan provides that an interest credit (or equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return

The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I).

(ii) Special rule for plan conversions

If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual

Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies

For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount[3] with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment

For purposes of this subparagraph—

(I) In general

The term ''applicable plan amendment'' means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits

If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments

The Secretary shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan

For purposes of this subparagraph, the term ''applicable defined benefit plan'' has the meaning given such term by section 411(a)(13).

(vi) Termination requirements

An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) Certain offsets permitted

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are otherwise allowable in applying the requirements of section 401(a).

(D) Permitted disparities in plan contributions or benefits

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(*l*) are met.

(E) Indexing permitted

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) Protection against loss

Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing

For purposes of this subparagraph, the term ''indexing'' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy

For purposes of this paragraph, the terms ''early retirement benefit'' and ''retirement-type subsidy'' have the meaning given such terms in subsection (d)(6)(B)(i).

(G) Benefit accrued to date

For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(c) Allocation of accrued benefits between employer and employee contributions

(1) Accrued benefit derived from employer contributions

For purposes of this section, an employee's accrued benefit derived from employer con-

[3] So in original. Probably should be ''similar account''.

tributions as of any applicable date is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2) Accrued benefit derived from employee contributions

(A) Plans other than defined benefit plans

In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) Defined benefit plans

In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date).

(C) Definition of accumulated contributions

For purposes of this subsection, the term ''accumulated contribution'' means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

For purposes of this subparagraph, the term ''mandatory contributions'' means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) Adjustments

The Secretary is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(3) Actuarial adjustment

For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(d) Special rules

(1) Coordination with section 401(a)(4)

A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless—

(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)), or

(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) Prohibited discrimination

Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4).

(3) Termination or partial termination; discontinuance of contributions

Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that—

(A) upon its termination or partial termination, or

(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan. For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.

[(4) Repealed. Pub. L. 99–514, title XI, § 1113(b), Oct. 22, 1986, 100 Stat. 2447]

(5) Treatment of voluntary employee contributions

In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(6) Accrued benefit not to be decreased by amendment

(A) In general

A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(d)(2), or section 4281 of the Employee Retirement Income Security Act of 1974.

(B) Treatment of certain plan amendments

For purposes of subparagraph (A), a plan amendment which has the effect of—

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

(C) Special rule for ESOPS

For purposes of this paragraph, any—

(i) tax credit employee stock ownership plan (as defined in section 409(a)), or

(ii) employee stock ownership plan (as defined in section 4975(e)(7)),

shall not be treated as failing to meet the requirements of this paragraph merely because it modifies distribution options in a nondiscriminatory manner.

(D) Plan transfers

(i) In general

A defined contribution plan (in this subparagraph referred to as the ''transferee plan'') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the ''transferor plan'') to the extent that—

(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(ii) Special rule for mergers, etc.

Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(E) Elimination of form of distribution

Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and

(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

(e) Application of vesting standards to certain plans

(1) The provisions of this section (other than paragraph (2)) shall not apply to—

(A) a governmental plan (within the meaning of section 414(d)),

(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

(C) a plan which has not, at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on September 1, 1974.

(f) Special rule for determining normal retirement age for certain existing defined benefit plans

(1) In general

Notwithstanding subsection (a)(8), an applicable plan shall not be treated as failing to meet any requirement of this subchapter, or as failing to have a uniform normal retirement age for purposes of this subchapter, solely because the plan provides for a normal retirement age described in paragraph (2).

(2) Applicable plan

For purposes of this subsection—

(A) In general

The term ''applicable plan'' means a defined benefit plan the terms of which, on or before December 8, 2014, provided for a normal retirement age which is the earlier of—

(i) an age otherwise permitted under subsection (a)(8), or

(ii) the age at which a participant completes the number of years (not less than 30 years) of benefit accrual service specified by the plan.

A plan shall not fail to be treated as an applicable plan solely because the normal retirement age described in the preceding sentence only applied to certain participants or only applied to employees of certain employers in the case of a plan maintained by more than 1 employer.

(B) Expanded application

Subject to subparagraph (C), if, after December 8, 2014, an applicable plan is amended to expand the application of the normal retirement age described in subparagraph (A) to additional participants or to employees of additional employers maintaining the plan, such plan shall also be treated as an applicable plan with respect to such participants or employees.

(C) Limitation on expanded application

A defined benefit plan shall be an applicable plan only with respect to an individual who—

(i) is a participant in the plan on or before January 1, 2017, or

(ii) is an employee at any time on or before January 1, 2017, of any employer maintaining the plan, and who becomes a participant in such plan after such date.

(Added Pub. L. 93–406, title II, §1012(a), Sept. 2, 1974, 88 Stat. 901; amended Pub. L. 94–455, title XIX, §§1901(a)(62), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1774, 1834; Pub. L. 96–364, title II, §206, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 98–397, title II, §202(b), (c), (d)(2), (e)(2), (3), (f), 205, title III, §301(a)(1), Aug. 23, 1984, 98 Stat. 1437, 1439, 1440, 1449, 1450; Pub. L. 99–509, title IX, §§9202(b), 9203(b)(2), Oct. 21, 1986, 100 Stat. 1977, 1979; Pub. L. 99–514, title XI, §§1113(a), (b), (d)(B), 1114(b)(10), 1139(a), title XVIII, §1898(a)(1)(A), (4)(A), (d)(1)(A), (2)(A), (f)(1)(A), Oct. 22, 1986, 100 Stat. 2446, 2447, 2451, 2487, 2941, 2943, 2955, 2956; Pub. L. 100–203, title IX, §9346(b), Dec. 22, 1987, 101 Stat. 1330–374; Pub. L. 100–647, title I, §1018(t)(8)(B), Nov. 10, 1988, 102 Stat. 3589; Pub. L. 101–239, title VII, §§7861(a)(5)(A), (6)(A), 7871(a)(1), (2), (b)(1), 7881(m)(1), Dec. 19, 1989, 103 Stat. 2430, 2435, 2443; Pub. L. 102–318, title V, §521(b)(44), July 3, 1992, 106 Stat. 313; Pub. L. 103–465, title VII, §767(a)(1), Dec. 8, 1994, 108 Stat. 5037; Pub. L. 104–188, title I, §1442(a), Aug. 20, 1996, 110 Stat. 1808; Pub. L. 105–34, title X, §1071(a)(1), (2)(A), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title VI, §§633(a), 645(a)(1), (b)(1), 648(a)(1), June 7, 2001, 115 Stat. 115, 123, 125, 127; Pub. L. 108–311, title IV, §408(a)(14), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, §114(b), title VII, 701(b), title IX, §§902(d)(2)(A), (B), 904(a), Aug. 17, 2006, 120 Stat. 853, 984, 1038, 1048; Pub. L. 110–458, title I, §§101(d)(2)(D), 107(b), 109(b)(2), Dec. 23, 2008, 122 Stat. 5099, 5107, 5111; Pub. L. 113–235, div. P, §2(b), Dec. 16, 2014, 128 Stat. 2828.)

REFERENCES IN TEXT

Section 418D, referred to in subsec. (a)(3)(F)(i), was repealed by Pub. L. 113–235, div. O, title I, §108(b)(1), Dec. 16, 2014, 128 Stat. 2787.

Section 4281 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(3)(F)(i), (ii) and (d)(6)(A), is classified to section 1441 of Title 29, Labor.

Section 4203 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(4)(G)(i)(I), is classified to section 1383 of Title 29, Labor.

Section 4205(b)(2)(A)(i) of such Act, referred to in subsec. (a)(4)(G)(i)(II), is classified to section 1385(b)(2)(A)(i) of Title 29, Labor.

Section 4048 of such Act, referred to in subsec. (a)(4)(G)(ii), is classified to section 1348 of Title 29, Labor.

The Social Security Act, referred to in subsecs. (a)(9) and (b)(1)(G), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classi-

fied generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2014—Subsec. (f). Pub. L. 113–235 added subsec. (f).

2008—Subsec. (a)(3)(C). Pub. L. 110–458, § 101(d)(2)(D)(i), substituted ''section 412(d)(2)'' for ''section 412(c)(2)''.

Subsec. (a)(3)(G). Pub. L. 110–458, § 109(b)(2), substituted ''permissible withdrawal'' for ''erroneous automatic contribution'' in heading and ''a permissible withdrawal'' for ''an erroneous automatic contribution'' in text.

Subsec. (a)(13)(A). Pub. L. 110–458, § 107(b)(2), substituted ''subparagraph (B)'' for ''paragraph (2)'' in cl. (i) and ''subparagraph (C)'' for paragraph (3) in concluding provisions, added cl. (ii), and struck out former cl. (ii) which read as follows: ''the requirements of subsection (c) or section 417(e) with respect to contributions other than employee contributions,''.

Subsec. (b)(5)(A)(iii). Pub. L. 110–458, § 107(b)(1)(A), substituted ''subparagraph'' for ''clause''.

Subsec. (b)(5)(B)(i)(II). Pub. L. 110–458, § 107(b)(3), amended subcl. (II) generally. Prior to amendment, text read as follows: ''An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.''

Subsec. (b)(5)(C). Pub. L. 110–458, § 107(b)(1)(B), inserted ''otherwise'' before ''allowable''.

Subsec. (d)(6)(A). Pub. L. 110–458, § 101(d)(2)(D)(ii), substituted ''section 412(d)(2)'' for ''section 412(e)(2)''.

2006—Subsec. (a)(2). Pub. L. 109–280, § 904(a)(1), reenacted heading without change and amended text of par. (2) generally, substituting provisions relating to vesting requirements under defined benefit plans and defined contribution plans for provisions relating to 5-year vesting and 3 to 7 year vesting under all plans.

Subsec. (a)(3)(C). Pub. L. 109–280, § 114(b)(1), substituted ''412(c)(2)'' for ''412(c)(8)''.

Subsec. (a)(3)(G). Pub. L. 109–280, § 902(d)(2)(A), (B), inserted ''or erroneous automatic contribution'' after ''or contribution'' in heading and ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),'' in text.

Subsec. (a)(12). Pub. L. 109–280, § 904(a)(2), struck out par. (12), which related to faster vesting for matching contributions by employers.

Subsec. (a)(13). Pub. L. 109–280, § 701(b)(2), added par. (13).

Subsec. (b)(1)(F). Pub. L. 109–280, § 114(b)(2), substituted ''subparagraphs (B) and (C) of section 412(e)(3)'' for ''paragraphs (2) and (3) of section 412(i)'' in cl. (ii) and ''subparagraphs (D), (E), and (F) of section 412(e)(3)'' for ''paragraphs (4), (5), and (6) of section 412(i)'' in concluding provisions.

Subsec. (b)(5). Pub. L. 109–280, § 701(b)(1), added par. (5).

Subsec. (d)(6)(A). Pub. L. 109–280, § 114(b)(3), substituted ''412(e)(2)'' for ''412(c)(8)''.

2004—Subsec. (a)(12)(B). Pub. L. 108–311 substituted ''6 or more'' for ''6'' in table.

2001—Subsec. (a)(2). Pub. L. 107–16, § 633(a)(1), substituted ''Except as provided in paragraph (12), a plan'' for ''A plan'' in introductory provisions.

Subsec. (a)(11)(D). Pub. L. 107–16, § 648(a)(1), added subpar. (D).

Subsec. (a)(12). Pub. L. 107–16, § 633(a)(2), added par. (12).

Subsec. (d)(6)(B). Pub. L. 107–16, § 645(b)(1), inserted after second sentence ''The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner.''

Subsec. (d)(6)(D), (E). Pub. L. 107–16, § 645(a)(1), added subpars. (D) and (E).

1997—Subsec. (a)(7)(B)(i). Pub. L. 105–34, § 1071(a)(2)(A), substituted ''the dollar limit under section 411(a)(11)(A)'' for ''$3,500''.

Subsec. (a)(11)(A). Pub. L. 105–34, § 1071(a)(1), substituted ''$5,000'' for ''$3,500''.

1996—Subsec. (a)(2). Pub. L. 104–188 substituted ''subparagraph (A) or (B)'' for ''subparagraph (A), (B), or (C)'' in introductory provisions and struck out subpar. (C) which read as follows: ''MULTIEMPLOYER PLANS.—A plan satisfies the requirements of this subparagraph if—

''(i) the plan is a multiemployer plan (within the meaning of section 414(f)), and

''(ii) under the plan—

''(I) an employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

''(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I).''

1994—Subsec. (a)(11)(B). Pub. L. 103–465 reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—For purposes of subparagraph (A), the present value shall be calculated—

''(I) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

''(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under subclause (I)).

In no event shall the present value determined under subclause (II) be less than $25,000.

''(ii) APPLICABLE INTEREST RATE.—For purposes of clause (i), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

1992—Subsec. (d)(3). Pub. L. 102–318 inserted at end ''For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.''

1989—Subsec. (a)(3)(G). Pub. L. 101–239, § 7861(a)(5)(A), added subpar. (G).

Subsec. (a)(4)(A). Pub. L. 101–239, § 7861(a)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''years of service before age 18, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;''.

Subsec. (a)(7)(D). Pub. L. 101–239, § 7881(m)(1)(D), added subpar. (D).

Subsec. (a)(8)(B). Pub. L. 101–239, § 7871(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the latest of—

''(i) the time a plan participant attains age 65,

''(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

''(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan.''

Subsec. (b)(2)(B). Pub. L. 101–239, § 7871(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''DISREGARD OF SUBSIDIZED PORTION OF EARLY RETIREMENT BENEFIT.—A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion

of any early retirement benefit is disregarded in determining benefit accruals.''

Subsec. (b)(2)(C), (D). Pub. L. 101–239, §7871(a)(1), (2), redesignated subpar. (D) as (C) and substituted ''this paragraph'' for ''this subparagraph''. Former subpar. (C) redesignated (B).

Subsec. (c)(2)(B). Pub. L. 101–239, §7881(m)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(i) IN GENERAL.—In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

''(ii) APPROPRIATE CONVERSION FACTOR.—For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary.''

Subsec. (c)(2)(C)(iii). Pub. L. 101–239, §7881(m)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) from the beginning of the first plan year to which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.''

Subsec. (c)(2)(E). Pub. L. 101–239, §7881(m)(1)(C), struck out subpar. (E) which read as follows: ''LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the greater of—

''(i) the employee's accrued benefit under the plan, or

''(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.''

1988—Subsec. (a)(11)(A). Pub. L. 100–647 substituted ''nonforfeitable'' for ''vested''.

1987—Subsec. (c)(2)(C)(iii). Pub. L. 100–203, §9346(b)(1), substituted ''120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)'' for ''5 percent per annum''.

Subsec. (c)(2)(D). Pub. L. 100–203, §9346(b)(2), struck out '', the rate of interest described in clause (iii) of subparagraph (C), or both'' before ''from time to time'' in first sentence and struck out second sentence which read as follows: ''The rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973.''

1986—Subsec. (a). Pub. L. 99–514, §1898(d)(1)(A)(ii), inserted reference to par. (11) in introductory text.

Pub. L. 99–509, §9202(b)(3), substituted ''subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2)'' for ''paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b)'' in first sentence.

Subsec. (a)(2). Pub. L. 99–514, §1113(a), amended par. (2) generally, substituting provisions covering 5-year vesting, 3 to 7 year vesting, and multiemployer plans, for former provisions which had covered 10-year vesting, 5- to 15-year vesting, and the ''rule of 45''.

Subsec. (a)(3)(D)(ii). Pub. L. 99–514, §1898(a)(4)(A)(i), substituted last sentence for former last sentence which read as follows: ''In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal.''

Subsec. (a)(7)(C). Pub. L. 99–514, §1898(a)(4)(A)(ii), substituted last sentence for former last sentence which read as follows: ''In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal.''

Subsec. (a)(8)(B). Pub. L. 99–509, §9203(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the latter of—

''(i) the time a plan participant attains age 65, or

''(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.''

Subsec. (a)(10)(B). Pub. L. 99–514, §1113(d)(B), substituted ''3 years'' for ''5 years''.

Subsec. (a)(11)(A). Pub. L. 99–514, §1898(d)(1)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If the present value of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.''

Subsec. (a)(11)(B). Pub. L. 99–514, §1139(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

Subsec. (a)(11)(C). Pub. L. 99–514, §1898(d)(2)(A), added subpar. (C).

Subsec. (b)(1). Pub. L. 99–509, §9202(b)(1), substituted ''Defined benefit plans'' for ''General rules'' in heading and added subpar. (H).

Subsec. (b)(2) to (4). Pub. L. 99–509, §9202(b)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d)(1)(A), (B). Pub. L. 99–514, §1114(b)(10), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders, or highly compensated''.

Subsec. (d)(4). Pub. L. 99–514, §1113(b), repealed par. (4) which provided that a class year plan satisfied the requirements of subsec. (a)(2) if it provided that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year were nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made.

Pub. L. 99–514, §1898(a)(1)(A), substituted ''Class-year'' for ''Class year'' in heading and amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.''

Subsec. (d)(6)(C). Pub. L. 99–514, §1898(f)(1)(A), added subpar. (C).

1984—Subsec. (a)(4)(A). Pub. L. 98–397, §202(b), substituted ''18'' for ''22''.

Subsec. (a)(6)(C). Pub. L. 98–397, § 202(c), substituted ''5 consecutive 1-year breaks'' for ''1-year break'', in heading, and in text substituted ''5 consecutive 1-year breaks in service'' for ''any 1-year break in service'' and ''such 5-year period'' for ''such break'' in two places.

Subsec. (a)(6)(D). Pub. L. 98–397, § 202(d)(2), amended subpar. (D) generally.

Subsec. (a)(6)(E). Pub. L. 98–397, § 202(e)(2), added subpar. (E).

Subsec. (a)(7)(B)(i). Pub. L. 98–397, § 205(b), substituted ''$3,500'' for ''$1,750''.

Subsec. (a)(7)(C). Pub. L. 98–397, § 202(f), substituted ''5 consecutive 1-year breaks in service'' for ''any one-year break in service''.

Subsec. (a)(11). Pub. L. 98–397, § 205(a), added par. (11).

Subsec. (b)(3)(A). Pub. L. 98–397, § 202(e)(3), inserted '', determined without regard to section 410(a)(5)(E)''.

Subsec. (d)(6). Pub. L. 98–397, § 301(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (a). Pub. L. 96–364, § 206(1)–(4), in par. (3) added subpars. (E) and (F), and in par. (4) added subpar. (G).

Subsec. (d)(6). Pub. L. 96–364, § 206(5), inserted reference to section 4281 of the Employee Retirement Income Security Act of 1974.

1976—Subsec. (a). Pub. L. 94–455, §§ 1901(a)(62)(A)–(C), 1906(b)(13)(A), substituted ''paragraph (8)'' for ''subsection (a)(8)'' in provisions preceding par. (1), substituted references to Sept. 2, 1974, for references to the date of enactment of the Employee Retirement Income Security Act of 1974 in par. (3)(D)(iii), struck out ''or his delegate'' after ''Secretary'' in pars. (4)(C) and (7)(B), and substituted ''(B)'' for ''(b)'' in heading of par. (7)(C).

Subsec. (b)(1)(D)(i). Pub. L. 94–455, § 1901(a)(62)(D), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

Subsecs. (c)(2)(B)(ii), (D), (d)(2), (3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(1)(C). Pub. L. 94–455, § 1901(a)(62)(D), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

Subsec. (e)(2). Pub. L. 94–455, § 1901(a)(62)(E), substituted reference to Sept. 1, 1974, for reference to the date before the date of enactment of the Employee Retirement Income Security Act of 1974.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–235, div. P, § 2(c), Dec. 16, 2014, 128 Stat. 2829, provided that: ''The amendments made by this section [amending this section and section 1054 of Title 29, Labor] shall apply to all periods before, on, and after the date of enactment of this Act [Dec. 16, 2014].''

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(b) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Pub. L. 109–280, title VII, § 701(e), Aug. 17, 2006, 120 Stat. 991, as amended by Pub. L. 110–458, title I, § 107(c)(2), Dec. 23, 2008, 122 Stat. 5107, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 623, 1053, and 1054 of Title 29, Labor] shall apply to periods beginning on or after June 29, 2005.

''(2) PRESENT VALUE OF ACCRUED BENEFIT.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 1053 of Title 29] shall apply to distributions made after the date of the enactment of this Act [Aug. 17, 2006].

''(3) VESTING AND INTEREST CREDIT REQUIREMENTS.—In the case of a plan in existence on June 29, 2005, the requirements of clause (i) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, clause (i) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(5)(B)], and clause (i) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(10)(B)] (as added by this Act) and the requirements of 203(f)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(2)] and section 411(a)(13)(B) of the Internal Revenue Code of 1986 (as so added) shall, for purposes of applying the amendments made by subsections (a) and (b) [amending this section and sections 1053 and 1054 of Title 29], apply to years beginning after December 31, 2007, unless the plan sponsor elects the application of such requirements for any period on or after June 29, 2005, and before the first year beginning after December 31, 2007.

''(4) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], the requirements described in paragraph (3) shall, for purposes of applying the amendments made by subsections (a) and (b) [amending this section and sections 1053 and 1054 of Title 29], not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

''(ii) January 1, 2008, or

''(B) January 1, 2010.

''(5) CONVERSIONS.—The requirements of clause (ii) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, clause (ii) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(5)(B)], and clause (ii) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(10)(B)] (as added by this Act), shall apply to plan amendments adopted on or after, and taking effect on or after, June 29, 2005, except that the plan sponsor may elect to have such amendments apply to plan amendments adopted before, and taking effect on or after, such date.

''(6) SPECIAL RULE FOR VESTING REQUIREMENTS.—The requirements of section 203(f)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(2)] and section 411(a)(13)(B) of the Internal Revenue Code of 1986 (as added by this Act)—

''(A) shall not apply to a participant who does not have an hour of service after the effective date of such requirements (as otherwise determined under this subsection); and

''(B) in the case of a plan other than a plan described in paragraph (3) or (4), shall apply to plan years ending on or after June 29, 2005.''

[Pub. L. 110–458, § 107(c)(2)(B)(i), which directed insertion of ''the earlier of'' after ''before'' in introductory provisions of section 701(e)(4) of Pub. L. 109–280, set out above, was executed by making the insertion after the second instance of ''before'' to reflect the probable intent of Congress.]

Amendment by section 902(d)(2)(A), (B) of 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.

Pub. L. 109–280, title IX, § 904(c), Aug. 17, 2006, 120 Stat. 1050, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to contributions for plan years beginning after December 31, 2006.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

''(ii) January 1, 2007; or

''(B) January 1, 2009.

''(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

''(4) SPECIAL RULE FOR STOCK OWNERSHIP PLANS.—Notwithstanding paragraph (1) or (2), in the case of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986) which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of such Code), the amendments made by this section shall not apply to any plan year beginning before the earlier of—

''(A) the date on which the loan is fully repaid, or

''(B) the date on which the loan was, as of September 26, 2005, scheduled to be fully repaid.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §633(c), June 7, 2001, 115 Stat. 116, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to contributions for plan years beginning after December 31, 2001.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified by the date of the enactment of this Act [June 7, 2001], the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

''(ii) January 1, 2002; or

''(B) January 1, 2006.

''(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.''

Pub. L. 107–16, title VI, §645(a)(3), June 7, 2001, 115 Stat. 125, provided that: ''The amendments made by this subsection [amending this section and section 1054 of Title 29, Labor] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §648(c), June 7, 2001, 115 Stat. 128, provided that: ''The amendments made by this section [amending this section, section 457 of this title, and section 1053 of Title 29, Labor] shall apply to distributions after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1071(c), Aug. 5, 1997, 111 Stat. 948, provided that: ''The amendments made by this section [amending this section, sections 417 and 457 of this title, and sections 1053 to 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1442(c), Aug. 20, 1996, 110 Stat. 1808, provided that: ''The amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to plan years beginning on or after the earlier of—

''(1) the later of—

''(A) January 1, 1997, or

''(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act [Aug. 20, 1996]), or

''(2) January 1, 1999.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §767(d), Dec. 8, 1994, 108 Stat. 5040, as amended by Pub. L. 104–188, title I, §1449(a), Aug. 20, 1996, 110 Stat. 1813; Pub. L. 105–34, title XVI, §1604(b)(3), Aug. 5, 1997, 111 Stat. 1097, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, sections 415 and 417 of this title, and sections 1053 and 1055 of Title 29, Labor] shall apply to plan years and limitation years beginning after December 31, 1994; except that an employer may elect to treat the amendments made by this section as being effective on or after the date of the enactment of this Act [Dec. 8, 1994].

''(2) NO REDUCTION IN ACCRUED BENEFITS.—A participant's accrued benefit shall not be considered to be reduced in violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] merely because (A) the benefit is determined in accordance with section 417(e)(3)(A) of such Code, as amended by this Act, or section 205(g)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(g)(3)], as amended by this Act, or (B) the plan applies section 415(b)(2)(E) of such Code, as amended by this Act.

''(3) SECTION 415.—

''(A) EXCEPTION.—A plan that was adopted and in effect before December 8, 1994, shall not be required to apply the amendments made by subsection (b) [amending section 415 of this title] with respect to benefits accrued before the earlier of—

''(i) the later of the date a plan amendment applying the amendments made by subsection (b) is adopted or made effective, or

''(ii) the first day of the first limitation year beginning after December 31, 1999.

Determinations under section 415(b)(2)(E) of the Internal Revenue Code of 1986 before such earlier date shall be made with respect to such benefits on the basis of such section as in effect on December 7, 1994, and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of such section (as so in effect).

''(B) TIMING OF PLAN AMENDMENT.—A plan that operates in accordance with the amendments made by subsection (b) shall not be treated as failing to satisfy section 401(a) of the Internal Revenue Code of 1986 or as not being operated in accordance with the provisions of the plan until such date as the Secretary of the Treasury provides merely because the plan has not been amended to include the amendments made by subsection (b).''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7861(a)(5)(A), (6)(A) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of this title.

Pub. L. 101–239, title VII, §7871(a)(4), Dec. 19, 1989, 103 Stat. 2435, provided that: ''The amendments made by this subsection [amending this section and section 1054 of Title 29, Labor] shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Pub. L. 101–239, title VII, §7871(b)(3), Dec. 19, 1989, 103 Stat. 2435, provided that: ''The amendments made by this subsection [amending this section and section 1002 of Title 29, Labor] shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Amendment by section 7881(m)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, 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 OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, with plan amendments not required to be made before first plan year beginning on or after Jan. 1, 1989, if certain conditions are met, see section 9346(c) of Pub. L. 100–203, set out as a note under section 1054 of Title 29, Labor.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1113(f), formerly §1113(e), Oct. 22, 1986, 100 Stat. 2447, as redesignated and amended by Pub. L. 101–239, title VII, §7861(a)(3), (4), Dec. 19, 1989, 103 Stat. 2430, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 410 of this title and sections 1052 to 1054 of Title 29, Labor] shall apply to plan years beginning after December 31, 1988.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to employees covered by any such agreement in plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.

''(3) PARTICIPATION REQUIRED.—The amendments made by this section shall not apply to any employee who does not have 1 hour of service in any plan year to which the amendments made by this section apply.

''(4) REPEAL OF CLASS YEAR VESTING.—If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the amendments made by subsections (b) and (e)(2) [amending this section and section 1053 of Title 29] apply (and any subsequent plan year) if—

''(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

''(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year.

This paragraph shall not apply to an employee who has 5 consecutive 1-year breaks in service (as defined in section 411(a)(6)(A) of the Internal Revenue Code of 1986) which include the 1st day of the 1st plan year to which the amendments made by subsection (b) and (e)(2) apply. A plan shall not be treated as failing to meet the requirements of section 401(a)(26) of such Code by reason of complying with the provisions of this paragraph.''

Amendment by section 1114(b)(10) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XI, §1139(d), Oct. 22, 1986, 100 Stat. 2488, as amended by Pub. L. 100–647, title I, §1011A(k), Nov. 10, 1988, 102 Stat. 3483, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 417 of this title and sections 1053 and 1055 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after December 31, 1984, and before January 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984 [Pub. L. 98–397, see Short Title of 1984 Amendment note set out under section 1001 of Title 29].

''(2) REDUCTION IN ACCRUED BENEFITS.—

''(A) IN GENERAL.—If a plan—

''(i) adopts a plan amendment before the close of the first plan year beginning on or after January 1, 1989, which provides for the calculation of the present value of the accrued benefits in the manner provided by the amendments made by this section, and

''(ii) the plan reduces the accrued benefits for any plan year to which such plan amendment applies in accordance with such plan amendment,

such reduction shall not be treated as a violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)).

''(B) SPECIAL RULE.—In the case of a plan maintained by a corporation incorporated on April 11, 1934, which is headquartered in Tarrant County, Texas—

''(i) such plan may be amended to remove the option of an employee to receive a lump sum distribution (within the meaning of section 402(e)(5) of such Code) if such amendment—

''(I) is adopted within 1 year of the date of the enactment of this Act [Oct. 22, 1986], and

''(II) is not effective until 2 years after the employees are notified of such amendment, and

''(ii) the present value of any vested accrued benefit of such plan determined during the 3-year period beginning on the date of the enactment of this Act shall be determined under the applicable interest rate (within the meaning of section 411(a)(11)(B)(ii) of such Code), except that if such value (as so determined) exceeds $50,000, then the value of any excess over $50,000 shall be determined by using the interest rate specified in the plan as of August 16, 1986.''

Pub. L. 99–514, title XVIII, §1898(a)(1)(C), Oct. 22, 1986, 100 Stat. 2942, provided that: ''The amendments made by this paragraph [amending this section and section 1053 of Title 29, Labor] shall apply to contributions made for plan years beginning after the date of the enactment of this Act [Oct. 22, 1986]; except that, in the case of a plan described in section 302(b) of the Retirement Equity Act of 1984 [section 302(b) of Pub. L. 98–397, set out as a note under section 1001 of Title 29], such amendments shall not apply to any plan year to which the amendments made by such Act [see Short Title of 1984 Amendment note set out under section 1001 of Title 29] do not apply by reason of such section 302(b).''

Amendment by section 1898(a)(4)(A), (d)(1)(A), (2)(A), (f)(1)(A) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as

otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 9202(b) of Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only to employees who have 1 hour of service in any plan year to which amendment applies, with special rule for collectively bargained plans, and amendment by section 9203(b)(2) of Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, see section 9204(a), (b) of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

EFFECTIVE DATE OF 1980 AMENDMENT

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 OF 1976 AMENDMENT

Amendment by section 1901(a)(62) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 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.

REGULATIONS

Pub. L. 109–280, title VII, §702, Aug. 17, 2006, 120 Stat. 992, provided that: ''The Secretary of the Treasury or his delegate shall, not later than 12 months after the date of the enactment of this Act [Aug. 17, 2006], prescribe regulations for the application of the amendments made by, and the provisions of, this title [amending this section and sections 623, 1053, and 1054 of Title 29, Labor, and enacting provisions set out as notes under this section] in cases where the conversion of a plan to an applicable defined benefit plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction.''

Pub. L. 109–280, title XI, §1102(b), Aug. 17, 2006, 120 Stat. 1056, provided that:

''(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055] to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

''(2) EFFECTIVE DATE.—

''(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2006.

''(B) REASONABLE NOTICE.—A plan shall not be treated as failing to meet the requirements of section 411(a)(11) of such Code or section 205 of such Act with respect to any description of consequences described in paragraph (1) made within 90 days after the Secretary of the Treasury issues the modifications required by paragraph (1) if the plan administrator makes a reasonable attempt to comply with such requirements.''

Pub. L. 107–16, title VI, §645(b)(3), June 7, 2001, 115 Stat. 126, provided that: ''Not later than December 31, 2003, the Secretary of the Treasury is directed to issue regulations under section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)], including the regulations required by the amendment made by this subsection [amending this section and section 1054 of Title 29, Labor]. Such regulations shall apply to plan years beginning after December 31, 2003, or such earlier date as is specified by the Secretary of the Treasury.''

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1113 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission shall each issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 9202 and 9203 of Pub. L. 99–509, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–280, title VII, §701(d), Aug. 17, 2006, 120 Stat. 991, as amended by Pub. L. 110–458, title I, §107(c)(1), Dec. 23, 2008, 122 Stat. 5107, provided that: ''Nothing in the amendments made by this section [amending this section and sections 623, 1053, and 1054 of Title 29, Labor] shall be construed to create an inference with respect to—

''(1) the treatment of applicable defined benefit plans or conversions to applicable defined benefit plans under sections 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(1)(H)], 4(i)(1) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(1)], and 411(b)(1)(H) of the Internal Revenue Code of 1986, as in effect before such amendments, or

''(2) the determination of whether an applicable defined benefit plan fails to meet the requirements of sections 203(a)(2), 204(c), or 205(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(a)(2), 1054(c), 1055(g)] or sections 411(a)(2), 411(c), or 417(e) of such Code, as in effect before such amendments, solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in a hypothetical account or as an accumulated percentage of the participant's final average compensation.

For purposes of this subsection, the term 'applicable defined benefit plan' has the meaning given such term by section 203(f)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(3)] and section 411(a)(13)(C) of such Code, as in effect after 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.

PROVISIONS RELATING TO PLAN AMENDMENTS

Pub. L. 109–280, title XI, §1107, Aug. 17, 2006, 120 Stat. 1063, provided that:

''(a) IN GENERAL.—If this section applies to any pension plan or contract amendment—

''(1) such pension plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

''(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee

Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(b) AMENDMENTS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to any amendment to any pension plan or annuity contract which is made—

''(A) pursuant to any amendment made by this Act [see Tables for classification] or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act, and

''(B) on or before the last day of the first plan year beginning on or after January 1, 2009.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2011' for '2009'.

''(2) CONDITIONS.—This section shall not apply to any amendment unless—

''(A) during the period—

''(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

''(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

''(B) such plan or contract amendment applies retroactively for such period.''

Pub. L. 108–218, title I, §101(c), Apr. 10, 2004, 118 Stat. 598, as amended by Pub. L. 109–280, title III, §301(c), Aug. 17, 2006, 120 Stat. 920; Pub. L. 110–458, title I, §103(a), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

''(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

''(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(2) AMENDMENTS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

''(i) pursuant to any amendment made by this section [amending sections 404, 412, and 415 of this title and sections 1082 and 1306 of Title 29, Labor], and

''(ii) on or before the last day of the first plan year beginning on or after January 1, 2009.

''(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

''(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

''(ii) such plan or contract amendment applies retroactively for such period.''

Pub. L. 105–34, title XV, §1541, Aug. 5, 1997, 111 Stat. 1085, provided that:

''(a) IN GENERAL.—If this section applies to any plan or contract amendment—

''(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

''(2) such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(b) AMENDMENTS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

''(A) pursuant to any amendment made by this title [enacting sections 9811 and 9812 of this title, amending sections 101, 401 to 404, 408, 409, 410, 412, 414, 415, 512, 664, 674, 2055, 2056, 4947, 4972, 4975, 4978, 4979A, 4980D, 9801, 9802, and 9831 of this title, sections 1021, 1022, 1024, 1026 to 1028, 1056, 1082, 1107, 1108, and 1132 of Title 29, Labor, and section 1320b–14 of Title 42, The Public Health and Welfare, renumbering sections 9804 to 9806 of this title as sections 9831 to 9833, respectively, of this title, and amending provisions set out as a note under section 412 of this title] or subtitle H of title X [§§1071–1075, amending this section, sections 72, 132, 417, 457, 691, 2013, 2053, 4975, and 6018 of this title, and sections 1053 to 1055 of Title 29 and repealing section 4980A of this title], and

''(B) before the first day of the first plan year beginning on or after January 1, 1999.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2001' for '1999'.

''(2) CONDITIONS.—This section shall not apply to any amendment unless—

''(A) during the period—

''(i) beginning on the date the legislative amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative amendment, the effective date specified by the plan), and

''(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

''(B) such plan or contract amendment applies retroactively for such period.''

TRANSITIONAL RULE: CERTAIN PLAN AMENDMENTS ADOPTED OR EFFECTIVE ON OR BEFORE AUGUST 20, 1996

Pub. L. 104–188, title I, §1449(d), Aug. 20, 1996, 110 Stat. 1814, provided that: ''In the case of a plan that was adopted and in effect before December 8, 1994, if—

''(1) a plan amendment was adopted or made effective on or before the date of the enactment of this Act [Aug. 20, 1996] applying the amendments made by section 767 of the Uruguay Round Agreements Act [Pub. L. 103–465, see Effective Date of 1994 Amendment note set out above], and

''(2) within 1 year after the date of the enactment of this Act [Aug. 20, 1996], a plan amendment is adopted which repeals the amendment referred to in paragraph (1),

the amendment referred to in paragraph (1) shall not be taken into account in applying section 767(d)(3)(A) of the Uruguay Round Agreements Act, as amended by subsection (a).''

PLAN AMENDMENTS REFLECTING AMENDMENTS BY SECTION 7881(m) OF PUB. L. 101–239 NOT TREATED AS REDUCING ACCRUED BENEFITS

For provisions directing that if during the period beginning Dec. 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments by section 9346 of Pub. L. 100–203 and such plan is amended to reflect the amendments by section 7881(m) of Pub. L. 101–239, any plan amendments made to reflect the amendments by section 7881(m) of Pub. L. 101–239 shall not be treated as reducing accrued benefits for purposes of subsection (d)(6) of this section or section 1054(g) of Title 29, Labor, see section 7881(m)(3) of Pub. L. 101–239, set out as a note under section 1054 of Title 29.

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, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

For provisions directing that if any amendments made by sections 9202(b) and 9203(b)(2) of Pub. L. 99–509 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 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

ALTERNATE METHODS OF SATISFYING REQUIREMENTS FOR VESTING AND ACCRUED BENEFITS

Pub. L. 93–406, title II, § 1012(c), Sept. 2, 1974, 88 Stat. 913, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act [Sept. 2, 1974], the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a)(2) of section 411 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

''(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

''(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

''(3) a waiver or extension of time granted under [former] section 412(d) or (e) would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the plan administrator petitions the Secretary of Labor for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.''

§ 412. Minimum funding standards

(a) Requirement to meet minimum funding standard

(1) In general

A plan to which this section applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

(2) Minimum funding standard

For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

(A) in the case of a defined benefit plan which is not a multiemployer plan or a CSEC plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

(B) in the case of a money purchase plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan,

(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year, and

(D) in the case of a CSEC plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 433 as of the end of the plan year.

(b) Liability for contributions

(1) In general

Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(j) or under section 433(f)) shall be paid by the employer responsible for making contributions to or under the plan.

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

If the 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 payment of such contributions.

(3) Multiemployer plans in critical status

Paragraph (1) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 432. This paragraph shall only apply if the plan sponsor adopts a rehabilitation plan in accordance with section 432(e) and complies with such rehabilitation plan (and any modifications of the plan).

(c) Variance from minimum funding standards

(1) Waiver in case of business hardship

(A) In general

If—

(i) an employer is (or in the case of a multiemployer plan or a CSEC plan, 10 percent or more of the number of employers contributing to or under the plan are) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years[1]

(B) Effects of waiver

If a waiver is granted under subparagraph (A) for any plan year—

(i) in the case of a defined benefit plan which is not a multiemployer plan or a CSEC plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e),

(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C), and

(iii) in the case of a CSEC plan, the funding standard account shall be credited under section 433(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 433(b)(2)(C).

(C) Waiver of amortized portion not allowed

The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

(2) Determination of business hardship

For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(C) the sales and profits of the industry concerned are depressed or declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(3) Waived funding deficiency

For purposes of this section and part III of this subchapter, the term ''waived funding deficiency'' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

(4) Security for waivers for single-employer plans, consultations

(A) Security may be required

(i) In general

Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1) or for granting an extension under section 433(d).

(ii) Special rules

Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

(B) Consultation with the Pension Benefit Guaranty Corporation

Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection or an extension under 433(d)[2] with respect to a plan described in subparagraph (A)(i)—

(i) provide the Pension Benefit Guaranty Corporation with—

(I) notice of the completed application for any waiver, modification, or extension, and

(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

(ii) consider—

(I) any comments of the Corporation under clause (i)(II), and

(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

[1] So in original. Probably should be followed by a period.

[2] So in original. Probably should be preceded by ''section''.

(C) Exception for certain waivers or extensions

(i) In general

The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

(I) the aggregate unpaid minimum required contributions (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years, or the accumulated funding deficiency under section 433, whichever is applicable,

(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2) or 433(b)(2)(C), whichever is applicable, and

(III) the total amounts not paid by reason of an extension in effect under section 433(d),

is less than $1,000,000.

(ii) Treatment of waivers or extensions for which applications are pending

The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers or extensions with respect to the minimum funding standard under this subsection which are pending with respect to such plan were denied.

(5) Special rules for single-employer plans

(A) Application must be submitted before date 2½ months after close of year

In the case of a defined benefit plan which is not a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

(B) Special rule if employer is member of controlled group

In the case of a defined benefit plan which is not a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

(6) Advance notice

(A) In general

The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of the Employee Retirement Income Security Act of 1974 and for benefit liabilities.

(B) Consideration of relevant information

The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

(7) Restriction on plan amendments

(A) In general

No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) or section 433(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) Exception

Subparagraph (A) shall not apply to any plan amendment which—

(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(ii) only repeals an amendment described in subsection (d)(2), or

(iii) is required as a condition of qualification under part I of subchapter D,[3] of chapter 1.

(d) Miscellaneous rules

(1) Change in method or year

If the funding method or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary.

(2) Certain retroactive plan amendments

For purposes of this section, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of

[3] So in original. The comma probably should not appear.

adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (c)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer plan and that a waiver under subsection (c) (or, in the case of a multiemployer plan or a CSEC plan, any extension of the amortization period under section 431(d) or section 433(d)) is unavailable or inadequate.

(3) Controlled group

For purposes of this section, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414.

(e) Plans to which section applies

(1) In general

Except as provided in paragraphs (2) and (4), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan under the Employee Retirement Income Security Act of 1974—

(A) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

(2) Exceptions

This section shall not apply to—

(A) any profit-sharing or stock bonus plan,

(B) any insurance contract plan described in paragraph (3),

(C) any governmental plan (within the meaning of section 414(d)),

(D) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

(E) any plan which has not, at any time after September 2, 1974, provided for employer contributions, or

(F) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

(3) Certain insurance contract plans

A plan is described in this paragraph if—

(A) the plan is funded exclusively by the purchase of individual insurance contracts,

(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

(E) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(F) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.

(4) Certain terminated multiemployer plans

This section applies with respect to a terminated multiemployer plan to which section 4021 of the Employee Retirement Income Security Act of 1974 applies until the last day of the plan year in which the plan terminates (within the meaning of section 4041A(a)(2) of such Act).

(Added Pub. L. 93–406, title II, § 1013(a), Sept. 2, 1974, 88 Stat. 914; amended Pub. L. 94–455, title XIX, §§ 1901(a)(63), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 96–364, title II, §§ 203, 208(c), Sept. 26, 1980, 94 Stat. 1285, 1289; Pub. L. 98–369, div. A, title IV, § 491(d)(25), July 18, 1984, 98 Stat. 850; Pub. L. 99–272, title XI, §§ 11015(a)(2), (b)(2), 11016(c)(4), Apr. 7, 1986, 100 Stat. 265, 267, 273; Pub. L. 100–203, title IX, §§ 9301(a), 9303(a), (d)(1), 9304(a)(1), (b)(1), (e)(1), 9305(b)(1), 9306(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), 9307(a)(1), (b)(1), (e)(1), Dec. 22, 1987, 101 Stat. 1330–331, 1330–333, 1330–342 to 1330–344, 1330–348, 1330–351, 1330–352, 1330–354 to 1330–357; Pub. L. 100–647, title II, § 2005(a)(2)(A), (d)(1), Nov. 10, 1988, 102 Stat. 3610, 3612; Pub. L. 101–239, title VII, § 7881(a)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (b)(1)(A), (2)(A), (3)(A), (4)(A), (6)(A), (c)(1), (d)(1)(A), Dec. 19, 1989, 103 Stat. 2435–2439; Pub. L. 103–465, title VII, §§ 751(a)(1)–(9)(A), (10), 752(a), 753(a), 754(a), 768(a), Dec. 8, 1994, 108 Stat. 5012–5019, 5021–5023, 5040; Pub. L. 105–34, title XV, § 1521(a), (c)(1), (3)(A), title XVI, § 1604(b)(2)(A), Aug. 5, 1997, 111 Stat. 1069, 1070, 1097; Pub. L. 107–16, title VI, §§ 651(a), 661(a), June 7, 2001, 115 Stat. 129, 141; Pub. L. 107–147, title IV, §§ 405(a), 411(v)(1), Mar. 9, 2002, 116 Stat. 42, 52; Pub. L. 108–218, title I,

§§ 101(b)(1)–(3), 102(b), 104(b), Apr. 10, 2004, 118 Stat. 597, 598, 601, 606; Pub. L. 109–135, title IV, § 412(x)(1), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title I, § 111(a), title II, § 212(c), title III, § 301(b), Aug. 17, 2006, 120 Stat. 820, 917, 919; Pub. L. 110–458, title I, §§ 101(a)(2), 102(b)(2)(H), Dec. 23, 2008, 122 Stat. 5093, 5103; Pub. L. 113–97, title II, § 202(c)(1), (2), Apr. 7, 2014, 128 Stat. 1135.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(4)(A), (B)(ii)(II), (6)(A), and (e)(1), (4), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. Title IV of the Act is classified generally to subchapter III (§ 1301 et seq.) of chapter 18 of Title 29. Sections 3, 4001, 4021, and 4041A of the Act are classified to sections 1002, 1301, 1321, and 1341a of Title 29, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The effective date of this section, referred to in subsec. (e)(1), probably means the effective date of Pub. L. 109–280, § 111(a), which amended this section. See Effective Date of 2006 Amendment note below.

AMENDMENTS

2014—Subsec. (a)(2)(A). Pub. L. 113–97, § 202(c)(2)(A), substituted ''multiemployer plan or a CSEC plan'' for ''multiemployer plan''.

Subsec. (a)(2)(D). Pub. L. 113–97, § 202(c)(1), added subpar. (D).

Subsec. (b)(1). Pub. L. 113–97, § 202(c)(2)(B), substituted ''430(j) or under section 433(f)'' for ''430(j)''.

Subsec. (c)(1)(A)(i). Pub. L. 113–97, § 202(c)(2)(A), substituted ''multiemployer plan or a CSEC plan, 10 percent'' for ''multiemployer plan, 10 percent''.

Subsec. (c)(1)(B)(i). Pub. L. 113–97, § 202(c)(2)(A), substituted ''multiemployer plan or a CSEC plan'' for ''multiemployer plan''.

Subsec. (c)(1)(B)(iii). Pub. L. 113–97, § 202(c)(2)(C), added cl. (iii).

Subsec. (c)(4)(A)(i). Pub. L. 113–97, § 202(c)(2)(D), substituted ''under paragraph (1) or for granting an extension under section 433(d)'' for ''under paragraph (1)''.

Subsec. (c)(4)(B). Pub. L. 113–97, § 202(c)(2)(E), substituted ''waiver under this subsection or an extension under 433(d)'' for ''waiver under this subsection'' in introductory provisions.

Subsec. (c)(4)(B)(i)(I). Pub. L. 113–97, § 202(c)(2)(F), substituted ''waiver, modification, or extension'' for ''waiver or modification''.

Subsec. (c)(4)(C). Pub. L. 113–97, § 202(c)(2)(G), substituted ''waivers or extensions'' for ''waivers'' in heading.

Subsec. (c)(4)(C)(i)(I). Pub. L. 113–97, § 202(c)(2)(I), substituted ''or the accumulated funding deficiency under section 433, whichever is applicable,'' for ''and'' at end.

Subsec. (c)(4)(C)(i)(II). Pub. L. 113–97, § 202(c)(2)(J), substituted ''430(e)(2) or 433(b)(2)(C), whichever is applicable, and'' for ''430(e)(2),''.

Subsec. (c)(4)(C)(i)(III). Pub. L. 113–97, § 202(c)(2)(K), added subcl. (III).

Subsec. (c)(4)(C)(ii). Pub. L. 113–97, § 202(c)(2)(L), substituted ''for waivers or extensions with respect to'' for ''for waivers of''.

Pub. L. 113–97, § 202(c)(2)(G), substituted ''waivers or extensions'' for ''waivers'' in heading.

Subsec. (c)(7)(A). Pub. L. 113–97, § 202(c)(2)(H), substituted ''section 431(d) or section 433(d)'' for ''section 431(d)''.

Subsec. (d)(2). Pub. L. 113–97, § 202(c)(2)(H), substituted ''section 431(d) or section 433(d)'' for ''section 431(d)'' in concluding provisions.

Pub. L. 113–97, § 202(c)(2)(A), substituted ''multiemployer plan or a CSEC plan, any extension'' for ''multiemployer plan, any extension'' in concluding provisions.

2008—Subsec. (b)(3). Pub. L. 110–458, § 102(b)(2)(H), substituted ''the plan sponsor adopts'' for ''the plan adopts''.

Subsec. (c)(1)(A)(i). Pub. L. 110–458, § 101(a)(2)(A), substituted ''the plan are'' for ''the plan is''.

Subsec. (c)(7)(A). Pub. L. 110–458, § 101(a)(2)(B), inserted ''which reduces the accrued benefit of any participant'' after ''subsection (d)(2)''.

Subsec. (d)(1). Pub. L. 110–458, § 101(a)(2)(C), struck out '', the valuation date,'' after ''If the funding method''.

2006—Pub. L. 109–280, § 111(a), reenacted heading without change and amended text generally, substituting provisions relating to minimum funding standard requirement, liability for contributions, variance from minimum funding standards, miscellaneous rules, and plans to which section applies, consisting of subsecs. (a) to (e), for provisions relating to general rule for satisfaction of minimum funding standard, funding standard account, special rules, variance from minimum funding standard, extension of amortization periods, requirements relating to waivers and extensions, alternative minimum funding standard, exceptions, certain insurance contract plans, certain terminated multiemployer plans, financial assistance, additional funding requirements for plans which are not multiemployer plans, quarterly contributions requirement, and imposition of lien where failure to make required contributions, consisting of subsecs. (a) to (n).

Subsec. (b)(3). Pub. L. 109–280, § 212(c), added par. (3).

Subsec. (b)(5)(B)(ii)(II). Pub. L. 109–280, § 301(b)(1), substituted '', 2005, 2006, and 2007'' for ''and 2005'' in heading and ''2008'' for ''2006'' in text.

Subsec. (*l*)(7)(C)(i)(IV). Pub. L. 109–280, § 301(b)(2), substituted '', 2005, 2006, and 2007'' for ''and 2005'' in heading and '', 2005, 2006, or 2007'' for ''or 2005'' in text.

2005—Subsec. (m)(4)(B)(i). Pub. L. 109–135 substituted ''subsection (d)'' for ''subsection (c)''.

2004—Subsec. (b)(5)(B)(ii)(I). Pub. L. 108–218, § 101(b)(1)(C), inserted ''or (III)'' after ''subclause (II)''.

Subsec. (b)(5)(B)(ii)(II), (III). Pub. L. 108–218, § 101(b)(1)(A), (B), added subcl. (II), redesignated former subcl. (II) as (III), and, in subcl. (III), inserted ''or (II)'' after ''permissible under subclause (I)'' and substituted ''such subclause'' for ''subclause (I)'' before period at end.

Subsec. (b)(7)(F). Pub. L. 108–218, § 104(b), added subpar. (F).

Subsec. (*l*)(7)(C)(i)(IV). Pub. L. 108–218, § 101(b)(2), added subcl. (IV).

Subsec. (*l*)(12). Pub. L. 108–218, § 102(b), added par. (12).

Subsec. (m)(7). Pub. L. 108–218, § 101(b)(3), amended heading and text of par. (7) generally, substituting provisions relating to special rule for 2002 for provisions relating to special rules for 2002 and 2004.

2002—Subsec. (c)(9)(B)(ii). Pub. L. 107–147, § 411(v)(1)(A), substituted ''100 percent'' for ''125 percent''.

Subsec. (c)(9)(B)(iv). Pub. L. 107–147, § 411(v)(1)(B), added cl. (iv).

Subsec. (*l*)(7)(C)(i)(III). Pub. L. 107–147, § 405(a)(1), added subcl. (III).

Subsec. (m)(7). Pub. L. 107–147, § 405(a)(2), added par. (7).

2001—Subsec. (c)(7)(A)(i)(I). Pub. L. 107–16, § 651(a)(1), substituted ''in the case of plan years beginning before January 1, 2004, the applicable percentage'' for ''the applicable percentage''.

Subsec. (c)(7)(F). Pub. L. 107–16, § 651(a)(2), reenacted heading and introductory provisions without change and amended table generally, substituting present provisions for provisions which had set out applicable percentage of 155 in the case of any plan year beginning in 1999 or 2000, 160 in the case of any plan year beginning in 2001 or 2002, 165 in the case of any plan year beginning in 2003 or 2004, and 170 in the case of any plan year beginning in 2005 and succeeding years.

Subsec. (c)(9). Pub. L. 107–16, § 661(a), reenacted heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: ''For purposes of this section, a determination of experience

gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.''

1997—Subsec. (b)(2)(E). Pub. L. 105–34, §1521(c)(1), added subpar. (E).

Subsec. (c)(7)(A)(i)(I). Pub. L. 105–34, §1521(a)(A), substituted ''the applicable percentage'' for ''150 percent''.

Subsec. (c)(7)(D). Pub. L. 105–34, §1521(c)(3)(A), inserted ''and'' at end of cl. (i), substituted a period for '', and'' at end of cl. (ii), and struck out cl. (iii) which read as follows: ''for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I).''

Subsec. (c)(7)(F). Pub. L. 105–34, §1521(a)(B), added subpar. (F).

Subsec. (m)(5)(E)(ii)(II). Pub. L. 105–34, §1604(b)(2)(A), substituted ''subclause (I)'' for ''clause (i)''.

1994—Subsec. (c)(5). Pub. L. 103–465, §752(a), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (c)(7)(A)(i)(I). Pub. L. 103–465, §751(a)(10)(A), inserted ''(including the expected increase in current liability due to benefits accruing during the plan year)'' after ''current liability''.

Subsec. (c)(7)(B). Pub. L. 103–465, §751(a)(10)(C), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (*l*)(7) (without regard to subparagraph (D) thereof).''

Subsec. (c)(7)(E). Pub. L. 103–465, §751(a)(10)(B), added subpar. (E).

Subsec. (c)(12). Pub. L. 103–465, §753(a), added par. (12).

Subsec. (*l*)(1). Pub. L. 103–465, §751(a)(1)(A), (2)(B), in introductory provisions, substituted ''to which this subsection applies under paragraph (9)'' for ''which has an unfunded current liability'', and amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.''

Subsec. (*l*)(1)(A)(ii). Pub. L. 103–465, §751(a)(2)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus''.

Subsec. (*l*)(2)(C). Pub. L. 103–465, §751(a)(3), added subpar. (C).

Subsec. (*l*)(2)(D). Pub. L. 103–465, §751(a)(7)(B)(i), added subpar. (D).

Subsec. (*l*)(3)(D), (E). Pub. L. 103–465, §751(a)(4)(A), added subpars. (D) and (E).

Subsec. (*l*)(4)(B)(i). Pub. L. 103–465, §751(a)(4)(B), (7)(B)(iii), inserted '', the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase,'' after ''old liability''.

Subsec. (*l*)(4)(C). Pub. L. 103–465, §751(a)(5), substituted ''.40'' for ''.25'' in cl. (i) and ''60'' for ''35'' in cl. (ii).

Subsec. (*l*)(5)(A). Pub. L. 103–465, §751(a)(6)(A)(i), substituted ''greatest of'' for ''greater of'' in introductory provisions.

Subsec. (*l*)(5)(A)(iii). Pub. L. 103–465, §751(a)(6)(A)(ii)–(iv), added cl. (iii).

Subsec. (*l*)(5)(E). Pub. L. 103–465, §751(a)(6)(B), added subpar. (E).

Subsec. (*l*)(7)(C). Pub. L. 103–465, §751(a)(7)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).''

Subsec. (*l*)(9). Pub. L. 103–465, §751(a)(1)(B), added par. (9).

Subsec. (*l*)(10). Pub. L. 103–465, §751(a)(7)(B)(ii), added par. (10).

Subsec. (*l*)(11). Pub. L. 103–465, §751(a)(8), added par. (11).

Subsec. (m)(1). Pub. L. 103–465, §754(a), in introductory provisions, inserted ''which has a funded current liability percentage (as defined in subsection (*l*)(8)) for the preceding plan year of less than 100 percent'' before ''fails'' and substituted ''the plan year'' for ''any plan year''.

Subsec. (m)(4)(D)(ii). Pub. L. 103–465, §751(a)(6)(C)(i), substituted ''greatest of'' for ''greater of'' in introductory provisions.

Subsec. (m)(4)(D)(ii)(III). Pub. L. 103–465, §751(a)(6)(C)(ii)–(iv), added subcl. (III).

Subsec. (m)(5), (6). Pub. L. 103–465, §751(a)(9)(A), added par. (5) and redesignated former par. (5) as (6).

Subsec. (n)(2). Pub. L. 103–465, §768(a)(1), inserted at end ''This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Retirement Protection Act of 1994).''

Subsec. (n)(3). Pub. L. 103–465, §768(a)(2), reenacted par. (3) heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

''(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

''(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

''(i) for plan years beginning after 1987, and

''(ii) for which payment has not been made before the due date.''

Subsec. (n)(4)(B). Pub. L. 103–465, §768(a)(3), struck out ''60th day following the'' before ''due date''.

1989—Subsec. (b)(5)(B)(iii). Pub. L. 101–239, §7881(d)(1)(A), struck out ''for purposes of this section and for purposes of determining current liability,'' before ''the interest rate'' in introductory provisions.

Subsec. (c)(9). Pub. L. 101–239, §7881(a)(6)(A), substituted ''Annual'' for ''3-year'' in heading and ''every year'' for ''every 3 years'' in text.

Subsec. (c)(10)(A). Pub. L. 101–239, §7881(b)(1)(A), substituted ''Defined benefit plans'' for ''Plans'' in heading and ''defined benefit plan other'' for ''plan other'' in introductory provisions.

Subsec. (c)(10)(B). Pub. L. 101–239, §7881(b)(2)(A), substituted ''Other'' for ''Multiemployer'' in heading and ''plan not described in subparagraph (A)'' for ''multiemployer plan'' in text.

Subsec. (d)(1)(A)(ii). Pub. L. 101–239, §7881(b)(6)(A)(ii), substituted ''costs (including adjustments under subsection (b)(5)(B))'' for ''costs''.

Subsec. (f)(4)(A). Pub. L. 101–239, §7881(c)(1), substituted ''for benefit liabilities'' for ''the benefit liabilities''.

Subsec. (*l*)(3)(C)(ii)(II). Pub. L. 101–239, §7881(a)(1)(A), substituted ''reducing (but not below zero)'' for ''reducing''.

Subsec. (*l*)(4)(B)(i). Pub. L. 101–239, §7881(a)(2)(A), substituted ''liability and the unamortized portion of the unfunded existing benefit increase liability'' for ''liability''.

Subsec. (*l*)(5)(C). Pub. L. 101–239, §7881(a)(3)(A), substituted ''the first plan year beginning after December 31, 1988'' for ''October 17, 1987''.

Subsec. (*l*)(7)(D)(iii)(III). Pub. L. 101–239, §7881(a)(4)(A)(i), added subcl. (III).

Subsec. (*l*)(7)(D)(iv). Pub. L. 101–239, §7881(a)(4)(A)(ii), added cl. (iv).

Subsec. (*l*)(8)(A)(ii). Pub. L. 101–239, §7881(a)(5)(A)(i), struck out ''reduced by any credit balance in the funding standard account'' after ''under subsection (c)(2)''.

Subsec. (*l*)(8)(E). Pub. L. 101–239, §7881(a)(5)(A)(ii), added subpar. (E).

Subsec. (m)(1). Pub. L. 101–239, §7881(b)(3)(A), substituted ''defined benefit plan (other than'' for ''plan (other than'' in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 101–239, §7881(b)(6)(A)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the rate under subsection (b)(5).''

Subsec. (m)(4)(D). Pub. L. 101–239, §7881(b)(4)(A), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''In the case of a plan with any unpredictable contingent event benefit liabilities—

''(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

''(ii) each required installment shall be increased by the greater of—

''(I) the amount of benefits described in subsection (*l*)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

''(II) 25 percent of the amount determined under subsection (*l*)(5)(A)(ii) for the plan year.''

1988—Subsec. (*l*)(3)(C)(i), (iii). Pub. L. 100–647, §2005(a)(2)(A), (d)(1), amended cl. (i) identically, substituting ''October 29'' for ''October 17'' and amended cl. (iii) identically, substituting ''October 28'' for ''October 16''.

1987—Subsec. (b)(2). Pub. L. 100–203, §9303(a)(2), inserted at end ''For additional requirements in the case of plans other than multiemployer plans, see subsection (*l*).''

Subsec. (b)(2)(B)(iv). Pub. L. 100–203, §9307(a)(1)(A), substituted ''5 plan years (15 plan years in the case of a multiemployer plan)'' for ''15 plan years''.

Subsec. (b)(2)(B)(v). Pub. L. 100–203, §9307(a)(1)(B), substituted ''10 plan years (30 plan years in the case of a multiemployer plan)'' for ''30 plan years''.

Subsec. (b)(2)(C), (3)(B)(ii). Pub. L. 100–203, §9307(a)(1)(A), substituted ''5 plan years (15 plan years in the case of a multiemployer plan)'' for ''15 plan years''.

Subsec. (b)(3)(B)(iii). Pub. L. 100–203, §9307(a)(1)(B), substituted ''10 plan years (30 plan years in the case of a multiemployer plan)'' for ''30 plan years''.

Subsec. (b)(5). Pub. L. 100–203, §9307(e)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.''

Subsec. (c)(2)(B). Pub. L. 100–203, §9303(d)(1), inserted at end ''In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5).''

Subsec. (c)(3). Pub. L. 100–203, §9307(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.''

Subsec. (c)(7). Pub. L. 100–203, §9301(a), substituted ''Full-funding'' for ''Full funding'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (6), the term full funding limitation means the excess (if any) of—

''(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).''

Subsec. (c)(10). Pub. L. 100–203, §9304(a)(1), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.''

Subsec. (c)(11). Pub. L. 100–203, §9305(b)(1), added par. (11).

Subsec. (d)(1). Pub. L. 100–203, §9306(a)(1)(B), struck out ''substantial'' after ''in case of'' in heading, and substituted ''temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)'' for ''substantial business hardship'' in text.

Pub. L. 100–203, §9306(b)(1), substituted ''more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)'' for ''more than 5 of any 15''.

Pub. L. 100–203, §9306(c)(1)(A), substituted ''The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—'' and subpars. (A) and (B) for ''The interest rate used for purposes of computing the amortization charge described in section 412(b)(2)(C) for a variance granted under this subsection shall be the rate determined under section 6621(b).''

Subsec. (d)(2). Pub. L. 100–203, §9306(a)(1)(B), struck out ''substantial'' after ''Determination of'' in heading, and substituted ''temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)'' for ''substantial business hardship'' in introductory provisions.

Subsec. (d)(4). Pub. L. 100–203, §9306(a)(1)(A), added par. (4).

Subsec. (d)(5). Pub. L. 100–203, §9306(a)(1)(C), added par. (5).

Subsec. (e). Pub. L. 100–203, §9306(c)(1)(B), substituted last two sentences for ''The interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the rate determined under section 6621(b).''

Subsec. (f)(3)(C)(i). Pub. L. 100–203, §9306(e)(1), substituted ''$1,000,000'' for ''$2,000,000'' at end.

Subsec. (f)(4)(A). Pub. L. 100–203, §9306(d)(1), substituted ''plan, and each participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and the benefit liabilities.'' for ''plan.''

Subsec. (*l*). Pub. L. 100–203, §9303(a)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 100–203, §9304(b)(1), added subsec. (m).

Subsec. (n). Pub. L. 100–203, §9304(e)(1), added subsec. (n).

1986—Subsec. (d)(1). Pub. L. 99–272, §11015(b)(2)(A), inserted provision that the interest rate used for purposes of computing the amortization charge described in section 412(b)(2)(C) for a variance granted under this subsection be the rate determined under section 6621(b).

Subsec. (e). Pub. L. 99–272, §11015(b)(2)(B), inserted provision that the interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection be the rate determined under section 6621(b).

Subsec. (f). Pub. L. 99–272, §11015(a)(2), substituted in heading ''Requirements relating to waivers and extensions'' for ''Benefits may not be increased during waiver or extension period'' and in par. (1) heading ''Benefits may not be increased during waiver or extension period'' for ''In general'', and added par. (3).

Pub. L. 99–272, §11016(c)(4), added par. (4).

1984—Subsec. (a)(2). Pub. L. 98–369 struck out ''or 405(a)'' after ''section 403(a)''.

1980—Subsec. (a). Pub. L. 96–364, §208(c), inserted provisions relating to plan years where multiemployer plan is in reorganization.

Subsec. (b). Pub. L. 96–364, §203(1), (2), struck out in pars. (2)(B)(ii), (iii), and (3)(B)(i) provisions respecting applicability of multiemployer plans with 40 plan years and in pars. (2)(B)(iv) and (3)(B)(ii) provisions respecting applicability of multiemployer plans with 20 year plans and added pars. (6) and (7).

Subsecs. (j), (k). Pub. L. 96–364, §203(3), added subsecs. (j) and (k).

1976—Subsecs. (a) to (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (h). Pub. L. 94–455, §1901(a)(63), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974 in par. (5) and substituted reference to Sept. 1, 1974, for reference to the day before the date of enactment of the Employee Retirement Income Security Act of 1974 in the provisions following par. (6).

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

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

Pub. L. 109–280, title I, §111(b), Aug. 17, 2006, 120 Stat. 826, provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 2007.''

Pub. L. 109–280, title II, §212(e), Aug. 17, 2006, 120 Stat. 917, as amended by Pub. L. 110–458, title I, §102(b)(3)(B), (C), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 432 of this title and amending this section and section 4971 of this title] shall apply with respect to plan years beginning after 2007, except that the amendments made by subsection (b) [amending section 4971 of this title] shall apply 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.

''(2) SPECIAL RULE FOR CERTAIN NOTICES.—In any case in which a plan's actuary certifies that it is reasonably expected that a multiemployer plan will be in critical status under section 432(b)(3) of the Internal Revenue Code of 1986, as added by this section, with respect to the first plan year beginning after 2007, the notice required under subparagraph (D) of such section may be provided at any time after the date of enactment [Aug. 17, 2006], so long as it is provided on or before the last date for providing the notice under such subparagraph.

''(3) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

''(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

''(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.''

Pub. L. 109–280, title II, §221(c), Aug. 17, 2006, 120 Stat. 919, as amended by Pub. L. 113–295, div. A, title I, §172(a), (b), Dec. 19, 2014, 128 Stat. 4024, which provided that the provisions of, and the amendments made by, sections 201(b), 202, and 212 (enacting section 432 of this title and section 1085 of Title 29, Labor, amending this section, section 4971 of this title, and sections 1082 and 1132 of Title 29, and enacting provisions set out as notes under this section and sections 1082 and 1084 of Title 29) were not applicable to plan years beginning after Dec. 31, 2014, and if a plan was operating under a funding improvement or rehabilitation plan under section 1085 of Title 29 or section 432 of this title for its last year beginning before Jan. 1, 2015, such plan was to continue to operate under such funding improvement or rehabilitation plan during any period after Dec. 31, 2014, such funding improvement or rehabilitation plan was in effect and all provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or this title relating to the operation of such funding improvement or rehabilitation plan were to continue in effect during such period, was repealed by Pub. L. 113–235, div. O, title I, §101(a), Dec. 16, 2014, 128 Stat. 2774.

[Pub. L. 113–295, div. A, title I, §172(c), Dec. 19, 2014, 128 Stat. 4024, provided that: ''The amendments made by this section [directing amendment of section 221(c) of Pub. L. 109–280, formerly set out above] shall apply to plan years beginning after December 31, 2014.'' Those amendments could not be executed because of the intervening repeal of section 221(c) by Pub. L. 113–235.]

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(1)–(3) of Pub. L. 108–218 applicable, except as otherwise provided, to plan years beginning after Dec. 31, 2003, see section 101(d) of Pub. L. 108–218, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(v)(1) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §651(c), June 7, 2001, 115 Stat. 129, provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §661(c), June 7, 2001, 115 Stat. 142, provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1521(d)(1), Aug. 5, 1997, 111 Stat. 1070, provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 1998.''

Pub. L. 105–34, title XVI, §1604(b)(4), Aug. 5, 1997, 111 Stat. 1097, provided that: ''The amendments made by this subsection [amending this section, section 6621 of this title, section 1082 of Title 29, Labor, and provisions set out as a note under section 411 of this title] shall take effect as if included in the sections of the Uruguay Round Agreements Act [Pub. L. 103–465] to which they relate.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 751(a)(1)–(9)(A), (10) of 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.

Pub. L. 103–465, title VII, §752(b), Dec. 8, 1994, 108 Stat. 5023, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to changes in assumptions for plan years beginning after October 28, 1993.

''(2) CERTAIN CHANGES CEASE TO BE EFFECTIVE.—In the case of changes in assumptions for plan years beginning after December 31, 1992, and on or before October 28, 1993, such changes shall cease to be effective for plan years beginning after December 31, 1994, if—

''(A) such change would have required the approval of the Secretary of the Treasury had such amendment applied to such change, and

''(B) such change is not so approved.''

Pub. L. 103–465, title VII, §753(b), Dec. 8, 1994, 108 Stat. 5023, provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1994, with respect to collective bargaining agreements in effect on or after January 1, 1995.''

Pub. L. 103–465, title VII, §754(b), Dec. 8, 1994, 108 Stat. 5023, provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after the date of enactment of this Act [Dec. 8, 1994].''

Pub. L. 103–465, title VII, §768(c), Dec. 8, 1994, 108 Stat. 5041, provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall be effective for installments and other payments required under section 412 of the Internal Revenue Code of 1986 or under part 3 of subtitle B [of title I] of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1081 et seq.] that become due on or after the date of enactment [Dec. 8, 1994].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, to which it relates, see section 2005(e) of Pub. L. 100–647, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9301(c)(1), (2), Dec. 22, 1987, 101 Stat. 1330–333, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

''(2) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as are necessary to carry out the amendments made by this section no later than August 15, 1988.''

Pub. L. 100–203, title IX, §9303(e), Dec. 22, 1987, 101 Stat. 1330–342, as amended by Pub. L. 101–239, title VII, §7881(a)(7), Dec. 19, 1989, 103 Stat. 2436, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 1988.

''(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) [set out below] and (d) [amending this section and section 1082 of Title 29] shall apply with respect to years beginning after December 31, 1987.

''(3) SPECIAL RULE FOR STEEL COMPANIES.—

''(A) IN GENERAL.—For any plan year beginning before January 1, 1994, any increase in the funding standard account under [former] section 412(*l*) of the 1986 Code or section 302(d) of ERISA (as added by this section) [29 U.S.C. 1082(d)] with respect to any steel employee plan shall not exceed the sum of—

''(i) the required percentage of the current liability under such plan, plus

''(ii) the amount determined under subparagraph (C)(i) for such plan year.

''(B) REQUIRED PERCENTAGE.—For purposes of subparagraph (A), the term 'required percentage' means, with respect to any plan year, the excess (if any) of—

''(i) the sum of—

''(I) the funded current liability percentage as of the beginning of the 1st plan year beginning after December 31, 1988 (determined without regard to any plan amendment adopted after June 30, 1987), plus

''(II) 1 percentage point for the plan year for which the determination under this paragraph is being made and for each prior plan year beginning after December 31, 1988, over

''(ii) the funded current liability percentage as of the beginning of the plan year for which such determination is being made.

''(C) SPECIAL RULES FOR CONTINGENT EVENTS.—In the case of any unpredictable contingent event benefit with respect to which the event on which such benefits are contingent occurs after December 17, 1987—

''(i) AMORTIZATION AMOUNT.—For purposes of subparagraph (A)(ii), the amount determined under this clause for any plan year is the amount which would be determined if the unpredictable contingent event benefit liability were amortized in equal annual installments over 10 plan years (beginning with the plan year in which such event occurs).

''(ii) BENEFIT AND CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (B), in determining the funded current liability percentage for any plan year, there shall not be taken into account—

''(I) the unpredictable contingent event benefit liability, or

''(II) any amount contributed to the plan which is attributable to clause (i) (and any income allocable to such amount).

''(D) STEEL EMPLOYEE PLAN.—For purposes of this paragraph, the term 'steel employee plan' means any plan if—

''(i) such plan is maintained by a steel company, and

''(ii) substantially all of the employees covered by such plan are employees of such company.

''(E) OTHER DEFINITIONS.—For purposes of this paragraph—

''(i) STEEL COMPANY.—The term 'steel company' means any corporation described in section 806(b) of the Steel Import Stabilization Act [section 806(b) of Pub. L. 98–573, 19 U.S.C. 2253 note].

''(ii) OTHER DEFINITIONS.—The terms 'current liability', 'funded current liability percentage', and 'unpredictable contingent event benefit' have the meanings given such terms by [former] section 412(*l*) of the 1986 Code (as added by this section).

''(F) SPECIAL RULE.—The provisions of this paragraph shall apply in the case of a company which was originally incorporated on April 25, 1927, in Michigan and reincorporated on June 3, 1968, in Delaware in the same manner as if such company were a steel company.''

Pub. L. 100–203, title IX, §9304(a)(3), Dec. 22, 1987, 101 Stat. 1330–344, provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 1987.''

Pub. L. 100–203, title IX, §9304(b)(3), Dec. 22, 1987, 101 Stat. 1330–347, provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29] shall apply with respect to plan years beginning after 1988.''

Pub. L. 100–203, title IX, §9304(e)(3), Dec. 22, 1987, 101 Stat. 1330–351, provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29] shall apply to plan years beginning after December 31, 1987.''

Pub. L. 100–203, title IX, §9305(d), Dec. 22, 1987, 101 Stat. 1330–352, provided that: ''The amendments made by this section [amending this section and sections 414 and 4971 of this title and section 1082 of Title 29] shall

apply with respect to plan years beginning after December 31, 1987.''

Pub. L. 100–203, title IX, § 9306(f), Dec. 22, 1987, 101 Stat. 1330–355, as amended by Pub. L. 101–239, title VII, § 7881(c)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 1083, 1084, and 1085a of Title 29, Labor] shall apply in the case of—

''(A) any application submitted after December 17, 1987, and

''(B) any waiver granted pursuant to such an application.

''(2) SPECIAL RULE FOR APPLICATION REQUIREMENT.—

''(A) IN GENERAL.—The amendments made by subsections (a)(1)(A) and (a)(2)(A) [amending this section and section 1083 of Title 29] shall apply to plan years beginning after December 31, 1987.

''(B) TRANSITIONAL RULE FOR YEARS BEGINNING IN 1988.—In the case of any plan year beginning during calendar 1988, [former] section 412(d)(4) of the 1986 Code and section 303(d)(1) of ERISA [29 U.S.C. 1083(d)(1)] (as added by subsection (a)(1) [and (2)]) shall be applied by substituting '6th month' for '3rd month'.

''(3) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and section 1083 of Title 29] shall apply to waivers for plan years beginning after December 31, 1987. For purposes of applying such amendments, the number of waivers which may be granted for plan years after December 31, 1987, shall be determined without regard to any waivers granted for plan years beginning before January 1, 1988.

''(4) SUBSECTION (d).—The amendments made by subsection (d) [amending this section and section 1083 of Title 29] shall apply to applications submitted more than 90 days after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by section 9307(a)(1), (b)(1), (e)(1) of Pub. L. 100–203 applicable to years beginning after Dec. 31, 1987, except that subsec. (b)(2)(B)(iv) and (3)(B)(ii) of this section (as amended by section 9307(a)(1)(A) of Pub. L. 100–203) is applicable to gains and losses established in years beginning after Dec. 31, 1987, see section 9307(f) of Pub. L. 100–203, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–272, title XI, § 11015(a)(3), Apr. 7, 1986, 100 Stat. 267, provided that: ''The amendments made by this subsection [enacting section 1085a of Title 29, Labor, and amending this section and section 1061 of Title 29] shall apply with respect to applications for waivers, extensions, and modifications filed on or after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by sections 11015(b)(2) and 11016(c)(4) of Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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 OF 1976 AMENDMENT

Amendment by section 1901(a)(63) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 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.

REGULATIONS

Pub. L. 103–465, title VII, § 769, Dec. 8, 1994, 108 Stat. 5041, as amended by Pub. L. 105–34, title XV, § 1508(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 108–218, title II, § 201(a), Apr. 10, 2004, 118 Stat. 608; Pub. L. 109–280, title I, § 115(d)(1), (e)(1), Aug. 17, 2006, 120 Stat. 856, provided that:

''(a) FUNDING RULES NOT TO APPLY TO CERTAIN PLANS.—Any changes made by this Act [Pub. L. 103–465] to section 412 of the Internal Revenue Code of 1986 or to part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1081 et seq.] shall not apply to—

''(1) a plan which is, on the date of enactment of this Act [Dec. 8, 1994], subject to a restoration payment schedule order issued by the Pension Benefit Guaranty Corporation that meets the requirements of section 1.412(c)(1)–3 of the Treasury Regulations, or

''(2) a plan established by an affected air carrier (as defined under section 4001(a)(14)(C)(ii)(I) of such Act [29 U.S.C. 1301(a)(14)(C)(ii)(I)]) and assumed by a new plan sponsor pursuant to the terms of a written agreement with the Pension Benefit Guaranty Corporation dated January 5, 1993, and approved by the United States Bankruptcy Court for the District of Delaware on December 30, 1992.

''(b) CHANGE IN ACTUARIAL METHOD.—Any amortization installments for bases established under [former] section 412(b) of the Internal Revenue Code of 1986 and section 302(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)] for plan years beginning after December 31, 1987, and before January 1, 1993, by reason of nonelective changes under the frozen entry age actuarial cost method shall not be included in the calculation of offsets under [former] section 412(*l*)(1)(A)(ii) of such Code and section 302(d)(1)(A)(ii) of such Act for the 1st 5 plan years beginning after December 31, 1994.''

[Pub. L. 109–280, title I, § 115(d)(2), Aug. 17, 2006, 120 Stat. 856, provided that: ''The amendment made by paragraph (1) [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 2005.'']

[Pub. L. 109–280, title I, § 115(e)(2), Aug. 17, 2006, 120 Stat. 856, provided that: ''The amendment made by paragraph (1) [amending section 769 of Pub. L. 103–465, set out above] shall take effect on December 31, 2007, and shall apply to plan years beginning after such date.'']

[Pub. L. 108–218, title II, § 201(b), Apr. 10, 2004, 118 Stat. 608, provided that: ''The amendments made by this section [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 2003.'']

[Pub. L. 105–34, title XV, § 1508(b), Aug. 5, 1997, 111 Stat. 1068, provided that: ''The amendment made by this section [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 1996.'']

Pub. L. 100–203, title IX, § 9303(c), Dec. 22, 1987, 101 Stat. 1330–342, provided that: ''Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.''

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

Pub. L. 109–280, title II, §206, Aug. 17, 2006, 120 Stat. 889, provided that: ''In the case of 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—

''(1) increases benefits, and

''(2) provides for special withdrawal liability rules under section 4203(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1383[(f)]),

the amendments made by sections 201, 202, 211, and 212 of this Act [enacting sections 431 and 432 of this title and sections 1084 and 1085 of Title 29, Labor, and amending this section, section 4971 of this title, and sections 1081, 1082, and 1132 of Title 29] shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto).''

APPLICABILITY OF SECTION TO CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

For special rules on applicability of this section to certain plans maintained by commercial airlines, see section 402 of Pub. L. 109–280, set out as a note under section 430 of this title.

EFFECT OF ELECTION

Pub. L. 108–218, title I, §102(c), Apr. 10, 2004, 118 Stat. 602, provided that: ''An election under section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] or [former] section 412(*l*)(12) of the Internal Revenue Code of 1986 (as added by this section) with respect to a plan shall not invalidate any obligation (pursuant to a collective bargaining agreement in effect on the date of the election) to provide benefits, to change the accrual of benefits, or to change the rate at which benefits become nonforfeitable under the plan.''

SPECIAL RULE FOR UNAMORTIZED BALANCES UNDER EXISTING LAW

Pub. L. 105–34, title XV, §1521(d)(2), Aug. 5, 1997, 111 Stat. 1070, provided that: ''The unamortized balance (as of the close of the plan year preceding the plan's first year beginning in 1999) of any amortization base established under [former] section 412(c)(7)(D)(iii) of such Code [26 U.S.C. 412(c)(7)(D)(iii)] and section 302(c)(7)(D)(iii) of such Act [29 U.S.C. 1082(c)(7)(D)(iii)] (as repealed by subsection (c)(3)) for any plan year beginning before 1999 shall be amortized in equal annual installments (until fully amortized) over a period of years equal to the excess of—

''(A) 20 years, over

''(B) the number of years since the amortization base was established.''

ALTERNATIVE AMORTIZATION METHOD FOR CERTAIN MULTIEMPLOYER PLANS

Pub. L. 93–406, title II, §1013(d), Sept. 2, 1974, 88 Stat. 923, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—In the case of any multiemployer plan (as defined in section 414(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to which section 412 of such Code applies, if—

''(A) on January 1, 1974, the contributions under the plan were based on a percentage of pay,

''(B) the actuarial assumptions with respect to pay are reasonably related to past and projected experience, and

''(C) the rates of interest under the plan are determined on the basis of reasonable actuarial assumptions,

the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act [section 1082(b)(2)(B)(i), (ii), and (iii) of Title 29, Labor].

''(2) LIMITATION.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of the Internal Revenue Code of 1986.''

§ 413. Collectively bargained plans, etc.

(a) Application of subsection (b)

Subsection (b) applies to—

(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

(2) each trust which is a part of such plan.

(b) General rule

If this subsection applies to a plan, notwithstanding any other provision of this title—

(1) Participation

Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

(2) Discrimination, etc.

Sections 401(a)(4) and 411(d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.

(3) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

(4) Vesting

Section 411 (other than subsection (d)(3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(5) Funding

The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

(6) Liability for funding tax

For a plan year the liability under section 4971 of each employer who is a party to the

collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

For purposes of this subsection and the last sentence of section 4971(a),[1] an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall not be treated as a liability for contributions under the plan.

(7) Deduction limitations

Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(8) Employees of labor unions

For purposes of this subsection, employees of employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees.

(9) Plans covering a professional employee

Notwithstanding subsection (a), in the case of a plan (and trust forming part thereof) which covers any professional employee, paragraph (1) shall be applied by substituting ''section 410(a)'' for ''section 410'', and paragraph (2) shall not apply.

(c) Plans maintained by more than one employer

In the case of a plan maintained by more than one employer—

(1) Participation

Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.

(2) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.

(3) Vesting

Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(4) Funding

(A) In general

In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan for purposes of section 412 unless such plan uses a method for determining required contributions which provides that any employer contributes not less than the amount which would be required if such employer maintained a separate plan.

(B) Other plans

In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year of the plan beginning after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary.

(5) Liability for funding tax

For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

(6) Deduction limitations

(A) In general

In the case of a plan established after December 31, 1988, each applicable limitation provided by section 404(a) shall be determined as if each employer were maintaining a separate plan.

(B) Other plans

(i) In general

In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan.

(ii) Special rule

If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for

[1] See References in Text note below.

such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(7) Allocations

(A) In general

Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary.

(B) Assets and liabilities of plan

For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan.

(d) CSEC plans

Notwithstanding any other provision of this section, in the case of a CSEC plan—

(1) Funding

The requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer.

(2) Application of provisions

Paragraphs (1), (2), (3), and (5) of subsection (c) shall apply.

(3) Deduction limitations

Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed such applicable limitation if the anticipated employer contributions for such plan year of all employers (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(4) Allocations

Allocations of amounts under paragraph (3) and subsection (c)(5) among the employers maintaining the plan shall not be inconsistent with the regulations prescribed for this purpose by the Secretary.

(Added Pub. L. 93–406, title II, §1014, Sept. 2, 1974, 88 Stat. 924; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–364, title II, §208(d), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 100–647, title I, §1011(h)(10), title VI, §6058(a)–(c), Nov. 10, 1988, 102 Stat. 3466, 3698, 3699; Pub. L. 101–508, title XI, §11704(a)(4), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 113–97, title II, §202(b), Apr. 7, 2014, 128 Stat. 1134.)

REFERENCES IN TEXT

The last sentence of section 4971(a), referred to in subsec. (b)(6), was struck out by Pub. L. 100–203, title IX, §9305(a)(2)(A), Dec. 22, 1987, 101 Stat. 1330–351.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(6), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of enactment of the Technical and Miscellaneous Revenue Act of 1988, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

AMENDMENTS

2014—Subsec. (d). Pub. L. 113–97 added subsec. (d).

1990—Subsec. (c)(7)(B). Pub. L. 101–508 substituted ''Assets'' for ''Asset'' in heading.

1988—Subsec. (b)(9). Pub. L. 100–647, §1011(h)(10), added par. (9).

Subsec. (c). Pub. L. 100–647, §6058(c), struck out at end ''Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary.''

Subsec. (c)(4). Pub. L. 100–647, §6058(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.''

Subsec. (c)(6). Pub. L. 100–647, §6058(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.''

Subsec. (c)(7). Pub. L. 100–647, §6058(c), added par. (7).

1980—Subsec. (b)(6). Pub. L. 96–364 inserted provisions relating to withdrawal liability of employer.

1976—Subsecs. (b), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

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 1988 AMENDMENT

Amendment by section 1011(h)(10) 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.

Pub. L. 100–647, title VI, §6058(d), Nov. 10, 1988, 102 Stat. 3699, provided that: ''Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to plan years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1980 AMENDMENT

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.

§ 414. Definitions and special rules

(a) Service for predecessor employer

For purposes of this part—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary, be treated as service for the employer.

(b) Employees of controlled group of corporations

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary.

(c) Employees of partnerships, proprietorships, etc., which are under common control

(1) In general

Except as provided in paragraph (2), for purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, under regulations prescribed by the Secretary, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

(2) Special rules relating to church plans

(A) General rule

Except as provided in subparagraphs (B) and (C), for purposes of this subsection and subsection (m), an organization that is otherwise eligible to participate in a church plan shall not be aggregated with another such organization and treated as a single employer with such other organization for a plan year beginning in a taxable year unless—

(i) one such organization provides (directly or indirectly) at least 80 percent of the operating funds for the other organization during the preceding taxable year of the recipient organization, and

(ii) there is a degree of common management or supervision between the organizations such that the organization providing the operating funds is directly involved in the day-to-day operations of the other organization.

(B) Nonqualified church-controlled organizations

Notwithstanding subparagraph (A), for purposes of this subsection and subsection (m), an organization that is a nonqualified church-controlled organization shall be aggregated with 1 or more other nonqualified church-controlled organizations, or with an organization that is not exempt from tax under section 501, and treated as a single employer with such other organization, if at least 80 percent of the directors or trustees of such other organization are either representatives of, or directly or indirectly controlled by, such nonqualified church-controlled organization. For purposes of this subparagraph, the term ''nonqualified church-controlled organization'' means a church-controlled tax-exempt organization described in section 501(c)(3) that is not a qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) Permissive aggregation among church-related organizations

The church or convention or association of churches with which an organization described in subparagraph (A) is associated (within the meaning of subsection (e)(3)(D)), or an organization designated by such church or convention or association of churches, may elect to treat such organizations as a single employer for a plan year. Such election, once made, shall apply to all succeeding plan years unless revoked with notice provided to the Secretary in such manner as the Secretary shall prescribe.

(D) Permissive disaggregation of church-related organizations

For purposes of subparagraph (A), in the case of a church plan, an employer may elect to treat churches (as defined in section 403(b)(12)(B)) separately from entities that are not churches (as so defined), without regard to whether such entities maintain separate church plans. Such election, once made, shall apply to all succeeding plan years unless revoked with notice provided to the Secretary in such manner as the Secretary shall prescribe.

(d) Governmental plan

For purposes of this part, the term ''governmental plan'' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term ''governmental plan'' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is fi-

nanced by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669). The term ''governmental plan'' includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

(e) Church plan

(1) In general

For purposes of this part, the term ''church plan'' means a plan established and maintained (to the extent required in paragraph (2)(B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.

(2) Certain plans excluded

The term ''church plan'' does not include a plan—

(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or

(B) if less than substantially all of the individuals included in the plan are individuals described in paragraph (1) or (3)(B) (or their beneficiaries).

(3) Definitions and other provisions

For purposes of this subsection—

(A) Treatment as church plan

A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(B) Employee defined

The term employee of a church or a convention or association of churches shall include—

(i) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(ii) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches; and

(iii) an individual described in subparagraph (E).

(C) Church treated as employer

A church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

(D) Association with church

An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(E) Special rule in case of separation from plan

If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph (3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan—

(i) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(ii) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7)) at the time of such separation from service.

(4) Correction of failure to meet church plan requirements

(A) In general

If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

(B) Failure to correct

If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this subsection beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(C) Correction period defined

The term ''correction period'' means—

(i) the period, ending 270 days after the date of mailing by the Secretary of a no-

tice of default with respect to the plan's failure to meet one or more of the requirements of this subsection;

(ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(5) Special rules for chaplains and self-employed ministers

(A) Certain ministers may participate

For purposes of this part—

(i) In general

A duly ordained, commissioned, or licensed minister of a church is described in paragraph (3)(B) if, in connection with the exercise of their ministry, the minister—

(I) is a self-employed individual (within the meaning of section 401(c)(1)(B), or

(II) is employed by an organization other than an organization which is described in section 501(c)(3) and with respect to which the minister shares common religious bonds.

(ii) Treatment as employer and employee

For purposes of sections 403(b)(1)(A) and 404(a)(10), a minister described in clause (i)(I) shall be treated as employed by the minister's own employer which is an organization described in section 501(c)(3) and exempt from tax under section 501(a).

(B) Special rules for applying section 403(b) to self-employed ministers

In the case of a minister described in subparagraph (A)(i)(I)—

(i) the minister's includible compensation under section 403(b)(3) shall be determined by reference to the minister's earned income (within the meaning of section 401(c)(2)) from such ministry rather than the amount of compensation which is received from an employer, and

(ii) the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) with respect to such ministry shall be included for purposes of section 403(b)(4).

(C) Effect on non-denominational plans

If a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry participates in a church plan (within the meaning of this section) and in the exercise of such ministry is employed by an employer not otherwise participating in such church plan, then such employer may exclude such minister from being treated as an employee of such employer for purposes of applying sections 401(a)(3), 401(a)(4), and 401(a)(5), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(26), 401(k)(3), 401(m), 403(b)(1)(D) (including section 403(b)(12)), and 410 to any stock bonus, pension, profit-sharing, or annuity plan (including an annuity described in section 403(b) or a retirement income account described in section 403(b)(9)). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of, and prevent the abuse of, this subparagraph.

(D) Compensation taken into account only once

If any compensation is taken into account in determining the amount of any contributions made to, or benefits to be provided under, any church plan, such compensation shall not also be taken into account in determining the amount of any contributions made to, or benefits to be provided under, any other stock bonus, pension, profit-sharing, or annuity plan which is not a church plan.

(E) Exclusion

In the case of a contribution to a church plan made on behalf of a minister described in subparagraph (A)(i)(II), such contribution shall not be included in the gross income of the minister to the extent that such contribution would not be so included if the minister was an employee of a church.

(f) Multiemployer plan

(1) Definition

For purposes of this part, the term ''multiemployer plan'' means a plan—

(A) to which more than one employer is required to contribute,

(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

(2) Cases of common control

For purposes of this subsection, all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

(3) Continuation of status after termination

Notwithstanding paragraph (1), a plan is a multiemployer plan on and after its termination date under title IV of the Employee Retirement Income Security Act of 1974 if the plan was a multiemployer plan under this subsection for the plan year preceding its termination date.

(4) Transitional rule

For any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term ''multiemployer plan'' means a plan described in this subsection as in effect immediately before that date.

(5) Special election

Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the Pension Benefit Guaranty Corporation and subject to the provisions of section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974, that the plan shall not be treated as a multiemployer plan for any purpose under such Act or this title, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(A) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of the Employee Retirement Income Security Act of 1974 and section 414(f)(1)(C) (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and

(B) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the Pension Benefit Guaranty Corporation, the Secretary of Labor and the Secretary.

(6) Election with regard to multiemployer status

(A) Within 1 year after the enactment of the Pension Protection Act of 2006—

(i) An election under paragraph (5) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act, the plan would have been a multiemployer plan but for the election under paragraph (5), and

(ii) a plan that meets the criteria in subparagraph (A) and (B) of paragraph (1) of this subsection or that is described in subparagraph (E) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

(I) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, the plan has met those criteria or is so described,

(II) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501, and

(III) the plan was established prior to September 2, 1974.

(B) An election under this paragraph shall be effective for all purposes under this Act[1] and under the Employee Retirement Income Security Act of 1974, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii).

(C) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subparagraph (A)(ii) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501.

(D) The fact that a plan makes an election under subparagraph (A)(ii) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

(E) A plan is described in this subparagraph if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.

(F) MAINTENANCE UNDER COLLECTIVE BARGAINING AGREEMENT.—For purposes of this title and the Employee Retirement Income Security Act of 1974, a plan making an election under this paragraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.

(g) Plan administrator

For purposes of this part, the term ''plan administrator'' means—

(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

(2) in the absence of a designation referred to in paragraph (1)—

(A) in the case of a plan maintained by a single employer, such employer,

(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary may by regulation, prescribe.

(h) Tax treatment of certain contributions

(1) In general

Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

(A) to an employees' trust described in section 401(a), or

(B) under a plan described in section 403(a),

shall not be treated as having been made by the employer if it is designated as an employee contribution.

(2) Designation by units of government

For purposes of paragraph (1), in the case of any plan established by the government of any

[1] So in original. Probably should be ''title''.

State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

(i) Defined contribution plan

For purposes of this part, the term ''defined contribution plan'' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(j) Defined benefit plan

For purposes of this part, the term ''defined benefit plan'' means any plan which is not a defined contribution plan.

(k) Certain plans

A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan,

(2) for purposes of sections 72(d) (relating to treatment of employee contributions as separate contract), 411(a)(7)(A) (relating to minimum vesting standards), 415 (relating to limitations on benefits and contributions under qualified plans), and 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

(*l*) Merger and consolidations of plans or transfers of plan assets

(1) In general

A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which Title IV of the Employee Retirement Income Security Act of 1974 applies.

(2) Allocation of assets in plan spin-offs, etc.

(A) In general

In the case of a plan spin-off of a defined benefit plan, a trust which forms part of—

(i) the original plan, or

(ii) any plan spun off from such plan,

shall not constitute a qualified trust under this section unless the applicable percentage of excess assets are allocated to each of such plans.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

(i) the excess (if any) of—

(I) the sum of the funding target and target normal cost determined under section 430, over

(II) the amount of the assets required to be allocated to the plan after the spin-off (without regard to this paragraph), by

(ii) the sum of the excess amounts determined separately under clause (i) for all such plans.

(C) Excess assets

For purposes of subparagraph (A), the term ''excess assets'' means an amount equal to the excess (if any) of—

(i) the fair market value of the assets of the original plan immediately before the spin-off, over

(ii) the amount of assets required to be allocated after the spin-off to all plans (determined without regard to this paragraph).

(D) Certain spun-off plans not taken into account

(i) In general

A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

(ii) Plans transferred out of controlled groups

A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

(iii) Plans transferred out of multiple employer plans

A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remain-

ing after the spin-off which is also maintained by another employer (or member of the same controlled group as such other employer) which maintained the plan in existence before the spin-off.

(iv) Terminated plans

A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

(v) Controlled group

For purposes of this subparagraph, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*).

(E) Paragraph not to apply to multiemployer plans

This paragraph does not apply to any multiemployer plan with respect to any spin-off to the extent that participants either before or after the spin-off are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(F) Application to similar transaction

Except as provided by the Secretary, rules similar to the rules of this paragraph shall apply to transactions similar to spin-offs.

(G) Special rules for bridge banks [2]

For purposes of this paragraph, in the case of a bridge depository institution established under section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i))—

(i) such bank shall be treated as a member of any controlled group which includes any insured bank (as defined in section 3(h) of such Act (12 U.S.C. 1813(h)))—

(I) which maintains a defined benefit plan,

(II) which is closed by the appropriate bank regulatory authorities, and

(III) any asset and liabilities of which are received by the bridge depository institution, and

(ii) the requirements of this paragraph shall not be treated as met with respect to such plan unless during the 180-day period beginning on the date such insured bank is closed—

(I) the bridge depository institution has the right to require the plan to transfer (subject to the provisions of this paragraph) not more than 50 percent of the excess assets (as defined in subparagraph (C)) to a defined benefit plan maintained by the bridge depository institution with respect to participants or former participants (including retirees and beneficiaries) in the original plan employed by the bridge depository institution or formerly employed by the closed bank, and

(II) no other merger, spin-off, termination, or similar transaction involving the portion of the excess assets described in subclause (I) may occur without the prior written consent of the bridge depository institution.

(m) Employees of an affiliated service group

(1) In general

For purposes of the employee benefit requirements listed in paragraph (4), except to the extent otherwise provided in regulations, all employees of the members of an affiliated service group shall be treated as employed by a single employer.

(2) Affiliated service group

For purposes of this subsection, the term ''affiliated service group'' means a group consisting of a service organization (hereinafter in this paragraph referred to as the ''first organization'') and one or more of the following:

(A) any service organization which—

(i) is a shareholder or partner in the first organization, and

(ii) regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons, and

(B) any other organization if—

(i) a significant portion of the business of such organization is the performance of services (for the first organization, for organizations described in subparagraph (A), or for both) of a type historically performed in such service field by employees, and

(ii) 10 percent or more of the interests in such organization is held by persons who are highly compensated employees (within the meaning of section 414(q)) of the first organization or an organization described in subparagraph (A).

(3) Service organizations

For purposes of this subsection, the term ''service organization'' means an organization the principal business of which is the performance of services.

(4) Employee benefit requirements

For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a), and

(B) sections 408(k), 408(p), 410, 411, 415, and 416.

(5) Certain organizations performing management functions

For purposes of this subsection, the term ''affiliated service group'' also includes a group consisting of—

(A) an organization the principal business of which is performing, on a regular and continuing basis, management functions for 1 organization (or for 1 organization and other organizations related to such 1 organization), and

(B) the organization (and related organizations) for which such functions are so performed by the organization described in subparagraph (A).

For purposes of this paragraph, the term ''related organizations'' has the same meaning as

[2] So in original. Probably should be ''bridge depository institutions''

the term ''related persons'' when used in section 144(a)(3).

(6) Other definitions

For purposes of this subsection—

(A) Organization defined

The term ''organization'' means a corporation, partnership, or other organization.

(B) Ownership

In determining ownership, the principles of section 318(a) shall apply.

(n) Employee leasing

(1) In general

For purposes of the requirements listed in paragraph (3), with respect to any person (hereinafter in this subsection referred to as the ''recipient'') for whom a leased employee performs services—

(A) the leased employee shall be treated as an employee of the recipient, but

(B) contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient shall be treated as provided by the recipient.

(2) Leased employee

For purposes of paragraph (1), the term ''leased employee'' means any person who is not an employee of the recipient and who provides services to the recipient if—

(A) such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the ''leasing organization''),

(B) such person has performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, and

(C) such services are performed under primary direction or control by the recipient.

(3) Requirements

For purposes of this subsection, the requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a),

(B) sections 408(k), 408(p), 410, 411, 415, and 416, and

(C) sections 79, 106, 117(d), 125, 127, 129, 132, 137, 274(j), 505, and 4980B.

(4) Time when first considered as employee

(A) In general

In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the requirements listed in paragraph (3) are met for periods after the close of the period referred to in paragraph (2)(B).

(B) Years of service

In the case of a person who is an employee of the recipient (whether by reason of this subsection or otherwise), for purposes of the requirements listed in paragraph (3), years of service for the recipient shall be determined by taking into account any period for which such employee would have been a leased employee but for the requirements of paragraph (2)(B).

(5) Safe harbor

(A) In general

In the case of requirements described in subparagraphs (A) and (B) of paragraph (3), this subsection shall not apply to any leased employee with respect to services performed for a recipient if—

(i) such employee is covered by a plan which is maintained by the leasing organization and meets the requirements of subparagraph (B), and

(ii) leased employees (determined without regard to this paragraph) do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

(B) Plan requirements

A plan meets the requirements of this subparagraph if—

(i) such plan is a money purchase pension plan with a nonintegrated employer contribution rate for each participant of at least 10 percent of compensation,

(ii) such plan provides for full and immediate vesting, and

(iii) each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization) immediately participates in such plan.

Clause (iii) shall not apply to any individual whose compensation from the leasing organization in each plan year during the 4-year period ending with the plan year is less than $1,000.

(C) Definitions

For purposes of this paragraph—

(i) Highly compensated employee

The term ''highly compensated employee'' has the meaning given such term by section 414(q).

(ii) Nonhighly compensated work force

The term ''nonhighly compensated work force'' means the aggregate number of individuals (other than highly compensated employees)—

(I) who are employees of the recipient (without regard to this subsection) and have performed services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, or

(II) who are leased employees with respect to the recipient (determined without regard to this paragraph).

(iii) Compensation

The term ''compensation'' has the same meaning as when used in section 415; except that such term shall include—

(I) any employer contribution under a qualified cash or deferred arrangement to the extent not included in gross income under section 402(e)(3) or 402(h)(1)(B),

(II) any amount which the employee would have received in cash but for an election under a cafeteria plan (within the meaning of section 125), and

(III) any amount contributed to an annuity contract described in section 403(b) pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).

(6) Other rules

For purposes of this subsection—

(A) Related persons

The term ''related persons'' has the same meaning as when used in section 144(a)(3).

(B) Employees of entities under common control

The rules of subsections (b), (c), (m), and (*o*) shall apply.

(*o*) Regulations

The Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in subsections (m) and (n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in subsection (m)(4) or (n)(3) or any requirement under section 457 through the use of—

(1) separate organizations,

(2) employee leasing, or

(3) other arrangements.

The regulations prescribed under subsection (n) shall include provisions to minimize the recordkeeping requirements of subsection (n) in the case of an employer which has no top-heavy plans (within the meaning of section 416(g)) and which uses the services of persons (other than employees) for an insignificant percentage of the employer's total workload.

(p) Qualified domestic relations order defined

For purposes of this subsection and section 401(a)(13)—

(1) In general

(A) Qualified domestic relations order

The term ''qualified domestic relations order'' means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order

The term ''domestic relations order'' means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) Order must clearly specify certain facts

A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits

A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) Exception for certain payments made after earliest retirement age

(A) In general

A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—

(i) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) Earliest retirement age

For purposes of this paragraph, the term ''earliest retirement age'' means the earlier of—

(i) the date on which the participant is entitled to a distribution under the plan, or

(ii) the later of—

(I) the date the participant attains age 50, or

(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits

To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

(6) Plan procedures with respect to orders

(A) Notice and determination by administrator

In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures

Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made

(A) In general

During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this paragraph referred to as the ''segregated amounts'') which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) Payment to alternate payee if order determined to be qualified domestic relations order

If within the 18-month period described in subparagraph (E) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(C) Payment to plan participant in certain cases

If within the 18-month period described in subparagraph (E)—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) Subsequent determination or order to be applied prospectively only

Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) Determination of 18-month period

For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) Alternate payee defined

The term ''alternate payee'' means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) Subsection not to apply to plans to which section 401(a)(13) does not apply

This subsection shall not apply to any plan to which section 401(a)(13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.

(10) Waiver of certain distribution requirements

With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), section 409(d), and section 457(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

(11) Application of rules to certain other plans

For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

(12) Tax treatment of payments from a section 457 plan

If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified do-

mestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.

(13) Consultation with the Secretary

In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

(q) Highly compensated employee

(1) In general

The term ''highly compensated employee'' means any employee who—

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year—

(i) had compensation from the employer in excess of $80,000, and

(ii) if the employer elects the application of this clause for such preceding year, was in the top-paid group of employees for such preceding year.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1996.

(2) 5-percent owner

An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

(3) Top-paid group

An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

(4) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 415(c)(3).

(5) Excluded employees

For purposes of subsection (r) and for purposes of determining the number of employees in the top-paid group, the following employees shall be excluded—

(A) employees who have not completed 6 months of service,

(B) employees who normally work less than 17½ hours per week,

(C) employees who normally work during not more than 6 months during any year,

(D) employees who have not attained age 21, and

(E) except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) than that specified in such subparagraph.

(6) Former employees

A former employee shall be treated as a highly compensated employee if—

(A) such employee was a highly compensated employee when such employee separated from service, or

(B) such employee was a highly compensated employee at any time after attaining age 55.

(7) Coordination with other provisions

Subsections (b), (c), (m), (n), and (*o*) shall be applied before the application of this subsection.

(8) Special rule for nonresident aliens

For purposes of this subsection and subsection (r), employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)) shall not be treated as employees.

(9) Certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans

In the case of a church plan (as defined in subsection (e)), no employee shall be considered an officer, a person whose principal duties consist of supervising the work of other employees, or a highly compensated employee for any year unless such employee is a highly compensated employee under paragraph (1) for such year.

(r) Special rules for separate line of business

(1) In general

For purposes of sections 129(d)(8) and 410(b), an employer shall be treated as operating separate lines of business during any year if the employer for bona fide business reasons operates separate lines of business.

(2) Line of business must have 50 employees, etc.

A line of business shall not be treated as separate under paragraph (1) unless—

(A) such line of business has at least 50 employees who are not excluded under subsection (q)(5),

(B) the employer notifies the Secretary that such line of business is being treated as separate for purposes of paragraph (1), and

(C) such line of business meets guidelines prescribed by the Secretary or the employer receives a determination from the Secretary that such line of business may be treated as separate for purposes of paragraph (1).

(3) Safe harbor rule

(A) In general

The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

(i) not less than one-half, and

(ii) not more than twice,

the percentage which highly compensated employees are of all employees of the em-

ployer. An employer shall be treated as meeting the requirements of clause (i) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

(B) Determination may be based on preceding year

The requirements of subparagraph (A) shall be treated as met with respect to any line of business if such requirements were met with respect to such line of business for the preceding year and if—

(i) no more than a de minimis number of employees were shifted to or from the line of business after the close of the preceding year, or

(ii) the employees shifted to or from the line of business after the close of the preceding year contained a substantially proportional number of highly compensated employees.

(4) Highly compensated employee percentage defined

For purposes of this subsection, the term ''highly compensated employee percentage'' means the percentage which highly compensated employees performing services for the line of business are of all employees performing services for the line of business.

(5) Allocation of benefits to line of business

For purposes of this subsection, benefits which are attributable to services provided to a line of business shall be treated as provided by such line of business.

(6) Headquarters personnel, etc.

The Secretary shall prescribe rules providing for—

(A) the allocation of headquarters personnel among the lines of business of the employer, and

(B) the treatment of other employees providing services for more than 1 line of business of the employer or not in lines of business meeting the requirements of paragraph (2).

(7) Separate operating units

For purposes of this subsection, the term ''separate line of business'' includes an operating unit in a separate geographic area separately operated for a bona fide business reason.

(8) Affiliated service groups

This subsection shall not apply in the case of any affiliated service group (within the meaning of section 414(m)).

(s) Compensation

For purposes of any applicable provision—

(1) In general

Except as provided in this subsection, the term ''compensation'' has the meaning given such term by section 415(c)(3).

(2) Employer may elect not to treat certain deferrals as compensation

An employer may elect not to include as compensation any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 132(f)(4), 402(e)(3), 402(h), or 403(b).

(3) Alternative determination of compensation

The Secretary shall by regulation provide for alternative methods of determining compensation which may be used by an employer, except that such regulations shall provide that an employer may not use an alternative method if the use of such method discriminates in favor of highly compensated employees (within the meaning of subsection (q)).

(4) Applicable provision

For purposes of this subsection, the term ''applicable provision'' means any provision which specifically refers to this subsection.

(t) Application of controlled group rules to certain employee benefits

(1) In general

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) shall be treated as employed by a single employer for purposes of an applicable section. The provisions of subsection (*o*) shall apply with respect to the requirements of an applicable section.

(2) Applicable section

For purposes of this subsection, the term ''applicable section'' means section 79, 106, 117(d), 125, 127, 129, 132, 137, 274(j), 505, or 4980B.

(u) Special rules relating to veterans' reemployment rights under USERRA and to differential wage payments to members on active duty

(1) Treatment of certain contributions made pursuant to veterans' reemployment rights

If any contribution is made by an employer or an employee under an individual account plan with respect to an employee, or by an employee to a defined benefit plan that provides for employee contributions, and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, then—

(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 402(h), 403(b), 404(a), 404(h), 408, 415, or 457, and shall not be taken into account in applying such limitations to other contributions or benefits under such plan or any other plan, with respect to the year in which the contribution is made,

(B) such contribution shall be subject to the limitations referred to in subparagraph (A) with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary), and

(C) such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

For purposes of the preceding sentence, any elective deferral or employee contribution

made under paragraph (2) shall be treated as required by reason of the employee's rights under such chapter 43.

(2) Reemployment rights under USERRA with respect to elective deferrals

(A) In general

For purposes of this subchapter and section 457, if an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, the employer sponsoring the plan shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals only if such employer—

(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B) or such lesser amount as is elected by the employee) during the period which begins on the date of the reemployment of such employee with such employer and has the same length as the lesser of—

(I) the product of 3 and the period of qualified military service which resulted in such rights, and

(II) 5 years, and

(ii) makes a matching contribution with respect to any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

(B) Amount of makeup required

The amount determined under this subparagraph with respect to any plan is the maximum amount of the elective deferrals that the individual would have been permitted to make under the plan in accordance with the limitations referred to in paragraph (1)(A) during the period of qualified military service if the individual had continued to be employed by the employer during such period and received compensation as determined under paragraph (7). Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

(C) Elective deferral

For purposes of this paragraph, the term ''elective deferral'' has the meaning given such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

(D) After-tax employee contributions

References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to employee contributions.

(3) Certain retroactive adjustments not required

For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

(B) any allocation of any forfeiture with respect to the period of qualified military service.

(4) Loan repayment suspensions permitted

If any plan suspends the obligation to repay any loan made to an employee from such plan for any part of any period during which such employee is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p), 401(a), or 4975(d)(1).

(5) Qualified military service

For purposes of this subsection, the term ''qualified military service'' means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

(6) Individual account plan

For purposes of this subsection, the term ''individual account plan'' means any defined contribution plan [3](including any tax-sheltered annuity plan under section 403(b), any simplified employee pension under section 408(k), any qualified salary reduction arrangement under section 408(p), and any eligible deferred compensation plan (as defined in section 457(b)).

(7) Compensation

For purposes of sections 403(b)(3), 415(c)(3), and 457(e)(5), an employee who is in qualified military service shall be treated as receiving compensation from the employer during such period of qualified military service equal to—

(A) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for absence during the period of qualified military service, or

(B) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(8) USERRA requirements for qualified retirement plans

For purposes of this subchapter and section 457, an employer sponsoring a retirement plan shall be treated as meeting the requirements of chapter 43 of title 38, United States Code, only if each of the following requirements is met:

(A) An individual reemployed under such chapter is treated with respect to such plan as not having incurred a break in service

[3] So in original. There is no closing parenthesis.

with the employer maintaining the plan by reason of such individual's period of qualified military service.

(B) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to such plan to constitute service with the employer maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

(C) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the employer throughout the period of qualified military service. Any payment to such plan shall be made during the period beginning with the date of reemployment and whose duration is 3 times the period of the qualified military service (but not greater than 5 years).

(9) Treatment in the case of death or disability resulting from active military service

(A) In general

For benefit accrual purposes, an employer sponsoring a retirement plan may treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

(B) Nondiscrimination requirement

Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to the employer maintaining the plan (as determined under subsections (b), (c), (m), and (*o*)) who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

(C) Determination of benefits

The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of—

(i) the 12-month period of service with the employer immediately prior to qualified military service, or

(ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

(10) Plans not subject to title 38

This subsection shall not apply to any retirement plan to which chapter 43 of title 38, United States Code, does not apply.

(11) References

For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment).

(12) Treatment of differential wage payments

(A) In general

Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation, and

(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

(B) Special rule for distributions

(i) In general

Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

(ii) Limitation

If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(C) Nondiscrimination requirement

Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (*o*)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably

equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

(D) Differential wage payment

For purposes of this paragraph, the term ''differential wage payment'' has the meaning given such term by section 3401(h)(2).

(v) Catch-up contributions for individuals age 50 or over

(1) In general

An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) Limitation on amount of additional deferrals

(A) In general

A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

(i) the applicable dollar amount, or

(ii) the excess (if any) of—

(I) the participant's compensation (as defined in section 415(c)(3)) for the year, over

(II) any other elective deferrals of the participant for such year which are made without regard to this subsection.

(B) Applicable dollar amount

For purposes of this paragraph—

(i) In the case of an applicable employer plan other than a plan described in section 401(k)(11) or 408(p), the applicable dollar amount is $5,000.

(ii) In the case of an applicable employer plan described in section 401(k)(11) or 408(p), the applicable dollar amount is $2,500.

(C) Cost-of-living adjustment

In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the $5,000 amount in subparagraph (B)(i) and the $2,500 amount in subparagraph (B)(ii) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(D) Aggregation of plans

For purposes of this paragraph, plans described in clauses (i), (ii), and (iv) of paragraph (6)(A) that are maintained by the same employer (as determined under subsection (b), (c), (m) or (*o*)) shall be treated as a single plan, and plans described in clause (iii) of paragraph (6)(A) that are maintained by the same employer shall be treated as a single plan.

(3) Treatment of contributions

In the case of any contribution to a plan under paragraph (1)—

(A) such contribution shall not, with respect to the year in which the contribution is made—

(i) be subject to any otherwise applicable limitation contained in sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3)), or

(ii) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan, and

(B) except as provided in paragraph (4), such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

(4) Application of nondiscrimination rules

(A) In general

An applicable employer plan shall be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

(B) Aggregation

For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 plan, except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section).

(5) Eligible participant

For purposes of this subsection, the term ''eligible participant'' means a participant in a plan—

(A) who would attain age 50 by the end of the taxable year,

(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan (or other applicable) year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation or restriction contained in the terms of the plan.

(6) Other definitions and rules

For purposes of this subsection—

(A) Applicable employer plan

The term ''applicable employer plan'' means—

(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(iii) an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A), and

(iv) an arrangement meeting the requirements of section 408(k) or (p).

(B) Elective deferral

The term ''elective deferral'' has the meaning given such term by subsection (u)(2)(C).

(C) Exception for section 457 plans

This subsection shall not apply to a participant for any year for which a higher limitation applies to the participant under section 457(b)(3).

(w) Special rules for certain withdrawals from eligible automatic contribution arrangements

(1) In general

If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals—

(A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.

(2) Permissible withdrawal

For purposes of this subsection—

(A) In general

The term ''permissible withdrawal'' means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

(i) is made pursuant to an election by an employee, and

(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

(B) Time for making election

Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement.

(C) Amount of distribution

Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

(3) Eligible automatic contribution arrangement

For purposes of this subsection, the term ''eligible automatic contribution arrangement'' means an arrangement under an applicable employer plan—

(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) which meets the requirements of paragraph (4).

(4) Notice requirements

(A) In general

The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(B) Time and form of notice

A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

(i) the notice includes an explanation of the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

(5) Applicable employer plan

For purposes of this subsection, the term ''applicable employer plan'' means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),

(D) a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), and

(E) a simple retirement account (as defined in section 408(p)).

(6) Special rule

A withdrawal described in paragraph (1) (subject to the limitation of paragraph (2)(C)) shall not be taken into account for purposes of section 401(k)(3) or for purposes of applying the limitation under section 402(g)(1).

(x) Special rules for eligible combined defined benefit plans and qualified cash or deferred arrangements

(1) General rule

Except as provided in this subsection, the requirements of this title shall be applied to any defined benefit plan or applicable defined contribution plan which are[4] part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan. In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.

(2) Eligible combined plan

For purposes of this subsection—

(A) In general

The term ''eligible combined plan'' means a plan—

(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

(ii) which consists of a defined benefit plan and an applicable defined contribution plan,

(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term ''small employer'' has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting ''500'' for ''50'' each place it appears.

(B) Benefit requirements

(i) In general

The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is the lesser of—

(I) 1 percent multiplied by the number of years of service with the employer, or

(II) 20 percent.

(iii) Special rule for applicable defined benefit plans

If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 411(a)(13)(B) which meets the interest credit requirements of section 411(b)(5)(B)(i), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives a pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

If the participant's age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

(iv) Years of service

For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

(C) Contribution requirements

(i) In general

The contribution requirements of this subparagraph with respect to any applicable defined contribution plan forming part of an eligible combined plan are met if—

(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply for purposes of this clause.

(ii) Nonelective contributions

An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

[4] So in original. Probably should be ''is''.

(D) Vesting requirements

The vesting requirements of this subparagraph are met if—

(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

(E) Uniform provision of contributions and benefits

In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

(F) Requirements must be met without taking into account social security and similar contributions and benefits or other plans

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Social security and similar contributions

The requirements of this clause are met if—

(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(*l*), and

(II) the requirements of sections 401(a)(4) and 410(b) are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(*l*).

(iii) Other plans and arrangements

The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) without being combined with any other plan.

(3) Nondiscrimination requirements for qualified cash or deferred arrangement

(A) In general

A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

(B) Matching contributions

In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

(4) Satisfaction of top-heavy rules

A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

(5) Automatic contribution arrangement

For purposes of this subsection—

(A) In general

A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

(ii) meets the notice requirements under subparagraph (B).

(B) Notice requirements

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Reasonable period to make election

The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

(iii) Annual notice of rights and obligations

The requirements of this clause are met if each employee eligible to participate in

the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

(6) Coordination with other requirements

(A) Treatment of separate plans

Section 414(k) shall not apply to an eligible combined plan.

(B) Reporting

An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

(7) Applicable defined contribution plan

For purposes of this subsection—

(A) In general

The term ''applicable defined contribution plan'' means a defined contribution plan which includes a qualified cash or deferred arrangement.

(B) Qualified cash or deferred arrangement

The term ''qualified cash or deferred arrangement'' has the meaning given such term by section 401(k)(2).

(y) Cooperative and small employer charity pension plans

(1) In general

For purposes of this title, except as provided in this subsection, a CSEC plan is a defined benefit plan (other than a multiemployer plan)—

(A) to which section 104 of the Pension Protection Act of 2006 applies, without regard to—

(i) section 104(a)(2) of such Act;

(ii) the amendments to such section 104 by section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; and

(iii) paragraph (3)(B);

(B) that, as of June 25, 2010, was maintained by more than one employer and all of the employers were organizations described in section 501(c)(3); or

(C) that, as of June 25, 2010, was maintained by an employer—

(i) described in section 501(c)(3) of such Code,[5]

(ii) chartered under part B of subtitle II of title 36, United States Code,

(iii) with employees in at least 40 States, and

(iv) whose primary exempt purpose is to provide services with respect to children.

(2) Aggregation

All employers that are treated as a single employer under subsection (b) or (c) shall be treated as a single employer for purposes of determining if a plan was maintained by more than one employer under subparagraph[6] (B) and (C) of paragraph (1).

(3) Election

(A) In general

If a plan falls within the definition of a CSEC plan under this subsection (without regard to this paragraph), such plan shall be a CSEC plan unless the plan sponsor elects not later than the close of the first plan year of the plan beginning after December 31, 2013, not to be treated as a CSEC plan. An election under the preceding sentence shall take effect for such plan year and, once made, may be revoked only with the consent of the Secretary.

(B) Special rule

If a plan described in subparagraph (A) is treated as a CSEC plan, section 104 of the Pension Protection Act of 2006, as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, shall cease to apply to such plan as of the first date as of which such plan is treated as a CSEC plan.

(z) Certain plan transfers and mergers

(1) In general

Under rules prescribed by the Secretary, except as provided in paragraph (2), no amount shall be includible in gross income by reason of—

(A) a transfer of all or a portion of the accrued benefit of a participant or beneficiary, whether or not vested, from a church plan that is a plan described in section 401(a) or an annuity contract described in section 403(b) to an annuity contract described in section 403(b), if such plan and annuity contract are both maintained by the same church or convention or association of churches,

(B) a transfer of all or a portion of the accrued benefit of a participant or beneficiary, whether or not vested, from an annuity contract described in section 403(b) to a church plan that is a plan described in section 401(a), if such plan and annuity contract are both maintained by the same church or convention or association of churches, or

(C) a merger of a church plan that is a plan described in section 401(a), or an annuity contract described in section 403(b), with an annuity contract described in section 403(b), if such plan and annuity contract are both maintained by the same church or convention or association of churches.

(2) Limitation

Paragraph (1) shall not apply to a transfer or merger unless the participant's or beneficiary's total accrued benefit immediately after the transfer or merger is equal to or greater than the participant's or beneficiary's total accrued benefit immediately before the transfer or merger, and such total accrued benefit is nonforfeitable after the transfer or merger.

(3) Qualification

A plan or annuity contract shall not fail to be considered to be described in section 401(a) or 403(b) merely because such plan or annuity

[5] So in original. Probably means section 501(c)(3) of this title.

[6] So in original.

contract engages in a transfer or merger described in this subsection.

(4) Definitions

For purposes of this subsection—

(A) Church or convention or association of churches

The term ''church or convention or association of churches'' includes an organization described in subparagraph (A) or (B)(ii) of subsection (e)(3).

(B) Annuity contract

The term ''annuity contract'' includes a custodial account described in section 403(b)(7) and a retirement income account described in section 403(b)(9).

(C) Accrued benefit

The term ''accrued benefit'' means—

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan, and

(ii) in the case of a plan other than a defined benefit plan, the balance of the employee's account under the plan.

(Added Pub. L. 93–406, title II, § 1015, Sept. 2, 1974, 88 Stat. 925; amended Pub. L. 94–455, title XIX, §§ 1901(a)(64), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 95–600, title I, § 152(d), Nov. 6, 1978, 92 Stat. 2799; Pub. L. 96–364, title II, §§ 207, 208(a), title IV, § 407(b), Sept. 26, 1980, 94 Stat. 1288, 1289, 1305; Pub. L. 96–605, title II, § 201(a), Dec. 28, 1980, 94 Stat. 3526; Pub. L. 96–613, § 5(a), Dec. 28, 1980, 94 Stat. 3580; Pub. L. 97–248, title II, §§ 240(c), 246(a), 248(a), Sept. 3, 1982, 96 Stat. 520, 525, 526; Pub. L. 98–369, div. A, title IV, § 491(d)(26), (27), title V, § 526(a)(1), (b)(1), (d)(1), (2), title VII, § 713(i), July 18, 1984, 98 Stat. 850, 874, 875, 960; Pub. L. 98–397, title II, § 204(b), Aug. 23, 1984, 98 Stat. 1445; Pub. L. 99–514, title XI, §§ 1114(a), (b)(11), 1115(a), 1117(c), 1146(a), (b), 1151(e)(1), (i), title XIII, § 1301(j)(4), title XVIII, §§ 1852(f), 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii), 1899A(12), Oct. 22, 1986, 100 Stat. 2448, 2451, 2452, 2462, 2491, 2506, 2507, 2657, 2868, 2951, 2953, 2954, 2958; Pub. L. 100–203, title IX, § 9305(c), Dec. 22, 1987, 101 Stat. 1330–352; Pub. L. 100–647, title I, §§ 1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), 1018(t)(8)(E)–(G), title II, § 2005(c)(1), (2), title III, §§ 3011(b)(4), (5), 3021(b)(1), (2)(A), title VI, § 6067(a), Nov. 10, 1988, 102 Stat. 3460, 3461, 3465, 3467, 3468, 3473, 3485, 3589, 3611, 3612, 3625, 3631, 3632, 3703; Pub. L. 101–140, title II, §§ 203(a)(6), 204(b)(2), Nov. 8, 1989, 103 Stat. 831, 833; Pub. L. 101–239, title VII, §§ 7811(m)(5), 7813(b), 7841(a)(2), Dec. 19, 1989, 103 Stat. 2412, 2413, 2427; Pub. L. 101–508, title XI, § 11703(b)(1), Nov. 5, 1990, 104 Stat. 1388–517; Pub. L. 102–318, title V, § 521(b)(20)–(22), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§ 1421(b)(9)(C), 1431(a), (b)(1), (c)(1)(A), (D), (E), 1434(b), 1454(a), 1461(a), 1462(a), 1704(n)(1), Aug. 20, 1996, 110 Stat. 1798, 1802, 1803, 1807, 1817, 1822, 1824, 1883; Pub. L. 105–34, title XV, § 1522(a), title XVI, § 1601(d)(6)(A), (7), (h)(2)(D)(i), (ii), Aug. 5, 1997, 111 Stat. 1070, 1089, 1090, 1092; Pub. L. 105–206, title VI, § 6018(c), July 22, 1998, 112 Stat. 822; Pub. L. 106–554, § 1(a)(7) [title III, § 314(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§ 631(a), 635(a)–(c), June 7, 2001, 115 Stat. 111, 117; Pub. L. 107–147, title IV, § 411(*o*)(3)–(8), Mar. 9, 2002, 116 Stat. 48, 49; Pub. L. 108–311, title IV, § 408(a)(15), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, § 114(c), title IX, §§ 902(d)(1), 903(a), 906(a)(1), (b)(1)(C), title XI, § 1106(b), Aug. 17, 2006, 120 Stat. 853, 1036, 1040, 1051, 1052, 1062; Pub. L. 110–28, title VI, § 6611(a)(2), (b)(2), May 25, 2007, 121 Stat. 180, 181; Pub. L. 110–245, title I, §§ 104(b), 105(b)(1), June 17, 2008, 122 Stat. 1626, 1628; Pub. L. 110–289, div. A, title VI, § 1604(b)(4), July 30, 2008, 122 Stat. 2829; Pub. L. 110–458, title I, §§ 101(d)(2)(E), 109(b)(4)–(c)(1), Dec. 23, 2008, 122 Stat. 5099, 5111; Pub. L. 113–97, title II, §§ 201, 203(a), Apr. 7, 2014, 128 Stat. 1121, 1138; Pub. L. 113–235, div. P, § 3(b), Dec. 16, 2014, 128 Stat. 2829; Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(i), (ii), (55), Dec. 19, 2014, 128 Stat. 4039, 4045; Pub. L. 114–113, div. Q, title III, § 336(a)(1), (d)(1), Dec. 18, 2015, 129 Stat. 3109, 3112.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Railroad Retirement Act of 1935 or 1937, referred to in subsec. (d), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–444, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

The International Organizations Immunities Act (59 Stat. 669), referred to in subsec. (d), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. The Act also amended several other laws including the Internal Revenue Code of 1939. For exemption from taxation of income of international organizations and of the compensation of employees thereof, see sections 892 and 893 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(3), (5), (6)(B), (F) and (*l*)(1), (2)(E), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§ 1301 et seq.) of chapter 18 of Title 29. Section 3(37)(A)(iii) of the Act is classified to section 1002(37)(A)(iii) of Title 29. Section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974 probably means section 4303(b) and (c) of such Act which is classified to section 1453(b) and (c) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(4), (5), means the date of the enactment of Pub. L. 96–364, which was approved Sept. 26, 1980.

Effective date of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(5), probably means the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, which was approved Sept. 26, 1980.

The Pension Protection Act of 2006, referred to in subsecs. (f)(6)(A) and (y)(1)(A), (3)(B), is Pub. L. 109–280,

Aug. 17, 2006, 120 Stat. 780. Section 104 of the Act is set out as a note under section 401 of this title. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 1001 of Title 29, Labor, and Tables.

The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, referred to in subsec. (y)(1)(A)(ii), (3)(B), is Pub. L. 111–192, June 25, 2010, 124 Stat. 1280. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1001 of Title 29, Labor, and Tables.

AMENDMENTS

2015—Subsec. (c). Pub. L. 114–113, §336(a)(1), designated existing provisions as par. (1), inserted heading, substituted ''Except as provided in paragraph (2), for purposes'' for ''For purposes'', and added par. (2).

Subsec. (z). Pub. L. 114–113, §336(d)(1), added subsec. (z).

2014—Subsec. (n)(3)(C). Pub. L. 113–295, §221(a)(19)(B)(i), struck out ''120,'' after ''117(d),''.

Subsec. (t)(2). Pub. L. 113–295, §221(a)(19)(B)(ii), struck out ''120,'' after ''117(d),''.

Subsec. (v)(2)(B)(i), (ii). Pub. L. 113–295, §221(a)(55), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) listed applicable dollar amounts for taxable years 2002 to 2006 and thereafter for an applicable employer plan other than a plan described in section 401(k)(11) or 408(p) and an applicable employer plan described in section 401(k)(11) or 408(p), respectively.

Subsec. (y). Pub. L. 113–97, §201, added subsec. (y).

Subsec. (y)(1)(C). Pub. L. 113–235, §3(b)(1), added subpar. (C).

Subsec. (y)(2). Pub. L. 113–235, §3(b)(2), substituted ''subparagraph (B) and (C) of paragraph (1)'' for ''paragraph (1)(B)''.

Subsec. (y)(3). Pub. L. 113–97, §203(a), added par. (3).

2008—Subsec. (*l*)(2)(B)(i)(I). Pub. L. 110–458, §101(d)(2)(E), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the funding shortfall and target normal cost determined under section 430 in the case of any other plan), over''.

Subsec. (*l*)(2)(G). Pub. L. 110–289, §1604(b)(4), which directed substitution of ''bridge depository institution'' for ''bridge bank'', was executed by making the substitution wherever appearing in text, to reflect the probable intent of Congress.

Subsec. (u). Pub. L. 110–245, §105(b)(1)(B), inserted ''and to differential wage payments to members on active duty'' after ''USERRA'' in heading.

Subsec. (u)(9) to (11). Pub. L. 110–245, §104(b), added par. (9) and redesignated former pars. (9) and (10) as (10) and (11), respectively.

Subsec. (u)(12). Pub. L. 110–245, §105(b)(1)(A), added par. (12).

Subsec. (w)(3)(B) to (D). Pub. L. 110–458, §109(b)(4), inserted ''and'' after comma at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ''under which, in the absence of an investment election by the participant, contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, and''.

Subsec. (w)(5)(D), (E). Pub. L. 110–458, §109(b)(5), added subpars. (D) and (E).

Subsec. (w)(6). Pub. L. 110–458, §109(b)(6), inserted ''or for purposes of applying the limitation under section 402(g)(1)'' before period at end.

Subsec. (x)(1). Pub. L. 110–458, §109(c)(1), inserted at end ''In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.''

2007—Subsec. (f)(6)(A)(ii)(I). Pub. L. 110–28, §6611(a)(2)(A), substituted ''for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan,'' for ''for each of the 3 plan years immediately before the date of enactment of the Pension Protection Act of 2006,''.

Subsec. (f)(6)(B). Pub. L. 110–28, §6611(a)(2)(B), substituted ''starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii)'' for ''starting with the first plan year ending after the date of the enactment of the Pension Protection Act of 2006''.

Subsec. (f)(6)(E). Pub. L. 110–28, §6611(b)(2), substituted ''if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.'' for ''if it is a plan—

''(i) that was established in Chicago, Illinois, on August 12, 1881; and

''(ii) sponsored by an organization described in section 501(c)(5) and exempt from tax under section 501(a).''

Subsec. (f)(6)(F). Pub. L. 110–28, §6611(a)(2)(C), added subpar. (F).

2006—Subsec. (d). Pub. L. 109–280, §906(a)(1), inserted at end ''The term 'governmental plan' includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).''

Subsec. (f)(6). Pub. L. 109–280, §1106(b), added par. (6).

Subsec. (h)(2). Pub. L. 109–280, §906(b)(1)(C), inserted ''or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments),'' after ''foregoing,''.

Subsec. (*l*)(2)(B)(i)(I). Pub. L. 109–280, §114(c), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over''.

Subsec. (w). Pub. L. 109–280, §902(d)(1), added subsec. (w).

Subsec. (x). Pub. L. 109–280, §903(a), added subsec. (x).

2004—Subsec. (q)(7). Pub. L. 108–311 substituted ''subsection'' for ''section''.

2002—Subsec. (v)(2)(D). Pub. L. 107–147, §411(*o*)(3), added subpar. (D).

Subsec. (v)(3)(A)(i). Pub. L. 107–147, §411(*o*)(4), substituted ''sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3))'' for ''section 402(g), 402(h), 403(b), 404(a), 404(h), 408(k), 408(p), 415, or 457''.

Subsec. (v)(3)(B). Pub. L. 107–147, §411(*o*)(5), substituted ''section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416'' for ''section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 403(b)(12), 408(k), 408(p), 408B, 410(b), or 416''.

Subsec. (v)(4)(B). Pub. L. 107–147, §411(*o*)(6), inserted before period at end '', except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section)''.

Subsec. (v)(5). Pub. L. 107–147, §411(*o*)(7)(A), struck out '', with respect to any plan year,'' before ''a participant'' in introductory provisions.

Subsec. (v)(5)(A). Pub. L. 107–147, §411(*o*)(7)(B), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows: ''who has attained the age of 50 before the close of the plan year, and''.

Subsec. (v)(5)(B). Pub. L. 107–147, §411(*o*)(7)(C), substituted ''plan (or other applicable) year'' for ''plan year''.

Subsec. (v)(6)(C). Pub. L. 107–147, §411(*o*)(8), reenacted heading without change and amended text generally.

Prior to amendment, text read as follows: ''This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.''

2001—Subsec. (p)(10). Pub. L. 107–16, § 635(b), substituted ''section 409(d), and section 457(d)'' for ''and section 409(d)''.

Subsec. (p)(11). Pub. L. 107–16, § 635(a), in heading substituted ''certain other plans'' for ''governmental and church plans'' and in text inserted ''or an eligible deferred compensation plan (within the meaning of section 457(b))'' after ''subsection (e))''.

Subsec. (p)(12), (13). Pub. L. 107–16, § 635(c), added par. (12) and redesignated former par. (12) as (13).

Subsec. (v). Pub. L. 107–16, § 631(a), added subsec. (v).

2000—Subsec. (s)(2). Pub. L. 106–554 substituted ''section 125, 132(f)(4), 402(e)(3)'' for ''section 125, 402(e)(3)''.

1998—Subsec. (q)(5). Pub. L. 105–206 made technical amendment to Pub. L. 104–188, § 1434(c)(1)(E). See 1996 Amendment note below.

1997—Subsec. (e)(5)(A). Pub. L. 105–34, § 1601(d)(6)(A), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''For purposes of this part—

''(i) IN GENERAL.—An employee of a church or a convention or association of churches shall include a duly ordained, commissioned, or licensed minister of a church who, in connection with the exercise of his or her ministry—

''(I) is a self-employed individual (within the meaning of section 401(c)(1)(B)), or

''(II) is employed by an organization other than an organization described in section 501(c)(3).

''(ii) TREATMENT AS EMPLOYER AND EMPLOYEE.—

''(I) SELF-EMPLOYED.—A minister described in clause (i)(I) shall be treated as his or her own employer which is an organization described in section 501(c)(3) and which is exempt from tax under section 501(a).

''(II) OTHERS.—A minister described in clause (i)(II) shall be treated as employed by an organization described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (e)(5)(C). Pub. L. 105–34, § 1522(a)(1), substituted ''not otherwise participating'' for ''not eligible to participate''.

Subsec. (e)(5)(E). Pub. L. 105–34, § 1522(a)(2), added subpar. (E).

Subsec. (n)(3)(C). Pub. L. 105–34, § 1601(h)(2)(D)(i), inserted ''137,'' after ''132,''.

Subsec. (q)(7), (9). Pub. L. 105–34, § 1601(d)(7), redesignated par. (7), relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans, as (9).

Subsec. (t)(2). Pub. L. 105–34, § 1601(h)(2)(D)(ii), inserted ''137,'' after ''132,''.

1996—Subsecs. (b), (c). Pub. L. 104–188, § 1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (e)(5). Pub. L. 104–188, § 1461(a), added par. (5).

Subsec. (m)(4)(B). Pub. L. 104–188, § 1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (n)(2)(C). Pub. L. 104–188, § 1454(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''such services are of a type historically performed, in the business field of the recipient, by employees.''

Subsec. (n)(3)(B). Pub. L. 104–188, § 1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (q)(1). Pub. L. 104–188, § 1431(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''IN GENERAL.—The term 'highly compensated employee' means any employee who, during the year or the preceding year—

''(A) was at any time a 5-percent owner,

''(B) received compensation from the employer in excess of $75,000,

''(C) received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or

''(D) was at any time an officer and received compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for such year.

The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).''

Subsec. (q)(2), (3). Pub. L. 104–188, § 1431(c)(1)(A), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''SPECIAL RULE FOR CURRENT YEAR.—In the case of the year for which the relevant determination is being made, an employee not described in subparagraph (B), (C), or (D) of paragraph (1) for the preceding year (without regard to this paragraph) shall not be treated as described in subparagraph (B), (C), or (D) of paragraph (1) unless such employee is a member of the group consisting of the 100 employees paid the greatest compensation during the year for which such determination is being made.''

Subsec. (q)(4). Pub. L. 104–188, § 1434(b)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'compensation' means compensation within the meaning of section 415(c)(3).

''(B) CERTAIN PROVISIONS NOT TAKEN INTO ACCOUNT.—The determination under subparagraph (A) shall be made—

''(i) without regard to sections 125, 402(e)(3), and 402(h)(1)(B), and

''(ii) in the case of employer contributions made pursuant to a salary reduction agreement, without regard to section 403(b).''

Pub. L. 104–188, § 1431(c)(1)(A), redesignated par. (7) as (4).

Subsec. (q)(5). Pub. L. 104–188, § 1434(c)(1)(E), as amended by Pub. L. 105–206, § 6018(c), struck out ''under paragraph (4) or the number of officers taken into account under paragraph (5)'' after ''top-paid group'' in introductory provisions.

Pub. L. 104–188, § 1431(c)(1)(A), redesignated par. (8) as (5) and struck out former par. (5) which read as follows: ''SPECIAL RULES FOR TREATMENT OF OFFICERS.—

''(A) NOT MORE THAN 50 OFFICERS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)(D), no more than 50 employees (or, if lesser, the greater of 3 employees or 10 percent of the employees) shall be treated as officers.

''(B) AT LEAST 1 OFFICER TAKEN INTO ACCOUNT.—If for any year no officer of the employer is described in paragraph (1)(D), the highest paid officer of the employer for such year shall be treated as described in such paragraph.''

Subsec. (q)(6). Pub. L. 104–188, § 1431(b)(1), (c)(1)(A), redesignated par. (9) as (6) and struck out former par. (6) which related to treatment of families of 5-percent owners or of highly compensated employees.

Subsec. (q)(7). Pub. L. 104–188, § 1462(a), added par. (7) relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans.

Pub. L. 104–188, § 1431(c)(1)(A), redesignated par. (10), relating to coordination with other provisions, as (7). Former par. (7) redesignated (4).

Subsec. (q)(8) to (12). Pub. L. 104–188, § 1431(c)(1)(A), redesignated pars. (8) to (11) as (5) to (8), respectively, and struck out par. (12) which related to simplified method for determining highly compensated employees.

Subsec. (r)(2)(A). Pub. L. 104–188, § 1431(c)(1)(D), substituted ''subsection (q)(5)'' for ''subsection (q)(8)''.

Subsec. (s)(2). Pub. L. 104–188, § 1434(b)(2), inserted ''not'' after ''elect'' in heading and in text.

Subsec. (u). Pub. L. 104–188, § 1704(n)(1), added subsec. (u).

1992—Subsec. (n)(5)(C)(iii)(I). Pub. L. 102–318, § 521(b)(20), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (q)(7)(B)(i). Pub. L. 102–318, § 521(b)(21), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (s)(2). Pub. L. 102–318, § 521(b)(22), substituted ''402(e)(3)'' for ''402(a)(8)''.

1990—Subsec. (n)(2)(B). Pub. L. 101–508 struck out ''(6 months in the case of core health benefits)'' after ''1 year''.

1989—Subsec. (n)(3)(C). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(4), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(A), struck out ''89,'' after ''79,''.

Subsec. (p)(10). Pub. L. 101–239, §7811(m)(5), inserted ''section'' before ''403(b)''.

Subsec. (p)(11). Pub. L. 101–239, §7841(a)(2), added par. (11) and redesignated former par. (11) as (12).

Subsec. (r)(1). Pub. L. 101–140, §204(b)(2), substituted ''sections 129(d)(8) and 410(b)'' for ''section 410(b)''.

Pub. L. 101–140, §203(a)(6)(B), substituted ''section 410(b)'' for ''sections 89 and 410(b)''.

Subsec. (t)(2). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(5), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(C), struck out ''89,'' after ''79,''.

1988—Subsec. (k)(2). Pub. L. 100–647, §1011A(b)(3), inserted ''72(d) (relating to treatment of employee contributions as separate contract),'' after ''purposes of sections''.

Subsec. (*l*). Pub. L. 100–647, §2005(c)(1), (2), substituted ''Merger'' for ''Mergers'' in heading, designated existing provision as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (*l*)(2)(G). Pub. L. 100–647, §6067(a), added subpar. (G).

Subsec. (m)(4)(A). Pub. L. 100–647, §1011(h)(5), substituted ''(16), (17), and (26)'' for ''and (16)''.

Subsec. (m)(4)(C), (D). Pub. L. 100–647, §1011B(a)(16), struck out subpars. (C) and (D) which read as follows:

''(C) section 105(h), and

''(D) section 125.''

Subsec. (n)(3)(A). Pub. L. 100–647, §1011(h)(5), substituted ''(16), (17), and (26)'' for ''and (16)''.

Subsec. (n)(3)(C). Pub. L. 100–647, §3011(b)(4), as amended by Pub. L. 101–239, §7813(b), struck out ''162(i)(2), 162(k),'' after ''132,'' and substituted ''505, and 4980B'' for ''and 505''.

Pub. L. 100–647, §1011B(a)(19), inserted ''162(i)(2), 162(k),'' after ''132,''.

Subsec. (*o*). Pub. L. 100–647, §1011(e)(4), inserted ''or any requirement under section 457'' after ''or (n)(3)''.

Subsec. (p)(4)(B). Pub. L. 100–647, §1018(t)(8)(E), substituted ''means the earlier of'' for ''means earlier of'' and struck out ''in'' at beginning of cls. (i) and (ii).

Subsec. (p)(9). Pub. L. 100–647, §1018(t)(8)(G), inserted at end ''For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.''

Subsec. (p)(10). Pub. L. 100–647, §1018(t)(8)(F), inserted '', 403(b),'' after ''section 401''.

Subsec. (q)(1). Pub. L. 100–647, §1011(i)(1), inserted at end ''The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).''

Subsec. (q)(1)(D). Pub. L. 100–647, §1011(d)(8), substituted ''50'' for ''150'' and ''415(b)(1)(A)'' for ''415(c)(1)(A)''.

Subsec. (q)(6)(C). Pub. L. 100–647, §1011(i)(2), added subpar. (C).

Subsec. (q)(8). Pub. L. 100–647, §1011(i)(4)(A), inserted ''or the number of officers taken into account under paragraph (5)'' after ''under paragraph (4)''.

Pub. L. 100–647, §1011(i)(3)(A)(ii), substituted ''Except as provided by the Secretary, the employer'' for ''The employer'' in last sentence.

Subsec. (q)(8)(F). Pub. L. 100–647, §1011(i)(3)(A)(i), struck out subpar. (F) which read as follows: ''employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).''

Subsec. (q)(11). Pub. L. 100–647, §1011(i)(3)(B), added par. (11).

Subsec. (q)(12). Pub. L. 100–647, §3021(b)(1), added par. (12).

Subsec. (r)(3). Pub. L. 100–647, §3021(b)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

''(A) not less than one-half, and

''(B) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of subparagraph (A) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.''

Subsec. (s). Pub. L. 100–647, §1011(j)(1), substituted ''any applicable provision'' for ''this part'' in introductory provisions.

Subsec. (s)(1). Pub. L. 100–647, §1011(j)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'compensation' means compensation for service performed for an employer which (taking into account the provisions of this chapter) is currently includible in gross income.''

Subsec. (s)(2) to (4). Pub. L. 100–647, §1011(j)(2), added par. (4), redesignated former pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''The Secretary shall prescribe regulations for the determination of the compensation of an employee who is a self-employed individual (within the meaning of section 401(c)(1)) which are based on the principles of paragraph (1).''

Subsec. (t)(1). Pub. L. 100–647, §1011B(a)(20), struck out ''of section 414'' before ''shall be treated'' and ''shall apply with''.

Subsec. (t)(2). Pub. L. 100–647, §3011(b)(5), as amended by Pub. L. 101–239, §7813(b), struck out ''162(i)(2), 162(k),'' after ''132,'' and substituted ''505, or 4980B'' for ''or 505''.

Pub. L. 100–647, §1011B(a)(17), inserted ''162(i)(2), 162(k),'' after ''132,''.

1987—Subsec. (b). Pub. L. 100–203 struck out ''the minimum funding standard of section 412, the tax imposed by section 4971, and'' after ''one such corporation,''.

1986—Subsec. (k)(2). Pub. L. 99–514, §1117(c), inserted reference to section 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions).

Subsec. (m)(2)(B)(ii). Pub. L. 99–514, §1114(b)(11), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, highly compensated employees, or owners''.

Subsec. (m)(5). Pub. L. 99–514, §1301(j)(4), substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)''.

Subsec. (m)(7). Pub. L. 99–514, §1852(f), amended directory language of Pub. L. 98–369, §526(d)(2), to correct an error, and did not involve any change in text. See 1984 Amendment note below.

Subsec. (n)(1). Pub. L. 99–514, §1151(i)(1), substituted ''requirements'' for ''pension requirements''.

Pub. L. 99–514, §1146(b)(2), struck out ''except to the extent otherwise provided in regulations,'' after ''listed in paragraph (3),''.

Subsec. (n)(2)(B). Pub. L. 99–514, §1151(i)(2), inserted ''(6 months in the case of core health benefits)'' after ''1 year''.

Subsec. (n)(3). Pub. L. 99–514, §1151(i)(3), substituted ''Requirements'' for ''Pension requirements'' in heading, substituted ''requirements'' for ''pension requirements'' in text, and added subpar. (C).

Subsec. (n)(4). Pub. L. 99–514, §1146(a)(2), substituted ''Time when first considered as employee'' for ''Time when leased employee is first considered as employee'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the pension requirements listed in paragraph (3) are met for periods after the close of the 1-year period referred to in paragraph (2);

except that years of service for the recipient shall be determined by taking into account the entire period for which the leased employee performed services for the recipient (or related persons).''

Subsec. (n)(5). Pub. L. 99–514, §1146(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This subsection shall not apply to any leased employee if such employee is covered by a plan which is maintained by the leasing organization if, with respect to such employee, such plan—

''(A) is a money purchase pension plan with a nonintegrated employer contribution rate of at least 7½ percent, and

''(B) provides for immediate participation and for full and immediate vesting.''

Subsec. (n)(6). Pub. L. 99–514, §1301(j)(4), substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)'' in subpar. (A).

Pub. L. 99–514, §1146(a)(3), substituted ''Other rules'' for ''Related persons'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'related persons' has the same meaning as when used in section 103(b)(6)(C).''

Subsec. (*o*). Pub. L. 99–514, §1146(b)(1), inserted provision relating to regulations to minimize recordkeeping requirements in case of employer which has no top-heavy plans and uses the services of persons other than employees for an insignificant percentage of the employer's total workload.

Subsec. (p)(1)(B)(i). Pub. L. 99–514, §1898(c)(7)(A)(ii), inserted ''former spouse,''.

Subsec. (p)(3)(B). Pub. L. 99–514, §1899A(12), struck out the comma after ''benefits''.

Subsec. (p)(4)(A). Pub. L. 99–514, §1898(c)(7)(A)(vi), substituted ''A'' for ''In the case of any payment before a participant has separated from service, a'' in introductory provisions and inserted ''in the case of any payment before a participant has separated from service,'' in cl. (i).

Subsec. (p)(4)(B). Pub. L. 99–514, §1898(c)(7)(A)(vii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, the term 'earliest retirement age' has the meaning given such term by section 417(f)(3), except that in the case of any defined contribution plan, the earliest retirement age shall be the date which is 10 years before the normal retirement age (within the meaning of section 411(a)(8)).''

Subsec. (p)(5). Pub. L. 99–514, §1898(c)(7)(A)(v), struck out last sentence which read as follows: ''A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order.''

Subsec. (p)(5)(A). Pub. L. 99–514, §1898(c)(6)(A), inserted ''(and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)''.

Subsec. (p)(5)(B). Pub. L. 99–514, §1898(c)(7)(A)(iv), substituted ''the surviving former spouse'' for ''the surviving spouse''.

Subsec. (p)(6)(A)(i). Pub. L. 99–514, §1898(c)(7)(A)(iii), substituted ''each alternate payee'' for ''any other alternate payee''.

Subsec. (p)(7)(A). Pub. L. 99–514, §1898(c)(2)(A)(i), substituted ''shall separately account for the amounts (hereinafter in this paragraph referred to as the 'segregated amounts')'' for ''shall segregate in a separate account in the plan or in an escrow account the amounts''.

Subsec. (p)(7)(B). Pub. L. 99–514, §1898(c)(2)(A)(ii), substituted ''the 18-month period described in subparagraph (E)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (p)(7)(C). Pub. L. 99–514, §1898(c)(2)(A)(iii), substituted ''the 18-month period described in subparagraph (E)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (p)(7)(D). Pub. L. 99–514, §1898(c)(2)(A)(iv), inserted ''described in subparagraph (E)''.

Subsec. (p)(7)(E). Pub. L. 99–514, §1898(c)(2)(A)(v), added subpar. (E).

Subsec. (p)(9). Pub. L. 99–514, §1898(c)(4)(A), added par. (9). Former par. (9) redesignated (11).

Subsec. (p)(10). Pub. L. 99–514, §1898(c)(7)(A)(v), added par. (10).

Subsec. (p)(11). Pub. L. 99–514, §1898(c)(4)(A), redesignated former par. (9) as (11).

Subsec. (q). Pub. L. 99–514, §1114(a), added subsec. (q).

Subsecs. (r), (s). Pub. L. 99–514, §1115(a), added subsecs. (r) and (s).

Subsec. (t). Pub. L. 99–514, §1151(e)(1), added subsec. (t).

1984—Subsec. (h)(1)(B). Pub. L. 98–369, §491(d)(26), struck out ''or 405(a)'' after ''section 403(a)''.

Subsec. (*l*). Pub. L. 98–369, §491(d)(27), struck out ''or 405'' after ''section 403(a)''.

Subsec. (m)(6)(B). Pub. L. 98–369, §526(a)(1), substituted ''section 318(a)'' for ''section 267(c)''.

Subsec. (m)(7). Pub. L. 98–369, §526(d)(2), as amended by Pub. L. 99–514, §1852(f), struck out par. (7) relating to regulations. See subsec. (*o*) of this section.

Subsec. (n)(2). Pub. L. 98–369, §§526(b)(1), 713(i), made identical amendments, substituting ''any person who is not an employee of the recipient and'' for ''any person'' in text preceding subpar. (A).

Subsec. (*o*). Pub. L. 98–369, §526(d)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 98–397 added subsec. (p).

1982—Subsecs. (b), (c). Pub. L. 97–248, §240(c)(1), inserted reference to section 416.

Subsec. (m)(4)(B). Pub. L. 97–248, §240(c)(2), inserted reference to section 416.

Subsec. (m)(5) to (7). Pub. L. 97–248, §246(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (n). Pub. L. 97–248, §248(a), added subsec. (n).

1980—Subsec. (e). Pub. L. 96–364, §407(b), substituted provisions defining ''church plan'' with respect to general requirements, exclusion of certain plans, definitions and other provisions, and correction of failures to meet church plan requirements, for provisions defining ''church plan'' with respect to general requirements, certain unrelated business or multiemployer plans, and special temporary rules for certain church agencies under church plan.

Subsec. (f). Pub. L. 96–364, §207, substituted provisions setting forth definition, cases of common control, continuation of status after termination, transitional rule, and special election with respect to a multiemployer plan, for provisions setting forth definition and special rules with respect to a multiemployer plan.

Subsec. (*l*). Pub. L. 96–364, §208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (m). Pub. L. 96–605 and Pub. L. 96–613 added an identical subsec. (m).

1978—Subsecs. (b), (c). Pub. L. 95–600 inserted ''408(k),'' after ''sections 401,'' wherever appearing.

1976—Subsecs. (a) to (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1901(a)(64)(A), substituted ''Plan'' for ''plan'' in heading.

Subsec. (g)(2)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*). Pub. L. 94–455, §1901(a)(64)(B), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, §336(a)(3), Dec. 18, 2015, 129 Stat. 3110, provided that: ''The amendments

made by paragraph (1) [amending this section] shall apply to years beginning before, on, or after the date of the enactment of this Act [Dec. 18, 2015].''

Pub. L. 114–113, div. Q, title III, §336(d)(2), Dec. 18, 2015, 129 Stat. 3113, provided that: ''The amendment made by this subsection [amending this section] shall apply to transfers or mergers occurring after the date of the enactment of this Act [Dec. 18, 2015].''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

Pub. L. 113–235, div. P, §3(c), Dec. 16, 2014, 128 Stat. 2829, provided that: ''The amendments made by this section [amending this section and section 1060 of Title 29, Labor] shall take effect as if included in the amendments made by the Cooperative and Small Employer Charity Pension Flexibility Act [Pub. L. 113–97] (29 U.S.C. 401 note) [probably means 26 U.S.C. 401 note].''

Amendment by section 201 of 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.

Pub. L. 113–97, title II, §203(b), Apr. 7, 2014, 128 Stat. 1139, provided that: ''The amendment made by this section [amending this section] shall apply as of the date of enactment of this Act [Apr. 7, 2014].''

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.

Amendment by section 104(b) of Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

Amendment by section 105(b)(1) of Pub. L. 110–245 applicable to years beginning after December 31, 2008, see section 105(b)(3) of Pub. L. 110–245, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VI, §6611(c), May 25, 2007, 121 Stat. 181, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall take effect as if included in section 1106 of the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(c) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) 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 902(d)(1) of 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.

Pub. L. 109–280, title IX, §903(c), Aug. 17, 2006, 120 Stat. 1048, provided that: ''The amendments made by this section [amending this section and section 1060 of Title 29, Labor] shall apply to plan years beginning after December 31, 2009.''

Pub. L. 109–280, title IX, §906(c), Aug. 17, 2006, 120 Stat. 1052, provided that: ''The amendments made by this section [amending this section, section 415 of this title, and sections 1002 and 1321 of Title 29, Labor] shall apply to any year beginning on or after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §631(b), June 7, 2001, 115 Stat. 113, provided that: ''The amendment made by this section [amending this section] shall apply to contributions in taxable years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §635(d), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this section [amending this section] shall apply to transfers, distributions, and payments made after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018 of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1522(b), Aug. 5, 1997, 111 Stat. 1070, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1601(d)(6)(A), (7), (h)(2)(D)(i), (ii) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(9)(C) of 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.

Pub. L. 104–188, title I, §1431(d), Aug. 20, 1996, 110 Stat. 1803, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, sections 129, 401, 404, 408, and 416 of this title, and provisions set out as a note below] shall apply to years beginning after December 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendments shall be treated as having been in effect for years beginning in 1996.

''(2) FAMILY AGGREGATION.—The amendments made by subsection (b) [amending this section and sections 401 and 404 of this title] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, §1434(c), Aug. 20, 1996, 110 Stat. 1807, provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after December 31, 1997.''

Pub. L. 104–188, title I, §1454(b), Aug. 20, 1996, 110 Stat. 1817, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act [Aug. 20, 1996] pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.''

Amendment by section 1461(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1461(c) of Pub. L. 104–188, set out as a note under section 404 of this title.

Pub. L. 104–188, title I, §1462(c), Aug. 20, 1996, 110 Stat. 1824, provided that: ''The amendments made by sub-

section (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, §1704(n)(3), Aug. 20, 1996, 110 Stat. 1886, provided that: ''The amendments made by this subsection [amending this section and section 1108 of Title 29, Labor] shall be effective as of December 12, 1994.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11703(b)(2), Nov. 5, 1990, 104 Stat. 1388–517, provided that: ''The amendment made by subsection (a) [probably means par. (1), which amended this section] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by sections 7811(m)(5) and 7813(b) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7841(a)(2) of Pub. L. 101–239 applicable to transfers after Dec. 19, 1989, in taxable years ending after such date, see section 7841(a)(3) of Pub. L. 101–239, set out as a note under section 408 of this title.

Amendment by section 203(a)(6) of 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.

Amendment by section 204(b)(2) of Pub. L. 101–140 applicable to years beginning after Dec. 31, 1988, see section 204(d)(1) of Pub. L. 101–140, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), and 1018(t)(8)(E)–(G) 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.

Pub. L. 100–647, title II, §2005(c)(3), Nov. 10, 1988, 102 Stat. 3612, provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply with respect to transactions occurring after July 26, 1988.

''(B) The amendments made by this subsection shall not apply to any transaction occurring after July 26, 1988, if on or before such date the board of directors of the employer, approves such transaction or the employer took similar binding action.''

Amendment by section 3011(b)(4), (5) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

Amendment by section 3021(b)(1), (2)(A) of Pub. L. 100–647 applicable to years beginning after Dec. 31, 1986, see section 3021(d)(2) of Pub. L. 100–647, set out as a note under section 129 of this title.

Pub. L. 100–647, title VI, §6067(c), Nov. 10, 1988, 102 Stat. 3703, as amended by Pub. L. 101–239, title VII, §7816(k), Dec. 19, 1989, 103 Stat. 2421, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 2005(c) of this Act [amending this section].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan years beginning after Dec. 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 1986 AMENDMENT

Pub. L. 99–514, title XI, §1114(c), Oct. 22, 1986, 100 Stat. 2452, as amended by Pub. L. 104–188, title I, §1431(c)(2), Aug. 20, 1996, 110 Stat. 1803; Pub. L. 107–16, title VI, §663(a), June 7, 2001, 115 Stat. 142, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section and sections 106, 274, 423, and 501 of this title] shall apply to years beginning after December 31, 1986.

''(2) CONFORMING AMENDMENTS TO EMPLOYEE BENEFIT PROVISIONS.—The amendments made by paragraphs (2), (3), (4), (5), and (16) of subsection (b) [amending sections 117, 120, 127, 129, 132, and 505 of this title] shall apply to years beginning after December 31, 1987.

''(3) CONFORMING AMENDMENTS TO PENSION PROVISIONS.—The amendments made by paragraphs (7), (8), (9), (10), (11), (12), and (15) of subsection (b) [amending this section and sections 401, 404A, 406, 407, 411, 415, and 4975 of this title and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 1988.''

[Pub. L. 107–16, title VI, §663(b), June 7, 2001, 115 Stat. 143, provided that: ''The repeal made by subsection (a) [repealing par. (4) of section 1114(c) of Pub. L. 99–514, set out above] shall apply to plan years beginning after December 31, 2001.'']

Pub. L. 99–514, title XI, §1115(b), Oct. 22, 1986, 100 Stat. 2454, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1986.''

Amendment by section 1117(c) of Pub. L. 99–514 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 a note under section 401 of this title.

Pub. L. 99–514, title XI, §1146(c), Oct. 22, 1986, 100 Stat. 2493, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

''(2) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to services performed after December 31, 1986.

''(3) RECORDKEEPING REQUIREMENTS.—In the case of years beginning before the date of the enactment of this Act [Oct. 22, 1986], the last sentence of section 414(*o*) shall be applied without regard to the requirement that an insignificant percentage of the workload be performed by persons other than employees.''

Amendment by section 1151(e)(1), (i) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(4) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1852(f) of 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.

Amendment by section 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(26), (27) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Pub. L. 98–369, div. A, title V, § 526(a)(2), July 18, 1984, 98 Stat. 874, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Pub. L. 98–369, div. A, title V, § 526(b)(2), July 18, 1984, 98 Stat. 874, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1983.''

Pub. L. 98–369, div. A, title V, § 526(d)(3), July 18, 1984, 98 Stat. 875, provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 713(i) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 240(c) of Pub. L. 97–248, applicable to years beginning after Dec. 31, 1983, see section 241(a) of Pub. L. 97–248, set out as a note under section 416 of this title.

Pub. L. 97–248, title II, § 246(b), Sept. 3, 1982, 96 Stat. 525, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

Pub. L. 97–248, title II, § 248(b), Sept. 3, 1982, 96 Stat. 527, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title II, § 201(c), Dec. 28, 1980, 94 Stat. 3527, and Pub. L. 96–613, § 5(c), Dec. 28, 1980, 94 Stat. 3582, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years ending after November 30, 1980.

''(2) PLANS IN EXISTENCE ON NOVEMBER 30, 1980.—In the case of a plan in existence on November 30, 1980, the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years beginning after November 30, 1980.''

Pub. L. 96–364, title IV, § 407(c), Sept. 26, 1980, 94 Stat. 1307, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall be effective as of January 1, 1974.''

Amendment by sections 207 and 208(a) of 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 OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(64) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 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.

REGULATIONS

Pub. L. 109–280, title X, § 1001, Aug. 17, 2006, 120 Stat. 1052, provided that: ''Not later than 1 year after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor shall issue regulations under section 206(d)(3) of the Employee Retirement Security Act of 1974 [29 U.S.C. 1056(d)(3)] and section 414(p) of the Internal Revenue Code of 1986 which clarify that—

''(1) a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order, including the requirements of section 206(d)(3)(D) of such Act and section 414(p)(3) of such Code, shall not fail to be treated as a qualified domestic relations order solely because—

''(A) the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or

''(B) of the time at which it is issued; and

''(2) any order described in paragraph (1) shall be subject to the same requirements and protections which apply to qualified domestic relations orders, including the provisions of section 206(d)(3)(H) of such Act and section 414(p)(7) of such Code.''

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1114, 1115, and 1117 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PROVISIONS RELATING TO PLAN AMENDMENTS PURSUANT TO PUB. L. 110–245

Pub. L. 110–245, title I, § 105(c), June 17, 2008, 122 Stat. 1629, provided that:

''(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i).

''(2) AMENDMENTS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

''(i) pursuant to any amendment made by subsection (b)(1) [amending this section], and

''(ii) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this subparagraph shall be applied by substituting '2012' for '2010' in clause (ii).

''(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

''(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and

''(ii) such plan or contract amendment applies retroactively for such period.''

CLARIFICATION RELATING TO APPLICATION OF ANTI-ABUSE RULE

Pub. L. 114–113, div. Q, title III, § 336(a)(2), Dec. 18, 2015, 129 Stat. 3110, provided that: ''The rule of 26 CFR 1.414(c)–5(f) shall continue to apply to each paragraph of section 414(c) of the Internal Revenue Code of 1986, as amended by paragraph (1).''

AUTOMATIC ENROLLMENT BY CHURCH PLANS

Pub. L. 114–113, div. Q, title III, § 336(c), Dec. 18, 2015, 129 Stat. 3110, provided that:

''(1) IN GENERAL.—This subsection shall supersede any law of a State that relates to wage, salary, or payroll payment, collection, deduction, garnishment, assignment, or withholding which would directly or indirectly prohibit or restrict the inclusion in any church plan (as defined in section 414(e) of the Internal Revenue Code of 1986) of an automatic contribution arrangement.

''(2) DEFINITION OF AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection, the term 'automatic contribution arrangement' means an arrangement—

''(A) under which a participant may elect to have the plan sponsor or the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

''(B) under which a participant is treated as having elected to have the plan sponsor or the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

''(C) under which the notice and election requirements of paragraph (3), and the investment requirements of paragraph (4), are satisfied.

''(3) NOTICE REQUIREMENTS.—

''(A) IN GENERAL.—The plan sponsor of, or plan administrator or employer maintaining, an automatic contribution arrangement shall, within a reasonable period before the first day of each plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

''(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

''(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

''(B) ELECTION REQUIREMENTS.—A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

''(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

''(ii) the participant has a reasonable period of time, after receipt of the explanation described in clause (i) and before the first elective contribution is made, to make such election, and

''(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

''(4) DEFAULT INVESTMENT.—If no affirmative investment election has been made with respect to any automatic contribution arrangement, contributions to such arrangement shall be invested in a default investment selected with the care, skill, prudence, and diligence that a prudent person selecting an investment option would use.

''(5) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act [Dec. 18, 2015].''

INVESTMENTS BY CHURCH PLANS IN COLLECTIVE TRUSTS

Pub. L. 114–113, div. Q, title III, § 336(e), Dec. 18, 2015, 129 Stat. 3113, provided that:

''(1) IN GENERAL.—In the case of—

''(A) a church plan (as defined in section 414(e) of the Internal Revenue Code of 1986), including a plan described in section 401(a) of such Code and a retirement income account described in section 403(b)(9) of such Code, and

''(B) an organization described in section 414(e)(3)(A) of such Code the principal purpose or function of which is the administration of such a plan or account,

the assets of such plan, account, or organization (including any assets otherwise permitted to be commingled for investment purposes with the assets of such a plan, account, or organization) may be invested in a group trust otherwise described in Internal Revenue Service Revenue Ruling 81–100 (as modified by Internal Revenue Service Revenue Rulings 2004–67, 2011–1, and 2014–24), or any subsequent revenue ruling that supersedes or modifies such revenue ruling, without adversely affecting the tax status of the group trust, such plan, account, or organization, or any other plan or trust that invests in the group trust.

''(2) EFFECTIVE DATE.—This subsection shall apply to investments made after the date of the enactment of this Act [Dec. 18, 2015].''

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.

SAMPLE LANGUAGE FOR SPOUSAL CONSENT AND QUALIFIED DOMESTIC RELATIONS FORMS

Pub. L. 104–188, title I, § 1457, Aug. 20, 1996, 110 Stat. 1818, provided that:

''(a) DEVELOPMENT OF SAMPLE LANGUAGE.—Not later than January 1, 1997, the Secretary of the Treasury shall develop—

''(1) sample language for inclusion in a form for the spousal consent required under section 417(a)(2) of the Internal Revenue Code of 1986 and section 205(c)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(c)(2)] which—

''(A) is written in a manner calculated to be understood by the average person, and

''(B) discloses in plain form—

''(i) whether the waiver to which the spouse consents is irrevocable, and

''(ii) whether such waiver may be revoked by a qualified domestic relations order, and

''(2) sample language for inclusion in a form for a qualified domestic relations order described in section 414(p)(1)(A) of such Code and section 206(d)(3)(B)(i) of such Act [29 U.S.C. 1056(d)(3)(B)(i)] which—

''(A) meets the requirements contained in such sections, and

''(B) the provisions of which focus attention on the need to consider the treatment of any lump sum payment, qualified joint and survivor annuity, or qualified preretirement survivor annuity.

''(b) PUBLICITY.—The Secretary of the Treasury shall include publicity for the sample language developed under subsection (a) in the pension outreach efforts undertaken by the Secretary.''

SAFEHARBOR AUTHORITY

Pub. L. 104–188, title I, § 1462(b), Aug. 20, 1996, 110 Stat. 1824, provided that: ''The Secretary of the Treasury may design nondiscrimination and coverage safe harbors for church plans.''

APPLICATION OF LINE OF BUSINESS TEST FOR PERIOD BEFORE GUIDELINES ISSUED

Pub. L. 101–140, title II, § 204(b)(1), Nov. 8, 1989, 103 Stat. 833, provided that: ''In the case of any plan year beginning on or before the date the Secretary of the Treasury or his delegate issues guidelines and begins issuing determinations under section 414(r)(2)(C) of the Internal Revenue Code of 1986, an employer shall be treated as operating separate lines of business if the employer reasonably determines that it meets the requirements of section 414(r) (other than paragraph (2)(C) thereof) of such Code.''

[Pub. L. 101–140, title II, § 204(d)(3), Nov. 8, 1989, 103 Stat. 833, provided that: ''The provisions of subsection

(b)(1) [set out above] shall apply to years beginning after December 31, 1986.'']

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

STUDY REFLECTING ALLOCATION OF ASSETS

Pub. L. 100–647, title VI, §6067(b), Nov. 10, 1988, 102 Stat. 3703, directed Secretary of the Treasury or his delegate, in consultation with Federal Deposit Insurance Corporation, to conduct a study with respect to proper method of allocating assets in case of a transaction to which the amendment made by such section and, not later than Jan. 1, 1990 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559) to report results of such study to Committee on Ways and Means of House of Representatives and to Committee on Finance of Senate.

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, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

§ 415. Limitations on benefits and contribution under qualified plans

(a) General rule

(1) Trusts

A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if—

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b), or

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c).

(2) Section applies to certain annuities and accounts

In the case of—

(A) an employee annuity plan described in section 403(a),

(B) an annuity contract described in section 403(b), or

(C) a simplified employee pension described in section 408(k),

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate.

(b) Limitation for defined benefit plans

(1) In general

Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

(A) $160,000, or

(B) 100 percent of the participant's average compensation for his high 3 years.

(2) Annual benefit

(A) In general

For purposes of paragraph (1), the term ''annual benefit'' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) are made.

(B) Adjustment for certain other forms of benefit

If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417) shall not be taken into account.

(C) Adjustment to $160,000 limit where benefit begins before age 62

If the retirement income benefit under the plan begins before age 62, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regula-

tions prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 62.

(D) Adjustment to $160,000 limit where benefit begins after age 65

If the retirement income benefit under the plan begins after age 65, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 65.

(E) Limitation on certain assumptions

(i) For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.

(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greatest of—

(I) 5.5 percent,

(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

(III) the rate specified under the plan.

(iii) For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.

(iv) For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.

(v) For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the applicable mortality table (within the meaning of section 417(e)(3)(B)).

(vi) In the case of a plan maintained by an eligible employer (as defined in section 408(p)(2)(C)(i)), clause (ii) shall be applied without regard to subclause (II) thereof.

[(F) Repealed. Pub. L. 107–16, title VI, § 611(a)(5)(A), June 7, 2001, 115 Stat. 97]

(G) Special limitation for qualified police or firefighters

In the case of a qualified participant, subparagraph (C) of this paragraph shall not apply.

(H) Qualified participant defined

For purposes of subparagraph (G), the term ''qualified participant'' means a participant—

(i) in a defined benefit plan which is maintained by a State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision thereof,

(ii) with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 15 years of service of the participant—

(I) as a full-time employee of any police department or fire department which is organized and operated by the State, Indian tribal government (as so defined), or any political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State, Indian tribal government (as so defined), or any political subdivision, or

(II) as a member of the Armed Forces of the United States.

(I) Exemption for survivor and disability benefits provided under governmental plans

Subparagraph (C) of this paragraph and paragraph (5) shall not apply to—

(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.

(3) Average compensation for high 3 years

For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for ''compensation from the employer'' the following: ''the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)''.

(4) Total annual benefits not in excess of $10,000

Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed $10,000 for the plan year, or for any prior plan year, and

(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

(5) Reduction for participation or service of less than 10 years

(A) Dollar limitation

In the case of an employee who has less than 10 years of participation in a defined benefit plan, the limitation referred to in paragraph (1)(A) shall be the limitation determined under such paragraph (without regard to this paragraph) multiplied by a fraction—

(i) the numerator of which is the number of years (or part thereof) of participation in the defined benefit plan of the employer, and

(ii) the denominator of which is 10.

(B) Compensation and benefits limitations

The provisions of subparagraph (A) shall apply to the limitations under paragraphs (1)(B) and (4), except that such subparagraph shall be applied with respect to years of service with an employer rather than years of participation in a plan.

(C) Limitation on reduction

In no event shall subparagraph (A) or (B) reduce the limitations referred to in paragraphs (1) and (4) to an amount less than ⅒ of such limitation (determined without regard to this paragraph).

(D) Application to changes in benefit structure

To the extent provided in regulations, subparagraph (A) shall be applied separately with respect to each change in the benefit structure of a plan.

(6) Computation of benefits and contributions

The computation of—

(A) benefits under a defined contribution plan, for purposes of section 401(a)(4),

(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4), and

(C) contributions and benefits provided for a participant in a plan described in section 414(k), for purposes of this section

shall not be made on a basis inconsistent with regulations prescribed by the Secretary.

(7) Benefits under certain collectively bargained plans

For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan (other than a multiemployer plan)—

(A) which is maintained for such year pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(B) which, at all times during such year, has at least 100 participants,

(C) under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement,

(D) which provides that an employee who has at least 4 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions, and

(E) which requires, as a condition of participation in the plan, that an employee complete a period of not more than 60 consecutive days of service with the employer or employers maintaining the plan.

This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. This paragraph shall not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting one-half the amount otherwise applicable for such year under paragraph (1)(A) for ''$160,000''.

(8) Social security retirement age defined

For purposes of this subsection, the term ''social security retirement age'' means the age used as the retirement age under section 216(*l*) of the Social Security Act, except that such section shall be applied—

(A) without regard to the age increase factor, and

(B) as if the early retirement age under section 216(*l*)(2) of such Act were 62.

(9) Special rule for commercial airline pilots

(A) In general

Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

(B) Individuals who separate from service before age 60

If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.

(10) Special rule for State, Indian tribal, and local government plans

(A) Limitation to equal accrued benefit

In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

(B) Qualified participant

For purposes of this paragraph, the term ''qualified participant'' means a participant

who first became a participant in the plan maintained by the employer before January 1, 1990.

(C) Election

(i) In general

This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)).

(ii) Revocation of election

An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.

(11) Special limitation rule for governmental and multiemployer plans

In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply. Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph, the term ''highly compensated benefits'' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.

(c) Limitation for defined contribution plans

(1) In general

Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

(A) $40,000, or

(B) 100 percent of the participant's compensation.

(2) Annual addition

For purposes of paragraph (1), the term ''annual addition'' means the sum of any year of—

(A) employer contributions,

(B) the employee contributions, and

(C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6). Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.

(3) Participant's compensation

For purposes of paragraph (1)—

(A) In general

The term ''participant's compensation'' means the compensation of the participant from the employer for the year.

(B) Special rule for self-employed individuals

In the case of an employee within the meaning of section 401(c)(1), subparagraph (A) shall be applied by substituting ''the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'' for ''compensation of the participant from the employer''.

(C) Special rules for permanent and total disability

In the case of a participant in any defined contribution plan—

(i) who is permanently and totally disabled (as defined in section 22(e)(3)),

(ii) who is not a highly compensated employee (within the meaning of section 414(q)), and

(iii) with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply,

the term ''participant's compensation'' means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made. If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).

(D) Certain deferrals included

The term ''participant's compensation'' shall include—

(i) any elective deferral (as defined in section 402(g)(3)), and

(ii) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(E) Annuity contracts

In the case of an annuity contract described in section 403(b), the term ''participant's compensation'' means the participant's includible compensation determined under section 403(b)(3).

[(4) Repealed. Pub. L. 107–16, title VI, § 632(a)(3)(E), June 7, 2001, 115 Stat. 114]

[(5) Repealed. Pub. L. 97–248, title II, § 238(d)(5), Sept. 3, 1982, 96 Stat. 513]

(6) Special rule for employee stock ownership plans

If no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7)) for a year which are deductible under paragraph (9) of section 404(a) are allocated to highly compensated employees (within the meaning of section 414(q)), the limitations imposed by this section shall not apply to—

(A) forfeitures of employer securities (within the meaning of section 409) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)), or

(B) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.

(7) Special rules relating to church plans

(A) Alternative contribution limitation

(i) In general

Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

(ii) $40,000 aggregate limitation

The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

(B) Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees

For purposes of this paragraph—

(i) all years of service by—

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

(C) Foreign missionaries

In the case of any individual described in subparagraph (B) performing services outside the United States, contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such employee, when expressed as an annual addition to such employee's account, shall not be treated as exceeding the limitation of paragraph (1) if such annual addition is not in excess of $3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds $17,000.

(D) Annual addition

For purposes of this paragraph, the term ''annual addition'' has the meaning given such term by paragraph (2).

(E) Church, convention or association of churches

For purposes of this paragraph, the terms ''church'' and ''convention or association of churches'' have the same meaning as when used in section 414(e).

(d) Cost-of-living adjustments

(1) In general

The Secretary shall adjust annually—

(A) the $160,000 amount in subsection (b)(1)(A),

(B) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B), and

(C) the $40,000 amount in subsection (c)(1)(A),

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

(2) Method

The regulations prescribed under paragraph (1) shall provide for—

(A) an adjustment with respect to any calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, and

(B) adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

(3) Base period

For purposes of paragraph (2)—

(A) $160,000 amount

The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning July 1, 2001.

(B) Separations after December 31, 1994

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer after December 31, 1994, is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs.

(C) Separations before January 1, 1995

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer before January 1, 1995, is the calendar quarter beginning October 1 of the calendar year preceding the calendar year in which such separation occurs.

(D) $40,000 amount

The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning July 1, 2001.

(4) Rounding

(A) $160,000 amount

Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000. This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.

(B) $40,000 amount

Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.

[(e) Repealed. Pub. L. 104–188, title I, § 1452(a), Aug. 20, 1996, 110 Stat. 1816]

(f) Combining of plans

(1) In general

For purposes of applying the limitations of subsections (b) and (c)—

(A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and

(B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.

(2) Exception for multiemployer plans

Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated—

(A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or

(B) with any other multiemployer plan for purposes of applying the limitations established in this section.

(g) Aggregation of plans

Except as provided in subsection (f)(3),[1] the Secretary, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsection (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

(h) 50 percent control

For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(i) Records not available for past periods

Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary may by regulations prescribe alternate methods for determining the amounts to be taken into account for such period.

(j) Regulations; definition of year

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term ''year'' for purposes of any provision of this section.

(k) Special rules

(1) Defined benefit plan and defined contribution plan

For purposes of this title, the term ''defined contribution plan'' or ''defined benefit plan'' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

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

(C) an annuity contract described in section 403(b), or

(D) a simplified employee pension.

(2) Contributions to provide cost-of-living protection under defined benefit plans

(A) In general

In the case of a defined benefit plan which maintains a qualified cost-of-living arrangement—

[1] See References in Text note below.

(i) any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c), and

(ii) any benefit under such arrangement which is allocable to an employer contribution which was transferred from a defined contribution plan and to which the requirements of subsection (c) were applied shall, for purposes of subsection (b), be treated as a benefit derived from an employee contribution (and subsection (c) shall not again apply to such contribution by reason of such transfer).

(B) Qualified cost-of-living arrangement defined

For purposes of this paragraph, the term ''qualified cost-of-living arrangement'' means an arrangement under a defined benefit plan which—

(i) provides a cost-of-living adjustment to a benefit provided under such plan or a separate plan subject to the requirements of section 412, and

(ii) meets the requirements of subparagraphs (C), (D), (E), and (F) and such other requirements as the Secretary may prescribe.

(C) Determination of amount of benefit

An arrangement meets the requirement of this subparagraph only if the cost-of-living adjustment of participants is based—

(i) on increases in the cost-of-living after the annuity starting date, and

(ii) on average cost-of-living increases determined by reference to 1 or more indexes prescribed by the Secretary, except that the arrangement may provide that the increase for any year will not be less than 3 percent of the retirement benefit (determined without regard to such increase).

(D) Arrangement elective; time for election

An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant—

(i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

(ii) separates from service.

(E) Nondiscrimination requirements

An arrangement shall not meet the requirements of this subparagraph if the Secretary finds that a pattern of discrimination exists with respect to participation.

(F) Special rules for key employees

(i) In general

An arrangement shall not meet the requirements of this paragraph if any key employee is eligible to participate.

(ii) Key employee

For purposes of this subparagraph, the term ''key employee'' has the meaning given such term by section 416(i)(1), except that in the case of a plan other than a top-heavy plan (within the meaning of section 416(g)), such term shall not include an individual who is a key employee solely by reason of section 416(i)(1)(A)(i).

(3) Repayments of cashouts under governmental plans

In the case of any repayment of contributions (including interest thereon) to the governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer within the same State, any such repayment shall not be taken into account for purposes of this section.

(4) Special rules for sections 403(b) and 408

For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.

(*l*) Treatment of certain medical benefits

(1) In general

For purposes of this section, contributions allocated to any individual medical benefit account which is part of a pension or annuity plan shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c). Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(2) Individual medical benefit account

For purposes of paragraph (1), the term ''individual medical benefit account'' means any separate account—

(A) which is established for a participant under a pension or annuity plan, and

(B) from which benefits described in section 401(h) are payable solely to such participant, his spouse, or his dependents.

(m) Treatment of qualified governmental excess benefit arrangements

(1) Governmental plan not affected

In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan

(or trust) shall be exempt from tax under section 115.

(2) Taxation of participant

For purposes of this chapter—

(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

(3) Qualified governmental excess benefit arrangement

For purposes of this subsection, the term ''qualified governmental excess benefit arrangement'' means a portion of a governmental plan if—

(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.

(n) Special rules relating to purchase of permissive service credit

(1) In general

If a participant makes 1 or more contributions to a defined benefit governmental plan (within the meaning of section 414(d)) to purchase permissive service credit under such plan, then the requirements of this section shall be treated as met only if—

(A) the requirements of subsection (b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of subsection (b), or

(B) the requirements of subsection (c) are met, determined by treating all such contributions as annual additions for purposes of subsection (c).

(2) Application of limit

For purposes of—

(A) applying paragraph (1)(A), the plan shall not fail to meet the reduced limit under subsection (b)(2)(C) solely by reason of this subsection, and

(B) applying paragraph (1)(B), the plan shall not fail to meet the percentage limitation under subsection (c)(1)(B) solely by reason of this subsection.

(3) Permissive service credit

For purposes of this subsection—

(A) In general

The term ''permissive service credit'' means service credit—

(i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan,

(ii) which such participant has not received under such governmental plan, and

(iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.

(B) Limitation on nonqualified service credit

A plan shall fail to meet the requirements of this section if—

(i) more than 5 years of nonqualified service credit are taken into account for purposes of this subsection, or

(ii) any nonqualified service credit is taken into account under this subsection before the employee has at least 5 years of participation under the plan.

(C) Nonqualified service credit

For purposes of subparagraph (B), the term ''nonqualified service credit'' means permissive service credit other than that allowed with respect to—

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in subsection (k)(3)),

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an educational organization described in section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(iii) service as an employee of an association of employees who are described in clause (i), or

(iv) military service (other than qualified military service under section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a participant to receive a retirement

benefit for the same service under more than one plan.

(D) Special rules for trustee-to-trustee transfers

In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

(i) the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

(ii) the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.

(Added Pub. L. 93–406, title II, §2004(a)(2), Sept. 2, 1974, 88 Stat. 979; amended Pub. L. 94–455, title VIII, §803(b)(4), (f), title XV, §§1501(b)(3), 1502(a)(1), 1511(a), title XIX, §§1901(a)(65), (b)(8)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1589, 1735–1737, 1741, 1775, 1794, 1834; Pub. L. 95–600, title I, §§141(f)(7), 152(g), 153(a), Nov. 6, 1978, 92 Stat. 2795, 2800; Pub. L. 96–222, title I, §101(a)(7)(L)(i)(VII), (iv)(I), (10)(I), (J)(iii), (11), Apr. 1, 1980, 94 Stat. 199, 200, 203, 204; Pub. L. 96–605, title II, §222(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§311(g)(4), (h)(3), 333(b)(1), Aug. 13, 1981, 95 Stat. 281, 282, 297; Pub. L. 97–248, title II, §§235(a)–(e), 238(d)(5), 251(c)(1), (2), 253(a), Sept. 3, 1982, 96 Stat. 505–507, 513, 530, 532; Pub. L. 98–21, title I, §122(c)(5), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §15, title IV, §491(d)(28)–(32), (e)(6), title (V), §528(a), title VII, §713(a)(1), (3), (d)(4)(B), (7), (k), July 18, 1984, 98 Stat. 505, 850, 853, 876, 955, 956, 958, 960; Pub. L. 99–514, title XI, §§1106(a)–(c)(1), (e)–(g), 1108(g)(5), 1114(b)(12), 1174(d)(1), (2), title XVIII, §§1847(b)(4), 1852(h)(2), (3), 1875(c)(9), (11), 1898(b)(15)(C), 1899A(13), Oct. 22, 1986, 100 Stat. 2420, 2422, 2424, 2425, 2434, 2451, 2518, 2856, 2869, 2895, 2951, 2958; Pub. L. 100–647, title I, §§1011(d)(2), (3), (6), (7), 1018(t)(3)(B), (8)(D), title VI, §§6054(a), 6059(a), Nov. 10, 1988, 102 Stat. 3459, 3460, 3588, 3589, 3696, 3699; Pub. L. 101–239, title VII, §7304(c)(1), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 102–318, title V, §521(b)(23)–(25), July 3, 1992, 106 Stat. 311, 312; Pub. L. 103–465, title VII, §§732(b), 767(b), Dec. 8, 1994, 108 Stat. 5004, 5038; Pub. L. 104–188, title I, §§1434(a), 1444(a), (b)(1), (c), (d), 1446(a), 1449(b), 1452(a), (c)(1)–(6), 1704(t)(75), Aug. 20, 1996, 110 Stat. 1807, 1809–1811, 1814, 1816, 1891; Pub. L. 105–34, title XV, §§1526(a), (b), 1527(a), 1530(c)(3), (4), Aug. 5, 1997, 111 Stat. 1072–1074, 1078; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§611(a), (b), (h), 632(a)(1), (3)(C)–(F), (b)(1), 641(e)(9), (10), 654(a), (b), June 7, 2001, 115 Stat. 96, 97, 100, 113–115, 121, 130, 131; Pub. L. 107–147, title IV, §411(p)(4), Mar. 9, 2002, 116 Stat. 50; Pub. L. 108–218, title I, §101(b)(4), Apr. 10, 2004, 118 Stat. 598; Pub. L. 108–311, title IV, §§404(b)(2), 408(a)(17), Oct. 4, 2004, 118 Stat. 1188, 1192; Pub. L. 109–135, title IV, §§407(b), 412(y), (z), Dec. 21, 2005, 119 Stat. 2635, 2638; Pub. L. 109–280, title III, §303(a), title VIII, §§821(a)–(c), 832(a), 867(a), title IX, §906(b)(1)(A), (B), Aug. 17, 2006, 120 Stat. 921, 997, 1003, 1025, 1051, 1052; Pub. L. 110–458, title I, §§103(b)(2)(B)(i), 108(g), 109(d)(1), 122(a), Dec. 23, 2008, 122 Stat. 5103, 5109, 5112, 5114.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(8) and (d)(2)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Sections 215(i)(2)(A) and 216(*l*) of the Act enacted sections 415(i)(2)(A) and 416(*l*) of Title 42, respectively. For complete classification of this Act to the Code, see Tables.

The date of the enactment of this clause, referred to in subsec. (b)(10)(C)(ii), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

Subsection (f)(3), referred to in subsec. (g), was redesignated subsection (f)(2) by Pub. L. 100–458, title I, §108(g), Dec. 23, 2008, 122 Stat. 5109.

AMENDMENTS

2008—Subsec. (b)(2)(E)(v). Pub. L. 110–458, §103(b)(2)(B)(i), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of section 807(d)(5)).''

Subsec. (b)(2)(E)(vi). Pub. L. 110–458, §122(a), added cl. (vi).

Subsec. (b)(10). Pub. L. 110–458, §109(d)(1), made technical correction to directory language of Pub. L. 109–280, §906(b)(1)(B)(ii). See 2006 Amendment note below.

Subsec. (f)(2), (3). Pub. L. 110–458, §108(g), redesignated par. (3) as par. (2) and struck out former par. (2) which related to annual compensation taken into account for defined benefit plans.

2006—Subsec. (b)(2)(E)(ii). Pub. L. 109–280, §303(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the applicable interest rate (as defined in section 417(e)(3)) shall be substituted for '5 percent' in clause (i), except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i).''

Subsec. (b)(2)(H)(i). Pub. L. 109–280, §906(b)(1)(A)(i), substituted ''State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision'' for ''State or political subdivision''.

Subsec. (b)(2)(H)(ii)(I). Pub. L. 109–280, §906(b)(1)(A)(ii), substituted ''State, Indian tribal government (as so defined), or any political subdivision'' for ''State or political subdivision'' in two places.

Subsec. (b)(3). Pub. L. 109–280, §832(a), struck out ''both was an active participant in the plan and'' before ''had the greatest''.

Subsec. (b)(10). Pub. L. 109–280, §906(b)(1)(B)(ii), as amended by Pub. L. 110–458, §109(d)(1), substituted ''State, Indian tribal, and'' for ''State and'' in heading.

Subsec. (b)(10)(A). Pub. L. 109–280, §906(b)(1)(B)(i), inserted ''or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments),'' after ''foregoing,''.

Subsec. (b)(11). Pub. L. 109–280, §867(a), inserted at end ''Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in

section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph, the term 'highly compensated benefits' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.''

Subsec. (n)(1). Pub. L. 109–280, § 821(a)(1), substituted ''a participant'' for ''an employee'' in introductory provisions.

Subsec. (n)(3)(A). Pub. L. 109–280, § 821(a)(2), inserted concluding provisions.

Subsec. (n)(3)(B)(i), (ii). Pub. L. 109–280, § 821(c)(1), substituted ''nonqualified service credit'' for ''permissive service credit attributable to nonqualified service''.

Subsec. (n)(3)(C). Pub. L. 109–280, § 821(c)(2), substituted ''service credit'' for ''service'' in heading and ''the term 'nonqualified service credit' means permissive service credit other than that allowed with respect to'' for ''the term 'nonqualified service' means service for which permissive service credit is allowed other than'' in introductory provisions.

Subsec. (n)(3)(C)(ii). Pub. L. 109–280, § 821(c)(3), substituted ''or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed'' for ''as determined under State law''.

Subsec. (n)(3)(D). Pub. L. 109–280, § 821(b), added subpar. (D).

2005—Subsec. (c)(7)(C). Pub. L. 109–135, § 407(b), substituted ''$3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds $17,000'' for ''the greater of $3,000 or the employee's includible compensation determined under section 403(b)(3)''.

Subsec. (*l*)(1). Pub. L. 109–135, § 412(y), substituted ''individual medical benefit account'' for ''individual medical account''.

Subsec. (n)(3)(C). Pub. L. 109–135, § 412(z), substituted ''clause'' for ''clauses'' in concluding provisions.

2004—Subsec. (b)(2)(E)(ii). Pub. L. 108–218 inserted before period at end '', except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i)''.

Subsec. (c)(7)(C). Pub. L. 108–311, § 408(a)(17), substituted ''subparagraph (B)'' for ''subparagraph (D)''.

Subsec. (d)(4)(A). Pub. L. 108–311, § 404(b)(2), inserted at end ''This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.''

2002—Subsec. (c)(7). Pub. L. 107–147 amended heading and text of par. (7) generally, substituting provisions relating to special rules relating to church plans for provisions relating to certain contributions by church plans not treated as exceeding limit and adding provisions relating to foreign missionaries and definitions of ''church'' and ''convention or association of churches''.

2001—Subsec. (a)(2). Pub. L. 107–16, § 632(a)(3)(C), struck out '', and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)'' before period at end.

Subsec. (b)(1)(A). Pub. L. 107–16, § 611(a)(1)(A), substituted ''$160,000'' for ''$90,000''.

Subsec. (b)(2)(A), (B). Pub. L. 107–16, § 641(e)(9), substituted ''403(b)(8), 408(d)(3), and 457(e)(16)'' for ''and 408(d)(3)''.

Subsec. (b)(2)(C). Pub. L. 107–16, § 611(a)(1)(B), (2), in heading substituted ''$160,000'' for ''$90,000'' and ''age 62'' for ''the social security retirement age'' and in text substituted ''age 62'' for ''the social security retirement age'' in two places, ''$160,000'' for ''$90,000'' in two places, and struck out at end ''The reduction under this subparagraph shall be made in such manner as the Secretary may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the social security retirement age under the Social Security Act.''

Subsec. (b)(2)(D). Pub. L. 107–16, § 611(a)(1)(B), (3), in heading substituted ''$160,000'' for ''$90,000'' and ''age 65'' for ''the social security retirement age'' and in text substituted ''age 65'' for ''the social security retirement age'' in two places and ''$160,000'' for ''$90,000'' in two places.

Subsec. (b)(2)(F). Pub. L. 107–16, § 611(a)(5)(A), struck out subpar. (F), which related to the application of subpars. (C) and (D) in the case of a governmental plan, a plan maintained by a tax-exempt organization, or a qualified merchant marine plan and defined ''qualified merchant marine plan''.

Subsec. (b)(7). Pub. L. 107–16, § 654(a)(2), inserted ''(other than a multiemployer plan)'' after ''defined benefit plan'' in introductory provisions.

Pub. L. 107–16, § 611(a)(1)(C), substituted ''one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$160,000' '' for ''the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000' '' in concluding provisions.

Subsec. (b)(9). Pub. L. 107–16, § 611(a)(5)(B), amended par. (9) generally, substituting present provisions for provisions which provided that, in the case of any participant who was a commercial airline pilot, the rule of par. (2)(F)(i)(II) would apply, and if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration required an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before the social security retirement age, par. (2)(C) would be applied by substituting such age for the social security retirement age, and provisions which provided that if a participant separated from service before age 60, the rules of par. (2)(F) would apply.

Subsec. (b)(10)(C)(i). Pub. L. 107–16, § 611(a)(5)(C), struck out ''applied without regard to paragraph (2)(F)'' before period at end.

Subsec. (b)(11). Pub. L. 107–16, § 654(a)(1), amended heading and text of par. (11) generally. Prior to amendment, text read as follows: ''In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply.''

Subsec. (c)(1)(A). Pub. L. 107–16, § 611(b)(1), substituted ''$40,000'' for ''$30,000''.

Subsec. (c)(1)(B). Pub. L. 107–16, § 632(a)(1), substituted ''100 percent'' for ''25 percent''.

Subsec. (c)(2). Pub. L. 107–16, § 641(e)(10), substituted ''408(d)(3), and 457(e)(16)'' for ''and 408(d)(3)'' in concluding provisions.

Subsec. (c)(3)(E). Pub. L. 107–16, § 632(a)(3)(D), added subpar. (E).

Subsec. (c)(4). Pub. L. 107–16, § 632(a)(3)(E), struck out par. (4), which related to special election for section 403(b) contracts purchased by educational organizations, hospitals, home health service agencies, certain churches, and other organizations.

Subsec. (c)(7). Pub. L. 107–16, § 632(a)(3)(F), amended par. (7) generally, redesignating cls. (i) and (ii) of subpar. (B) as subpars. (A) and (B), respectively, reenacting subpar. (C) without change, striking out former subpar. (A), which directed that any contribution or addition with respect to any participant, when expressed as an annual addition, which was allocable to the application of section 403(b)(2)(D) to such participant for such year, would be treated as not exceeding the limitations of par. (1), and striking out former subpar. (B), cl. (iii), which prohibited making of election under this subpar. for any year if an election had been made under former par. (4)(A) for such year.

Subsec. (d)(1)(A). Pub. L. 107–16, § 611(a)(4)(A), substituted ''$160,000'' for ''$90,000''.

Subsec. (d)(1)(C). Pub. L. 107–16, § 611(b)(2)(A), substituted ''$40,000'' for ''$30,000''.

Subsec. (d)(3)(A). Pub. L. 107–16, § 611(a)(4)(B), in heading substituted ''$160,000'' for ''$90,000'' and in text substituted ''July 1, 2001'' for ''October 1, 1986''.

Subsec. (d)(3)(D). Pub. L. 107–16, § 611(b)(2)(B), in heading substituted ''$40,000'' for ''$30,000'' and in text substituted ''July 1, 2001'' for ''October 1, 1993''.

Subsec. (d)(4). Pub. L. 107–16, § 611(h), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''Any increase under subparagraph (A) or (C) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.''

Subsec. (f)(3). Pub. L. 107–16, § 654(b)(1), added par. (3).

Subsec. (g). Pub. L. 107–16, § 654(b)(2), substituted ''Except as provided in subsection (f)(3), the Secretary'' for ''The Secretary''.

Subsec. (k)(4). Pub. L. 107–16, § 632(b)(1), added par. (4).

2000—Subsec. (c)(3)(D)(ii). Pub. L. 106–554 substituted ''section 125, 132(f)(4), or'' for ''section 125 or''.

1997—Subsec. (b)(2)(G). Pub. L. 105–34, § 1527(a), substituted ''participant, subparagraph (C) of this paragraph shall not apply.'' for ''participant—

''(i) subparagraph (C) shall not reduce the limitation of paragraph (1)(A) to an amount less than $50,000, and

''(ii) the rules of subparagraph (F) shall apply.

The Secretary shall adjust the $50,000 amount in clause (i) at the same time and in the same manner as under section 415(d).''

Subsec. (c)(6). Pub. L. 105–34, § 1530(c)(3), inserted concluding provisions ''The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.''

Subsec. (e)(6), (7). Pub. L. 105–34, § 1530(c)(4), added par. (6) and redesignated former par. (6) as (7).

Subsec. (k)(3). Pub. L. 105–34, § 1526(b), added par. (3).

Subsec. (n). Pub. L. 105–34, § 1526(a), added subsec. (n).

1996—Subsec. (a)(1). Pub. L. 104–188, § 1452(c)(1), inserted ''or'' at end of subpar. (A), struck out '', or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g).''

Subsec. (b)(2)(E)(i). Pub. L. 104–188, § 1449(b)(1), substituted ''For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B),'' for ''Except as provided in clause (ii), for purposes of adjusting any benefit or limitation under subparagraph (B) or (C),''.

Subsec. (b)(2)(E)(ii). Pub. L. 104–188, § 1449(b)(2), substituted ''For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3),'' for ''For purposes of adjusting the benefit or limitation of any form of benefit subject to section 417(e)(3),''.

Subsec. (b)(2)(I). Pub. L. 104–188, § 1444(c), added subpar. (I).

Subsec. (b)(5)(B). Pub. L. 104–188, § 1452(c)(2), struck out ''and subsection (e)'' after ''and (4)''.

Subsec. (b)(10)(C). Pub. L. 104–188, § 1444(d), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (b)(11). Pub. L. 104–188, § 1444(a), added par. (11).

Subsec. (c)(3)(C). Pub. L. 104–188, § 1446(a), inserted at end ''If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).''

Subsec. (c)(3)(D). Pub. L. 104–188, § 1434(a), added subpar. (D).

Subsec. (e). Pub. L. 104–188, § 1452(a), struck out subsec. (e) which related to limitation in case of a defined benefit plan and a defined contribution plan for same employee.

Subsec. (f)(1). Pub. L. 104–188, § 1452(c)(3), in introductory provisions, substituted ''subsections (b) and (c)'' for ''subsections (b), (c), and (e)''.

Subsec. (g). Pub. L. 104–188, § 1452(c)(4), in last sentence, substituted ''subsection (f)'' for ''subsections (e) and (f)''.

Subsec. (k)(1)(C) to (F). Pub. L. 104–188, § 1704(t)(75), inserted ''or'' at end of subpar. (C), redesignated subpar. (F) as (D), and struck out former subpars. (D) and (E) which read as follows:

''(D) an individual retirement account described in section 408(a),

''(E) an individual retirement annuity described in section 408(b), or''.

Subsec. (k)(2)(A)(i). Pub. L. 104–188, § 1452(c)(5), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any contribution made directly by an employee under such arrangement—

''(I) shall not be treated as an annual addition for purposes of subsection (c), but

''(II) shall be so treated for purposes of subsection (e), and''.

Subsec. (k)(2)(A)(ii). Pub. L. 104–188, § 1452(c)(6), substituted ''subsection (c)'' for ''subsections (c) and (e)'' before ''shall not again''.

Subsec. (m). Pub. L. 104–188, § 1444(b)(1), added subsec. (m).

1994—Subsec. (b)(2)(E). Pub. L. 103–465, § 767(b), added cls. (i), (ii), and (v), redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively, and struck out former cl. (i) which read as follows: ''For purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.''

Subsec. (c)(1)(A). Pub. L. 103–465, § 732(b)(2), struck out ''(or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A))'' after ''$30,000''.

Subsec. (d). Pub. L. 103–465, § 732(b)(1), amended subsec. (d) generally, substituting present provisions for provisions authorizing annual cost-of-living adjustments, outlining base periods, and providing for a freeze on adjustment to defined contribution and benefit limits.

1992—Subsecs. (b)(2)(A), (B), (c)(2). Pub. L. 102–318 substituted ''402(c)'' for ''402(a)(5)''.

1989—Subsec. (c)(6). Pub. L. 101–239 substituted ''Special rule for employee stock ownership plans'' for ''Special limitation for employee stock ownership plan'' in heading and amended text generally, substituting introductory provisions and subpars. (A) and (B) for former subpars. (A) to (C).

1988—Subsec. (b)(2)(H)(ii). Pub. L. 100–647, § 6059(a), substituted ''15'' for ''20''.

Subsec. (b)(5)(B). Pub. L. 100–647, § 1011(d)(6), inserted ''and subsection (e)'' after ''paragraphs (1)(B) and (4)''.

Subsec. (b)(5)(D). Pub. L. 100–647, § 1011(d)(2), substituted ''subparagraph (A)'' for ''this paragraph''.

Subsec. (b)(10). Pub. L. 100–647, § 6054(a), added par. (10).

Subsec. (c)(6)(A). Pub. L. 100–647, § 1011(d)(7), substituted ''paragraph (1)(A)'' for ''paragraph (c)(1)(A) (as adjusted for such year pursuant to subsection (d)(1))'' and for ''paragraph (c)(1)(A) (as so adjusted)''.

Subsec. (k). Pub. L. 100–647, § 1018(t)(8)(D), repealed Pub. L. 99–514, § 1899A(13), see 1986 Amendment note below.

Subsec. (k)(2)(C)(ii). Pub. L. 100–647, § 1011(d)(3)(A), substituted ''to such increase'' for ''to the arrangement''.

Subsec. (k)(2)(D). Pub. L. 100–647, § 1011(d)(3)(B), added subpar. (D) and struck out former subpar. (D) which read as follows: ''An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may be made in—

''(i) the year in which the participant—

''(I) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

''(II) separates from service, or

''(ii) both such years.''

Subsec. (*l*)(1). Pub. L. 100–647, §1018(t)(3)(B), made technical correction to directory language of Pub. L. 99–514, §1852(h)(2). See 1986 Amendment note below.

1986—Subsec. (b)(2)(B). Pub. L. 99–514, §1898(b)(15)(C), substituted reference to section 417 for reference to section 401(a)(11)(G)(iii).

Subsec. (b)(2)(C). Pub. L. 99–514, §1106(b)(1)(A), substituted in heading and in two places in text ''the social security retirement age'' for ''age 62'' and substituted new last sentence for ''The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below—

''(i) if the benefit begins at or after age 55, $75,000, or

''(ii) if the benefit begins before age 55, the amount which is the equivalent of the $75,000 limitation for age 55.''

Subsec. (b)(2)(D). Pub. L. 99–514, §1106(b)(1)(A)(i), substituted in heading and in two places in text ''the social security retirement age'' for ''age 65''.

Subsec. (b)(2)(E)(iii). Pub. L. 99–514, §1875(c)(9), substituted ''this subsection'' for ''adjusting any benefit or limitation under subparagraph (B), (C), or (D)''.

Subsec. (b)(2)(F) to (H). Pub. L. 99–514, §1106(b)(2), added subpars. (F) to (H).

Subsec. (b)(5). Pub. L. 99–514, §1106(f), substituted ''Reduction for participation or service of less than 10 years'' for ''Reduction for service less than 10 years'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.''

Subsec. (b)(8). Pub. L. 99–514, §1106(b)(1)(B), added par. (8).

Subsec. (b)(9). Pub. L. 99–514, §1106(b)(3), added par. (9).

Subsec. (c)(1)(A). Pub. L. 99–514, §1106(a), amended subpar. (A) generally, inserting ''(or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A))''.

Subsec. (c)(2). Pub. L. 99–514, §1108(g)(5), substituted ''which are excludable from gross income under section 408(k)(6)'' for ''allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(*o*)(5)'' in last sentence.

Pub. L. 99–514, §1106(e)(2), inserted at end ''Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.''

Subsec. (c)(2)(B). Pub. L. 99–514, §1106(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the lesser of—

''(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

''(ii) one-half of the employee contributions, and''.

Subsec. (c)(3)(C). Pub. L. 99–514, §1875(c)(11), substituted ''any defined contribution plan'' for ''a profit-sharing or stock bonus plan''.

Subsec. (c)(3)(C)(i). Pub. L. 99–514, §1847(b)(4), substituted ''section 22(e)(3)'' for ''section 37(e)(3)''.

Subsec. (c)(3)(C)(ii). Pub. L. 99–514, §1114(b)(12), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, owner, or highly compensated''.

Subsec. (c)(4)(A) to (C). Pub. L. 99–514, §1106(b)(4), inserted ''a health and welfare service agency,'' after ''a home health service agency,''.

Subsec. (c)(6)(A). Pub. L. 99–514, §1174(d)(1), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)''.

Subsec. (c)(6)(B)(iii), (iv). Pub. L. 99–514, §1174(d)(2)(A), struck out cls. (iii) and (iv) which read as follows:

''(iii) an employee described in this clause is any participant whose compensation for a year exceeds an amount equal to twice the amount described in paragraph (1)(A) for such year (as adjusted for such year pursuant to subsection (d)(1)), determined without regard to subparagraph (A) of this paragraph, and

''(iv) an individual shall be considered to own more than 10 percent of the employer's stock if, without regard to stock held under the employee stock ownership plan, he owns (after application of section 1563(e)) more than 10 percent of the total combined voting power of all classes of stock entitled to vote or more than 10 percent of the total value of shares of all classes of stock.''

Subsec. (c)(6)(C). Pub. L. 99–514, §1174(d)(2)(B), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)''.

Subsec. (d)(1)(B), (C). Pub. L. 99–514, §1106(g)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B), which related to the $30,000 amount in subsection (c)(1)(A).

Subsec. (d)(2)(A). Pub. L. 99–514, §1106(g)(2)(A), substituted ''subparagraph (A)'' for ''subparagraphs (A) and (B)''.

Subsec. (d)(2)(B). Pub. L. 99–514, §1106(g)(2)(B), substituted ''subparagraph (B)'' for ''subparagraph (C)''.

Subsec. (d)(3). Pub. L. 99–514, §1106(g)(3), substituted ''subparagraph (A)'' for ''subparagraph (A) or (B)''.

Subsec. (k). Pub. L. 99–514, §1899A(13), which directed the general amendment of subsec. (k) by striking out par. (1) designation and redesignating subpars. (A) to (F) as pars. (1) to (6), respectively, was repealed by Pub. L. 100–647, §1018(t)(8)(D).

Subsec. (k)(2). Pub. L. 99–514, §1106(c)(1), added par. (2) relating to contributions to provide cost-of-living protection under defined benefit plans.

Subsec. (*l*). Pub. L. 99–514, §1852(h)(3), substituted ''a pension or annuity plan'' for ''a defined benefit plan'' in pars. (1) and (2)(A).

Pub. L. 99–514, §1852(h)(2), as amended by Pub. L. 100–647, §1018(t)(3)(B), inserted at end of par. (1) ''Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.''

1984—Subsec. (a)(2). Pub. L. 98–369, §491(d)(28), struck out subpar. (D) which related to application of this section to a plan described in section 405(a), and in provision following subpar. (C) struck out ''405(a),'' after ''403(b),''.

Subsec. (b)(2)(A), (B). Pub. L. 98–369, §491(d)(29), (30), substituted ''and 408(d)(3)'' for ''408(d)(3) and 409(b)(3)(C)''.

Subsec. (b)(2)(C). Pub. L. 98–369, §713(a)(1)(A), substituted provision respecting determination as to whether $90,000 limitation has been satisfied by reducing the limitation of par. (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 62 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 62.

Subsec. (b)(2)(D). Pub. L. 98–369, §713(a)(1)(B), substituted ''limit'' for ''limitation'' in heading, and in text substituted provision respecting determination as to whether $90,000 limitation has been satisfied by increasing the limitation of par. (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins)

which is equivalent to a $90,000 annual benefit beginning at age 65 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 65.

Subsec. (b)(2)(E). Pub. L. 98–369, §713(a)(1)(C), provided in cls. (i) and (iii) for adjustment of any limitation and substituted in cl. (ii) ''any limitation'' for ''any benefit''.

Subsec. (c)(2). Pub. L. 98–369, §491(d)(31), substituted ''and 408(d)(3)'' for ''405(d)(3), 408(d)(3), and 409(b)(3)(C)''.

Subsec. (c)(3)(C). Pub. L. 98–369, §713(k), inserted in introductory text ''in a profit-sharing or stock bonus plan'', and substituted in last sentence ''if contributions made with respect to amounts treated as compensation under this subparagraph'' for ''if contributions made with respect to such participant''.

Subsec. (c)(6)(B)(ii). Pub. L. 98–369, §491(e)(6), substituted ''section 409'' for ''section 409A''.

Subsec. (c)(6)(C). Pub. L. 98–369, §713(d)(4)(B)(i)–(iii), substituted ''paragraph (9)'' for ''paragraph (10)'' of section 404(a), section ''404(a)(9)(A)'' for ''404(a)(10)(A)'', and section ''404(a)(9)(B)'' for ''404(a)(10)(B)''.

Subsec. (c)(7), (8). Pub. L. 98–369, §713(d)(7)(A), redesignated par. (8) as (7), and struck out former par. (7) relating to certain level premium annuity contracts under plans benefiting owner-employees.

Subsec. (d)(2)(A). Pub. L. 98–369, §15(b), substituted ''1986'' for ''1984''.

Subsec. (d)(3). Pub. L. 98–369, §15(a), substituted ''January 1, 1988'' for ''January 1, 1986''.

Subsec. (e)(3)(B)(ii)(II). Pub. L. 98–369, §713(d)(7)(B), struck out reference to subsec. (c)(8).

Subsec. (e)(6)(C). Pub. L. 98–369, §713(a)(3), added subpar. (C).

Subsec. (k)(1). Pub. L. 98–369, §491(d)(32), struck out subpars. (C) and (H), which included a qualified bond purchase plan described in section 405(a) and an individual retirement bond described in section 409 within the term ''defined contribution plan'' or ''defined benefit plan'', respectively, and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (*l*). Pub. L. 98–369, §528(a), added subsec. (*l*).

1983—Subsec. (c)(3)(C)(i). Pub. L. 98–21 substituted ''section 37(e)(3)'' for ''section 105(d)(4)''.

1982—Subsec. (b)(1)(A). Pub. L. 97–248, §235(a)(1), substituted ''$90,000'' for ''$75,000''.

Subsec. (b)(2)(C). Pub. L. 97–248, §235(a)(3)(A), (e)(1), (2), inserted provisions relating to reduction under this subparagraph, and substituted ''$90,000'' for ''$75,000'' and ''62'' for ''55'', wherever appearing.

Subsec. (b)(2)(D), (E). Pub. L. 97–248, §235(e)(3), (4), added subpars. (D) and (E).

Subsec. (b)(7). Pub. L. 97–248, §235(a)(3)(B), substituted ''the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000' '' for '' '37,500' for '75,000' ''.

Subsec. (c)(1)(A). Pub. L. 97–248, §235(a)(2), substituted ''$30,000'' for ''$25,000''.

Subsec. (c)(3). Pub. L. 97–248, §253(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (c)(4). Pub. L. 97–248, §251(c)(1), substituted '', home health service agencies, and certain churches, etc.'' for ''and home health service agencies'' in heading, in subpar. (A) inserted ''(as determined for purposes of section 403(b)(2))'' after ''by taking into account his service for the employer'', substituted ''a home health service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii)'' for ''or a home health service agency'' in subpars. (A), (B) and (C), respectively, and, in subpar. (D), added cl. (iv).

Subsec. (c)(5). Pub. L. 97–248, §238(d)(5), struck out par. (5) relating to application with section 404(e)(4).

Subsec. (c)(8). Pub. L. 97–248, §251(c)(2), added par. (8).

Subsec. (d)(1). Pub. L. 97–248, §235(b)(1), substituted ''benefit amounts'' for ''primary insurance amounts'' in provision following subpar. (C).

Pub. L. 97–248, §235(b)(3), substituted ''$90,000'' for ''$75,000'' in subpar. (A), and in subpar. (B) substituted ''$30,000'' for ''$25,000''.

Subsec. (d)(2)(A). Pub. L. 97–248, §235(b)(2)(B), substituted ''1984'' for ''1974''.

Subsec. (d)(3). Pub. L. 97–248, §235(b)(2)(A), added par. (3).

Subsec. (e)(1). Pub. L. 97–248, §235(c)(1), substituted ''1.0'' for ''1.4''.

Subsec. (e)(2)(B). Pub. L. 97–248, §235(c)(2)(A), substituted provisions that for purposes of this subsection, the defined benefit plan fraction for any year has a denominator which is the lesser of the product of 1.25 multiplied by the dollar limitation in effect under subsec. (b)(1)(A) for such year, or the product of 1.4 multiplied by the amount which may be taken into account under subsec. (b)(1)(B) with respect to such individual under the plan for such year, for provisions that such benefit plan fraction had a denominator which was the projected annual benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsec. (b).

Subsec. (e)(3)(B). Pub. L. 97–248, §235(c)(2)(B), substituted provision that the defined contribution plan fraction for any year has a denominator which, determined for such year and for each prior year of service with the employer, is the lesser of either the product of 1.25 multiplied by the dollar limitation in effect under subsec. (c)(1)(A) for such year (determined without regard to subsec. (c)(6)), or the product of 1.4 multiplied by the amount which may be taken into account under subsec. (c)(1)(B) (or subsec. (c)(7) or (8), if applicable) with respect to such individual under such plan for such year, for provision that the denominator of such fraction was the sum of the maximum amount of annual additions to the participant's account which could have been made under subsec. (c) for such year and for each prior year of service with the employer (determined without regard to subsec. (c)(6)).

Subsec. (e)(6). Pub. L. 97–248, §235(d), added par. (6).

1981—Subsec. (a)(2). Pub. L. 97–34, §311(g)(4)(A), struck out in provision preceding subpar. (A) ''Except as provided in paragraph (3)'', redesignated former subpar. (E) as (C), and in subpar. (C) as so designated, inserted ''described in section 408(k), or'', redesignated former subpar. (F) as (D), struck out former subpars. (C), relating to an individual retirement account described under section 408(a), (D), relating to an individual retirement annuity described in section 408(b), and (G), relating to a retirement bond described in section 409, and in provision following subpar. (D), substituted ''such a contract, plan, or pension,'' for ''such contract, annuity plan, account, annuity, plan, or bond'' and ''408(k)'' for ''408(a), 408(b), or 409''.

Subsec. (a)(3). Pub. L. 97–34, §311(h)(3), struck out par. (3) which provided that par. (2) not apply to an account, annuity, or bond described in section 408(a), 408(b), or 409, established for the benefit of the spouse of the individual contributing to such account, or for such annuity or bond, if a deduction is allowed under section 220 to such individual with respect to such contribution for such year.

Subsec. (c)(2). Pub. L. 97–34, §311(g)(4)(B), included in provision following subpar. (C) references to sections 403(b)(8) and 405(d)(3) and inserted ''without regard to employee contributions to a simplified employee pension allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(*o*)(5)''.

Subsec. (c)(6)(C). Pub. L. 97–34, §333(b)(1), added subpar. (C).

Subsec. (e)(5). Pub. L. 97–34, §311(g)(4)(C), struck out '', any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), and any retirement bond described in section 409,'' before ''for the benefit''.

1980—Subsec. (b)(7). Pub. L. 96–222, §101(a)(11), substituted in subpar. (C) ''under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement'' for ''benefits under which are determined by multiplying a specified

amount (which is the same amount for each participant) by the number of the participant's years of service'' and inserted in text following subpar. (E) provisions requiring that this paragraph not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan.

Subsec. (c)(6)(A). Pub. L. 96–605 inserted '', or purchased with cash contributed,'' after ''securities contributed''.

Subsec. (c)(6)(B)(i). Pub. L. 96–222, §101(a)(7)(L)(i)(VII), (iv)(I), substituted ''a tax credit employee stock ownership plan'' for ''an ESOP'' and struck out ''leveraged'' before ''employee''.

Subsec. (e)(5). Pub. L. 96–222, §101(a)(10)(I), inserted provisions requiring that for purposes of this section, any contribution by an employer to a simplified employee pension for an individual for a taxable year be treated as an employer contribution to a defined contribution plan for such individual for such year.

1978—Subsec. (a)(2). Pub. L. 95–600, §152(g)(1), (2), as amended by Pub. L. 96–222, §101(a)(10)(J)(iii), added subpar. (E), redesignated former subpars. (E) and (F) as (F) and (G), respectively, and in provision following subpar. (G) as so redesignated, inserted ''408(k),'' after ''408(b),''.

Subsec. (b)(7). Pub. L. 95–600, §153(a), added par. (7).

Subsec. (c)(6)(B)(i). Pub. L. 95–600, §141(f)(7), substituted ''leveraged employee stock ownership plan (within the meaning of section 4975(e)(7)) or an ESOP'' for ''a plan which meets the requirements of section 4975(e)(7) or section 301(d) of the Tax Reduction Act of 1975''.

Subsec. (c)(6)(B)(ii). Pub. L. 95–600, §141(f)(7), substituted ''has the meaning given to such term by section 409A'' for ''means, in the case of an employee stock ownership plan within the meaning of section 4975(e)(7), qualifying employer securities within the meaning of section 4975(e)(8), but only if they are described in section 301(d)(9)(A) of the Tax Reduction Act of 1975, or, in the case of an employee stock ownership plan described in section 301(d)(2) of the Tax Reduction Act of 1975, employer securities within the meaning of section 301(d)(9)(A) of such Act''.

Subsec. (e)(5). Pub. L. 95–600, §152(g)(3), inserted ''any simplified employee pension,'' after ''section 408(b),''.

Subsec. (k)(1)(G), (H). Pub. L. 95–600, §152(g)(4), added subpar. (G) and redesignated former subpar. (G) as (H).

1976—Subsec. (a)(2). Pub. L. 94–455, §1501(b)(3)(A), substituted ''Except as provided in paragraph (3), in the case'' for ''In the case''.

Subsec. (a)(3). Pub. L. 94–455, §1501(b)(3)(B), added par. (3).

Subsec. (b)(2)(A). Pub. L. 94–455, §1901(a)(65)(A), inserted closing parenthesis after ''409(b)(3)(C)''.

Subsec. (b)(2)(B). Pub. L. 94–455, §§1901(a)(65)(B), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' and substituted ''section 401(a)(11)(G)(iii)'' for ''section 401(a)(11)(H)(iii)''.

Subsec. (b)(2)(C), (6). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(4). Pub. L. 94–455, §§1901(b)(8)(D), 1906(b)(13)(A), substituted ''educational organizations'' for ''educational institutions'' in the heading and ''educational organization'' for ''educational institution'' in subpars. (A), (B), and (C), struck out ''or his delegate'' after ''Secretary'' in subpar. (D)(i), and substituted ''For purposes of this paragraph the term 'educational organization' means an educational organization described in section 170(b)(1)(A)(ii)'' for ''For purposes of this paragraph the term 'educational institution' means an educational institution as defined in section 151(e)(4)'' in subpar. (D)(ii).

Subsec. (c)(5). Pub. L. 94–455, §1502(a)(1), added par. (5).

Subsec. (c)(6). Pub. L. 94–455, §803(f)(1), added par. (6).

Subsec. (c)(7). Pub. L. 94–455, §1511(a), added par. (7).

Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(3)(B). Pub. L. 94–455, §803(f)(2), substituted ''with the employer determined without regard to paragraph (6) of such subsection)'' for ''with the employer''.

Subsec. (e)(5). Pub. L. 94–455, §803(b)(4), substituted ''For purposes of this section'' for ''For purposes of this subsection''.

Subsecs. (g), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §103(b)(2)(B)(ii), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(I) Except as provided in subclause (II), the amendment made by clause (i) [amending this section] shall apply to years beginning after December 31, 2008.

''(II) A plan sponsor may elect to have the amendment made by clause (i) apply to any year beginning after December 31, 2007, and before January 1, 2009, or to any portion of any such year.''

Amendment by sections 108(g) and 109(d)(1) of 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.

Pub. L. 110–458, title I, §122(b), Dec. 23, 2008, 122 Stat. 5114, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title III, §303(b), Aug. 17, 2006, 120 Stat. 921, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions made in years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, §821(d), Aug. 17, 2006, 120 Stat. 998, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section] shall take effect as if included in the amendments made by section 1526 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001 [see section 647(c) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 403 of this title].''

Pub. L. 109–280, title VIII, §832(b), Aug. 17, 2006, 120 Stat. 1003, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, §867(b), Aug. 17, 2006, 120 Stat. 1025, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2006.''

Amendment by section 906(b)(1)(A), (B) of Pub. L. 109–280 applicable to any year beginning on or after Aug. 17, 2006, see section 906(c) of Pub. L. 109–280, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 407(b) of Pub. L. 109–135 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 407(c) of Pub. L. 109–135, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 404(b)(2) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, 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.

Amendment by Pub. L. 108–218 applicable, except as otherwise provided, to plan years beginning after Dec. 31, 2003, see section 101(d) of Pub. L. 108–218, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Re-

lief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §611(i), June 7, 2001, 115 Stat. 100, as amended by Pub. L. 107–147, title IV, §411(j)(3), Mar. 9, 2002, 116 Stat. 47, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 401, 402, 404, 408, 457, 501, and 505 of this title] shall apply to years beginning after December 31, 2001.

''(2) DEFINED BENEFIT PLANS.—The amendments made by subsection (a) [amending this section] shall apply to years ending after December 31, 2001.''

''(3) SPECIAL RULE.—In the case of plan that, on June 7, 2001, incorporated by reference the limitation of section 415(b)(1)(A) of the Internal Revenue Code of 1986, section 411(d)(6) of such Code and section 204(g)(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)(1)] do not apply to a plan amendment that—

''(A) is adopted on or before June 30, 2002,

''(B) reduces benefits to the level that would have applied without regard to the amendments made by subsection (a) of this section, and

''(C) is effective no earlier than the years described in paragraph (2).''

Amendment by section 632(a)(1), (3)(C)–(F) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §632(b)(2), June 7, 2001, 115 Stat. 115, provided that:

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to limitation years beginning after December 31, 1999.

''(B) EXCLUSION ALLOWANCE.—Effective for limitation years beginning in 2000, in the case of any annuity contract described in section 403(b) of the Internal Revenue Code of 1986, the amount of the contribution disqualified by reason of section 415(g) of such Code shall reduce the exclusion allowance as provided in section 403(b)(2) of such Code.''

Amendment by section 641(e)(9), (10) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §654(c), June 7, 2001, 115 Stat. 131, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1526(c), Aug. 5, 1997, 111 Stat. 1073, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to permissive service credit contributions made in years beginning after December 31, 1997.

''(2) TRANSITION RULE.—

''(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the limitations of section 415(c)(1) of such Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on the date of the enactment of this Act [Aug. 5, 1997].

''(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan before the first plan year beginning after the last day of the calendar year in which the next regular session (following the date of the enactment of this Act) of the governing body with authority to amend the plan ends.''

Pub. L. 105–34, title XV, §1527(b), Aug. 5, 1997, 111 Stat. 1074, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Amendment by section 1530(c)(3), (4) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1434(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1997, see section 1434(c) of Pub. L. 104–188, set out as a note under section 414 of this title.

Pub. L. 104–188, title I, §1444(e), Aug. 20, 1996, 110 Stat. 1811, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 457 of this title] shall apply to years beginning after December 31, 1994. The amendments made by subsection (d) [amending this section] shall apply with respect to revocations adopted after the date of the enactment of this Act [Aug. 20, 1997].

''(2) TREATMENT FOR YEARS BEGINNING BEFORE JANUARY 1, 1995.—Nothing in the amendments made by this section shall be construed to imply that a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) fails to satisfy the requirements of section 415 of such Code for any taxable year beginning before January 1, 1995.''

Pub. L. 104–188, title I, §1446(b), Aug. 20, 1996, 110 Stat. 1811, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Pub. L. 104–188, title I, §1449(c), Aug. 20, 1996, 110 Stat. 1814, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 411 of this title] shall take effect as if included in the provisions of section 767 of the Uruguay Round Agreements Act [Pub. L. 103–465].''

Pub. L. 104–188, title I, §1452(d), Aug. 20, 1996, 110 Stat. 1816, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 416 and 4980A of this title] shall apply to limitation years beginning after December 31, 1999.

''(2) EXCESS DISTRIBUTIONS.—The amendment made by subsection (b) [amending section 4980A of this title] shall apply to years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 732(b) of Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

Amendment by section 767(b) of Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103–465, as amended, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7304(c)(2), Dec. 19, 1989, 103 Stat. 2354, provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after July 12, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(2), (3), (6), (7) and 1018(t)(3)(B), (8)(D) 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.

Pub. L. 100–647, title VI, §6054(b), Nov. 10, 1988, 102 Stat. 3697, as amended by Pub. L. 101–239, title VII, §7816(h), Dec. 19, 1989, 103 Stat. 2421, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section] shall apply to years beginning after December 31, 1982.

''(2) ELECTION.—Section 415(b)(10)(C) of the 1986 Code (as added by subsection (a)) shall not apply to any year beginning before January 1, 1990.''

Pub. L. 100–647, title VI, §6059(b), Nov. 10, 1988, 102 Stat. 3699, provided that: ''The amendment made by this section [amending this section] shall apply as if included in the amendments made by section 1106(b)(2) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1106(i), Oct. 22, 1986, 100 Stat. 2425, as amended by Pub. L. 100–647, title I, §1011(d)(5), title VI, §6062(a), Nov. 10, 1988, 102 Stat. 3460, 3700, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 401, 402, 404, 416, and 818 of this title] shall apply to years beginning after December 31, 1986.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan in effect before March 1, 1986, pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section (other than subsection (d)) shall not apply to contributions or benefits pursuant to such agreement in years beginning before October 1, 1991.

''(3) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

''(A) IN GENERAL.—In the case of an individual who is a participant (as of the 1st day of the 1st year to which the amendments made by this section apply) in a defined benefit plan which is in existence on May 6, 1986, and with respect to which the requirements of section 415 of the Internal Revenue Code of 1986 have been met for all plan years, if such individual's current accrued benefit under the plan exceeds the limitation of subsection (b) of section 415 of such Code (as amended by this section), then (in the case of such plan), for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b)(1)(A) with respect to such individual shall be equal to such current accrued benefit.

''(B) CURRENT ACCRUED BENEFIT DEFINED.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year to which the amendments made by this section do not apply) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code).

''(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

''(I) no change in the terms and conditions of the plan after May 5, 1986, and

''(II) no cost-of-living adjustment occurring after May 5, 1986,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement ratified before May 6, 1986, shall be treated as a change made before May 6, 1986.

''(4) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for its last year beginning before January 1, 1987, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of such Code does not exceed 1.0 for such year (determined as if the amendments made by this section were in effect for such year).

''(5) EFFECTIVE DATE FOR SUBSECTION (d).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (d) [amending sections 401, 404, 416, and 818 of this title] shall apply to benefits accruing in years beginning after December 31, 1988.

''(B) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan described in paragraph (2), the amendments made by subsection (d) shall apply to benefits accruing in years beginning on or after the earlier of—

''(i) the later of—

''(I) the date determined under paragraph (2)(A), or

''(II) January 1, 1989, or

''(ii) January 1, 1991.

''(6) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (e).—The amendment made by subsection (e) [amending this section] shall not require the recomputation, for purposes of section 415(e) of the Internal Revenue Code of 1986, of the annual addition for any year beginning before 1987.''

[Pub. L. 100–647, title VI, §6062(b), Nov. 10, 1988, 102 Stat. 3700, provided that: ''The amendment made by this section [amending section 1106(i) of Pub. L. 99–514, set out above] shall take effect as if included in the provisions of section 1106 of the Reform Act [Pub. L. 99–514].'']

Amendment by section 1108(g)(5) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1114(b)(12) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XI, §1174(d)(3), Oct. 22, 1986, 100 Stat. 2518, provided that: ''The amendments made by this subsection [amending this section] shall apply to years beginning after December 31, 1986.''

Amendment by sections 1847(b)(4), 1852(h)(2), (3), and 1875(c)(9), (11) of 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.

Amendment by section 1898(b)(15)(C) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 15 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 491(d)(28)–(32) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 491(e)(6) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 528(a) of Pub. L. 98–369 applicable to years beginning after Mar. 31, 1984, see section 528(c) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §235(g), Sept. 3, 1982, 96 Stat. 508, as amended by Pub. L. 97–448, title III, §306(a)(10), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98–369, div. A, title VII, §713(a)(2), (4), (f)(3), July 18, 1984, 98 Stat. 956, 959; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—

''(A) NEW PLANS.—In the case of any plan which is not in existence on July 1, 1982, the amendments made by this section [amending this section and section 404 of this title] shall apply to years ending after July 1, 1982.

''(B) EXISTING PLANS.—

''(i) In the case of any plan which is in existence on July 1, 1982, the amendments made by this section [amending this section and section 404 of this title] shall apply to years beginning after December 31, 1982.

''(ii) PLAN REQUIREMENTS.—A plan shall not be treated as failing to meet the requirements of section 401(a)(16) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for any year beginning before January 1, 1984, merely because such plan provides for benefit or contribution limits which are in excess of the limitations under section 415 of such Code, as amended by this section. The preceding sentence shall not apply to any plan which provides such limits in excess of the limitation under section 415 of such Code before such amendments.

''(2) AMENDMENTS RELATED TO COST-OF-LIVING ADJUSTMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section] shall apply to adjustments for years beginning after December 31, 1982.

''(B) ADJUSTMENT PROCEDURES.—The amendments made by subsections (b)(1) and (b)(2)(B) [amending this section] shall apply to adjustments for years beginning after December 31, 1985.

''(3) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for the last year beginning before January 1, 1983, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of the Internal Revenue Code of 1986 (as amended by the Tax Equity and Fiscal Responsibility Act of 1982) does not exceed 1.0 for such year. A similar rule shall apply with respect to the last plan year beginning before January 1, 1984, for purposes of applying section 416(h) of the Internal Revenue Code of 1986.

''(4) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

''(A) IN GENERAL.—In the case of an individual who is a participant before January 1, 1983, in a defined benefit plan which is in existence on July 1, 1982, and with respect to which the requirements of section 415 of such Code have been met for all years, if such individual's current accrued benefit under such plan exceeds the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1986 (as amended by this section), then (in the case of such plan) for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b) with respect to such individual shall be equal to such current accrued benefit.

''(B) CURRENT ACCRUED BENEFIT DEFINED.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year beginning before January 1, 1983) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code as in effect before the amendments made by this Act). In the case of any plan described in the first sentence of paragraph (5), the preceding sentence shall be applied by substituting for 'January 1, 1983' the applicable date determined under paragraph (5).

''(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

''(I) no change in the terms and conditions of the plan after July 1, 1982, and

''(II) no cost-of-living adjustment occurring after July 1, 1982,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement entered into before July 1, 1982, and ratified before September 3, 1982, shall be treated as a change made before July 1, 1982.

''(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained on the date of the enactment of this Act [Sept. 3, 1982] pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section [amending this section and section 404 of this title] and section 242 [amending section 401 of this title and enacting a provision set out as a note under section 401 of this title] (relating to age 70½) shall not apply to years beginning before the earlier of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Sept. 3, 1982]), or

''(B) January 1, 1986.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section and section 242 shall not be treated as a termination of such collective bargaining agreement.''

Amendment by section 238(d)(5) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

Amendment by section 251(c)(1), (2) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1981, see section 251(e)(3) of Pub. L. 97–248, set out as a note under section 403 of this title.

Amendment by section 253(a) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1981, see section 253(c) of Pub. L. 97–248, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(4), (h)(3) of Pub. L. 97–34 applicable to years beginning after Dec. 31, 1981, see section 311(i)(4) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title III, §333(b)(2), Aug. 13, 1981, 95 Stat. 297, provided that: ''The amendment made by this

subsection [amending this section] shall apply to years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–605, title II, § 222(b), Dec. 28, 1980, 94 Stat. 3528, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to years beginning after December 31, 1980.''

Pub. L. 96–222, title I, § 101(b)(1)(G), Apr. 1, 1980, 94 Stat. 205, provided that: ''The amendment made by subparagraph (I) of subsection (a)(10) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Apr. 1, 1980].''

Amendment by section 101(a)(7)(L)(i)(VII), (iv)(i), (10)(J)(iii), (11) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 141(f)(7) of Pub. L. 95–600 effective for years beginning after Dec. 31, 1978, and with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Pub. L. 95–600, title I, § 141(g)(5), as added by Pub. L. 96–222, title I, § 101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197, provided that: ''The amendment made by subsection (f)(7) [amending this section] shall apply to years beginning after December 31, 1978.''

Amendment by section 152(g) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

Pub. L. 95–600, title I, § 153(b), Nov. 6, 1978, 92 Stat. 2801, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(4), (f) of Pub. L. 94–455 effective for years beginning after Dec. 31, 1975, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Amendment by section 1501(b)(3) of Pub. L. 94–455 effective for years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

Pub. L. 94–455, title XV, § 1502(b), Oct. 4, 1976, 90 Stat. 1738, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to years beginning after December 31, 1975. The amendment made by subsection (a)(2) [amending section 404 of this title] shall apply to taxable years beginning after December 31, 1975.''

Pub. L. 94–455, title XV, § 1511(b), Oct. 4, 1976, 90 Stat. 1742, provided that: ''The amendment made by this section [amending this section] shall apply for years beginning after December 31, 1975.''

Amendment by section 1901(a)(65), (b)(8)(D) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE; TRANSITION PROVISIONS

Pub. L. 93–406, title II, § 2004(d), Sept. 2, 1974, 88 Stat. 987, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this section, amending sections 401, 403, 404, 405, and 805 of this title, and enacting provisions set out as notes under this section] shall apply to years beginning after December 31, 1975. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

''(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if—

''(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer,

''(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

''(C) in the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1986.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLANS MAY INCORPORATE SECTION 415 LIMITATIONS BY REFERENCE

Pub. L. 99–514, title XI, § 1106(h), Oct. 22, 1986, 100 Stat. 2425, provided that: ''Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the limitations under section 415 of the Internal Revenue Code of 1986.''

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, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

SPECIAL RULE FOR CERTAIN PLANS IN EFFECT ON SEPTEMBER 2, 1974

Pub. L. 93–406, title II, § 2004(a)(3), Sept. 2, 1974, 88 Stat. 985, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986,

100 Stat. 2095, provided that: ''In any case in which, on the date of enactment of this Act [Sept. 2, 1974], an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if—

''(A) the defined benefit plan fraction is not increased, by amendment of the plan or otherwise, after

''(B) no contributions are made under the defined contribution plan after such date.

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection.''

§ 416. Special rules for top-heavy plans

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) for any plan year if the plan of which it is a part is a top-heavy plan for such plan year unless such plan meets—

(1) the vesting requirements of subsection (b), and

(2) the minimum benefit requirements of subsection (c).

(b) Vesting requirements

(1) In general

A plan satisfies the requirements of this subsection if it satisfies the requirements of either of the following subparagraphs:

(A) 3-year vesting

A plan satisfies the requirements of this subparagraph if an employee who has completed at least 3 years of service with the employer or employers maintaining the plan has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) 6-year graded vesting

A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

Years of service	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100

(2) Certain rules made applicable

Except to the extent inconsistent with the provisions of this subsection, the rules of section 411 shall apply for purposes of this subsection.

(c) Plan must provide minimum benefits

(1) Defined benefit plans

(A) In general

A defined benefit plan meets the requirements of this subsection if the accrued benefit derived from employer contributions of each participant who is a non-key employee, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's average compensation for years in the testing period.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means the lesser of—

(i) 2 percent multiplied by the number of years of service with the employer, or

(ii) 20 percent.

(C) Years of service

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii) or (iii), years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a).

(ii) Exception for years during which plan was not top-heavy

A year of service with the employer shall not be taken into account under this paragraph if—

(I) the plan was not a top-heavy plan for any plan year ending during such year of service, or

(II) such year of service was completed in a plan year beginning before January 1, 1984.

(iii) Exception for plan under which no key employee (or former key employee) benefits for plan year

For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.

(D) Average compensation for high 5 years

For purposes of this paragraph—

(i) In general

A participant's testing period shall be the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Year must be included in year of service

The years taken into account under clause (i) shall be properly adjusted for years not included in a year of service.

(iii) Certain years not taken into account

Except to the extent provided in the plan, a year shall not be taken into account under clause (i) if—

(I) such year ends in a plan year beginning before January 1, 1984, or

(II) such year begins after the close of the last year in which the plan was a top-heavy plan.

(E) Annual retirement benefit

For purposes of this paragraph, the term ''annual retirement benefit'' means a benefit

payable annually in the form of a single life annuity (with no ancillary benefits) beginning at the normal retirement age under the plan.

(2) Defined contribution plans

(A) In general

A defined contribution plan meets the requirements of the subsection if the employer contribution for the year for each participant who is a non-key employee is not less than 3 percent of such participant's compensation (within the meaning of section 415). Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).

(B) Special rule where maximum contribution less than 3 percent

(i) In general

The percentage referred to in subparagraph (A) for any year shall not exceed the percentage at which contributions are made (or required to be made) under the plan for the year for the key employee for whom such percentage is the highest for the year.

(ii) Treatment of aggregation groups

(I) For purposes of this subparagraph, all defined contribution plans required to be included in an aggregation group under subsection (g)(2)(A)(i) shall be treated as one plan.

(II) This subparagraph shall not apply to any plan required to be included in an aggregation group if such plan enables a defined benefit plan required to be included in such group to meet the requirements of section 401(a)(4) or 410.

[(d) Repealed. Pub. L. 99–514, title XI, § 1106(d)(3)(B)(i), Oct. 22, 1986, 100 Stat. 2424]

(e) Plan must meet requirements without taking into account social security and similar contributions and benefits

A top-heavy plan shall not be treated as meeting the requirement of subsection (b) or (c) unless such plan meets such requirement without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

(f) Coordination where employer has 2 or more plans

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section where the employer has 2 or more plans including (but not limited to) regulations to prevent inappropriate omissions or required duplication of minimum benefits or contributions.

(g) Top-heavy plan defined

For purposes of this section—

(1) In general

(A) Plans not required to be aggregated

Except as provided in subparagraph (B), the term ''top-heavy plan'' means, with respect to any plan year—

(i) any defined benefit plan if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, and

(ii) any defined contribution plan if, as of the determination date, the aggregate of the accounts of key employees under the plan exceeds 60 percent of the aggregate of the accounts of all employees under such plan.

(B) Aggregated plans

Each plan of an employer required to be included in an aggregation group shall be treated as a top-heavy plan if such group is a top-heavy group.

(2) Aggregation

For purposes of this subsection—

(A) Aggregation group

(i) Required aggregation

The term ''aggregation group'' means—

(I) each plan of the employer in which a key employee is a participant, and

(II) each other plan of the employer which enables any plan described in subclause (I) to meet the requirements of section 401(a)(4) or 410.

(ii) Permissive aggregation

The employer may treat any plan not required to be included in an aggregation group under clause (i) as being part of such group if such group would continue to meet the requirements of sections 401(a)(4) and 410 with such plan being taken into account.

(B) Top-heavy group

The term ''top-heavy group'' means any aggregation group if—

(i) the sum (as of the determination date) of—

(I) the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group, and

(II) the aggregate of the accounts of key employees under all defined contribution plans included in such group,

(ii) exceeds 60 percent of a similar sum determined for all employees.

(3) Distributions during last year before determination date taken into account

(A) In general

For purposes of determining—

(i) the present value of the cumulative accrued benefit for any employee, or

(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made

with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

(B) 5-year period in case of in-service distribution

In the case of any distribution made for a reason other than severance from employment, death, or disability, subparagraph (A) shall be applied by substituting ''5-year period'' for ''1-year period''.

(4) Other special rules

For purposes of this subsection—

(A) Rollover contributions to plan not taken into account

Except to the extent provided in regulations, any rollover contribution (or similar transfer) initiated by the employee and made after December 31, 1983, to a plan shall not be taken into account with respect to the transferee plan for purposes of determining whether such plan is a top-heavy plan (or whether any aggregation group which includes such plan is a top-heavy group).

(B) Benefits not taken into account if employee ceases to be key employee

If any individual is a non-key employee with respect to any plan for any plan year, but such individual was a key employee with respect to such plan for any prior plan year, any accrued benefit for such employee (and the account of such employee) shall not be taken into account.

(C) Determination date

The term ''determination date'' means, with respect to any plan year—

(i) the last day of the preceding plan year, or

(ii) in the case of the first plan year of any plan, the last day of such plan year.

(D) Years

To the extent provided in regulations, this section shall be applied on the basis of any year specified in such regulations in lieu of plan years.

(E) Benefits not taken into account if employee not employed for last year before determination date

If any individual has not performed services for the employer maintaining the plan at any time during the 1-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.

(F) Accrued benefits treated as accruing ratably

The accrued benefit of any employee (other than a key employee) shall be determined—

(i) under the method which is used for accrual purposes for all plans of the employer, or

(ii) if there is no method described in clause (i), as if such benefit accrued not more rapidly than the slowest accrual rate permitted under section 411(b)(1)(C).

(G) Simple retirement accounts

The term ''top-heavy plan'' shall not include a simple retirement account under section 408(p).

(H) Cash or deferred arrangements using alternative methods of meeting nondiscrimination requirements

The term ''top-heavy plan'' shall not include a plan which consists solely of—

(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12) or 401(k)(13), and

(ii) matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).

[(h) Repealed. Pub. L. 104–188, title I, § 1452(c)(7), Aug. 20, 1996, 110 Stat. 1816]

(i) Definitions

For purposes of this section—

(1) Key employee

(A) In general

The term ''key employee'' means an employee who, at any time during the plan year, is—

(i) an officer of the employer having an annual compensation greater than $130,000,

(ii) a 5-percent owner of the employer, or

(iii) a 1-percent owner of the employer having an annual compensation from the employer of more than $150,000.

For purposes of clause (i), no more than 50 employees (or, if lesser, the greater of 3 or 10 percent of the employees) shall be treated as officers. In the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000. Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans). For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(5) shall be excluded.

(B) Percentage owners

(i) 5-percent owner

For purposes of this paragraph, the term ''5-percent owner'' means—

(I) if the employer is a corporation, any person who owns (or is considered as

owning within the meaning of section 318) more than 5 percent of the outstanding stock of the corporation or stock possessing more than 5 percent of the total combined voting power of all stock of the corporation, or

(II) if the employer is not a corporation, any person who owns more than 5 percent of the capital or profits interest in the employer.

(ii) 1-percent owner

For purposes of this paragraph, the term ''1-percent owner'' means any person who would be described in clause (i) if ''1 percent'' were substituted for ''5 percent'' each place it appears in clause (i).

(iii) Constructive ownership rules

For purposes of this subparagraph—

(I) subparagraph (C) of section 318(a)(2) shall be applied by substituting ''5 percent'' for ''50 percent'', and

(II) in the case of any employer which is not a corporation, ownership in such employer shall be determined in accordance with regulations prescribed by the Secretary which shall be based on principles similar to the principles of section 318 (as modified by subclause (I)).

(C) Aggregation rules do not apply for purposes of determining ownership in the employer

The rules of subsections (b), (c), and (m) of section 414 shall not apply for purposes of determining ownership in the employer.

(D) Compensation

For purposes of this paragraph, the term ''compensation'' has the meaning given such term by section 414(q)(4).

(2) Non-key employee

The term ''non-key employee'' means any employee who is not a key employee.

(3) Self-employed individuals

In the case of a self-employed individual described in section 401(c)(1)—

(A) such individual shall be treated as an employee, and

(B) such individual's earned income (within the meaning of section 401(c)(2)) shall be treated as compensation.

(4) Treatment of employees covered by collective bargaining agreements

The requirements of subsections (b), (c), and (d) shall not apply with respect to any employee included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and 1 or more employers if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(5) Treatment of beneficiaries

The terms ''employee'' and ''key employee'' include their beneficiaries.

(6) Treatment of simplified employee pensions

(A) Treatment as defined contribution plans

A simplified employee pension shall be treated as a defined contribution plan.

(B) Election to have determinations based on employer contributions

In the case of a simplified employee pension, at the election of the employer, paragraphs (1)(A)(ii) and (2)(B) of subsection (g) shall be applied by taking into account aggregate employer contributions in lieu of the aggregate of the accounts of employees.

(Added Pub. L. 97–248, title II, § 240(a), Sept. 3, 1982, 96 Stat. 514; amended Pub. L. 98–369, div. A, title V, § 524(a)(1), (b)(1), (c)(1), title VII, § 713(f)(1), (4), (5)(A), (6), July 18, 1984, 98 Stat. 872, 958–960; Pub. L. 99–514, title XI, §§ 1106(d)(3)(A), (B), 1118(a), title XVIII, § 1852(d), Oct. 22, 1986, 100 Stat. 2424, 2463, 2867; Pub. L. 100–647, title I, § 1011(d)(8), (i)(4)(B), (j)(3)(A), Nov. 10, 1988, 102 Stat. 3460, 3467, 3468; Pub. L. 104–188, title I, §§ 1421(b)(7), 1431(c)(1)(B), (C), 1452(c)(7), Aug. 20, 1996, 110 Stat. 1797, 1803, 1816; Pub. L. 107–16, title VI, § 613(a)–(e), June 7, 2001, 115 Stat. 100–102; Pub. L. 107–147, title IV, § 411(k), Mar. 9, 2002, 116 Stat. 47; Pub. L. 108–311, title IV, § 408(a)(16), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title IX, § 902(c), Aug. 17, 2006, 120 Stat. 1036.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (e), is act Aug. 16, 1954, ch. 736, §§ 3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (g)(4)(H)(i). Pub. L. 109–280, § 902(c)(1), inserted ''or 401(k)(13)'' after ''401(k)(12)''.

Subsec. (g)(4)(H)(ii). Pub. L. 109–280, § 902(c)(2), inserted ''or 401(m)(12)'' after ''401(m)(11)''.

2004—Subsec. (i)(1)(A). Pub. L. 108–311 substituted ''In the case of plan years'' for ''in the case of plan years'' in concluding provisions.

2002—Subsec. (c)(1)(C)(iii). Pub. L. 107–147, § 411(k)(1), substituted ''Exception for plan under which no key employee (or former key employee) benefits for plan year'' for ''Exception for frozen plan'' in heading.

Subsec. (g)(3)(B). Pub. L. 107–147, § 411(k)(2), substituted ''severance from employment'' for ''separation from service''.

2001—Subsec. (c)(1)(C)(i). Pub. L. 107–16, § 613(e)(A), substituted ''clause (ii) or (iii)'' for ''clause (ii)''.

Subsec. (c)(1)(C)(iii). Pub. L. 107–16, § 613(e)(B), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 107–16, § 613(b), inserted at end ''Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).''

Subsec. (g)(3). Pub. L. 107–16, § 613(c)(1), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of determining—

''(A) the present value of the cumulative accrued benefit for any employee, or

''(B) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.''

Subsec. (g)(4)(E). Pub. L. 107–16, §613(c)(2), in heading substituted ''last year before determination date'' for ''last 5 years'' and in text substituted ''1-year period'' for ''5-year period''.

Subsec. (g)(4)(H). Pub. L. 107–16, §613(d), added subpar. (H).

Subsec. (i)(1)(A). Pub. L. 107–16, §613(a)(1)(D), in concluding provisions, substituted ''in the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000.'' for ''For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest.''

Pub. L. 107–16, §613(a)(1)(A), struck out ''or any of the 4 preceding plan years'' after ''plan year'' in introductory provisions.

Subsec. (i)(1)(A)(i). Pub. L. 107–16, § 613(a)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: ''an officer of the employer having an annual compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for any such plan year,''.

Subsec. (i)(1)(A)(ii)–(iv). Pub. L. 107–16, §613(a)(1)(C), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318) the largest interests in the employer,''.

Subsec. (i)(1)(B)(iii). Pub. L. 107–16, §613(a)(2), struck out ''and subparagraph (A)(ii)'' after ''this subparagraph'' in introductory provisions.

1996—Subsec. (g)(4)(G). Pub. L. 104–188, §1421(b)(7), added subpar. (G).

Subsec. (h). Pub. L. 104–188, §1452(c)(7), struck out subsec. (h) which related to adjustments in section 415 limits for top-heavy plans.

Subsec. (i)(1)(A). Pub. L. 104–188, §1431(c)(1)(C), substituted ''section 414(q)(5)'' for ''section 414(q)(8)'' in closing provisions.

Subsec. (i)(1)(D). Pub. L. 104–188, §1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

1988—Subsec. (i)(1)(A). Pub. L. 100–647, §1011(i)(4)(B), inserted at end ''For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(8) shall be excluded.''

Subsec. (i)(1)(A)(i). Pub. L. 100–647, §1011(d)(8), substituted ''50'' for ''150'' and ''415(b)(1)(A)'' for ''415(c)(1)(A)''.

Subsec. (i)(1)(D). Pub. L. 100–647, §1011(j)(3)(A), added subpar. (D).

1986—Subsec. (a)(3). Pub. L. 99–514, §1106(d)(3)(A), struck out par. (3) which read as follows: ''the limitation on compensation requirement of subsection (d).''

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 99–514, §1106(d)(3)(B)(ii), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''DETERMINATION OF PERCENTAGE.—The determination referred to in clause (i) shall be determined for each key employee by dividing the contributions for such employee by so much of his total compensation for the year as does not exceed $200,000.''

Subsec. (d). Pub. L. 99–514, §1106(d)(3)(B)(i), repealed subsec. (d) which provided for a $200,000 limitation on the amount of annual compensation of each employee taken into account.

Subsec. (g)(4)(E). Pub. L. 99–514, §1852(d)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''If any individual has not received any compensation from any employer maintaining the plan (other than benefits under the plan) at any time during the 5-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.''

Subsec. (g)(4)(F). Pub. L. 99–514, §1118(a), added subpar. (F).

Subsec. (i)(1)(A). Pub. L. 99–514, §1852(d)(1), inserted at end ''Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans).''

1984—Subsec. (c)(2)(C). Pub. L. 98–369, §524(c)(1), struck out subpar. (C) which provided that for purposes of this paragraph, any employer contribution attributable to a salary reduction or similar arrangement shall not be taken into account.

Subsec. (d)(2). Pub. L. 98–369, §713(f)(5)(A), inserted ''at the same time and''.

Subsec. (f). Pub. L. 98–369, §713(f)(6)(A), substituted ''required'' for ''require''.

Subsec. (g)(3). Pub. L. 98–369, §713(f)(4), inserted at end ''The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.''

Subsec. (g)(4)(E). Pub. L. 98–369, §524(b)(1), added subpar. (E).

Subsec. (i)(1)(A). Pub. L. 98–369, §713(f)(1)(A), (C), substituted in provisions preceding cl. (i) ''an employee'' for ''any participant in an employer plan'' and inserted at end thereof provision for treatment of an employee with the greater annual compensation as having a larger interest in the employer where, for purposes of cl. (ii), 2 employees have the same interest in the employer.

Subsec. (i)(1)(A)(i). Pub. L. 98–369, §524(a)(1), inserted ''having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for any plan year''.

Subsec. (i)(1)(A)(ii). Pub. L. 98–369, §713(f)(1)(B), required a key employee to have annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A).

Subsec. (i)(1)(B)(iii). Pub. L. 98–369, §713(f)(6)(B), substituted subparagraph ''(A)(ii)'' for ''(A)(ii)(II)''.

Subsec. (i)(1)(C). Pub. L. 98–369, §713(f)(1)(A), substituted in heading ''ownership in the employer'' for ''5-percent or 1-percent owners''.

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 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §613(f), June 7, 2001, 115 Stat. 102, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(7) of 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.

Amendment by section 1431(c)(1)(B), (C) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

Amendment by section 1452(c)(7) of Pub. L. 104–188 applicable to limitation years beginning after Dec. 31, 1999, see section 1452(d) of Pub. L. 104–188, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1011(j)(3)(B), Nov. 10, 1988, 102 Stat. 3468, provided that: ''The amendment made by this paragraph [amending this section] shall apply to years beginning after December 31, 1988.''

Amendment by section 1011(d)(8), (i)(4)(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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(A), (B) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Pub. L. 99–514, title XI, § 1118(b), Oct. 22, 1986, 100 Stat. 2463, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1986.''

Amendment by section 1852(d) of 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 OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, § 524(a)(2), July 18, 1984, 98 Stat. 872, provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983.''

Pub. L. 98–369, div. A, title V, § 524(b)(2), July 18, 1984, 98 Stat. 872, provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984.''

Pub. L. 98–369, div. A, title V, § 524(c)(2), July 18, 1984, 98 Stat. 872, provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984.''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, § 241, Sept. 3, 1982, 96 Stat. 520, provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this part [part II (§§ 237–241) of subtitle C of title II of Pub. L. 97–248, enacting this section, amending sections 72, 401, 404, 408, 414, 415, and 1379 of this title, and repealing section 4972 of this title] shall apply to years beginning after December 31, 1983.

''(b) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT FOR SELF-EMPLOYED INDIVIDUALS.—The amendment made by section 239 [amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1983.''

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.

§ 417. Definitions and special rules for purposes of minimum survivor annuity requirements

(a) Election to waive qualified joint and survivor annuity or qualified preretirement survivor annuity

(1) In general

A plan meets the requirements of section 401(a)(11) only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4) of this subsection.

(2) Spouse must consent to election

Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) Plan to provide written explanations

(A) Explanation of joint and survivor annuity

Each plan shall provide to each participant, within a reasonable period of time be-

fore the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B) Explanation of qualified preretirement survivor annuity

(i) In general

Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) Applicable period

For purposes of clause (i), the term ''applicable period'' means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after section 401(a)(11) applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Requirement of spousal consent for using plan assets as security for loans

Each plan shall provide that, if section 401(a)(11) applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5) Special rules where plan fully subsidizes costs

(A) In general

The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) Definition

For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) Applicable election period defined

For purposes of this subsection, the term ''applicable election period'' means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(7) Special rules relating to time for written explanation

Notwithstanding any other provision of this subsection—

(A) Explanation may be provided after annuity starting date

(i) In general

A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (6) shall not end before the 30th day after the date on which such explanation is provided.

(ii) Regulatory authority

The Secretary may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) Waiver of 30-day period

A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(b) Definition of qualified joint and survivor annuity

For purposes of this section and section 401(a)(11), the term ''qualified joint and survivor annuity'' means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(c) Definition of qualified preretirement survivor annuity

For purposes of this section and section 401(a)(11)—

(1) In general

Except as provided in paragraph (2), the term ''qualified preretirement survivor annuity'' means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) Special rule for defined contribution plans

In the case of any defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B), the term ''qualified preretirement survivor annuity'' means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a)).

(3) Security interests taken into account

For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(d) Survivor annuities need not be provided if participant and spouse married less than 1 year

(1) In general

Except as provided in paragraph (2), a plan shall not be treated as failing to meet the requirements of section 401(a)(11) merely because the plan provides that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) Treatment of certain marriages within 1 year of annuity starting date for purposes of qualified joint and survivor annuities

For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(e) Restrictions on cash-outs

(1) Plan may require distribution if present value not in excess of dollar limit

A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

(2) Plan may distribute benefit in excess of dollar limit only with consent

If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) Determination of present value

(A) In general

For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) Applicable mortality table

For purposes of subparagraph (A), the term ''applicable mortality table'' means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of section 430(h)(3) (without regard to subparagraph (C) or (D) of such section).

(C) Applicable interest rate

For purposes of subparagraph (A), the term ''applicable interest rate'' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.

(D) Applicable segment rates

For purposes of subparagraph (C), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) if section 430(h)(2)(D) were applied by substituting the average yields for the month described in subparagraph (C) for the average yields for the 24-month period described in such section.

(f) Other definitions and special rules

For purposes of this section and section 401(a)(11)—

(1) Vested participant

The term ''vested participant'' means any participant who has a nonforfeitable right (within the meaning of section 411(a)) to any portion of such participant's accrued benefit.

(2) Annuity starting date

(A) In general

The term ''annuity starting date'' means—

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) Special rule for disability benefits

For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) Earliest retirement age

The term ''earliest retirement age'' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(4) Plan may take into account increased costs

A plan may take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(5) Distributions by reason of security interests

If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (a)(4), nothing in this section or section 411(a)(11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(6) Requirements for certain spousal consents

No consent of a spouse shall be effective for purposes of subsection (e)(1) or (e)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a)(1)(A) are met.

(7) Consultation with the Secretary of Labor

In prescribing regulations under this section and section 401(a)(11), the Secretary shall consult with the Secretary of Labor.

(g) Definition of qualified optional survivor annuity

(1) In general

For purposes of this section, the term ''qualified optional survivor annuity'' means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), if the survivor annuity percentage—

(i) is less than 75 percent, the applicable percentage is 75 percent, and

(ii) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(B) Survivor annuity percentage

For purposes of subparagraph (A), the term ''survivor annuity percentage'' means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(Added Pub. L. 98–397, title II, § 203(b), Aug. 23, 1984, 98 Stat. 1441; amended Pub. L. 99–514, title

XI, §1139(b), title XVIII, §1898(b)(1)(A), (4)(A), (5)(A), (6)(A), (8)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B), Oct. 22, 1986, 100 Stat. 2487, 2944, 2945, 2947–2951; Pub. L. 100–647, title I, §1018(u)(9), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 101–239, title VII, §7862(d)(1)(A), Dec. 19, 1989, 103 Stat. 2433; Pub. L. 103–465, title VII, §767(a)(2), Dec. 8, 1994, 108 Stat. 5038; Pub. L. 104–188, title I, §1451(a), Aug. 20, 1996, 110 Stat. 1815; Pub. L. 105–34, title X, §1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–147, title IV, §411(r)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title III, §302(b), title X, §1004(a), title XI, §1102(a)(1)(A), Aug. 17, 2006, 120 Stat. 920, 1053, 1056; Pub. L. 110–458, title I, §103(b)(2)(A), Dec. 23, 2008, 122 Stat. 5103; Pub. L. 112–141, div. D, title II, §40211(a)(2)(C), July 6, 2012, 126 Stat. 847; Pub. L. 113–295, div. A, title II, §221(a)(57)(B)(i), Dec. 19, 2014, 128 Stat. 4046.)

AMENDMENTS

2014—Subsec. (e)(3)(D). Pub. L. 113–295 substituted ''if section 430(h)(2)(D)'' for ''if—

''(i) section 430(h)(2)(D)''

and ''described in such section.'' for ''described in such section,'' and struck out cls. (ii) and (iii) which applied section 430(h)(2)(G)(i)(II) of this title by substituting ''section 417(e)(3)(A)(ii)(II)'' for ''section 412(b)(5)(B)(ii)(II)'' and listed the applicable percentage under section 430(h)(2)(G) for plan years beginning in 2008 to 2011.

2012—Subsec. (e)(3)(C), (D). Pub. L. 112–141 substituted ''section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof)'' for ''section 430(h)(2)(C)''.

2008—Subsec. (e)(3)(D)(i). Pub. L. 110–458 substituted ''subparagraph (C)'' for ''clause (ii)''.

2006—Subsec. (a)(1)(A)(ii), (iii). Pub. L. 109–280, §1004(a)(1), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(3)(A)(i). Pub. L. 109–280, §1004(a)(3), inserted ''and of the qualified optional survivor annuity'' before comma at end.

Subsec. (a)(6)(A). Pub. L. 109–280, §1102(a)(1)(A), substituted ''180-day'' for ''90-day''.

Subsec. (e)(3). Pub. L. 109–280, §302(b), reenacted heading without change and amended text of par. (3) generally, substituting provisions relating to determination of present value by using the applicable mortality table and the applicable interest rate, provisions defining ''applicable mortality table'' and ''applicable interest rate'', and provisions relating to determination of the adjusted first, second, and third segment rates, for provisions relating to determination of present value, provisions defining ''applicable mortality table'' and ''applicable interest rate'', and provisions stating exception for a distribution from a plan that was adopted and in effect before the date of the enactment of the Retirement Protection Act of 1994.

Subsec. (g). Pub. L. 109–280, §1004(a)(2), added subsec. (g).

2002—Subsec. (e)(1). Pub. L. 107–147, §411(r)(1)(A), substituted ''exceed the amount that can be distributed without the participant's consent under section 411(a)(11)'' for ''exceed the dollar limit under section 411(a)(11)(A)''.

Subsec. (e)(2)(A). Pub. L. 107–147, §411(r)(1)(B), substituted ''exceeds the amount that can be distributed without the participant's consent under section 411(a)(11)'' for ''exceeds the dollar limit under section 411(a)(11)(A)''.

1997—Subsec. (e)(1), (2). Pub. L. 105–34 substituted ''dollar limit'' for ''$3,500'' in headings of pars. (1) and (2) and ''the dollar limit under section 411(a)(11)(A)'' for ''$3,500'' in text of pars. (1) and (2)(A).

1996—Subsec. (a)(7). Pub. L. 104–188 added par. (7).

1994—Subsec. (e)(3). Pub. L. 103–465 amended par. (3) generally, substituting present provisions for provisions directing that present value be calculated by using a rate no greater than the applicable interest rate or 120 percent of such rate, depending upon amount of vested accrued benefit, and defining ''applicable interest rate''.

1989—Subsec. (a)(3)(B)(ii). Pub. L. 101–239 added sentence at end and struck out former subcl. (V) which read as follows: ''A reasonable period after separation from service in case of a participant who separates before attaining age 35.''

1988—Subsec. (e)(3)(A). Pub. L. 100–647 substituted ''clause (ii)'' for ''subclause (II)'' in last sentence.

1986—Subsec. (a)(1). Pub. L. 99–514, §1898(b)(15)(A), substituted ''section 401(a)(11)'' for ''section 401(a)(ii)''.

Subsec. (a)(1)(B). Pub. L. 99–514, §1898(b)(4)(A)(i), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (a)(2)(A). Pub. L. 99–514, §1898(b)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or''.

Subsec. (a)(3)(B). Pub. L. 99–514, §1898(b)(5)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).''

Subsec. (a)(4). Pub. L. 99–514, §1898(b)(4)(A)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5), (6). Pub. L. 99–514, §1898(b)(4)(A)(ii), (11)(A), redesignated former par. (4) as (5) and inserted in subpar. (A) ''if such benefit may not be waived (or another beneficiary selected) and'' before ''if the plan''. Former par. (5) redesignated (6).

Subsec. (c)(1). Pub. L. 99–514, §1898(b)(15)(B), substituted ''survivor annuity for the life of'' for ''survivor annuity or the life of''.

Pub. L. 99–514, §1898(b)(1)(A), inserted ''In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.''

Subsec. (c)(2). Pub. L. 99–514, §1898(b)(9)(A)(i), substituted ''the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a))'' for ''the account balance of the participant as of the date of death''.

Subsec. (c)(3). Pub. L. 99–514, §1898(b)(9)(A)(ii), added par. (3).

Subsec. (e)(3). Pub. L. 99–514, §1139(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

Subsec. (f)(1). Pub. L. 99–514, §1898(b)(8)(A), substituted ''such participant's accrued benefit'' for ''the accrued benefit derived from employer contributions''.

Subsec. (f)(2). Pub. L. 99–514, §1898(b)(12)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).''

Subsec. (f)(5). Pub. L. 99–514, §1898(b)(4)(A)(iii), added par. (5) and redesignated former par. (5) as (6).

Subsec. (f)(6), (7). Pub. L. 99–514, §1898(b)(10)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 99–514, §1898(b)(4)(A)(iii), redesignated former par. (5) as (6).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 applicable with respect to plan years beginning after December 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112–141, set out as a note under section 404 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

Pub. L. 109–280, title III, §302(c), Aug. 17, 2006, 120 Stat. 921, provided that: ''The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2007.''

Pub. L. 109–280, title X, §1004(c), Aug. 17, 2006, 120 Stat. 1055, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.

''(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 2008, or

''(ii) the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

''(B) January 1, 2009.''

Pub. L. 109–280, title XI, §1102(a)(3), Aug. 17, 2006, 120 Stat. 1056, provided that: ''The amendments and modifications made or required by this subsection [amending this section and section 1055 of Title 29, Labor] shall apply to years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to plan years beginning after Aug. 5, 1997, see section 1071(c) of Pub. L. 105–34, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1451(c), Aug. 20, 1996, 110 Stat. 1816, provided that: ''The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103–465, as amended, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 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 OF 1986 AMENDMENT

Amendment by section 1139(b) of Pub. L. 99–514 applicable to distributions in plan years beginning after Dec. 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after Dec. 31, 1984, and before Jan. 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984, Pub. L. 98–397, with additional provisions relating to reductions in accrued benefits, see section 1139(d) of Pub. L. 99–514, set out as a note under section 411 of this title.

Pub. L. 99–514, title XVIII, §1898(b)(4)(C), Oct. 22, 1986, 100 Stat. 2946, provided that:

''(i) The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply with respect to loans made after August 18, 1985.

''(ii) In the case of any loan which was made on or before August 18, 1985, and which is secured by a portion of the participant's accrued benefit, nothing in the amendments made by sections 103 and 203 of the Retirement Equity Act of 1984 [sections 103 and 203 of Pub. L. 98–397, enacting this section and amending section 401 of this title and section 1055 of Title 29] shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

''(iii) For purposes of this subparagraph, any loan which is revised, extended, renewed, or renegotiated after August 18, 1985, shall be treated as made after August 18, 1985.

Section 1898(b)(6)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1898(b)(8)(C) of Pub. L. 99–514, as added by Pub. L. 101–239, title VII, §7862(d)(2), Dec. 19, 1989, 103 Stat. 2434, provided that: ''The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1898(b)(1)(A), (5)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as an Effective Date of 1984 Amendment note under section 1001 of Title 29, Labor.

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.

SUBPART C—INSOLVENT PLANS

Sec.
[418 to 418D. Repealed.]
418E. Insolvent plans.

AMENDMENTS

2014—Pub. L. 113–235, div. O, title I, § 108(b)(3)(B), (C), Dec. 16, 2014, 128 Stat. 2789, substituted ''Insolvent Plans'' for ''Special Rules for Multiemployer Plans'' in subpart heading and struck out items 418 ''Reorganization status'', 418A ''Notice of reorganization and funding requirements'', 418B ''Minimum contribution requirement'', 418C ''Overburden credit against minimum contribution requirement'', and 418D ''Adjustments in accrued benefits''.

1980—Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1271, added subpart C heading ''Special Rules for Multiemployer Plans'' and items 418 to 418E.

[§§ 418 to 418D. Repealed. Pub. L. 113–235, div. O, title I, § 108(b)(1), Dec. 16, 2014, 128 Stat. 2787]

Section 418, added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1271, related to reorganization status.

Section 418A, added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1274, related to notice of reorganization and funding requirements.

Section 418B, added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1274, related to minimum contribution requirement.

Section 418C, added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1278, related to overburden credit against minimum contribution requirement.

Section 418D, added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1280, related to adjustments in accrued benefits.

EFFECTIVE DATE OF REPEAL

Pub. L. 113–235, div. O, title I, § 108(c), Dec. 16, 2014, 128 Stat. 2789, provided that: ''The amendments made by this section [amending sections 418E and 431 of this title and sections 1084, 1301, and 1426 of Title 29, Labor, and repealing sections 418 to 418D of this title and sections 1421 to 1425 of Title 29] shall apply with respect to plan years beginning after December 31, 2014.''

§ 418E. Insolvent plans

(a) Suspension of certain benefit payments

Notwithstanding section 411, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974.

(b) Definitions

For purposes of this section, for a plan year—

(1) Insolvency

A multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d).

(2) Resource benefit level

The term ''resource benefit level'' means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) to be the highest level which can be paid out of the plan's available resources.

(3) Available resources

The term ''available resources'' means the plan's cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the Pension Benefit Guaranty Corporation under section 4261(b)(2) of the Employee Retirement Income Security Act of 1974.

(4) Insolvency year

The term ''insolvency year'' means a plan year in which a plan is insolvent.

(c) Benefit payments under insolvent plans

(1) Determination of resource benefit level

The plan sponsor of a plan in critical status, as described in subsection [1] 432(b)(2), shall determine in writing the plan's resource benefit level for each insolvency year, based on the plan sponsor's reasonable projection of the plan's available resources and the benefits payable under the plan.

(2) Uniformity of the benefit suspension

(A) The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary, apply in substantially uniform proportions to the benefits of all persons in pay status under the plan, except that the Secretary may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(B) For purposes of this paragraph—

(i) the term ''person in pay status'' means—

(I) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

[1] So in original. Probably should be ''section''.

(II) to the extent provided in regulations prescribed by the Secretary of the Treasury, any other person who is entitled to such a benefit under the plan.

(ii) the base plan year for any plan year is—

(I) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(II) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(iii) a relevant collective bargaining agreement is a collective bargaining agreement—

(I) which is in effect for at least 6 months during the plan year, and

(II) which has not been in effect for more than 36 months as of the end of the plan year.

(iv) the relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

(3) Resource benefit level below level of basic benefits

Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource benefit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits shall be suspended for that plan year.

(4) Excess resources

(A) In general

If, by the end of an insolvency year, the plan sponsor determines in writing that the plan's available resources in that insolvency year could have supported benefit payments above the resource benefit level for that insolvency year, the plan sponsor shall distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan in that insolvency year, in accordance with regulations prescribed by the Secretary.

(B) Excess resources

For purposes of this paragraph, the term ''excess resources'' means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at the benefit levels under the plan.

(5) Unpaid benefits

If, by the end of an insolvency year, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level which were unpaid shall be distributed to the participants and beneficiaries, in accordance with regulations prescribed by the Secretary, to the extent possible taking into account the plan's total available resources in that insolvency year.

(6) Retroactive payments

Except as provided in paragraph (4) or (5), a plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this section.

(d) Plan sponsor determination

(1) Triennial test

As of the end of the first plan year in which a plan is in critical status, as described in subsection[1] 432(b)(2),,[2] and at least every 3 plan years thereafter (unless the plan is no longer in critical status, as described in subsection[1] 432(b)(2),),[2] the plan sponsor shall compare the value of plan assets for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 5 plan years. If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.

(2) Determination of insolvency

If, at any time, the plan sponsor of a plan in critical status, as described in subsection[1] 432(b)(2), reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year, the plan sponsor shall make such determination available to interested parties.

(3) Determination of resource benefit level

The plan sponsor of a plan in critical status, as described in subsection[1] 432(b)(2), shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

(4) For purposes of this subsection, the value of plan assets shall be the value of the available plan assets determined under regulations prescribed by the Secretary of the Treasury.

(e) Notice requirements

(1) Impending insolvency

If the plan sponsor of a plan in critical status, as described in subsection[1] 432(b)(2), determines under subsection (d)(1) or (2) that the plan may become insolvent (within the meaning of subsection (b)(1)), the plan sponsor shall—

(A) notify the Secretary,[3] the parties described in section 101(f)(1) of the Employee Retirement Income Security Act of 1974 of that determination, and

(B) inform the parties described in section 101(f)(1) of the Employee Retirement Income Security Act of 1974 that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

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[2] So in original.

[3] So in original. The comma probably should be ''and''.

(2) Resource benefit level

No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in critical status, as described in subsection[1] 432(b)(2), shall notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of the resource benefit level determined in writing for that insolvency year.

(3) Potential need for financial assistance

In any case in which the plan sponsor anticipates that the resource benefit level for an insolvency year may not exceed the level of basic benefits, the plan sponsor shall notify the Pension Benefit Guaranty Corporation.

(4) Regulations

Notice required by this subsection shall be given in accordance with regulations prescribed by the Pension Benefit Guaranty Corporation, except that notice to the Secretary shall be given in accordance with regulations prescribed by the Secretary.

(5) Corporation may prescribe time

The Pension Benefit Guaranty Corporation may prescribe a time other than the time prescribed by this section for the making of a determination or the filing of a notice under this section.

(f) Financial assistance

(1) Permissive application

If the plan sponsor of an insolvent plan for which the resource benefit level is above the level of basic benefits anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

(2) Mandatory application

A plan sponsor who has determined a resource benefit level for an insolvency year which is below the level of basic benefits shall apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

(g) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this subpart in such manner as determined by the Secretary.

(h) Subsections (a) and (c) shall not apply to a plan that, for the plan year, is operating under section 432(e)(9), regarding benefit suspensions by certain multiemployer plans in critical and declining status.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1282; amended Pub. L. 109–280, title II, § 213(a), Aug. 17, 2006, 120 Stat. 917; Pub. L. 113–235, div. O, title I, § 108(b)(2), Dec. 16, 2014, 128 Stat. 2787.)

REFERENCES IN TEXT

Section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1322a(g)(5) of Title 29, Labor.

Section 4261 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(3) and (f), is classified to section 1431 of Title 29, Labor.

Section 101(f)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (e)(1), is classified to section 1021(f)(1) of Title 29, Labor.

AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113–235, § 108(b)(2)(A), substituted ''critical status, as described in subsection 432(b)(2),'' for ''reorganization''.

Subsec. (c)(2). Pub. L. 113–235, § 108(b)(2)(B), designated existing provisions as subpar. (A), struck out ''(within the meaning of section 418(b)(6))'' after ''pay status'', and added subpar. (B).

Subsec. (d). Pub. L. 113–235, § 108(b)(2)(A), substituted ''critical status, as described in subsection 432(b)(2),'' for ''reorganization'' wherever appearing.

Subsec. (d)(1). Pub. L. 113–235, § 108(b)(2)(C)(i), which directed amendment of par. (1) by striking out ''(determined in accordance with section 418B(3)(B)(ii))'', was executed by striking out ''(determined in accordance with section 418B(b)(3)(B)(ii))'' after ''compare the value of plan assets'' to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 113–235, § 108(b)(2)(C)(ii), added par. (4).

Subsec. (e)(1). Pub. L. 113–235, § 108(b)(2)(A), substituted ''critical status, as described in subsection 432(b)(2),'' for ''reorganization''.

Subsec. (e)(1)(A). Pub. L. 113–235, § 108(b)(2)(D)(i), which directed substitution of ''the parties described in section 101(f)(1) of the Employee Retirement Income Security Act of 1974'' for ''the corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries'', was executed by making the substitution for ''the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries'' to reflect the probable intent of Congress.

Subsec. (e)(1)(B). Pub. L. 113–235, § 108(b)(2)(D)(ii), substituted ''section 101(f)(1) of the Employee Retirement Income Security Act of 1974'' for ''section 418A(a)(2) and the plan participants and beneficiaries''.

Subsec. (e)(2). Pub. L. 113–235, § 108(b)(2)(A), substituted ''critical status, as described in subsection 432(b)(2),'' for ''reorganization''.

Subsec. (h). Pub. L. 113–235, § 108(b)(2)(E), added subsec. (h).

2006—Subsec. (d)(1). Pub. L. 109–280 substituted ''5 plan years'' for ''3 plan years'' the second place it appeared and inserted at end ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 108(c) of div. O of Pub. L. 113–235, set out as an Effective Date of Repeal note under section 418 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title II, § 213(b), Aug. 17, 2006, 120 Stat. 918, provided that: ''The amendments made by this section [amending this section] shall apply with respect to the determinations made in plan years beginning after 2007.''

EFFECTIVE DATE

Section effective, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on Sept. 26, 1980, ex-

pires, without regard to extensions agreed to after such date, or 3 years after Sept. 26, 1980, see section 210 of Pub. L. 96–364, set out as a note under section 194A of this title.

SUBPART D—TREATMENT OF WELFARE BENEFIT FUNDS

§ 419. Treatment of funded welfare benefit plans

(a) General rule

Contributions paid or accrued by an employer to a welfare benefit fund—

(1) shall not be deductible under this chapter, but

(2) if they would otherwise be deductible, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

(b) Limitation

The amount of the deduction allowable under subsection (a)(2) for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year.

(c) Qualified cost

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified cost'' means, with respect to any taxable year, the sum of—

(A) the qualified direct cost for such taxable year, and

(B) subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year.

(2) Reduction for funds after-tax income

In the case of any welfare benefit fund, the qualified cost for any taxable year shall be reduced by such fund's after-tax income for such taxable year.

(3) Qualified direct cost

(A) In general

The term ''qualified direct cost'' means, with respect to any taxable year, the aggregate amount (including administrative expenses) which would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

(B) Time when benefits provided

For purposes of subparagraph (A), a benefit shall be treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of this chapter excluding such benefit from gross income).

(C) 60-month amortization of child care facilities

(i) In general

In determining qualified direct costs with respect to any child care facility for purposes of subparagraph (A), in lieu of depreciation the adjusted basis of such facility shall be allowable as a deduction ratably over a period of 60 months beginning with the month in which the facility is placed in service.

(ii) Child care facility

The term ''child care facility'' means any tangible property which qualifies under regulations prescribed by the Secretary as a child care center primarily for children of employees of the employer; except that such term shall not include any property—

(I) not of a character subject to depreciation; or

(II) located outside the United States.

(4) After-tax income

(A) In general

The term ''after-tax income'' means, with respect to any taxable year, the gross income of the welfare benefit fund reduced by the sum of—

(i) the deductions allowed by this chapter which are directly connected with the production of such gross income, and

(ii) the tax imposed by this chapter on the fund for the taxable year.

(B) Treatment of certain amounts

In determining the gross income of any welfare benefit fund—

(i) contributions and other amounts received from employees shall be taken into account, but

(ii) contributions from the employer shall not be taken into account.

(5) Item only taken into account once

No item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

(d) Carryover of excess contributions

If—

(1) the amount of the contributions paid (or deemed paid under this subsection) by the employer during any taxable year to a welfare benefit fund, exceeds

(2) the limitation of subsection (b),

such excess shall be treated as an amount paid by the employer to such fund during the succeeding taxable year.

(e) Welfare benefit fund

For purposes of this section—

(1) In general

The term ''welfare benefit fund'' means any fund—

(A) which is part of a plan of an employer, and

(B) through which the employer provides welfare benefits to employees or their beneficiaries.

(2) Welfare benefit

The term ''welfare benefit'' means any benefit other than a benefit with respect to which—

(A) section 83(h) applies,

(B) section 404 applies (determined without regard to section 404(b)(2)), or

(C) section 404A applies.

(3) Fund

The term ''fund'' means—

(A) any organization described in paragraph (7), (9), (17), or (20)[1] of section 501(c),

(B) any trust, corporation, or other organization not exempt from the tax imposed by this chapter, and

(C) to the extent provided in regulations, any account held for an employer by any person.

(4) Treatment of amounts held pursuant to certain insurance contracts

(A) In general

Notwithstanding paragraph (3)(C), the term ''fund'' shall not include amounts held by an insurance company pursuant to an insurance contract if—

(i) such contract is a life insurance contract described in section 264(a)(1), or

(ii) such contract is a qualified nonguaranteed contract.

(B) Qualified nonguaranteed contract

(i) In general

For purposes of this paragraph, the term ''qualified nonguaranteed contract'' means any insurance contract (including a reasonable premium stabilization reserve held thereunder) if—

(I) there is no guarantee of a renewal of such contract, and

(II) other than insurance protection, the only payments to which the employer or employees are entitled are experience rated refunds or policy dividends which are not guaranteed and which are determined by factors other than the amount of welfare benefits paid to (or on behalf of) the employees of the employer or their beneficiaries.

(ii) Limitation

In the case of any qualified nonguaranteed contract, subparagraph (A) shall not apply unless the amount of any experience rated refund or policy dividend payable to an employer with respect to a policy year is treated by the employer as received or accrued in the taxable year in which the policy year ends.

(f) Method of contributions, etc., having the effect of a plan

If—

(1) there is no plan, but

(2) there is a method or arrangement of employer contributions or benefits which has the effect of a plan,

this section shall apply as if there were a plan.

(g) Extension to plans for independent contractors

If any fund would be a welfare benefit fund (as modified by subsection (f)) but for the fact that there is no employee-employer relationship—

(1) this section shall apply as if there were such a relationship, and

(2) any reference in this section to the employer shall be treated as a reference to the person for whom services are provided, and any reference in this section to an employee shall be treated as a reference to the person providing the services.

(Added Pub. L. 98–369, div. A, title V, § 511(a), July 18, 1984, 98 Stat. 854; amended Pub. L. 99–514, title XVIII, § 1851(a)(1), (8)(A), (b)(2)(C)(iv), Oct. 22, 1986, 100 Stat. 2858, 2860, 2863; Pub. L. 100–203, title IX, § 10201(b)(4), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, § 1018(t)(2)(C), Nov. 10, 1988, 102 Stat. 3587.)

REFERENCES IN TEXT

Section 501(c)(20), referred to in subsec. (e)(3)(A), was repealed by Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(iii), Dec. 19, 2014, 128 Stat. 4040.

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 substituted ''chapter'' for ''subchapter''.

1987—Subsec. (e)(2)(D). Pub. L. 100–203 struck out subpar. (D) which related to a benefit with respect to which an election under section 463 applies.

1986—Subsec. (a)(1). Pub. L. 99–514, § 1851(b)(2)(C)(iv)(I), substituted ''under this subchapter'' for ''under section 162 or 212''.

Subsec. (a)(2). Pub. L. 99–514, § 1851(b)(2)(C)(iv)(II), substituted ''they would otherwise be deductible'' for ''they satisfy the requirements of either of such sections''.

Subsec. (e)(4). Pub. L. 99–514, § 1851(a)(8)(A), added par. (4).

Subsec. (g)(1). Pub. L. 99–514, § 1851(a)(1), substituted ''such a relationship'' for ''such a plan''.

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 OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as a note under section 404 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

Pub. L. 98–369, div. A, title V, § 511(e), July 18, 1984, 98 Stat. 862, as amended by Pub. L. 99–514, title XVIII, § 1851(a)(12), (14), Oct. 22, 1986, 100 Stat. 2862, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this subpart] shall apply to contributions paid or accrued after December 31, 1985, in taxable years ending after such date.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of plan maintained pursuant to 1 or more collective bargaining agreements—

''(A) between employee representatives and 1 or more employers, and

''(B) in effect on July 1, 1985 (or ratified on or before such date),

[1] See References in Text note below.

the amendments made by this section shall not apply to years beginning before the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after July 1, 1985).

''(3) SPECIAL RULE FOR PARAGRAPH (2).—For purposes of paragraph (2), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

''(4) SPECIAL EFFECTIVE DATE FOR CONTRIBUTIONS OF FACILITIES.—Notwithstanding paragraphs (1) and (2), the amendments made by this section shall apply in the case of—

''(A) any contribution after June 22, 1984, of a facility to a welfare benefit fund, and

''(B) any other contribution after June 22, 1984, to a welfare benefit fund to be used to acquire or improve a facility.

''(5) BINDING CONTRACT EXCEPTIONS TO PARAGRAPH (4).—Paragraph (4) shall not apply to any facility placed in service before January 1, 1987—

''(A) which is acquired or improved by the fund (or contributed to the fund) pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter, or

''(B) the construction of which by or for the fund began before June 22, 1984.

''(6) AMENDMENTS RELATED TO TAX ON UNRELATED BUSINESS INCOME.—The amendments made by subsection (b) [amending section 512 of this title] shall apply with respect to taxable years ending after December 31, 1985. For purposes of section 15 of the Internal Revenue Code of 1954 [now 1986], such amendments shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

''(7) AMENDMENTS RELATED TO EXCISE TAXES ON CERTAIN WELFARE BENEFIT PLANS.—The amendments made by subsection (c) [enacting section 4976 of this title] shall apply to benefits provided after December 31, 1985.''

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.

EFFECTIVE DATE OF REGULATIONS

Pub. L. 99–514, title XVIII, § 1851(a)(8)(B), Oct. 22, 1986, 100 Stat. 2860, provided that: ''Except in the case of a reserve for post-retirement medical or life insurance benefits and any other arrangement between an insurance company and an employer under which the employer has a contractual right to a refund or dividend based solely on the experience of such employer, any account held for an employer by any person and defined as a fund in regulations issued pursuant to section 419(e)(3)(C) of the Internal Revenue Code of 1954 [now 1986] shall be considered a 'fund' no earlier than 6 months following the date such regulations are published in final form.''

§ 419A. Qualified asset account; limitation on additions to account

(a) General rule

For purposes of this subpart and section 512, the term ''qualified asset account'' means any account consisting of assets set aside to provide for the payment of—

(1) disability benefits,

(2) medical benefits,

(3) SUB or severance pay benefits, or

(4) life insurance benefits.

(b) Limitation on additions to account

No addition to any qualified asset account may be taken into account under section 419(c)(1)(B) to the extent such addition results in the amount in such account exceeding the account limit.

(c) Account limit

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund—

(A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a), and

(B) administrative costs with respect to such claims.

(2) Additional reserve for post-retirement medical and life insurance benefits

The account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for—

(A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or

(B) post-retirement life insurance benefits to be provided to covered employees.

(3) Amount taken into account for SUB or severance pay benefits

(A) In general

The account limit for any taxable year with respect to SUB or severance pay benefits is 75 percent of the average annual qualified direct costs for SUB or severance pay benefits for any 2 of the immediately preceding 7 taxable years (as selected by the fund).

(B) Special rule for certain new plans

In the case of any new plan for which SUB or severance pay benefits are not available to any key employee, the Secretary shall, by regulations, provide for an interim amount to be taken into account under paragraph (1).

(4) Limitation on amounts to be taken into account

(A) Disability benefits

For purposes of paragraph (1), disability benefits payable to any individual shall not be taken into account to the extent such benefits are payable at an annual rate in excess of the lower of—

(i) 75 percent of such individual's average compensation for his high 3 years (within the meaning of section 415(b)(3)), or

(ii) the limitation in effect under section 415(b)(1)(A).

(B) Limitation on SUB or severance pay benefits

For purposes of paragraph (3), any SUB or severance pay benefit payable to any indi-

vidual shall not be taken into account to the extent such benefit is payable at an annual rate in excess of 150 percent of the limitation in effect under section 415(c)(1)(A).

(5) Special limitation where no actuarial certification

(A) In general

Unless there is an actuarial certification of the account limit determined under this subsection for any taxable year, the account limit for such taxable year shall not exceed the sum of the safe harbor limits for such taxable year.

(B) Safe harbor limits

(i) Short-term disability benefits

In the case of short-term disability benefits, the safe harbor limit for any taxable year is 17.5 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to such benefits.

(ii) Medical benefits

In the case of medical benefits, the safe harbor limit for any taxable year is 35 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to medical benefits.

(iii) SUB or severance pay benefits

In the case of SUB or severance pay benefits, the safe harbor limit for any taxable year is the amount determined under paragraph (3).

(iv) Long-term disability or life insurance benefits

In the case of any long-term disability benefit or life insurance benefit, the safe harbor limit for any taxable year shall be the amount prescribed by regulations.

(6) Additional reserve for medical benefits of bona fide association plans

(A) In general

An applicable account limit for any taxable year may include a reserve in an amount not to exceed 35 percent of the sum of—

(i) the qualified direct costs, and

(ii) the change in claims incurred but unpaid,

for such taxable year with respect to medical benefits (other than post-retirement medical benefits).

(B) Applicable account limit

For purposes of this subsection, the term ''applicable account limit'' means an account limit for a qualified asset account with respect to medical benefits provided through a plan maintained by a bona fide association (as defined in section 2791(d)(3) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(3)).[1]

[1] So in original. The period probably should be preceded by an additional closing parenthesis.

(d) Requirement of separate accounts for post-retirement medical or life insurance benefits provided to key employees

(1) In general

In the case of any employee who is a key employee—

(A) a separate account shall be established for any medical benefits or life insurance benefits provided with respect to such employee after retirement, and

(B) medical benefits and life insurance benefits provided with respect to such employee after retirement may only be paid from such separate account.

The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years.

(2) Coordination with section 415

For purposes of section 415, any amount attributable to medical benefits allocated to an account established under paragraph (1) shall be treated as an annual addition to a defined contribution plan for purposes of section 415(c). Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(3) Key employee

For purposes of this section, the term ''key employee'' means any employee who, at any time during the plan year or any preceding plan year, is or was a key employee as defined in section 416(i).

(e) Special limitations on reserves for medical benefits or life insurance benefits provided to retired employees

(1) Reserve must be nondiscriminatory

No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b) with respect to such benefits (whether or not such requirements apply to such plan). The preceding sentence 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 post-retirement medical benefits or life insurance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(2) Limitation on amount of life insurance benefits

Life insurance benefits shall not be taken into account under subsection (c)(2) to the extent the aggregate amount of such benefits to be provided with respect to the employee exceeds $50,000.

(f) Definitions and other special rules

For purposes of this section—

(1) SUB or severance pay benefit

The term ''SUB or severance pay benefit'' means—

(A) any supplemental unemployment compensation benefit (as defined in section 501(c)(17)(D)), and

(B) any severance pay benefit.

(2) Medical benefit

The term ''medical benefit'' means a benefit which consists of the providing (directly or through insurance) of medical care (as defined in section 213(d)).

(3) Life insurance benefit

The term ''life insurance benefit'' includes any other death benefit.

(4) Valuation

For purposes of this section, the amount of the qualified asset account shall be the value of the assets in such account (as determined under regulations).

(5) Special rule for collective bargained and employee pay-all plans

No account limits shall apply in the case of any qualified asset account under a separate welfare benefit fund—

(A) under a collective bargaining agreement, or

(B) an employee pay-all plan under section 501(c)(9) if—

(i) such plan has at least 50 employees (determined without regard to subsection (h)(1)), and

(ii) no employee is entitled to a refund with respect to amounts in the fund, other than a refund based on the experience of the entire fund.

(6) Exception for 10-or-more employer plans

(A) In general

This subpart shall not apply in the case of any welfare benefit fund which is part of a 10 or more employer plan. The preceding sentence shall not apply to any plan which maintains experience-rating arrangements with respect to individual employers.

(B) 10 or more employer plan

For purposes of subparagraph (A), the term ''10 or more employer plan'' means a plan—

(i) to which more than 1 employer contributes, and

(ii) to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

(7) Adjustments for existing excess reserves

(A) Increase in account limit

The account limit for any of the first 4 taxable years to which this section applies shall be increased by the applicable percentage of any existing excess reserves.

(B) Applicable percentage

For purposes of subparagraph (A)—

In the case of:	The applicable percentage is:
The first taxable year to which this section applies	80
The second taxable year to which this section applies	60
The third taxable year to which this section applies	40
The fourth taxable year to which this section applies	20.

(C) Existing excess reserve

For purposes of computing the increase under subparagraph (A) for any taxable year, the term ''existing excess reserve'' means the excess (if any) of—

(i) the amount of assets set aside at the close of the first taxable year ending after July 18, 1984, for purposes described in subsection (a), over

(ii) the account limit determined under this section (without regard to this paragraph) for the taxable year for which such increase is being computed.

(D) Funds to which paragraph applies

This paragraph shall apply only to a welfare benefit fund which, as of July 18, 1984, had assets set aside for purposes described in subsection (a).

(g) Employer taxed on income of welfare benefit fund in certain cases

(1) In general

In the case of any welfare benefit fund which is not an organization described in paragraph (7), (9), (17), or (20)[2] of section 501(c), the employer shall include in gross income for any taxable year an amount equal to such fund's deemed unrelated income for the fund's taxable year ending within the employer's taxable year.

(2) Deemed unrelated income

For purposes of paragraph (1), the deemed unrelated income of any welfare benefit fund shall be the amount which would have been its unrelated business taxable income under section 512(a)(3) if such fund were an organization described in paragraph (7), (9), (17), or (20)[2] of section 501(c).

(3) Coordination with section 419

If any amount is included in the gross income of an employer for any taxable year under paragraph (1) with respect to any welfare benefit fund—

(A) the amount of the tax imposed by this chapter which is attributable to the amount so included shall be treated as a contribution paid to such welfare benefit fund on the last day of such taxable year, and

(B) the tax so attributable shall be treated as imposed on the fund for purposes of section 419(c)(4)(A).

(h) Aggregation rules

For purposes of this subpart—

(1) Aggregation of funds

(A) Mandatory aggregation

For purposes of subsections (c)(4), (d)(2), and (e)(2), all welfare benefit funds of an employer shall be treated as 1 fund.

(B) Permissive aggregation for purposes not specified in subparagraph (A)

For purposes of this section (other than the provisions specified in subparagraph (A)), at the election of the employer, 2 or more welfare benefit funds of such employer

[2] See References in Text note below.

may (to the extent not inconsistent with the purposes of this subpart and section 512) be treated as 1 fund.

(2) Treatment of related employers

Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subpart. Such regulations may provide that the plan administrator of any welfare benefit fund which is part of a plan to which more than 1 employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of this section.

(Added Pub. L. 98–369, div. A, title V, § 511(a), July 18, 1984, 98 Stat. 856; amended Pub. L. 99–514, title XVIII, § 1851(a)(2), (3)(A), (4)–(7), (9), (13), Oct. 22, 1986, 100 Stat. 2858–2860, 2862; Pub. L. 100–647, title I, § 1018(t)(1)(C), (2)(A), (u)(12), Nov. 10, 1988, 102 Stat. 3587, 3590; Pub. L. 104–188, title I, § 1704(t)(60), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109–280, title VIII, § 843(a), Aug. 17, 2006, 120 Stat. 1010.)

REFERENCES IN TEXT

Section 501(c)(20), referred to in subsec. (g)(1), (2), was repealed by Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(iii), Dec. 19, 2014, 128 Stat. 4040.

AMENDMENTS

2006—Subsec. (c)(6). Pub. L. 109–280 added par. (6).

1996—Subsec. (c)(3). Pub. L. 104–188 substituted ''severance'' for ''severence'' in heading.

1988—Subsec. (a). Pub. L. 100–647, § 1018(u)(12), made technical amendment to directory language of Pub. L. 99–514, § 1851(a)(6)(B). See 1986 Amendment note below.

Subsec. (f)(5). Pub. L. 100–647, § 1018(t)(2)(A), repealed Pub. L. 99–514, § 1851(a)(4). See 1986 Amendment note below.

Pub. L. 100–647, § 1018(t)(1)(C), substituted ''account'' for ''accounts''.

1986—Subsec. (a). Pub. L. 99–514, § 1851(a)(6)(B), as amended by Pub. L. 100–647, § 1018(u)(12), inserted ''and section 512'' after ''this subpart''.

Subsec. (c)(5)(A). Pub. L. 99–514, § 1851(a)(5), substituted ''under this subsection'' for ''under paragraph (1)''.

Subsec. (d)(1). Pub. L. 99–514, § 1851(a)(2)(B), inserted ''The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years.''

Subsec. (d)(2). Pub. L. 99–514, § 1851(a)(2)(A), inserted ''Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.''

Subsec. (e). Pub. L. 99–514, § 1851(a)(3)(A), amended subsec. (e) generally. Prior to amendment, par. (1), benefits must be nondiscriminatory, read as follows: ''No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b)(1) with respect to such benefits.'', and par. (2), taxable life insurance benefits not taken into account, read as follows: ''No life insurance benefit may be taken into account under subsection (c)(2) to the extent—

''(A) such benefit is includible in gross income under section 79, or

''(B) such benefit would be includible in gross income under section 101(b) (determined by substituting '$50,000' for '$5,000').''

Subsec. (f)(5). Pub. L. 99–514, § 1851(a)(13), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''HIGHER LIMIT IN CASE OF COLLECTIVELY BARGAINED PLANS.—Not later than July 1, 1985, the Secretary shall by regulations provide for special account limits in the case of any qualified asset account under a welfare benefit fund established under a collective bargaining agreement.''

Pub. L. 99–514, § 1851(a)(4), which directed amendment of par. (5) by substituting ''welfare benefit fund maintained pursuant to'' for ''welfare benefit fund established under'', was repealed by Pub. L. 100–647, § 1018(t)(2)(A).

Subsec. (f)(7)(C), (D). Pub. L. 99–514, § 1851(a)(7), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''For purposes of this paragraph, the term 'existing excess reserve' means the excess (if any) of—

''(i) the amount of assets set aside for purposes described in subsection (a) as of the close of the first taxable year ending after the date of the enactment of the Tax Reform Act of 1984, over

''(ii) the account limit which would have applied under this section to such taxable year if this section had applied to such taxable year.''

Subsec. (g)(3). Pub. L. 99–514, § 1851(a)(9), added par. (3).

Subsec. (h)(1). Pub. L. 99–514, § 1851(a)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''At the election of the employer, 2 or more welfare benefit funds of such employer may be treated as 1 fund.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 843(b), Aug. 17, 2006, 120 Stat. 1010, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

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 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.

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 SECTION 419A(e) TO GROUP-TERM LIFE INSURANCE

Pub. L. 99–514, title XVIII, § 1851(a)(3)(B), Oct. 22, 1986, 100 Stat. 2859, as amended by Pub. L. 100–647, title I, § 1018(t)(2)(D), Nov. 10, 1988, 102 Stat. 3587, provided that: ''Subsection (e) of section 419A, section 505, and section 4976(b)(1)(B) of the Internal Revenue Code of 1954 [now 1986] (as amended by subparagraph (A)) shall not apply to any group-term life insurance to the extent that the amendments made by section 223(a) of the Tax Reform Act of 1984 [section 223(a) of Pub. L. 98–369, amending section 79 of this title] do not apply to such insurance by reason of paragraph (2) of section 223(d) of such Act [set out as a note under section 79 of this title].''

SUBPART E—TREATMENT OF TRANSFERS TO RETIREE HEALTH ACCOUNTS

§ 420. Transfers of excess pension assets to retiree health accounts

(a) General rule

If there is a qualified transfer of any excess pension assets of a defined benefit plan to a health benefits account, or an applicable life insurance account, which is part of such plan—

(1) a trust which is part of such plan shall not be treated as failing to meet the requirements of subsection (a) or (h) of section 401 solely by reason of such transfer (or any other action authorized under this section),

(2) no amount shall be includible in the gross income of the employer maintaining the plan solely by reason of such transfer,

(3) such transfer shall not be treated—

(A) as an employer reversion for purposes of section 4980, or

(B) as a prohibited transaction for purposes of section 4975, and

(4) the limitations of subsection (d) shall apply to such employer.

(b) Qualified transfer

For purposes of this section—

(1) In general

The term ''qualified transfer'' means a transfer—

(A) of excess pension assets of a defined benefit plan to a health benefits account, or an applicable life insurance account, which is part of such plan,

(B) which does not contravene any other provision of law, and

(C) with respect to which the following requirements are met in connection with the plan—

(i) the use requirements of subsection (c)(1),

(ii) the vesting requirements of subsection (c)(2), and

(iii) the minimum cost requirements of subsection (c)(3).

(2) Only 1 transfer per year

No more than 1 transfer with respect to any plan during a taxable year may be treated as a qualified transfer for purposes of this section. If there is a transfer from a defined benefit plan to both a health benefits account and an applicable life insurance account during any taxable year, such transfers shall be treated as 1 transfer for purposes of this paragraph.

(3) Limitation on amount transferred

The amount of excess pension assets which may be transferred to an account in a qualified transfer shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree liabilities.

(4) Expiration

No transfer made after December 31, 2025, shall be treated as a qualified transfer.

(c) Requirements of plans transferring assets

(1) Use of transferred assets

(A) In general

Any assets transferred to a health benefits account, or an applicable life insurance account, in a qualified transfer (and any income allocable thereto) shall be used only to pay qualified current retiree liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D))[1] for the taxable year of the transfer (whether directly or through reimbursement). In the case of a qualified future transfer or collectively bargained transfer to which subsection (f) applies, any assets so transferred may also be used to pay liabilities described in subsection (f)(2)(C).

(B) Amounts not used to pay for health benefits or life insurance

(i) In general

Any assets transferred to a health benefits account, or an applicable life insurance account, in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) shall be transferred out of the account to the transferor plan.

(ii) Tax treatment of amounts

Any amount transferred out of an account under clause (i)—

(I) shall not be includible in the gross income of the employer for such taxable year, but

(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

(C) Ordering rule

For purposes of this section, any amount paid out of a health benefits account, or an applicable life insurance account, shall be treated as paid first out of the assets and income described in subparagraph (A).

(2) Requirements relating to pension benefits accruing before transfer

The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).

(3) Minimum cost requirements

(A) In general

The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits

[1] See References in Text note below.

are provided, and each group-term life insurance plan under which applicable life insurance benefits are provided, provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer or, in the case of a transfer which involves a plan maintained by an employer described in subsection (f)(2)(E)(i)(III), if the plan meets the requirements of subsection (f)(2)(D)(i)(II).

(B) Applicable employer cost

For purposes of this paragraph, the term ''applicable employer cost'' means, with respect to any taxable year, the amount determined by dividing—

(i) the qualified current retiree liabilities of the employer for such taxable year determined—

(I) separately with respect to applicable health benefits and applicable life insurance benefits,

(II) without regard to any reduction under subsection (e)(1)(B), and

(III) in the case of a taxable year in which there was no qualified transfer, in the same manner as if there had been such a transfer at the end of the taxable year, by

(ii) the number of individuals to whom coverage was provided during such taxable year for the benefits with respect to which the determination under clause (i) is made.

(C) Election to compute cost separately

An employer may elect to have this paragraph applied separately for applicable health benefits with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible, and separately for applicable life insurance benefits with respect to individuals age 65 or older at any time during the taxable year and with respect to individuals under age 65 during the taxable year.

(D) Cost maintenance period

For purposes of this paragraph, the term ''cost maintenance period'' means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in two or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A) for such taxable year.

(E) Regulations

(i) In general

The Secretary shall prescribe such regulations as may be necessary to prevent an employer who significantly reduces retiree health coverage or retiree life insurance coverage, as the case may be, during the cost maintenance period from being treated as satisfying the minimum cost requirement of this subsection.

(ii) Insignificant cost reductions for retiree health coverage permitted

(I) In general

An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

(II) Eligible employer

For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree liabilities of the employer with respect to applicable health benefits were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer's gross receipts.

(d) Limitations on employer

For purposes of this title—

(1) Deduction limitations

No deduction shall be allowed—

(A) for the transfer of any amount to a health benefits account, or an applicable life insurance account, in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(B)),

(B) for qualified current retiree liabilities paid out of the assets (and income) described in subsection (c)(1), or

(C) for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

(i) the amount determined under subparagraph (A) (and income allocable thereto), over

(ii) the amount determined under subparagraph (B).

(2) No contributions allowed

An employer may not contribute any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree liabilities for which transferred assets are required to be used under subsection (c)(1).

(e) Definition and special rules

For purposes of this section—

(1) Qualified current retiree liabilities

For purposes of this section—

(A) In general

The term ''qualified current retiree liabilities'' means, with respect to any taxable year, the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for such taxable year with respect to applicable health benefits and applicable life insurance benefits provided during such taxable year if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

For purposes of the preceding sentence, the rule of section 419(c)(3)(B) shall apply.

(B) Reductions for amounts previously set aside

The amount determined under subparagraph (A) shall be reduced by the amount (determined separately for applicable health benefits and applicable life insurance benefits) which bears the same ratio to such amount as—

(i) the value (as of the close of the plan year preceding the year of the qualified transfer) of the assets in all health benefits accounts or applicable life insurance accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the qualified current retiree liability, bears to

(ii) the present value of the qualified current retiree liabilities for all plan years (determined without regard to this subparagraph).

(C) Applicable health benefits

The term ''applicable health benefits'' means health benefits or coverage which are provided to—

(i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits by reason of retirement and who are entitled to pension benefits under the plan, and

(ii) their spouses and dependents.

(D) Applicable life insurance benefits

The term ''applicable life insurance benefits'' means group-term life insurance coverage provided to retired employees who, immediately before the qualified transfer, are entitled to receive such coverage by reason of retirement and who are entitled to pension benefits under the plan, but only to the extent that such coverage is provided under a policy for retired employees and the cost of such coverage is excludable from the retired employee's gross income under section 79.

(E) Key employees excluded

If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing qualified current retiree liabilities for such taxable year or in calculating applicable employer cost under subsection (c)(3)(B).

(2) Excess pension assets

The term ''excess pension assets'' means the excess (if any) of—

(A) the lesser of—

(i) the fair market value of the plan's assets (reduced by the prefunding balance and funding standard carryover balance determined under section 430(f)), or

(ii) the value of plan assets as determined under section 430(g)(3) after reduction under section 430(f), over

(B) 125 percent of the sum of the funding target and the target normal cost determined under section 430 for such plan year.

(3) Health benefits account

The term ''health benefits account'' means an account established and maintained under section 401(h).

(4) Applicable life insurance account

The term ''applicable life insurance account'' means a separate account established and maintained for amounts transferred under this section for qualified current retiree liabilities based on premiums for applicable life insurance benefits.

(5) Coordination with sections 430 and 433

In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section and sections 430 and 433, be treated as assets in the plan.

(6) Application to multiemployer plans

In the case of a multiemployer plan, this section shall be applied to any such plan—

(A) by treating any reference in this section to an employer as a reference to all employers maintaining the plan (or, if appropriate, the plan sponsor), and

(B) in accordance with such modifications of this section (and the provisions of this title relating to this section) as the Secretary determines appropriate to reflect the fact the plan is not maintained by a single employer.

(f) Qualified transfers to cover future retiree costs and collectively bargained retiree benefits

(1) In general

An employer maintaining a defined benefit plan (other than a multiemployer plan) may, in lieu of a qualified transfer, elect for any taxable year to have the plan make—

(A) a qualified future transfer, or

(B) a collectively bargained transfer.

Except as provided in this subsection, a qualified future transfer and a collectively bargained transfer shall be treated for purposes of this title and the Employee Retirement Income Security Act of 1974 as if it were a qualified transfer.

(2) Qualified future and collectively bargained transfers

For purposes of this subsection—

(A) In general

The terms ''qualified future transfer'' and ''collectively bargained transfer'' mean a

transfer which meets all of the requirements for a qualified transfer, except that—

(i) the determination of excess pension assets shall be made under subparagraph (B),

(ii) the limitation on the amount transferred shall be determined under subparagraph (C),

(iii) the minimum cost requirements of subsection (c)(3) shall be modified as provided under subparagraph (D), and

(iv) in the case of a collectively bargained transfer, the requirements of subparagraph (E) shall be met with respect to the transfer.

(B) Excess pension assets

(i) In general

In determining excess pension assets for purposes of this subsection, subsection (e)(2) shall be applied by substituting ''120 percent'' for ''125 percent''.

(ii) Requirement to maintain funded status

If, as of any valuation date of any plan year in the transfer period, the amount determined under subsection (e)(2)(B) (after application of clause (i)) exceeds the amount determined under subsection (e)(2)(A), either—

(I) the employer maintaining the plan shall make contributions to the plan in an amount not less than the amount required to reduce such excess to zero as of such date, or

(II) there is transferred from the health benefits account or applicable life insurance account, as the case may be, to the plan an amount not less than the amount required to reduce such excess to zero as of such date.

(C) Limitation on amount transferred

Notwithstanding subsection (b)(3), the amount of the excess pension assets which may be transferred—

(i) in the case of a qualified future transfer shall be equal to the sum of—

(I) if the transfer period includes the taxable year of the transfer, the amount determined under subsection (b)(3) for such taxable year, plus

(II) in the case of all other taxable years in the transfer period, the sum of the qualified current retiree liabilities which the plan reasonably estimates, in accordance with guidance issued by the Secretary, will be incurred for each of such years, and

(ii) in the case of a collectively bargained transfer, shall not exceed the amount which is reasonably estimated, in accordance with the provisions of the collective bargaining agreement and generally accepted accounting principles, to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the collectively bargained cost maintenance period for collectively bargained retiree liabilities.

(D) Minimum cost requirements

(i) In general

The requirements of subsection (c)(3) shall be treated as met if—

(I) in the case of a qualified future transfer, each group health plan or arrangement under which applicable health benefits are provided, and each group-term life insurance plan or arrangement under which applicable life insurance benefits are provided, provides applicable health benefits or applicable life insurance benefits, as the case may be, during the period beginning with the first year of the transfer period and ending with the last day of the 4th year following the transfer period such that the annual average amount of the applicable employer cost during such period is not less than the applicable employer cost determined under subsection (c)(3)(A) with respect to the transfer, and

(II) in the case of a collectively bargained transfer, each collectively bargained plan under which collectively bargained health benefits or collectively bargained life insurance benefits are provided provides that the collectively bargained employer cost for each taxable year during the collectively bargained cost maintenance period shall not be less than the amount specified by the collective bargaining agreement.

(ii) Election to maintain benefits for future transfers

An employer may elect, in lieu of the requirements of clause (i)(I), to meet the requirements of subsection (c)(3) with respect to applicable health benefits or applicable life insurance benefits by meeting the requirements of such subsection (as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999) for each of the years described in the period under clause (i)(I). Such election may be made separately with respect to applicable health benefits and applicable life insurance benefits. In the case of an election with respect to applicable life insurance benefits, the first sentence of this clause shall be applied as if subsection (c)(3) as in effect before the amendments made by such Act applied to such benefits.

(iii) Collectively bargained employer cost

For purposes of this subparagraph, the term ''collectively bargained employer cost'' means the average cost per covered individual of providing collectively bargained health benefits, collectively bargained life insurance benefits, or both, as the case may be, as determined in accordance with the applicable collective bargaining agreement. Such agreement may provide for an appropriate reduction in the collectively bargained employer cost to take into account any portion of the collectively bargained health benefits, collectively bargained life insurance benefits, or both, as the case may be, that is provided

or financed by a government program or other source.

(E) Special rules for collectively bargained transfers

(i) In general

A collectively bargained transfer shall only include a transfer which—

(I) is made in accordance with a collective bargaining agreement,

(II) before the transfer, the employer designates, in a written notice delivered to each employee organization that is a party to the collective bargaining agreement, as a collectively bargained transfer in accordance with this section, and

(III) involves a defined benefit plan maintained by an employer which, in its taxable year ending in 2005, provided health benefits or coverage to retirees and their spouses and dependents under all of the health benefit plans maintained by the employer, but only if the aggregate cost (including administrative expenses) of such benefits or coverage which would have been allowable as a deduction to the employer (if such benefits or coverage had been provided directly by the employer and the employer used the cash receipts and disbursements method of accounting) is at least 5 percent of the gross receipts of the employer (determined in accordance with the last sentence of subsection (c)(3)(E)(ii)(II)) for such taxable year, or a plan maintained by a successor to such employer.

(ii) Use of assets

Any assets transferred to a health benefits account, or an applicable life insurance account, in a collectively bargained transfer (and any income allocable thereto) shall be used only to pay collectively bargained retiree liabilities (other than liabilities of key employees not taken into account under paragraph (6)(B)(iii)) for the taxable year of the transfer or for any subsequent taxable year during the collectively bargained cost maintenance period (whether directly or through reimbursement).

(3) Coordination with other transfers

In applying subsection (b)(3) to any subsequent transfer during a taxable year in a transfer period or collectively bargained cost maintenance period, qualified current retiree liabilities shall be reduced by any such liabilities taken into account with respect to the qualified future transfer or collectively bargained transfer to which such period relates.

(4) Special deduction rules for collectively bargained transfers

In the case of a collectively bargained transfer—

(A) the limitation under subsection (d)(1)(C) shall not apply, and

(B) notwithstanding subsection (d)(2), an employer may contribute an amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to collectively bargained retiree liabilities for which transferred assets are required to be used under subsection (c)(1)(B), and the deductibility of any such contribution shall be governed by the limits applicable to the deductibility of contributions to a welfare benefit fund under a collective bargaining agreement (as determined under section 419A(f)(5)(A)) without regard to whether such contributions are made to a health benefits account or welfare benefit fund and without regard to the provisions of section 404 or the other provisions of this section.

The Secretary shall provide rules to ensure that the application of this paragraph does not result in a deduction being allowed more than once for the same contribution or for 2 or more contributions or expenditures relating to the same collectively bargained retiree liabilities.

(5) Transfer period

For purposes of this subsection, the term ''transfer period'' means, with respect to any transfer, a period of consecutive taxable years (not less than 2) specified in the election under paragraph (1) which begins and ends during the 10-taxable-year period beginning with the taxable year of the transfer.

(6) Terms relating to collectively bargained transfers

For purposes of this subsection—

(A) Collectively bargained cost maintenance period

The term ''collectively bargained cost maintenance period'' means, with respect to each covered retiree and his covered spouse and dependents, the shorter of—

(i) the remaining lifetime of such covered retiree and, in the case of a transfer to a health benefits account, his covered spouse and dependents, or

(ii) the period of coverage provided by the collectively bargained plan (determined as of the date of the collectively bargained transfer) with respect to such covered retiree and, in the case of a transfer to a health benefits account, his covered spouse and dependents.

(B) Collectively bargained retiree liabilities

(i) In general

The term ''collectively bargained retiree liabilities'' means the present value, as of the beginning of a taxable year and determined in accordance with the applicable collective bargaining agreement, of all collectively bargained health benefits, and collectively bargained life insurance benefits, (including administrative expenses) for such taxable year and all subsequent taxable years during the collectively bargained cost maintenance period.

(ii) Reduction for amounts previously set aside

The amount determined under clause (i) shall be reduced by the value (as of the close of the plan year preceding the year of

the collectively bargained transfer) of the assets in all health benefits accounts, applicable life insurance accounts, or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the collectively bargained retiree liabilities. The preceding sentence shall be applied separately for collectively bargained health benefits and collectively bargained life insurance benefits.

(iii) Key employees excluded

If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing collectively bargained retiree liabilities for such taxable year or in calculating collectively bargained employer cost under subsection (c)(3)(C).

(C) Collectively bargained health benefits

The term ''collectively bargained health benefits'' means health benefits or coverage—

(i) which are provided to retired employees who, immediately before the collectively bargained transfer, are entitled to receive such benefits by reason of retirement and who are entitled to pension benefits under the plan, and their spouses and dependents, and

(ii) if specified by the provisions of the collective bargaining agreement governing the collectively bargained transfer, which will be provided at retirement to employees who are not retired employees at the time of the transfer and who are entitled to receive such benefits and who are entitled to pension benefits under the plan, and their spouses and dependents.

(D) Collectively bargained life insurance benefits

The term ''collectively bargained life insurance benefits'' means, with respect to any collectively bargained transfer—

(i) applicable life insurance benefits which are provided to retired employees who, immediately before the transfer, are entitled to receive such benefits by reason of retirement, and

(ii) if specified by the provisions of the collective bargaining agreement governing the transfer, applicable life insurance benefits which will be provided at retirement to employees who are not retired employees at the time of the transfer.

(E) Collectively bargained plan

The term ''collectively bargained plan'' means a group health plan or arrangement for retired employees and their spouses and dependents, or a group-term life insurance plan or arrangement for retired employees, that is maintained pursuant to 1 or more collective bargaining agreements.

(g) Segment rates determined without pension stabilization

For purposes of this section, section 430 shall be applied without regard to subsection (h)(2)(C)(iv) thereof.

(Added Pub. L. 101–508, title XII, § 12011(a), Nov. 5, 1990, 104 Stat. 1388–567; amended Pub. L. 103–465, title VII, § 731(a)–(c)(3), Dec. 8, 1994, 108 Stat. 5003, 5004; Pub. L. 104–188, title I, § 1704(a), (t)(32), Aug. 20, 1996, 110 Stat. 1878, 1889; Pub. L. 106–170, title V, § 535(a)(1), (b), Dec. 17, 1999, 113 Stat. 1934; Pub. L. 108–218, title II, § 204(a), Apr. 10, 2004, 118 Stat. 609; Pub. L. 108–357, title VII, § 709(b)(1), (2), Oct. 22, 2004, 118 Stat. 1551, 1552; Pub. L. 109–280, title I, § 114(d), title VIII, §§ 841(a), 842(a), Aug. 17, 2006, 120 Stat. 854, 1005, 1009; Pub. L. 110–28, title VI, §§ 6612(a), (b), 6613(a), May 25, 2007, 121 Stat. 181; Pub. L. 110–458, title I, § 108(i)(1), (2), Dec. 23, 2008, 122 Stat. 5110; Pub. L. 112–141, div. D, title II, §§ 40211(a)(2)(D), 40241(a), 40242(a)–(c), (e)(1)–(13), (f), (g), July 6, 2012, 126 Stat. 847, 859, 860, 862, 863; Pub. L. 113–97, title II, § 202(c)(7), Apr. 7, 2014, 128 Stat. 1137; Pub. L. 114–41, title II, § 2007(a), July 31, 2015, 129 Stat. 459.)

REFERENCES IN TEXT

Subsection (e)(1)(D), referred to in subsec. (c)(1)(A), was redesignated subsec. (e)(1)(E) and a new subsec. (e)(1)(D) was added by Pub. L. 112–141, div. D, title II, § 40242(b)(2), July 6, 2012, 126 Stat. 859.

The Social Security Act, referred to in subsec. (c)(3)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Subsection (c)(3) as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999, referred to in subsec. (f)(2)(D)(ii), is subsec. (c)(3) of this section prior to its general amendment by section 535(b)(1) of Pub. L. 106–170.

AMENDMENTS

2015—Subsec. (b)(4). Pub. L. 114–41 substituted ''December 31, 2025'' for ''December 31, 2021''.

2014—Subsec. (e)(5). Pub. L. 113–97 substituted ''sections 430 and 433'' for ''section 430'' in heading and text.

2012—Pub. L. 112–141, § 40242(e)(1), substituted ''qualified current retiree liabilities'' for ''qualified current retiree health liabilities'' wherever appearing in subsecs. (b) to (d), (e)(1), and (f).

Subsec. (a). Pub. L. 112–141, § 40242(a), inserted '', or an applicable life insurance account,'' after ''health benefits account''.

Subsec. (b)(1)(A). Pub. L. 112–141, § 40242(g)(1), struck out ''in a taxable year beginning after December 31, 1990'' after ''such plan''.

Pub. L. 112–141, § 40242(e)(2), inserted '', or an applicable life insurance account,'' after ''a health benefits account''.

Subsec. (b)(2). Pub. L. 112–141, § 40242(g)(3), struck out ''(A) In general'' before ''No more than'' and struck out heading and text of subpar. (B). Prior to amendment, text read as follows: ''A transfer described in paragraph (4) shall not be taken into account for purposes of subparagraph (A).''

Subsec. (b)(2)(A). Pub. L. 112–141, § 40242(e)(3)(A), inserted at end ''If there is a transfer from a defined benefit plan to both a health benefits account and an applicable life insurance account during any taxable year, such transfers shall be treated as 1 transfer for purposes of this paragraph.''

Subsec. (b)(3). Pub. L. 112–141, § 40242(e)(3)(B), inserted ''to an account'' after ''may be transferred''.

Subsec. (b)(4). Pub. L. 112–141, § 40242(g)(2), redesignated par. (5) as (4) and struck out former par. (4) which related to a special rule for 1990.

Subsec. (b)(5). Pub. L. 112–141, § 40242(g)(2), redesignated par. (5) as (4).

Pub. L. 112–141, § 40241(a), substituted ''December 31, 2021'' for ''December 31, 2013''.

Subsec. (c)(1)(A). Pub. L. 112–141, § 40242(e)(2), inserted '', or an applicable life insurance account,'' after ''a health benefits account''.

Subsec. (c)(1)(B). Pub. L. 112–141, § 40242(e)(4), inserted ''or life insurance'' after ''health benefits'' in heading.

Subsec. (c)(1)(B)(i). Pub. L. 112–141, § 40242(e)(2), inserted '', or an applicable life insurance account,'' after ''a health benefits account''.

Subsec. (c)(1)(C). Pub. L. 112–141, § 40242(e)(2), inserted '', or an applicable life insurance account,'' after ''a health benefits account''.

Subsec. (c)(2). Pub. L. 112–141, § 40242(g)(4), struck out ''(A) In general'' before ''The requirements of'', realigned margins, and struck out heading and text of subpar. (B). Prior to amendment, text read as follows: ''In the case of a qualified transfer described in subsection (b)(4), the requirements of this paragraph are met with respect to any participant who separated from service during the taxable year to which such transfer relates by recomputing such participant's benefits as if subparagraph (A) had applied immediately before such separation.''

Subsec. (c)(3)(A). Pub. L. 112–141, § 40242(c)(1), inserted '', and each group-term life insurance plan under which applicable life insurance benefits are provided,'' after ''health benefits are provided''.

Subsec. (c)(3)(B)(i). Pub. L. 112–141, § 40242(c)(2)(A)(i), redesignated subcls. (I) and (II) as (II) and (III), respectively, and added subcl. (I).

Subsec. (c)(3)(B)(ii). Pub. L. 112–141, § 40242(c)(2)(A)(ii), substituted ''was provided during such taxable year for the benefits with respect to which the determination under clause (i) is made.'' for ''for applicable health benefits was provided during such taxable year.''

Subsec. (c)(3)(C). Pub. L. 112–141, § 40242(c)(2)(B), inserted ''for applicable health benefits'' after ''applied separately'' and '', and separately for applicable life insurance benefits with respect to individuals age 65 or older at any time during the taxable year and with respect to individuals under age 65 during the taxable year'' before the period at end.

Subsec. (c)(3)(E)(i). Pub. L. 112–141, § 40242(c)(2)(C)(i), inserted ''or retiree life insurance coverage, as the case may be,'' after ''retiree health coverage''.

Subsec. (c)(3)(E)(ii). Pub. L. 112–141, § 40242(c)(2)(C)(ii), inserted ''for retiree health coverage'' after ''cost reductions'' in heading.

Subsec. (c)(3)(E)(ii)(II). Pub. L. 112–141, § 40242(c)(2)(C)(iii), inserted ''with respect to applicable health benefits'' after ''liabilities of the employer''.

Subsec. (d)(1)(A). Pub. L. 112–141, § 40242(e)(2), inserted '', or an applicable life insurance account,'' after ''a health benefits account''.

Subsec. (d)(2). Pub. L. 112–141, § 40242(g)(5), struck out ''after December 31, 1990'' after ''may not contribute''.

Subsec. (e)(1). Pub. L. 112–141, § 40242(e)(5)(B), struck out ''health'' after ''Qualified current retiree'' in the heading.

Subsec. (e)(1)(A). Pub. L. 112–141, § 40242(e)(5)(A), inserted ''and applicable life insurance benefits'' after ''applicable health benefits''.

Subsec. (e)(1)(B). Pub. L. 112–141, § 40242(e)(6)(A), inserted ''(determined separately for applicable health benefits and applicable life insurance benefits)'' after ''shall be reduced by the amount'' in introductory provisions.

Subsec. (e)(1)(B)(i). Pub. L. 112–141, § 40242(e)(6)(C), substituted ''qualified current retiree liability'' for ''qualified current retiree health liability''.

Pub. L. 112–141, § 40242(e)(6)(B), which directed the insertion of ''or applicable life insurance accounts'' after ''health benefit accounts'', was executed by making the insertion after ''health benefits accounts'' to reflect the probable intent of Congress.

Subsec. (e)(1)(C)(i). Pub. L. 112–141, § 40242(b)(3)(B)(i), substituted ''by reason of retirement'' for ''upon retirement''.

Subsec. (e)(1)(D), (E). Pub. L. 112–141, § 40242(b)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (e)(4) to (6). Pub. L. 112–141, § 40242(b)(1), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 112–141, § 40242(e)(7), struck out ''health'' after ''retiree'' in two places in the heading.

Subsec. (f)(2)(B)(ii)(II). Pub. L. 112–141, § 40242(e)(8), inserted ''or applicable life insurance account, as the case may be,'' after ''health benefits account''.

Subsec. (f)(2)(C)(ii). Pub. L. 112–141, § 40242(c)(2)(D), substituted ''collectively bargained retiree liabilities'' for ''collectively bargained retiree health liabilities''.

Subsec. (f)(2)(D)(i)(I). Pub. L. 112–141, § 40242(c)(2)(E)(i), (ii), inserted '', and each group-term life insurance plan or arrangement under which applicable life insurance benefits are provided,'' after ''applicable health benefits are provided'' and ''or applicable life insurance benefits, as the case may be,'' after ''provides applicable health benefits''.

Subsec. (f)(2)(D)(i)(II). Pub. L. 112–141, § 40242(c)(2)(E)(iii), (iv), struck out ''group health'' after ''each collectively bargained'' and inserted ''or collectively bargained life insurance benefits'' after ''collectively bargained health benefits''.

Subsec. (f)(2)(D)(ii). Pub. L. 112–141, § 40242(c)(2)(F), inserted ''with respect to applicable health benefits or applicable life insurance benefits'' after ''requirements of subsection (c)(3)'' and inserted at end ''Such election may be made separately with respect to applicable health benefits and applicable life insurance benefits. In the case of an election with respect to applicable life insurance benefits, the first sentence of this clause shall be applied as if subsection (c)(3) as in effect before the amendments made by such Act applied to such benefits.''

Subsec. (f)(2)(D)(iii). Pub. L. 112–141, § 40242(c)(2)(G), struck out ''retiree'' before ''health benefits'' in two places and inserted '', collectively bargained life insurance benefits, or both, as the case may be,'' after ''health benefits'' in two places.

Subsec. (f)(2)(E)(i)(III). Pub. L. 112–141, § 40242(e)(9), inserted ''defined benefit'' before ''plan maintained by an employer'' and ''health'' before ''benefit plans maintained by the employer''.

Subsec. (f)(2)(E)(ii). Pub. L. 112–141, § 40242(e)(2), inserted '', or an applicable life insurance account,'' after ''a health benefits account''.

Pub. L. 112–141, § 40242(c)(2)(D), substituted ''collectively bargained retiree liabilities'' for ''collectively bargained retiree health liabilities''.

Subsec. (f)(4). Pub. L. 112–141, § 40242(e)(10), substituted ''collectively bargained retiree liabilities'' for ''collectively bargained retiree health liabilities'' in two places.

Subsec. (f)(6)(A)(i). Pub. L. 112–141, § 40242(e)(11)(A), inserted '', in the case of a transfer to a health benefits account,'' before ''his covered spouse and dependents''.

Subsec. (f)(6)(A)(ii). Pub. L. 112–141, § 40242(e)(11), inserted '', in the case of a transfer to a health benefits account,'' before ''his covered spouse and dependents'' and substituted ''plan'' for ''health plan''.

Subsec. (f)(6)(B). Pub. L. 112–141, § 40242(e)(12)(C), struck out ''health'' after ''retiree'' in the heading.

Pub. L. 112–141, § 40242(e)(10), substituted ''collectively bargained retiree liabilities'' for ''collectively bargained retiree health liabilities'' wherever appearing.

Subsec. (f)(6)(B)(i). Pub. L. 112–141, § 40242(e)(12)(A), inserted '', and collectively bargained life insurance benefits,'' after ''collectively bargained health benefits''.

Subsec. (f)(6)(B)(ii). Pub. L. 112–141, § 40242(e)(12)(B)(ii), which directed the insertion of '', applicable life insurance accounts,'' after ''health benefit accounts'', was executed by making the insertion after ''health benefits accounts'' to reflect the probable intent of Congress.

Pub. L. 112–141, § 40242(e)(12)(B)(i), inserted at end ''The preceding sentence shall be applied separately for collectively bargained health benefits and collectively bargained life insurance benefits.''

Subsec. (f)(6)(B)(iii). Pub. L. 112–141, § 40242(f), substituted ''416(i)(1)'' for ''416(I)(1)''.

Subsec. (f)(6)(C). Pub. L. 112–141, § 40242(b)(3)(B)(ii)(I), struck out ''which are provided to'' after ''coverage'' in introductory provisions.

Subsec. (f)(6)(C)(i). Pub. L. 112–141, § 40242(b)(3)(B)(ii)(II), (III), inserted ''which are provided to'' before ''retired employees'' and substituted ''by reason of retirement'' for ''upon retirement''.

Subsec. (f)(6)(C)(ii). Pub. L. 112–141, § 40242(b)(3)(B)(ii)(IV), substituted ''which will be provided at retirement to employees who are not retired employees at the time of the transfer and who'' for ''active employees who, following their retirement,''.

Subsec. (f)(6)(D). Pub. L. 112–141, § 40242(b)(3)(A), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (f)(6)(E). Pub. L. 112–141, § 40242(e)(13), struck out ''health'' after ''bargained'' in heading, substituted ''bargained'' for ''bargained health'', and inserted '', or a group-term life insurance plan or arrangement for retired employees,'' after ''dependents''.

Pub. L. 112–141, § 40242(b)(3)(A), redesignated subpar. (D) as (E).

Subsec. (g). Pub. L. 112–141, § 40211(a)(2)(D), added subsec. (g).

2008—Subsec. (c)(1)(A). Pub. L. 110–458, § 108(i)(1), inserted last sentence ''In the case of a qualified future transfer or collectively bargained transfer to which subsection (f) applies, any assets so transferred may also be used to pay liabilities described in subsection (f)(2)(C).''

Subsec. (f)(2)(D)(i)(I). Pub. L. 110–458, § 108(i)(2), struck out ''such'' after ''average amount of''.

2007—Subsec. (c)(3)(A). Pub. L. 110–28, § 6613(a), substituted ''transfer or, in the case of a transfer which involves a plan maintained by an employer described in subsection (f)(2)(E)(i)(III), if the plan meets the requirements of subsection (f)(2)(D)(i)(II).'' for ''transfer.''

Subsec. (e)(2)(B). Pub. L. 110–28, § 6612(b), substituted ''funding target'' for ''funding shortfall''.

Subsec. (f)(2)(E)(i)(III). Pub. L. 110–28, § 6612(a), substituted ''subsection (c)(3)(E)(ii)(II)'' for ''subsection (c)(2)(E)(ii)(II)''.

2006—Subsec. (a). Pub. L. 109–280, § 842(a)(1), struck out ''(other than a multiemployer plan)'' after ''defined benefit plan'' in introductory provisions.

Subsec. (e)(2). Pub. L. 109–280, § 114(d)(1), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'excess pension assets' means the excess (if any) of—

''(A) the amount determined under section 412(c)(7)(A)(ii), over

''(B) the greater of—

''(i) the amount determined under section 412(c)(7)(A)(i), or

''(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer.''

Subsec. (e)(4). Pub. L. 109–280, § 114(d)(2), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''In the case of a qualified transfer to a health benefits account—

''(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

''(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the pension plan under subsection (c)(1)(B)) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'.''

Subsec. (e)(5). Pub. L. 109–280, § 842(a)(2), added par. (5).

Subsec. (f). Pub. L. 109–280, § 841(a), added subsec. (f).

2004—Subsec. (b)(5). Pub. L. 108–218 substituted ''2013'' for ''2005''.

Subsec. (c)(3)(E). Pub. L. 108–357 designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

1999—Subsec. (b)(1)(C)(iii). Pub. L. 106–170, § 535(b)(2)(A), substituted ''cost'' for ''benefits''.

Subsec. (b)(5). Pub. L. 106–170, § 535(a)(1), substituted ''made after December 31, 2005'' for ''in any taxable year beginning after December 31, 2000''.

Subsec. (c)(3). Pub. L. 106–170, § 535(b)(1), amended heading and text of par. (3) generally, substituting present provisions for provisions relating to maintenance of benefit requirements.

Subsec. (e)(1)(D). Pub. L. 106–170, § 535(b)(2)(B), substituted ''or in calculating applicable employer cost under subsection (c)(3)(B)'' for ''and shall not be subject to the minimum benefit requirements of subsection (c)(3)''.

1996—Pub. L. 104–188, § 1704(a), provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Section 12011(a) of title XII of Pub. L. 101–508 directed the amendment of part I of subchapter D of chapter 1 by adding this subpart, including this section, without specifying that amendment was to the Internal Revenue Code of 1986.

Subsec. (e)(1)(C). Pub. L. 104–188, § 1704(t)(32), substituted ''means'' for ''mean''.

1994—Subsec. (b)(1)(C)(iii). Pub. L. 103–465, § 731(c)(1), substituted ''benefits'' for ''cost''.

Subsec. (b)(5). Pub. L. 103–465, § 731(a), substituted ''2000'' for ''1995''.

Subsec. (c)(3). Pub. L. 103–465, § 731(b), amended par. (3) generally, substituting present provisions for provisions outlining minimum cost requirements for plans, providing for elections to compute costs separately, and defining ''applicable employer cost'' and ''cost maintenance period''.

Subsec. (e)(1)(B). Pub. L. 103–465, § 731(c)(2), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows: ''The amount determined under subparagraph (A) shall be reduced by any amount previously contributed to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) to pay for the qualified current retiree health liabilities. The portion of any reserves remaining as of the close of December 31, 1990, shall be allocated on a pro rata basis to qualified current retiree health liabilities.''

Subsec. (e)(1)(D). Pub. L. 103–465, § 731(c)(3), substituted ''and shall not be subject to the minimum benefit requirements of subsection (c)(3)'' for ''or in calculating applicable employer cost under subsection (c)(3)(B)''.

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 2012 AMENDMENT

Amendment by section 40211(a)(2)(D) of Pub. L. 112–141 applicable with respect to plan years beginning after December 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112–141, set out as a note under section 404 of this title.

Pub. L. 112–141, div. D, title II, § 40241(c), July 6, 2012, 126 Stat. 859, provided that: ''The amendments made by this Act [probably should be ''section'', amending this section and sections 1021, 1103, and 1108 of Title 29,

Labor] shall take effect on the date of the enactment of this Act [July 6, 2012].''

Pub. L. 112–141, div. D, title II, §40242(h), July 6, 2012, 126 Stat. 864, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, section 79 of this title, and section 1021 of Title 29, Labor] shall apply to transfers made after the date of the enactment of this Act [July 6, 2012].

''(2) CONFORMING AMENDMENTS RELATING TO PENSION PROTECTION ACT.—The amendments made by subsections (b)(3)(B) and (f) [amending this section] shall take effect as if included in the amendments made by section 841(a) of the Pension Protection Act of 2006 [Pub. L. 109–280].''

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 2007 AMENDMENT

Pub. L. 110–28, title VI, §6612(c), May 25, 2007, 121 Stat. 181, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which they relate.''

Pub. L. 110–28, title VI, §6613(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [May 25, 2007].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(d) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Pub. L. 109–280, title VIII, §841(b), Aug. 17, 2006, 120 Stat. 1009, provided that: ''The amendments made by this section [amending this section] shall apply to transfers after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title VIII, §842(b), Aug. 17, 2006, 120 Stat. 1009, provided that: ''The amendment made by this section [amending this section] shall apply to transfers made in taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §709(b)(3), Oct. 22, 2004, 118 Stat. 1552, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §535(c), Dec. 17, 1999, 113 Stat. 1935, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1021, 1103, and 1108 of Title 29, Labor] shall apply to qualified transfers occurring after the date of the enactment of this Act [Dec. 17, 1999].

''(2) TRANSITION RULE.—If the cost maintenance period for any qualified transfer after the date of the enactment of this Act [Dec. 17, 1999] includes any portion of a benefit maintenance period for any qualified transfer on or before such date, the amendments made by subsection (b) [amending this section] shall not apply to such portion of the cost maintenance period (and such portion shall be treated as a benefit maintenance period).''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §731(d), Dec. 8, 1994, 108 Stat. 5004, provided that:

''(1) EXTENSION.—The amendments made by subsections (a) and (c)(3) [amending this section] shall apply to taxable years beginning after December 31, 1995.

''(2) BENEFITS.—The amendments made by subsections (b) and (c)(1) and (2) [amending this section] shall apply to qualified transfers occurring after the date of the enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE

Pub. L. 101–508, title XII, §12011(c), Nov. 5, 1990, 104 Stat. 1388–571, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 401 of this title] shall apply to transfers in taxable years beginning after December 31, 1990.

''(2) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or section 6655 of the Internal Revenue Code of 1986 for the taxable year preceding the taxpayer's 1st taxable year beginning after December 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of [former] section 420(b)(4)(B) of such Code (as added by subsection (a)).''

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.

PART II—CERTAIN STOCK OPTIONS

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11801(b)(6), (c)(9)(A)(ii), Nov. 5, 1990, 104 Stat. 1388–522, 1388–524, struck out items 422 ''Qualified stock options'' and 424 ''Restricted stock options'' and redesignated items 422A and 425 as 422 and 424, respectively.

1981—Pub. L. 97–34, title II, §251(b)(6), Aug. 13, 1981, 95 Stat. 259, added item 422A.

1964—Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 63, substituted ''CERTAIN STOCK OPTIONS'' for ''MISCELLANEOUS PROVISIONS'' in part II heading, and ''General rules'' for ''Employee stock options'' in item 421, and added items 422–425.

§ 421. General rules

(a) Effect of qualifying transfer

If a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a) or 423(a) are met—

(1) no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) no deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 424(a) applies, with respect to the share so transferred; and

(3) no amount other than the price paid under the option shall be considered as re-

ceived by any of such corporations for the share so transferred.

(b) Effect of disqualifying disposition

If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422(a) or 423(a) except that there is a failure to meet any of the holding period requirements of section 422(a)(1) or 423(a)(1), then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred. No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.

(c) Exercise by estate

(1) In general

If an option to which this part applies is exercised after the death of the employee by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the provisions of subsection (a) shall apply to the same extent as if the option had been exercised by the decedent, except that—

(A) the holding period and employment requirements of sections 422(a) and 423(a) shall not apply, and

(B) any transfer by the estate of stock acquired shall be considered a disposition of such stock for purposes of section 423(c).

(2) Deduction for estate tax

If an amount is required to be included under section 423(c) in gross income of the estate of the deceased employee or of a person described in paragraph (1), there shall be allowed to the estate or such person a deduction with respect to the estate tax attributable to the inclusion in the taxable estate of the deceased employee of the net value for estate tax purposes of the option. For this purpose, the deduction shall be determined under section 691(c) as if the option acquired from the deceased employee were an item of gross income in respect of the decedent under section 691 and as if the amount includible in gross income under section 423(c) were an amount included in gross income under section 691 in respect of such item of gross income.

(3) Basis of shares acquired

In the case of a share of stock acquired by the exercise of an option to which paragraph (1) applies—

(A) the basis of such share shall include so much of the basis of the option as is attributable to such share; except that the basis of such share shall be reduced by the excess (if any) of (i) the amount which would have been includible in gross income under section 423(c) if the employee had exercised the option on the date of his death and had held the share acquired pursuant to such exercise at the time of his death, over (ii) the amount which is includible in gross income under such section; and

(B) the last sentence of section 423(c) shall apply only to the extent that the amount includible in gross income under such section exceeds so much of the basis of the option as is attributable to such share.

(d) Certain sales to comply with conflict-of-interest requirements

If—

(1) a share of stock is transferred to an eligible person (as defined in section 1043(b)(1)) pursuant to such person's exercise of an option to which this part applies, and

(2) such share is disposed of by such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)),

such disposition shall be treated as meeting the requirements of section 422(a)(1) or 423(a)(1), whichever is applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 142; Pub. L. 85–320, § 1, Feb. 11, 1958, 72 Stat. 4; Pub. L. 85–866, title I, §§ 25, 26(a), Sept. 2, 1958, 72 Stat. 1623, 1624; Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 63; Pub. L. 97–34, title II, § 251(b)(1), Aug. 13, 1981, 95 Stat. 259; Pub. L. 101–508, title XI, § 11801(c)(9)(B), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 108–357, title II, § 251(b), title VIII, § 905(a), Oct. 22, 2004, 118 Stat. 1458, 1653.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, § 251(b), inserted at end ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.''

Subsec. (d). Pub. L. 108–357, § 905(a), added subsec. (d).

1990—Subsec. (a). Pub. L. 101–508, § 11801(c)(9)(B)(i)(I), substituted ''422(a) or 423(a)'' for ''422(a), 422A(a), 423(a), or 424(a)'' in introductory provisions.

Subsec. (a)(1). Pub. L. 101–508, § 11801(c)(9)(B)(i)(II), struck out ''except as provided in section 422(c)(1),'' before ''no income''.

Subsec. (a)(2). Pub. L. 101–508, § 11801(c)(9)(B)(i)(III), substituted ''424(a)'' for ''425(a)''.

Subsec. (b). Pub. L. 101–508, § 11801(c)(9)(B)(ii), substituted ''422(a) or 423(a)'' for ''422(a), 422A(a), 423(a), or 424(a)'' and ''422(a)(1) or 423(a)(1),'' for ''422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1),''.

Subsec. (c)(1)(A). Pub. L. 101–508, § 11801(c)(9)(B)(iii)(I), substituted ''422(a) and 423(a)'' for ''422(a), 422A(a), 423(a), and 424(a)''.

Subsec. (c)(1)(B). Pub. L. 101–508, § 11801(c)(9)(B)(iii)(II), substituted ''section 423(c)'' for ''sections 423(c) and 424(c)(1)''.

Subsec. (c)(2), (3)(A). Pub. L. 101–508, § 11801(c)(9)(B)(iii)(III), substituted ''423(c)'' for ''422(c)(1), 423(c), or 424(c)(1)'' wherever appearing.

Subsec. (c)(3)(B). Pub. L. 101–508, § 11801(c)(9)(B)(iii)(IV), (V), substituted ''section 423(c)'' for ''sections 422(c)(1), 423(c), and 424(c)(1)'' and ''such section'' for ''such sections''.

1981—Subsecs. (a), (b), (c)(1)(A). Pub. L. 97–34 inserted references to section 422A(a) in subsecs. (a), (b), and (c)(1)(A) and to section 422A(a)(1) in subsec. (b).

1964—Pub. L. 88–272 amended section generally, and among other changes, inserted provisions relating to the effect of a qualifying transfer, and to the basis of shares acquired when an option is exercised by an estate, and omitted provisions relating to treatment of restricted stock options, a special rule where option price was between 85 percent and 95 percent of value of

stock, acquisition of new stock, definitions, modification, extension, or renewal of option, and corporate reorganizations, liquidations, etc. See sections 421 to 425 of this title.

1958—Subsec. (a). Pub. L. 85–866, §25, inserted sentence authorizing substitution of ''grantor corporation'' or ''corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable'' for ''employer corporation''.

Subsec. (d)(6)(C). Pub. L. 85–320 added subpar. (C).

Subsec. (d)(1)(A)(ii). Pub. L. 85–866, §26(a)(1), substituted ''in the case of a variable price option'' for ''in case the purchase price of the stock under the option is fixed or determinable under a formula in which the only variable is the value of the stock at any time during a period of 6 months which includes the time the option is exercised'' and inserted ''fair'' before ''market value''.

Subsec. (d)(7). Pub. L. 85–866, §26(a)(2), added par. (7).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §251(d), Oct. 22, 2004, 118 Stat. 1459, provided that: ''The amendments made by this section [amending this section, sections 423, 3121, 3231, and 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §905(b), Oct. 22, 2004, 118 Stat. 1653, provided that: ''The amendment made by this section [amending this section] shall apply to sales after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §221(e), Feb. 26, 1964, 78 Stat. 75, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting sections 422 to 425 and 6039, amending this section, sections 402, 691, 6652, 6678, and the analysis preceding sections 401 and 6031, and renumbering section 3039 as 3040 of this title] shall apply to taxable years ending after December 31, 1963.

''(2) The amendments made by paragraphs (1) and (3) of subsection (b) [enacting section 3039, renumbering former section 3039 as 3040, and amending section 6678 of this title] and paragraph (2) of section 6652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (2) of subsection (b)), shall apply to stock transferred pursuant to options exercised on or after January 1, 1964.

''(3) In the case of an option granted after December 31, 1963, and before January 1, 1965—

''(A) paragraphs (1) and (2) of section 422(b) of the Internal Revenue Code of 1986 (as added by subsection (a)), shall not apply, and

''(B) paragraph (1) of section 425(h) of such Code (as added by subsection (a)), shall not apply to any change in the terms of such option made before January 1, 1965, to permit such option to qualify under paragraphs (3), (4), and (5) of such section 422(b).''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 25 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, §26(b), Sept. 2, 1958, 72 Stat. 1624, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after September 30, 1958.''

Pub. L. 85–320, §3, Feb. 11, 1958, 72 Stat. 5, provided that: ''The amendments made by this Act [amending this section and section 1014 of this title] shall apply with respect to taxable years ending after December 31, 1956, but only in the case of employees dying after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 422. Incentive stock options

(a) In general

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an incentive stock option if—

(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 1 year after the transfer of such share to him, and

(2) at all times during the period beginning on the date of the granting of the option and ending on the day 3 months before the date of such exercise, such individual was an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) applies.

(b) Incentive stock option

For purposes of this part, the term ''incentive stock option'' means an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) the option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

(3) such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted;

(4) the option price is not less than the fair market value of the stock at the time such option is granted;

(5) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(6) such individual, at the time the option is granted, does not own stock possessing more

than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation.

Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option. Such term shall not include any option if an election is made under section 83(i) with respect to the stock received in connection with the exercise of such option.

(c) Special rules

(1) Good faith efforts to value stock

If a share of stock is transferred pursuant to the exercise by an individual of an option which would fail to qualify as an incentive stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b)(4), the requirement of subsection (b)(4) shall be considered to have been met. To the extent provided in regulations by the Secretary, a similar rule shall apply for purposes of subsection (d).

(2) Certain disqualifying dispositions where amount realized is less than value at exercise

If—

(A) an individual who has acquired a share of stock by the exercise of an incentive stock option makes a disposition of such share within either of the periods described in subsection (a)(1), and

(B) such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual,

then the amount which is includible in the gross income of such individual, and the amount which is deductible from the income of his employer corporation, as compensation attributable to the exercise of such option shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

(3) Certain transfers by insolvent individuals

If an insolvent individual holds a share of stock acquired pursuant to his exercise of an incentive stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary in any proceeding under title 11 or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of his creditors in such proceeding, shall constitute a disposition of such share for purposes of subsection (a)(1).

(4) Permissible provisions

An option which meets the requirements of subsection (b) shall be treated as an incentive stock option even if—

(A) the employee may pay for the stock with stock of the corporation granting the option,

(B) the employee has a right to receive property at the time of exercise of the option, or

(C) the option is subject to any condition not inconsistent with the provisions of subsection (b).

Subparagraph (B) shall apply to a transfer of property (other than cash) only if section 83 applies to the property so transferred.

(5) 10-percent shareholder rule

Subsection (b)(6) shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option and such option by its terms is not exercisable after the expiration of 5 years from the date such option is granted.

(6) Special rule when disabled

For purposes of subsection (a)(2), in the case of an employee who is disabled (within the meaning of section 22(e)(3)), the 3-month period of subsection (a)(2) shall be 1 year.

(7) Fair market value

For purposes of this section, the fair market value of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.

(d) $100,000 per year limitation

(1) In general

To the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to this subsection) are exercisable for the 1st time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) exceeds $100,000, such options shall be treated as options which are not incentive stock options.

(2) Ordering rule

Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(3) Determination of fair market value

For purposes of paragraph (1), the fair market value of any stock shall be determined as of the time the option with respect to such stock is granted.

(Added Pub. L. 97–34, title II, § 251(a), Aug. 13, 1981, 95 Stat. 256, § 422A; amended Pub. L. 97–448, title I, § 102(j)(1)–(4), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 98–369, div. A, title V, § 555(a)(1), div. B, title VI, § 2662(f)(1), July 18, 1984, 98 Stat. 897, 1159; Pub. L. 99–514, title III, § 321(a), (b), title XVIII, § 1847(b)(5), Oct. 22, 1986, 100 Stat. 2220, 2856; Pub. L. 100–647, title I, § 1003(d)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3384; renumbered § 422 and amended Pub. L. 101–508, title XI, § 11801(c)(9)(A)(i), (C), Nov. 5, 1990, 104 Stat. 1388–524, 1388–525; Pub. L. 115–97, title I, § 13603(c)(1)(A), Dec. 22, 2017, 131 Stat. 2163.)

PRIOR PROVISIONS

A prior section 422, added Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 64; amended Pub. L. 94–455, title VI, § 603(a), (b), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1574, 1834; Pub. L. 96–589, § 6(i)(3), Dec. 24, 1980, 94 Stat. 3410, related to qualified stock options, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(20), Nov. 5, 1990, 104 Stat. 1388–521. For savings provision, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97 inserted at end of concluding provisions ''Such term shall not include any

option if an election is made under section 83(i) with respect to the stock received in connection with the exercise of such option.''

1990—Pub. L. 101–508, §11801(c)(9)(A)(i), renumbered section 422A of this title as this section.

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(C)(i), substituted ''424(a)'' for ''425(a)''.

Subsec. (c)(5) to (8). Pub. L. 101–508, §11801(c)(9)(C)(ii), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) ''Coordination with sections 422 and 424'' which read as follows: ''Sections 422 and 424 shall not apply to an incentive stock option.''

1988—Subsec. (b). Pub. L. 100–647, §1003(d)(1)(A), inserted at end ''Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option.''

Subsec. (b)(7). Pub. L. 100–647, §1003(d)(2)(B), struck out par. (7) which read as follows: ''under the terms of the plan, the aggregate fair market value (determined at the time the option is granted) of the stock with respect to which incentive stock options are exercisable for the 1st time by such individual during any calendar year (under all such plans of the individual's employer corporation and its parent and subsidiary corporations) shall not exceed $100,000.''

Subsec. (c)(1). Pub. L. 100–647, §1003(d)(2)(C), substituted ''subsection (d)'' for ''paragraph (7) of subsection (b)''.

Subsec. (d). Pub. L. 100–647, §1003(d)(2)(A), added subsec. (d).

1986—Subsec. (b)(7). Pub. L. 99–514, §321(a), added par. (7) and struck out former par. (7) which read as follows: ''such option by its terms is not exercisable while there is outstanding (within the meaning of subsection (c)(7)) any incentive stock option which was granted, before the granting of such option, to such individual to purchase stock in his employer corporation or in a corporation which (at the time of the granting of such option) is a parent or subsidiary corporation of the employer corporation, or in a predecessor corporation of any of such corporations; and''.

Subsec. (b)(8). Pub. L. 99–514, §321(a), struck out par. (8) which read as follows: ''in the case of an option granted after December 31, 1980, under the terms of the plan the aggregate fair market value (determined as of the time the option is granted) of the stock for which any employee may be granted incentive stock options in any calendar year (under all such plans of his employer corporation and its parent and subsidiary corporation) shall not exceed $100,000 plus any unused limit carryover to such year.''

Subsec. (c)(1). Pub. L. 99–514, §321(b)(2), substituted ''paragraph (7) of subsection (b)'' for ''paragraph (8) of subsection (b) and paragraph (4) of this subsection''.

Subsec. (c)(4). Pub. L. 99–514, §321(b)(1), redesignated par. (5) as (4) and struck out former par. (4) relating to carryover of unused limit.

Subsec. (c)(5), (6). Pub. L. 99–514, §321(b)(1)(B), redesignated pars. (6) and (8) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (c)(7). Pub. L. 99–514, §321(b)(1), redesignated par. (9) as (7) and struck out former par. (7) which provided that for purposes of subsec. (b)(7) any incentive stock option be treated as outstanding until such option was exercised in full or expired by reason of lapse of time.

Subsec. (c)(8). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (10) as (8). Former par. (8) redesignated (6).

Subsec. (c)(9). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (9) as (7).

Pub. L. 99–514, §1847(b)(5), substituted ''section 22(e)(3)'' for ''section 37(e)(3)''.

Subsec. (c)(10). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (10) as (8).

1984—Subsec. (c)(9). Pub. L. 98–369, §2662(f)(1), substituted ''section 37(e)(3)'' for ''section 105(d)(4)''.

Subsec. (c)(10). Pub. L. 98–369, §555(a)(1), added par. (10).

1983—Subsec. (b)(8). Pub. L. 97–448, §102(j)(1), substituted ''granted incentive stock options'' for ''granted options''.

Subsec. (c)(1). Pub. L. 97–448, §102(j)(2), substituted ''Good faith efforts to value stock'' for ''Exercise of option when price is less than value of stock'' as par. (1) heading and inserted sentence providing that, to the extent provided in regulations by the Secretary, a rule similar to that already enunciated in the paragraph applies for purposes of par. (8) of subsec. (b) and par. (4) of subsec. (c).

Subsec. (c)(2)(A). Pub. L. 97–448, §102(j)(3), substituted ''either of the periods'' for ''the 2-year period''.

Subsec. (c)(4)(A)(ii). Pub. L. 97–448, §102(j)(4), substituted ''granted incentive stock options'' for ''granted options''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to stock attributable to options exercised, or restricted stock units settled, after Dec. 31, 2017, see section 13603(f)(1) of Pub. L. 115–97, set out as a note under section 83 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 OF 1986 AMENDMENT

Pub. L. 99–514, title III, §321(c), Oct. 22, 1986, 100 Stat. 2220, provided that: ''The amendments made by this section [amending this section] shall apply to options granted after December 31, 1986.''

Amendment by section 1847(b)(5) of 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 OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, §555(c)(1), July 18, 1984, 98 Stat. 898, as amended by Pub. L. 99–514, title XVIII, §1855(a)(1), Oct. 22, 1986, 100 Stat. 2882, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to options granted after March 20, 1984, except that such subsection shall not apply to any incentive stock option granted before September 20, 1984, pursuant to a plan adopted or corporate action taken by the board of directors of the grantor corporation before May 15, 1984.''

Amendment by section 2662 of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 97–34, title II, §251(c), Aug. 13, 1981, 95 Stat. 259, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) OPTIONS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [enacting this section and amending sections 421, 425 [now 424], and 6039 of this title] shall apply with respect to options granted on or after January 1, 1976, and exercised on or after January 1, 1981, or outstanding on such date.

''(B) ELECTION AND DESIGNATION OF OPTIONS.—In the case of an option granted before January 1, 1981, the

amendments made by this section shall apply only if the corporation granting such option elects (in the manner and at the time prescribed by the Secretary of the Treasury or his delegate) to have the amendments made by this section apply to such option. The aggregate fair market value (determined at the time the option is granted) of the stock for which any employee was granted options (under all plans of his employer corporation and its parent and subsidiary corporations) to which the amendments made by this section apply by reason of this subparagraph shall not exceed $50,000 per calendar year ans shall not exceed $200,000 in the aggregate.

''(2) CHANGES IN TERMS OF OPTIONS.—In the case of an option granted on or after January 1, 1976, and outstanding on the date of the enactment of this Act [Aug. 13, 1981], paragraph (1) of section 425(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any change in the terms of such option (or the terms of the plan under which granted, including shareholder approval) made within 1 year after such date of enactment to permit such option to qualify as a incentive stock option.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TREATMENT OF OPTIONS AS INCENTIVE STOCK OPTIONS

Pub. L. 100–647, title I, § 1003(d)(1)(B), Nov. 10, 1988, 102 Stat. 3384, provided that: ''In the case of an option granted after December 31, 1986, and on or before the date of the enactment of this Act [Nov. 10, 1988], such option shall not be treated as an incentive stock option if the terms of such option are amended before the date 90 days after such date of enactment to provide that such option will not be treated as an incentive stock option.''

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.

[§ 422A. Renumbered § 422]

§ 423. Employee stock purchase plans

(a) General rule

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted under an employee stock purchase plan (as defined in subsection (b)) if—

(1) no disposition of such share is made by him within 2 years after the date of the granting of the option nor within 1 year after the transfer of such share to him; and

(2) at all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, he is an employee of the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) applies.

(b) Employee stock purchase plan

For purposes of this part, the term ''employee stock purchase plan'' means a plan which meets the following requirements:

(1) the plan provides that options are to be granted only to employees of the employer corporation or of its parent or subsidiary corporation to purchase stock in any such corporation;

(2) such plan is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(3) under the terms of the plan, no employee can be granted an option if such employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For purposes of this paragraph, the rules of section 424(d) shall apply in determining the stock ownership of an individual, and stock which the employee may purchase under outstanding options shall be treated as stock owned by the employee;

(4) under the terms of the plan, options are to be granted to all employees of any corporation whose employees are granted any of such options by reason of their employment by such corporation, except that there may be excluded—

(A) employees who have been employed less than 2 years,

(B) employees whose customary employment is 20 hours or less per week,

(C) employees whose customary employment is for not more than 5 months in any calendar year, and

(D) highly compensated employees (within the meaning of section 414(q));

(5) under the terms of the plan, all employees granted such options shall have the same rights and privileges, except that the amount of stock which may be purchased by any employee under such option may bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees, the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan, and the rules of section 83(i) shall apply in determining which employees have a right to make an election under such section;

(6) under the terms of the plan, the option price is not less than the lesser of—

(A) an amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or

(B) an amount which under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time such option is exercised;

(7) under the terms of the plan, such option cannot be exercised after the expiration of—

(A) 5 years from the date such option is granted if, under the terms of such plan, the

option price is to be not less than 85 percent of the fair market value of such stock at the time of the exercise of the option, or

(B) 27 months from the date such option is granted, if the option price is not determinable in the manner described in subparagraph (A);

(8) under the terms of the plan, no employee may be granted an option which permits his rights to purchase stock under all such plans of his employer corporation and its parent and subsidiary corporations to accrue at a rate which exceeds $25,000 of fair market value of such stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time. For purposes of this paragraph—

(A) the right to purchase stock under an option accrues when the option (or any portion thereof) first becomes exercisable during the calendar year;

(B) the right to purchase stock under an option accrues at the rate provided in the option, but in no case may such rate exceed $25,000 of fair market value of such stock (determined at the time such option is granted) for any one calendar year; and

(C) a right to purchase stock which has accrued under one option granted pursuant to the plan may not be carried over to any other option; and

(9) under the terms of the plan, such option is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

For purposes of paragraphs (3) to (9), inclusive, where additional terms are contained in an offering made under a plan, such additional terms shall, with respect to options exercised under such offering, be treated as a part of the terms of such plan.

(c) Special rule where option price is between 85 percent and 100 percent of value of stock

If the option price of a share of stock acquired by an individual pursuant to a transfer to which subsection (a) applies was less than 100 percent of the fair market value of such share at the time such option was granted, then, in the event of any disposition of such share by him which meets the holding period requirements of subsection (a), or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies, an amount equal to the lesser of—

(1) the excess of the fair market value of the share at the time of such disposition or death over the amount paid for the share under the option, or

(2) the excess of the fair market value of the share at the time the option was granted over the option price.

If the option price is not fixed or determinable at the time the option is granted, then for purposes of this subsection, the option price shall be determined as if the option were exercised at such time. In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income. No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.

(d) Coordination with qualified equity grants

An option for which an election is made under section 83(i) with respect to the stock received in connection with its exercise shall not be considered as granted pursuant an employee stock purchase plan.

(Added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 67; amended Pub. L. 94–455, title XIV, §1402(b)(1)(E), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98–369, div. A, title X, §1001(b)(5), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title XI, §1114(b)(13), Oct. 22, 1986, 100 Stat. 2451; Pub. L. 101–508, title XI, §11801(c)(9)(D), (E), Nov. 5, 1990, 104 Stat. 1388–525; Pub. L. 108–357, title II, §251(c), Oct. 22, 2004, 118 Stat. 1459; Pub. L. 113–295, div. A, title II, §221(a)(56), Dec. 19, 2014, 128 Stat. 4046; Pub. L. 115–97, title I, §13603(c)(1)(B), Dec. 22, 2017, 131 Stat. 2164.)

AMENDMENTS

2017—Subsec. (b)(5). Pub. L. 115–97, §13603(c)(1)(B)(i), struck out ''and'' before ''the plan may provide'' and inserted '', and the rules of section 83(i) shall apply in determining which employees have a right to make an election under such section'' before semicolon at end.

Subsec. (d). Pub. L. 115–97, §13603(c)(1)(B)(ii), added subsec. (d).

2014—Subsec. (a). Pub. L. 113–295 struck out ''after December 31, 1963,'' after ''option granted'' in introductory provisions.

2004—Subsec. (c). Pub. L. 108–357 inserted at end of concluding provisions ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.''

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(9)(D)(i), struck out ''(other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B))'' after ''December 31, 1963''.

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(D)(ii), substituted ''424(a)'' for ''425(a)''.

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(9)(E), substituted ''424(d)'' for ''425(d)''.

1986—Subsec. (b)(4)(D). Pub. L. 99–514 substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees''.

1984—Subsec. (a)(1). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (a)(1). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(E), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to stock attributable to options exercised, or restricted stock units settled, after Dec. 31, 2017, see section 13603(f)(1) of Pub. L. 115–97, set out as a note under section 83 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, § 1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K 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.

§ 424. Definitions and special rules

(a) Corporate reorganizations, liquidations, etc.

For purposes of this part, the term ''issuing or assuming a stock option in a transaction to which section 424(a) applies'' means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation, if—

(1) the excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and

(2) the new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

For purposes of this subsection, the parent-subsidiary relationship shall be determined at the time of any such transaction under this subsection.

(b) Acquisition of new stock

For purposes of this part, if stock is received by an individual in a distribution to which section 305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(c) Disposition

(1) In general

Except as provided in paragraphs (2), (3), and (4), for purposes of this part, the term ''disposition'' includes a sale, exchange, gift, or a transfer of legal title, but does not include—

(A) a transfer from a decedent to an estate or a transfer by bequest or inheritance;

(B) an exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(C) a mere pledge or hypothecation.

(2) Joint tenancy

The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(3) Special rule where incentive stock is acquired through use of other statutory option stock

(A) Nonrecognition sections not to apply

If—

(i) there is a transfer of statutory option stock in connection with the exercise of any incentive stock option, and

(ii) the applicable holding period requirements (under section 422(a)(1) or 423(a)(1)) are not met before such transfer,

then no section referred to in subparagraph (B) of paragraph (1) shall apply to such transfer.

(B) Statutory option stock

For purpose of subparagraph (A), the term ''statutory option stock'' means any stock acquired through the exercise of an incentive stock option or an option granted under an employee stock purchase plan.

(4) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

(A) such transfer shall not be treated as a disposition for purposes of this part, and

(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(d) Attribution of stock ownership

For purposes of this part, in applying the percentage limitations of sections 422(b)(6) and 423(b)(3)—

(1) the individual with respect to whom such limitation is being determined shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(2) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

(e) Parent corporation

For purposes of this part, the term ''parent corporation'' means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(f) Subsidiary corporation

For purposes of this part, the term ''subsidiary corporation'' means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(g) Special rule for applying subsections (e) and (f)

In applying subsections (e) and (f) for purposes of section [1] 422(a)(2) and 423(a)(2), there shall be substituted for the term ''employer corporation'' wherever it appears in subsections (e) and (f) the term ''grantor corporation'' or the term ''corporation issuing or assuming a stock option in a transaction to which section 424(a) applies'', as the case may be.

(h) Modification, extension, or renewal of option

(1) In general

For purposes of this part, if the terms of any option to purchase stock are modified, extended, or renewed, such modification, extension, or renewal shall be considered as the granting of a new option.

(2) Special rule for section 423 options

In the case of the transfer of stock pursuant to the exercise of an option to which section 423 applies and which has been so modified, extended, or renewed, the fair market value of such stock at the time of the granting of the option shall be considered as whichever of the following is the highest—

(A) the fair market value of such stock on the date of the original granting of the option,

(B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or

(C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal.

(3) Definition of modification

The term ''modification'' means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option—

(A) attributable to the issuance or assumption of an option under subsection (a);

(B) to permit the option to qualify under section 423(b)(9); or

(C) in the case of an option not immediately exercisable in full, to accelerate the time at which the option may be exercised.

(i) Stockholder approval

For purposes of this part, if the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(j) Cross references

For provisions requiring the reporting of certain acts with respect to a qualified stock option, an incentive stock option, options granted under employer stock purchase plans, or a restricted stock option, see section 6039.

(Added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 71, §425; amended Pub. L. 97–34, title II, §251(b)(2)–(4), Aug. 13, 1981, 95 Stat. 259; Pub. L. 97–448, title I, §102(j)(5), (6), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 98–369, div. A, title V, §555(b), July 18, 1984, 98 Stat. 898; Pub. L. 100–647, title I, §1018(*l*)(1), (2), Nov. 10, 1988, 102 Stat. 3584; Pub. L. 101–239, title VII, §7811(m)(6), Dec. 19, 1989, 103 Stat. 2412; renumbered §424 and amended Pub. L. 101–508, title XI, §11801(c)(9)(A)(i), (F), Nov. 5, 1990, 104 Stat. 1388–524, 1388–525; Pub. L. 104–188, title I, §1702(h)(13), Aug. 20, 1996, 110 Stat. 1874.)

PRIOR PROVISIONS

A prior section 424, added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 69; amended Pub. L. 94–455, title VI, §603(c), title XIV, §1402(b)(1)(F), (2), Oct. 4, 1976, 90 Stat. 1574, 1732, related to restricted stock options, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(21), Nov. 5, 1990, 104 Stat. 1388–521. For savings provisions, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMENDMENTS

1996—Subsec. (c)(3)(B). Pub. L. 104–188 substituted ''an incentive stock option or an option granted under an

[1] So in original. Probably should be ''sections''.

employee stock purchase plan'' for ''a qualified stock option, an incentive stock option, an option granted under an employee stock purchase plan, or a restricted stock option''.

1990—Pub. L. 101–508, §11801(c)(9)(A)(i), renumbered section 425 of this title as this section.

Subsec. (a). Pub. L. 101–508, §11801(c)(9)(F)(i), substituted ''424(a)'' for ''425(a)''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–508, §11801(c)(9)(F)(ii), substituted ''422(a)(1) or 423(a)(1)'' for ''422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)''.

Subsec. (d). Pub. L. 101–508, §11801(c)(9)(F)(iii), substituted ''422(b)(6) and 423(b)(3)'' for ''422(b)(7), 422A(b)(6), 423(b)(3), and 424(b)(3)''.

Subsec. (g). Pub. L. 101–508, §11801(c)(9)(F)(iv), substituted ''422(a)(2) and 423(a)(2)'' for ''422(a)(2), 422A(a)(2), 423(a)(2), and 424(a)(2)'' and ''424(a)'' for ''425(a)''.

Subsec. (h)(2). Pub. L. 101–508, §11801(c)(9)(F)(v)(I), added par. (2) and struck out former par. (2) which related to special rules for sections 423 and 424 options and to an exception that such rules would not apply with respect to a modification, extension or renewal of a restricted stock option before Jan. 1, 1964, if the aggregate of the monthly fair market value for 12 consecutive months before date of modification, etc., divided by 12 is an amount less than 80% of the fair market value of such stock on the date of original granting or the date of modification, etc., whichever is higher.

Subsec. (h)(3). Pub. L. 101–508, §11801(c)(9)(F)(v)(III), struck out at end ''If a restricted stock option is exercisable after the expiration of 10 years from the date such option is granted, subparagraph (B) shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.''

Subsec. (h)(3)(B). Pub. L. 101–508, §11801(c)(9)(F)(v)(II), substituted ''section 423(b)(9)'' for ''sections 422(b)(6), 423(b)(9), and 424(b)(2)''.

1989—Subsec. (c)(1). Pub. L. 101–239 made technical correction to Pub. L. 100–647, §1018(*l*)(2), see 1988 Amendment note below.

1988—Subsec. (c)(1). Pub. L. 100–647, §1018(*l*)(2), as amended by Pub. L. 101–239, substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (c)(4). Pub. L. 100–647, §1018(*l*)(1), added par. (4).

1984—Subsec. (h)(3)(B). Pub. L. 98–369 struck out reference to section 422A(b)(5).

1983—Subsec. (c)(1). Pub. L. 97–448, §102(j)(6)(B), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (c)(3). Pub. L. 97–448, §102(j)(6)(A), added par. (3).

Subsec. (j). Pub. L. 97–448, §102(j)(5), inserted reference to an incentive stock option.

1981—Subsec. (d). Pub. L. 97–34, §251(b)(2), inserted reference to section 422A(b)(6).

Subsec. (g). Pub. L. 97–34, §251(b)(3), inserted reference to section 422A(a)(2).

Subsec. (h)(3)(B). Pub. L. 97–34, §251(b)(4), inserted reference to section 422A(b)(5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 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 OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, §555(c)(3), July 18, 1984, 98 Stat. 898, as amended by Pub. L. 99–514, title XVIII, §1855(a)(4), Oct. 22, 1986, 100 Stat. 2882, provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to modifications of options after March 20, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title I, §102(j)(6), Jan. 12, 1983, 96 Stat. 2373, provided that the amendment made by that section is effective only with respect to transfers after March 15, 1982.

Amendment by section 102(j)(5) of title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, except in cases of options granted after Dec. 31, 1963, and before Jan. 1, 1965, in which case par. (1) of subsec. (h) shall not apply to any change in the terms of such option made before Jan. 1, 1965, to permit such option to qualify under pars. (3), (4), and (5) of section 422(b), see section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 425. Renumbered § 424]

PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS

Subpart

A. Minimum funding standards for pension plans.

B. Benefit limitations under single-employer plans.

AMENDMENTS

2006—Pub. L. 109–280, title I, §113(a)(1)(A), Aug. 17, 2006, 120 Stat. 846, substituted ''RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS'' for ''MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS'' in part heading and added subpart analysis.

SUBPART A—MINIMUM FUNDING STANDARDS FOR PENSION PLANS

Sec.

430. Minimum funding standards for single-employer defined benefit pension plans.

AMENDMENTS

2006—Pub. L. 109–280, title II, § 212(d), Aug. 17, 2006, 120 Stat. 917, added item 432.

§ 430. Minimum funding standards for single-employer defined benefit pension plans

(a) Minimum required contribution

For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term ''minimum required contribution'' means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan—

(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by such excess.

(b) Target normal cost

For purposes of this section:

(1) In general

Except as provided in subsection (i)(2) with respect to plans in at-risk status, the term ''target normal cost'' means, for any plan year, the excess of—

(A) the sum of—

(i) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, plus

(ii) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(B) the amount of mandatory employee contributions expected to be made during the plan year.

(2) Special rule for increase in compensation

For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

(c) Shortfall amortization charge

(1) In general

For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total (not less than zero) of the shortfall amortization installments for such plan year with respect to any shortfall amortization base which has not been fully amortized under this subsection.

(2) Shortfall amortization installment

For purposes of paragraph (1)—

(A) Determination

The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

(B) Shortfall installment

The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(C) Segment rates

In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(D) Special election for eligible plan years

(i) In general

If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an ''election year''), then, notwithstanding subparagraphs (A) and (B)—

(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

(ii) 2 plus 7 amortization schedule

The shortfall amortization installments determined under this clause are—

(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts

[1] Editorially supplied. Section 431 added by Pub. L. 109–280 without corresponding amendment of subpart analysis.

[2] Editorially supplied. Section 433 added by Pub. L. 113–97 without corresponding amendment of subpart analysis.

necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

(iii) 15-year amortization

The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

(iv) Election

(I) In general

The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

(II) Amortization schedule

Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

(III) Other rules

Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary, and may be revoked only with the consent of the Secretary. The Secretary shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

(v) Eligible plan year

For purposes of this subparagraph, the term ''eligible plan year'' means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph.

(vi) Reporting

A plan sponsor of a plan who makes an election under clause (i) shall—

(I) give notice of the election to participants and beneficiaries of the plan, and

(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

(vii) Increases in required installments in certain cases

For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).

(3) Shortfall amortization base

For purposes of this section, the shortfall amortization base of a plan for a plan year is—

(A) the funding shortfall of such plan for such plan year, minus

(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

(4) Funding shortfall

For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

(A) the funding target of the plan for the plan year, over

(B) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

(5) Exemption from new shortfall amortization base

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

(6) Early deemed amortization upon attainment of funding target

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

(7) Increases in alternate required installments in cases of excess compensation or extraordinary dividends or stock redemptions

(A) In general

If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

(B) Total installments limited to shortfall base

Subject to rules prescribed by the Secretary, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)—

(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

(C) Installment acceleration amount

For purposes of this paragraph—

(i) In general

The term ''installment acceleration amount'' means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

(ii) Annual limitation

The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

(iii) Carryover of excess installment acceleration amounts

(I) In general

If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

(II) Cap to apply

If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.

(III) Limitation on years to which amounts carried for

No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

(IV) Ordering rules

For purposes of applying subclause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause) shall be applied first against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

(D) Excess employee compensation

For purposes of this paragraph—

(i) In general

The term ''excess employee compensation'' means, with respect to any employee for any plan year, the excess (if any) of—

(I) the aggregate amount includible in income under this chapter for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

(II) $1,000,000.

(ii) Amounts set aside for nonqualified deferred compensation

If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

(iii) Only remuneration for certain post-2009 services counted

Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

(iv) Exception for certain equity payments

(I) In general

There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of section 409A) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1)) for at least 5 years from the date of such grant.

(II) Secretarial authority

The Secretary may by regulation provide for the application of this clause in the case of a person other than a corporation.

(v) Other exceptions

The following amounts includible in income shall not be taken into account under clause (i)(I):

(I) Commissions

Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

(II) Certain payments under existing contracts

Any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and which was not modified in any material respect before such remuneration is paid.

(vi) Self-employed individual treated as employee

The term ''employee'' includes, with respect to a calendar year, a self-employed individual who is treated as an employee under section 401(c) for the taxable year ending during such calendar year, and the term ''compensation'' shall include earned income of such individual with respect to such self-employment.

(vii) Indexing of amount

In the case of any calendar year beginning after 2010, the dollar amount under clause (i)(II) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2009'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

If the amount of any increase under clause (i) is not a multiple of $1,000, such increase shall be rounded to the next lowest multiple of $1,000.

(E) Extraordinary dividends and redemptions

(i) In general

The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

(I) the adjusted net income (within the meaning of section 4043 of the Employee Retirement Income Security Act of 1974) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization, or

(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

(ii) Only certain post-2009 dividends and redemptions counted

For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

(iii) Exception for intra-group dividends

Dividends paid by one member of a controlled group (as defined in section 412(d)(3)) to another member of such group shall not be taken into account under clause (i).

(iv) Exception for certain redemptions

Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

(v) Exception for certain preferred stock

(I) In general

Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor's income, and interest accrues on any unpaid dividends with respect to such stock.

(II) Applicable preferred stock

For purposes of subclause (I), the term ''applicable preferred stock'' means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of title I of[1] Employee Retirement Income Security Act of 1974).

[1] So in original. Probably should be followed by ''the''.

(F) Other definitions and rules

For purposes of this paragraph—

(i) Plan sponsor

The term ''plan sponsor'' includes any member of the plan sponsor's controlled group (as defined in section 412(d)(3)).

(ii) Restriction period

The term ''restriction period'' means, with respect to any election year—

(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

(II) if the plan sponsor elects 15-year amortization for the shortfall amortization base for the election year, the 5-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009).

(iii) Elections for multiple plans

If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan's relative reduction in the plan's shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

(iv) Mergers and acquisitions

The Secretary shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).

(d) Rules relating to funding target

For purposes of this section—

(1) Funding target

Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

(2) Funding target attainment percentage

The ''funding target attainment percentage'' of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

(e) Waiver amortization charge

(1) Determination of waiver amortization charge

The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

(2) Waiver amortization installment

For purposes of paragraph (1)—

(A) Determination

The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

(B) Waiver installment

The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(3) Interest rate

In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(4) Waiver amortization base

The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(c).

(5) Early deemed amortization upon attainment of funding target

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to such bases) shall be reduced to zero.

(f) Reduction of minimum required contribution by prefunding balance and funding standard carryover balance

(1) Election to maintain balances

(A) Prefunding balance

The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a prefunding balance.

(B) Funding standard carryover balance

(i) In general

In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(ii) Plans maintaining funding standard account in 2007

A plan is described in this clause if the plan—

(I) was in effect for a plan year beginning in 2007, and

(II) had a positive balance in the funding standard account under section 412(b)

as in effect for such plan year and determined as of the end of such plan year.

(2) Application of balances

A prefunding balance and a funding standard carryover balance maintained pursuant to this paragraph—

(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

(C) may be reduced at any time, pursuant to an election under paragraph (5).

(3) Election to apply balances against minimum required contribution

(A) In general

Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the prefunding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced as of the first day of the plan year by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

(B) Coordination with funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the prefunding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

(C) Limitation for underfunded plans

The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), bears to

(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent. In the case of plan years beginning in 2008, the ratio under this subparagraph may be determined using such methods of estimation as the Secretary may prescribe.

(D) Special rule for certain years of plans maintained by charities

(i) In general

For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year of a plan shall be the greater of—

(I) such ratio, as determined without regard to this subsection, or

(II) the ratio for such plan for the plan year beginning after August 31, 2007 and before September 1, 2008, as determined under rules prescribed by the Secretary.

(ii) Special rule

In the case of a plan for which the valuation date is not the first day of the plan year—

(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary.

(iii) Limitation to charities

This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3).

(4) Effect of balances on amounts treated as value of plan assets

In the case of any plan maintaining a prefunding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

(A) Applicability of shortfall amortization base

For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance, but only if an election under paragraph (3) applying any portion of the prefunding balance in reducing the minimum required contribution is in effect for the plan year.

(B) Determination of excess assets, funding shortfall, and funding target attainment percentage

(i) In general

For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance and the funding standard carryover balance.

(ii) Special rule for certain binding agreements with PBGC

For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term ''specified balance'' means the prefunding balance or the funding standard carryover balance, as the case may be.

(C) Availability of balances in plan year for crediting against minimum required contribution

For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is

deemed to be such amount, reduced by the amount of the prefunding balance.

(5) Election to reduce balance prior to determinations of value of plan assets and crediting against minimum required contribution

(A) In general

The plan sponsor may elect to reduce by any amount the balance of the prefunding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

(B) Coordination between prefunding balance and funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the prefunding balance.

(6) Prefunding balance

(A) In general

A prefunding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

(B) Increases

(i) In general

As of the first day of each plan year beginning after 2008, the prefunding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

(I) the aggregate total of employer contributions to the plan for the preceding plan year, over—

(II) the minimum required contribution for such preceding plan year.

(ii) Adjustments for interest

Any excess contributions under clause (i) shall be properly adjusted for interest accruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

(iii) Certain contributions necessary to avoid benefit limitations disregarded

The excess described in clause (i) with respect to any preceding plan year shall be reduced (but not below zero) by the amount of contributions an employer would be required to make under subsection (b), (c), or (e) of section 436 to avoid a benefit limitation which would otherwise be imposed under such paragraph for the preceding plan year. Any contribution which may be taken into account in satisfying the requirements of more than 1 of such paragraphs shall be taken into account only once for purposes of this clause.

(C) Decreases

The prefunding balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(7) Funding standard carryover balance

(A) In general

A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

(B) Beginning balance

The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

(C) Decreases

The funding standard carryover balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(8) Adjustments for investment experience

In determining the prefunding balance or the funding standard carryover balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

(9) Elections

Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

(g) Valuation of plan assets and liabilities

(1) Timing of determinations

Except as otherwise provided under this subsection, all determinations under this section

for a plan year shall be made as of the valuation date of the plan for such plan year.

(2) Valuation date

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

(B) Exception for small plans

If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

(C) Application of certain rules in determination of plan size

For purposes of this paragraph—

(i) Plans not in existence in preceding year

In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

(ii) Predecessors

Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

(3) Determination of value of plan assets

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

(B) Averaging allowed

A plan may determine the value of plan assets on the basis of the averaging of fair market values, but only if such method—

(i) is permitted under regulations prescribed by the Secretary,

(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 25th month preceding the month in which the valuation date occurs and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month), and

(iii) does not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

Any such averaging shall be adjusted for contributions, distributions, and expected earnings (as determined by the plan's actuary on the basis of an assumed earnings rate specified by the actuary but not in excess of the third segment rate applicable under subsection (h)(2)(C)(iii)), as specified by the Secretary.

(4) Accounting for contribution receipts

For purposes of determining the value of assets under paragraph (3)—

(A) Prior year contributions

If—

(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2008, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

(B) Special rule for current year contributions made before valuation date

If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

(i) such contributions, and

(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

(h) Actuarial assumptions and methods

(1) In general

Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(2) Interest rates

(A) Effective interest rate

For purposes of this section, the term ''effective interest rate'' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's accrued or earned benefits referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

(B) Interest rates for determining funding target

For purposes of determining the funding target and target normal cost of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be—

(i) in the case of benefits reasonably determined to be payable during the 5-year period beginning on the valuation date for the plan year, the first segment rate with respect to the applicable month,

(ii) in the case of benefits reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

(iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

(C) Segment rates

For purposes of this paragraph—

(i) First segment rate

The term ''first segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

(ii) Second segment rate

The term ''second segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

(iii) Third segment rate

The term ''third segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

(iv) Segment rate stabilization

(I) In general

If a segment rate described in clause (i), (ii), or (iii) with respect to any applicable month (determined without regard to this clause) is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the segment rates described in such clause for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate described in such clause with respect to the applicable month shall be equal to the applicable minimum percentage or the applicable maximum percentage of such average, whichever is closest. The Secretary shall determine such average on an annual basis and may prescribe equivalent rates for years in any such 25-year period for which the rates described in any such clause are not available.

(II) Applicable minimum percentage; applicable maximum percentage

For purposes of subclause (I), the applicable minimum percentage and the applicable maximum percentage for a plan year beginning in a calendar year shall be determined in accordance with the following table:

If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020	90%	110%
2021	85%	115%
2022	80%	120%
2023	75%	125%
After 2023	70%	130%

(D) Corporate bond yield curve

For purposes of this paragraph—

(i) In general

The term ''corporate bond yield curve'' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top 3 quality levels available.

(ii) Election to use yield curve

Solely for purposes of determining the minimum required contribution under this section, the plan sponsor may, in lieu of the segment rates determined under subparagraph (C), elect to use interest rates under the corporate bond yield curve. For purposes of the preceding sentence such curve shall be determined without regard to the 24-month averaging described in clause (i). Such election, once made, may be revoked only with the consent of the Secretary.

(E) Applicable month

For purposes of this paragraph, the term ''applicable month'' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

(F) Publication requirements

The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the

modification described in section 417(e)(3)(D)(i)[2] for such month) and each of the rates determined under subparagraph (C) and the averages determined under subparagraph (C)(iv) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

(3) Mortality tables

(A) In general

Except as provided in subparagraph (C) or (D), the Secretary shall by regulation prescribe mortality tables to be used in determining any present value or making any computation under this section. Such tables shall be based on the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(B) Periodic revision

The Secretary shall (at least every 10 years) make revisions in any table in effect under subparagraph (A) to reflect the actual experience of pension plans and projected trends in such experience.

(C) Substitute mortality table

(i) In general

Upon request by the plan sponsor and approval by the Secretary, a mortality table which meets the requirements of clause (iii) shall be used in determining any present value or making any computation under this section during the period of consecutive plan years (not to exceed 10) specified in the request.

(ii) Early termination of period

Notwithstanding clause (i), a mortality table described in clause (i) shall cease to be in effect as of the earliest of—

(I) the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or

(II) the date on which the plan actuary determines that such table does not meet the requirements of clause (iii).

(iii) Requirements

A mortality table meets the requirements of this clause if—

(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II), and

(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience.

(iv) All plans in controlled group must use separate table

Except as provided by the Secretary, a plan sponsor may not use a mortality table under this subparagraph for any plan maintained by the plan sponsor unless—

(I) a separate mortality table is established and used under this subparagraph for each other plan maintained by the plan sponsor and if the plan sponsor is a member of a controlled group, each member of the controlled group, and

(II) the requirements of clause (iii) are met separately with respect to the table so established for each such plan, determined by only taking into account the participants of such plan, the time such plan has been in existence, and the actual experience of such plan.

(v) Deadline for submission and disposition of application

(I) Submission

The plan sponsor shall submit a mortality table to the Secretary for approval under this subparagraph at least 7 months before the 1st day of the period described in clause (i).

(II) Disposition

Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect as of the 1st day of the period described in clause (i) unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (iii). The 180-day period shall be extended upon mutual agreement of the Secretary and the plan sponsor.

(D) Separate mortality tables for the disabled

Notwithstanding subparagraph (A)—

(i) In general

The Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(ii) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(iii) Periodic revision

The Secretary shall (at least every 10 years) make revisions in any table in ef-

[2] See References in Text note below.

fect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

(4) Probability of benefit payments in the form of lump sums or other optional forms

For purposes of determining any present value or making any computation under this section, there shall be taken into account—

(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

(5) Approval of large changes in actuarial assumptions

(A) In general

No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary.

(B) Plans to which paragraph applies

This paragraph shall apply to a plan only if—

(i) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

(i) Special rules for at-risk plans

(1) Funding target for plans in at-risk status

(A) In general

In the case of a plan which is in at-risk status for a plan year, the funding target of the plan for the plan year shall be equal to the sum of—

(i) the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B), and

(ii) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor determined under subparagraph (C).

(B) Additional actuarial assumptions

The actuarial assumptions described in this subparagraph are as follows:

(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 10 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk funding target and at-risk target normal cost are being determined.

(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result in the highest present value of benefits.

(C) Loading factor

The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

(i) $700, times the number of participants in the plan, plus

(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

(2) Target normal cost of at-risk plans

In the case of a plan which is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be equal to the sum of—

(A) the excess of—

(i) the sum of—

(I) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus

(II) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(ii) the amount of mandatory employee contributions expected to be made during the plan year, plus

(B) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor equal to 4 percent of the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year.

(3) Minimum amount

In no event shall—

(A) the at-risk funding target be less than the funding target, as determined without regard to this subsection, or

(B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

(4) Determination of at-risk status

For purposes of this subsection—

(A) In general

A plan is in at-risk status for a plan year if—

(i) the funding target attainment percentage for the preceding plan year (determined under this section without regard to this subsection) is less than 80 percent, and

(ii) the funding target attainment percentage for the preceding plan year (determined under this section by using the additional actuarial assumptions described in paragraph (1)(B) in computing the funding target) is less than 70 percent.

(B) Transition rule

In the case of plan years beginning in 2008, 2009, and 2010, subparagraph (A)(i) shall be applied by substituting the following percentages for ''80 percent'':

(i) 65 percent in the case of 2008.

(ii) 70 percent in the case of 2009.

(iii) 75 percent in the case of 2010.

In the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year under subparagraph (A) may be determined using such methods of estimation as the Secretary may provide.

(C) Special rule for employees offered early retirement in 2006

(i) In general

For purposes of subparagraph (A)(ii), the additional actuarial assumptions described in paragraph (1)(B) shall not be taken into account with respect to any employee if—

(I) such employee is employed by a specified automobile manufacturer,

(II) such employee is offered a substantial amount of additional cash compensation, substantially enhanced retirement benefits under the plan, or materially reduced employment duties on the condition that by a specified date (not later than December 31, 2010) the employee retires (as defined under the terms of the plan),

(III) such offer is made during 2006 and pursuant to a bona fide retirement incentive program and requires, by the terms of the offer, that such offer can be accepted not later than a specified date (not later than December 31, 2006), and

(IV) such employee does not elect to accept such offer before the specified date on which the offer expires.

(ii) Specified automobile manufacturer

For purposes of clause (i), the term ''specified automobile manufacturer'' means—

(I) any manufacturer of automobiles, and

(II) any manufacturer of automobile parts which supplies such parts directly to a manufacturer of automobiles and which, after a transaction or series of transactions ending in 1999, ceased to be a member of a controlled group which included such manufacturer of automobiles.

(5) Transition between applicable funding targets and between applicable target normal costs

(A) In general

In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

(i) the amount determined under this section without regard to this subsection, plus

(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

(B) Transition percentage

For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

If the consecutive number of years (including the plan year) the plan is in at-risk status is—	The transition percentage is—
1	20
2	40
3	60
4	80.

(C) Years before effective date

For purposes of this paragraph, plan years beginning before 2008 shall not be taken into account.

(6) Small plan exception

If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan shall not be treated as in at-risk status for the plan year. For purposes of this paragraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account and the rules of subsection (g)(2)(C) shall apply.

(j) Payment of minimum required contributions

(1) In general

For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

(2) Interest

Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

(3) Accelerated quarterly contribution schedule for underfunded plans

(A) Failure to timely make required installment

In any case in which the plan has a funding shortfall for the preceding plan year, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points. In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

(B) Amount of underpayment, period of underpayment

For purposes of subparagraph (A)—

(i) Amount

The amount of the underpayment shall be the excess of—

(I) the required installment, over

(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(ii) Period of underpayment

The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

(iii) Order of crediting contributions

For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) Number of required installments; due dates

For purposes of this paragraph—

(i) Payable in 4 installments

There shall be 4 required installments for each plan year.

(ii) Time for payment of installments

The due dates for required installments are set forth in the following table:

In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

(D) Amount of required installment

For purposes of this paragraph—

(i) In general

The amount of any required installment shall be 25 percent of the required annual payment.

(ii) Required annual payment

For purposes of clause (i), the term ''required annual payment'' means the lesser of—

(I) 90 percent of the minimum required contribution (determined without regard to this subsection) to the plan for the plan year under this section, or

(II) 100 percent of the minimum required contribution (determined without regard to this subsection or to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

(E) Fiscal years, short years, and years with alternate valuation date

(i) Fiscal years

In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

(ii) Short plan year

This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

(iii) Plan with alternate valuation date

The Secretary shall prescribe regulations for the application of this paragraph in the case of a plan which has a valuation date other than the first day of the plan year.

(F) Quarterly contributions not to include certain increased contributions

Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).

(4) Liquidity requirement in connection with quarterly contributions

(A) In general

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies

This paragraph shall apply to a plan (other than a plan described in subsection (g)(2)(B)) which—

(i) is required to pay installments under paragraph (3) for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment

For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the

quarter in which the due date for such installment occurs.

(D) Limitation on increase

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall

The term ''liquidity shortfall'' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

(I) the base amount with respect to such quarter, over

(II) the value (as of such last day) of the plan's liquid assets.

(ii) Base amount

(I) In general

The term ''base amount'' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule

If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan

The term ''disbursements from the plan'' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements

The term ''adjusted disbursements'' means disbursements from the plan reduced by the product of—

(I) the plan's funding target attainment percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

(v) Liquid assets

The term ''liquid assets'' means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

(vi) Quarter

The term ''quarter'' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) Regulations

The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

(k) Imposition of lien where failure to make required contributions

(1) In general

In the case of a plan to which this subsection applies (as provided under paragraph (2)), if—

(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) covered under section 4021 of the Employee Retirement Income Security Act of 1974 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

(4) Notice of failure; lien

(A) Notice of failure

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

(B) Period of lien

The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) Enforcement

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

(6) Definitions

For purposes of this subsection—

(A) Contribution payment

The term ''contribution payment'' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (j).

(B) Due date; required installment

The terms ''due date'' and ''required installment'' have the meanings given such terms by subsection (j).

(C) Controlled group

The term ''controlled group'' means any group treated as a single employer under subsections (b), (c), (m), and (*o*) of section 414.

(*l*) Qualified transfers to health benefit accounts

In the case of a qualified transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

(Added Pub. L. 109–280, title I, §112(a), Aug. 17, 2006, 120 Stat. 826; amended Pub. L. 110–458, title I, §§101(b)(2), 121(b), title II, §202(b), Dec. 23, 2008, 122 Stat. 5095, 5113, 5118; Pub. L. 111–192, title II, §§201(b), 204(b), June 25, 2010, 124 Stat. 1290, 1301; Pub. L. 112–141, div. D, title II, §40211(a)(1), (2)(B), July 6, 2012, 126 Stat. 846, 847; Pub. L. 113–159, title II, §2003(a), (d)(1), Aug. 8, 2014, 128 Stat. 1849, 1851; Pub. L. 113–295, div. A, title II, §221(a)(57)(C)(i), (D)(i), Dec. 19, 2014, 128 Stat. 4046; Pub. L. 114–74, title V, §504(a), Nov. 2, 2015, 129 Stat. 593; Pub. L. 115–97, title I, §11002(d)(1)(X), Dec. 22, 2017, 131 Stat. 2060.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 106 of the Pension Protection Act of 2006, referred to in subsec. (c)(2)(D)(iv)(I), is section 106 of Pub. L. 109–280, which is set out as a note under section 401 of this title.

The date of the enactment of this subparagraph, referred to in subsec. (c)(2)(D)(v), is the date of enactment of Pub. L. 111–192, which was approved June 25, 2010.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(7)(E)(i)(I), (v)(II), (h)(5)(B)(i), (ii), and (k)(2), (4)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title I of the Act is classified generally to subchapter I (§1001 et seq.) of chapter 18 of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 4001, 4006, 4021, 4043, and 4068 of the Act are classified to sections 1301, 1306, 1321, 1343, and 1368, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 417(e)(3)(D)(i), referred to in subsec. (h)(2)(F), was redesignated subsec. (e)(3)(D) by Pub. L. 113–295, div. A, title II, §221(a)(57)(B)(i), Dec. 19, 2014, 128 Stat. 4046.

The Social Security Act, referred to in subsec. (h)(3)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2017—Subsec. (c)(7)(D)(vii)(II). Pub. L. 115–97 substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

2015—Subsec. (h)(2)(C)(iv)(II). Pub. L. 114–74 amended table generally. Prior to amendment, table related to applicable minimum and maximum percentages for calendar years 2012 to 2020 and after.

2014—Subsec. (c)(5). Pub. L. 113–295, §221(a)(57)(C)(i), struck out subpar. (A) designation and heading and subpar. (B) which related to a transition rule for plan years beginning after 2007 and before 2011.

Subsec. (h)(2)(B)(i). Pub. L. 113–159, §2003(d)(1), substituted ''the valuation date for the plan year'' for ''the first day of the plan year''.

Subsec. (h)(2)(C)(iv)(II). Pub. L. 113–159, §2003(a), amended table generally. Prior to amendment, table related to applicable minimum and maximum percentages for calendar years 2012 to 2015 and after.

Subsec. (h)(2)(G). Pub. L. 113–295, §221(a)(57)(D)(i), struck out subpar. (G) which related to a transition rule for plan years beginning in 2008 or 2009.

2012—Subsec. (h)(2)(C)(iv). Pub. L. 112–141, §40211(a)(1), added cl. (iv).

Subsec. (h)(2)(F). Pub. L. 112–141, §40211(a)(2)(B), inserted ''and the averages determined under subparagraph (C)(iv)'' after ''subparagraph (C)''.

2010—Subsec. (c)(1). Pub. L. 111–192, §201(b)(3)(A), substituted ''any shortfall amortization base which has not been fully amortized under this subsection'' for ''the shortfall amortization bases for such plan year and each of the 6 preceding plan years''.

Subsec. (c)(2)(D). Pub. L. 111–192, §201(b)(1), added subpar. (D).

Subsec. (c)(7). Pub. L. 111–192, §201(b)(2), added par. (7).

Subsec. (f)(3)(D). Pub. L. 111–192, §204(b), added subpar. (D).

Subsec. (j)(3)(F). Pub. L. 111–192, §201(b)(3)(B), added subpar. (F).

2008—Subsec. (b). Pub. L. 110–458, §101(b)(2)(A), amended subsec. (b) generally. Prior to amendment, text read as follows: ''For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term ''target normal cost'' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.''

Subsec. (c)(5)(B)(i). Pub. L. 110–458, §202(b)(2), added cl. (i) and struck out former cl. (i). Prior to amend-

ment, text read as follows: ''Except as provided in clauses (iii) and (iv), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year for purposes of subparagraph (A).''

Subsec. (c)(5)(B)(iii). Pub. L. 110–458, § 202(b)(1), redesignated cl. (iv) as (iii) and struck out former cl. (iii). Prior to amendment, text read as follows: ''Clause (i) shall not apply with respect to any plan year beginning after 2008 unless the shortfall amortization base for each of the preceding years beginning after 2007 was zero (determined after application of this subparagraph).''

Pub. L. 110–458, § 101(b)(2)(B), inserted ''beginning'' before ''after 2008''.

Subsec. (c)(5)(B)(iv). Pub. L. 110–458, § 202(b)(1), redesignated cl. (iv) as (iii).

Subsec. (c)(5)(B)(iv)(II). Pub. L. 110–458, § 101(b)(2)(C), inserted ''for such year'' after ''beginning in 2007)''.

Subsec. (f)(3)(A). Pub. L. 110–458, § 101(b)(2)(D)(i), struck out ''as of the first day of the plan year'' after ''credited by the plan sponsor''.

Subsec. (f)(4)(A). Pub. L. 110–458, § 101(b)(2)(D)(ii), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (f)(6)(B)(iii). Pub. L. 110–458, § 101(b)(2)(D)(iii), substituted ''subsection (b), (c), or (e) of section 436'' for ''paragraph (1), (2), or (4) of section 206(g)''.

Subsec. (f)(6)(C). Pub. L. 110–458, § 101(b)(2)(D)(iv), struck out ''the sum of'' after ''by'' in introductory provisions.

Subsec. (f)(8). Pub. L. 110–458, § 101(b)(2)(D)(v), struck out ''of the Treasury'' after ''by the Secretary''.

Subsec. (g)(3)(B). Pub. L. 110–458, § 121(b), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''Any such averaging shall be adjusted for contributions and distributions (as provided by the Secretary).''

Subsec. (h)(2)(B). Pub. L. 110–458, § 101(b)(2)(E)(i), (ii), in introductory provisions, inserted ''and target normal cost'' after ''funding target'' and substituted ''benefits'' for ''liabilities''.

Subsec. (h)(2)(F). Pub. L. 110–458, § 101(b)(2)(E)(iii), (iv), substituted ''section 417(e)(3)(D)(i) for such month)'' for ''section 417(e)(3)(D)(i)) for such month'' and ''subparagraph (C)'' for ''subparagraph (B)''.

Subsec. (i)(2)(A). Pub. L. 110–458, § 101(b)(2)(F)(i)(I), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus''.

Subsec. (i)(2)(B). Pub. L. 110–458, § 101(b)(2)(F)(i)(II), substituted ''the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year'' for ''the target normal cost (determined without regard to this paragraph) of the plan for the plan year''.

Subsec. (i)(4)(B). Pub. L. 110–458, § 101(b)(2)(F)(ii), substituted ''subparagraph (A)'' for ''subparagraph (A)(ii)'' in concluding provisions.

Subsec. (j)(3)(A). Pub. L. 110–458, § 101(b)(2)(G)(i), inserted at end ''In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.''

Subsec. (j)(3)(D)(ii)(II). Pub. L. 110–458, § 101(b)(2)(G)(ii), substituted ''section 412(c)'' for ''section 302(c)''.

Subsec. (j)(3)(E). Pub. L. 110–458, § 101(b)(2)(G)(iii), (iv), substituted '', short years, and years with alternate valuation date'' for ''and short years'' in heading and added cl. (iii).

Subsec. (k)(1). Pub. L. 110–458, § 101(b)(2)(H)(i), inserted ''(as provided under paragraph (2))'' after ''applies'' in introductory provisions.

Subsec. (k)(6)(B). Pub. L. 110–458, § 101(b)(2)(H)(ii), struck out '', except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430'' before period at end.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–74, title V, § 504(c), Nov. 2, 2015, 129 Stat. 594, provided that: ''The amendments made by this section [amending this section and sections 1021 and 1083 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2015.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

Pub. L. 113–159, title II, § 2003(e), Aug. 8, 2014, 128 Stat. 1851, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (d) [amending this section and sections 1021 and 1083 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2012.

''(2) ELECTIONS.—A plan sponsor may elect not to have the amendments made by subsections (a), (b), and (d) apply to any plan year beginning before January 1, 2014, either (as specified in the election)—

''(A) for all purposes for which such amendments apply, or

''(B) solely for purposes of determining the adjusted funding target attainment percentage under sections 436 of the Internal Revenue Code of 1986 [26 U.S.C. 436] and 206(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g) [probably should be 29 U.S.C. 1056(g)]) for such plan year.

A plan shall not be treated as failing to meet the requirements of section 204(g) of such Act [29 U.S.C. 1054(g)] and section 411(d)(6) of such Code [26 U.S.C. 411(d)(6)] solely by reason of an election under this paragraph.''

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 applicable with respect to plan years beginning after December 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112–141, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, § 201(c), June 25, 2010, 124 Stat. 1296, provided that: ''The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.''

Pub. L. 111–192, title II, § 204(c), June 25, 2010, 124 Stat. 1302, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall apply to plan years beginning after August 31, 2009.

''(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 101(b)(3), Dec. 23, 2008, 122 Stat. 5096, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraphs (1)(A) [amending section 1083 of Title 29, Labor], (1)(F)(i) [amending section 1083 of Title 29], (2)(A) [amending this section], and (2)(F)(i) [amending this section] shall apply to plan years beginning after December 31, 2008.''

''(B) ELECTION FOR EARLIER APPLICATION.—The amendments made by such paragraphs shall apply to a plan

for the first plan year beginning after December 31, 2007, if the plan sponsor makes the election under this subparagraph. An election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe, and, once made, may be revoked only with the consent of the Secretary.''

Amendment by section 101(b)(2)(B)–(E), (F)(ii)–(H) of 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.

Pub. L. 110–458, title I, §121(c), Dec. 23, 2008, 122 Stat. 5114, provided that: ''The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109–280] to which the amendments relate.''

Pub. L. 110–458, title II, §202(c), Dec. 23, 2008, 122 Stat. 5118, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1083 of Title 29, Labor] shall apply as if included in the enactment of sections 102 and 112, respectively, of the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE

Pub. L. 109–280, title I, §112(b), Aug. 17, 2006, 120 Stat. 846, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to plan years beginning after December 31, 2007.''

MORTALITY TABLES

Pub. L. 114–74, title V, §503, Nov. 2, 2015, 129 Stat. 593, provided that:

''(a) CREDIBILITY.—For purposes of subclause (I) of section 430(h)(3)(C)(iii) of the Internal Revenue Code of 1986 and subclause (I) of section 303(h)(3)(C)(iii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(h)(3)(C)(iii)], the determination of whether plans have credible information shall be made in accordance with established actuarial credibility theory, which—

''(1) is materially different from rules under such section of such Code, including Revenue Procedure 2007–37, that are in effect on the date of the enactment of this Act [Nov. 2, 2015]; and

''(2) permits the use of tables that reflect adjustments to the tables described in subparagraphs (A) and (B) of section 430(h)(3) of such Code, and subparagraphs (A) and (B) of section 303(h)(3) of such Act, if such adjustments are based on the experience described in subclause (II) of section 430(h)(3)(C)(iii) of such Code and in subclause (II) of section 303(h)(3)(C)(iii) of such Act.

''(b) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2015.''

APPLICABILITY OF SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of 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.

MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS

Pub. L. 109–280, title I, §115(a)–(c), Aug. 17, 2006, 120 Stat. 855, 856, provided that:

''(a) IN GENERAL.—In the case of a plan that—

''(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

''(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor), and

''(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after December 31, 2007.

''(b) MODIFIED RULES.—The rules described in this subsection are as follows:

''(1) For purposes of section 430(j)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(j)(3)], the plan shall be treated as not having a funding shortfall for any plan year.

''(2) For purposes of—

''(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act [29 U.S.C. 1306(a)(3)(E)(iii)], and

''(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act [29 U.S.C. 1082],

the mortality table shall be the mortality table used by the plan.

''(3) [Former] Section 430(c)(5)(B) of such Code and [former] section 303(c)(5)(B) of such Act [29 U.S.C. 1083(c)(5)(B)] (relating to phase-in of funding target for exemption from new shortfall amortization base) shall each be applied by substituting '2012' for '2011' therein and by substituting for the table therein the following:

''In the case of a plan year beginning in calendar year:	**The applicable percentage is:**
2008	90 percent
2009	92 percent
2010	94 percent
2011	96 percent.**

''(c) DEFINITIONS.—Any term used in this section which is also used in section 430 of such Code or section 303 of such Act [29 U.S.C. 1083] shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act [29 U.S.C. 1001 et seq.], such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act.''

SPECIAL FUNDING RULES FOR CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

Pub. L. 109–280, title IV, §402, Aug. 17, 2006, 120 Stat. 922, as amended by Pub. L. 110–28, title VI, §§6614(a), 6615(a), May 25, 2007, 121 Stat. 181; Pub. L. 110–458, title I, §§104(b), 126(a), Dec. 23, 2008, 122 Stat. 5104, 5116, provided that:

''(a) IN GENERAL.—The plan sponsor of an eligible plan may elect to either—

''(1) have the rules of subsection (b) apply, or

''(2) have section 303 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083] and section 430 of the Internal Revenue Code of 1986 applied to its first taxable year beginning in 2008 by amortizing the shortfall amortization base for such taxable year over a period of 10 plan years (rather than 7 plan years) beginning with such plan year and by using, in determining the funding target for each of the 10 plan years during such period, an interest rate of 8.25 percent (rather than the segment rates calculated on the basis of the corporate bond yield curve).

''(b) ALTERNATIVE FUNDING SCHEDULE.—

''(1) IN GENERAL.—If an election is made under subsection (a)(1) to have this subsection apply to an eligible plan and the requirements of paragraphs (2) and (3) are met with respect to the plan—

''(A) in the case of any applicable plan year beginning before January 1, 2008, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution deter-

mined under subsection (e) for the plan for the plan year, and

''(B) in the case of any applicable plan year beginning on or after January 1, 2008, the minimum required contribution determined under sections 303 of such Act [29 U.S.C. 1083] and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (e) for the plan for the plan year.

''(2) ACCRUAL RESTRICTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

''(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act [29 U.S.C. 1054(b)(1)(G)], of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

''(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

''(B) INCREASES IN SECTION 415 LIMITS.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this section unless, effective as of the first day of the first applicable plan year (or, if later, the date of the enactment of this Act [Aug. 17, 2006]) and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

''(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

''(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

''(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term 'applicable benefit increase' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

''(i) any increase in benefits,

''(ii) any change in the accrual of benefits, or

''(iii) any change in the rate at which benefits become nonforfeitable under the plan.

''(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant's disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) (or on or after July 26, 2005, in the case of the restrictions under paragraph (3)) if the participant—

''(A) was receiving disability benefits as of such date, or

''(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE PLAN.—The term 'eligible plan' means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act [29 U.S.C. 1082] and 412 of such Code applies which is sponsored by an employer—

''(A) which is a commercial passenger airline, or

''(B) the principal business of which is providing catering services to a commercial passenger airline.

''(2) APPLICABLE PLAN YEAR.—The term 'applicable plan year' means each plan year to which the election under subsection (a)(1) applies under subsection (d)(1)(A).

''(d) ELECTIONS AND RELATED TERMS.—

''(1) YEARS FOR WHICH ELECTION MADE.—

''(A) ALTERNATIVE FUNDING SCHEDULE.—If an election under subsection (a)(1) was made with respect to an eligible plan, the plan sponsor may select either a plan year beginning in 2006 or a plan year beginning in 2007 as the first plan year to which such election applies. The election shall apply to such plan year and all subsequent years. The election shall be made—

''(i) not later than December 31, 2006, in the case of an election for a plan year beginning in 2006, or

''(ii) not later than December 31, 2007, in the case of an election for a plan year beginning in 2007.

''(B) 10 YEAR AMORTIZATION.—An election under subsection (a)(2) shall be made not later than December 31, 2007.

''(C) ELECTION OF NEW PLAN YEAR FOR ALTERNATIVE FUNDING SCHEDULE.—In the case of an election under subsection (a)(1), the plan sponsor may specify a new plan year in such election and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

''(2) MANNER OF ELECTION.—A plan sponsor shall make any election under subsection (a) in such manner as the Secretary of the Treasury may prescribe. Such election, once made, may be revoked only with the consent of such Secretary.

''(e) MINIMUM REQUIRED CONTRIBUTION.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

''(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

''(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act [29 U.S.C. 1082(a)(2)(A)] and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance and funding standard carryover balance as of the first day of the first of such years under section 303(f) of such Act [29 U.S.C. 1083(f)] and section 430(f) of such Code shall be zero.

''(3) DEFINITIONS.—For purposes of this section—

''(A) UNFUNDED LIABILITY.—The term 'unfunded liability' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

''(B) AMORTIZATION PERIOD.—The term 'amortization period' means the 17-plan year period beginning with the first applicable plan year.

''(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

''(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall apply,

''(B) a rate of interest of 8.85 percent shall be used for all calculations requiring an interest rate, and

''(C) the value of plan assets shall be determined under sections 303(g)(3) of such Act [29 U.S.C. 1083(g)(3)] and 430(g)(3) of such Code.

''(5) SPECIAL RULE FOR CERTAIN PLAN SPINOFFS.—For purposes of subsection (b), if, with respect to any eligible plan to which this subsection applies—

''(A) any applicable plan year includes the date of the enactment of this Act,

''(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under paragraph (1) for the eligible plan for such applicable plan year shall be an aggregate amount determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spinoff). The employer shall designate the allocation of such aggregate amount between such plans for the applicable plan year.

''(f) SPECIAL RULES FOR CERTAIN BALANCES AND WAIVERS.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

''(1) FUNDING STANDARD ACCOUNT AND CREDIT BALANCES.—Any charge or credit in the funding standard account under section 302 of such Act [29 U.S.C. 1082] or section 412 of such Code, and any prefunding balance or funding standard carryover balance under section 303 of such Act [29 U.S.C. 1083] or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

''(2) WAIVED FUNDING DEFICIENCIES.—Any waived funding deficiency under sections 302 and 303 of such Act or section 412 of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall be deemed satisfied as of the first day of the first applicable plan year and the amount of such waived funding deficiency shall be taken into account in determining the plan's unfunded liability under subsection (e)(3)(A). In the case of a plan amendment adopted to satisfy the requirements of subsection (b)(2), the plan shall not be deemed to violate section 304(b) of such Act [29 U.S.C. 1084(b)] or section 412(f) of such Code, as so in effect, by reason of such amendment or any increase in benefits provided to such plan's participants under a separate plan that is a defined contribution plan or a multiemployer plan.

''(g) OTHER RULES FOR PLANS MAKING ELECTION UNDER THIS SECTION.—

''(1) SUCCESSOR PLANS TO CERTAIN PLANS.—If—

''(A) an election under paragraph (1) or (2) of subsection (a) is in effect with respect to any eligible plan, and

''(B) the eligible plan is maintained by an employer that establishes or maintains 1 or more other defined benefit plans (other than any multiemployer plan), and such other plans in combination provide benefit accruals to any substantial number of successor employees,

the Secretary of the Treasury may, in the Secretary's discretion, determine that any trust of which any other such plan is a part does not constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1986 unless all benefit obligations of the eligible plan have been satisfied. For purposes of this paragraph, the term 'successor employee' means any employee who is or was covered by the eligible plan and any employees who perform substantially the same type of work with respect to the same business operations as an employee covered by such eligible plan.

''(2) SPECIAL RULES FOR TERMINATIONS.—

''(A) PBGC LIABILITY LIMITED.—[Amended section 1322 of Title 29, Labor.]

''(B) TERMINATION PREMIUM.—In applying section 4006(a)(7)(A) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1306(a)(7)(A)] to an eligible plan during any period in which an election under subsection (a)(1) is in effect—

''(i) '$2,500' shall be substituted for '$1,250' in such section if such plan terminates during the 5-year period beginning on the first day of the first applicable plan year with respect to such plan, and

''(ii) such section shall be applied without regard to subparagraph (B) of section 8101(d)(2) of the Deficit Reduction Act of 2005 [Pub. L. 109–171, 29 U.S.C. 1306 note] (relating to special rule for plans terminated in bankruptcy).

The substitution described in clause (i) shall not apply with respect to any plan if the Secretary of Labor determines that such plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

''(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iv) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to any taxable year of a plan sponsor of an eligible plan if any applicable plan year with respect to such plan ends with or within such taxable year.

''(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act [29 U.S.C. 1054(h)] or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

''(h) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

''(1) IN GENERAL.—[Amended section 410 of this title.]

''(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 410 of this title] shall apply to years beginning before, on, or after the date of the enactment of this Act [Aug. 17, 2006].

''(i) EXTENSION OF SPECIAL RULE FOR ADDITIONAL FUNDING REQUIREMENTS.—In the case of an employer which is a commercial passenger airline, section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] and section 412(*l*)(12) of the Internal Revenue Code of 1986, as in effect before the date of the enactment of this Act [Aug. 17, 2006], shall each be applied—

''(1) by substituting 'January 1, 2008' for 'December 28, 2005' in subparagraph (D)(i) thereof, and

''(2) without regard to subparagraph (D)(ii).

''(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of and amendments made by this section [amending section 410 of this title and section 1322 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006].''

[Pub. L. 110–458, title I, §126(b), Dec. 23, 2008, 122 Stat. 5116, provided that: ''The amendment made by this section [amending section 402(e)(4)(C) of Pub. L. 109–280, set out above] shall apply to plan years beginning after December 31, 2007.'']

[Pub. L. 110–28, title VI, §6614(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by subsection (a) [amending section 402(i)(1) of Pub. L. 109–280, set out above] shall take effect as if included in section 402 of the Pension Protection Act of 2006 [Pub. L. 109–280].'']

[Pub. L. 110–28, title VI, §6615(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by this section [amending section 402(a)(2) of Pub. L. 109–280, set out above] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which such amendment relates.'']

§ 431. Minimum funding standards for multiemployer plans

(a) In general

For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for

any plan year is the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years.

(b) Funding standard account

(1) Account required

Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account

For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

(iv) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006).

(3) Credits to account

For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Special rule for amounts first amortized in plan years before 2008

In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006) over any period beginning with a plan year beginning before 2008 in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

(5) Combining and offsetting amounts to be amortized

Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(6) Interest

The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or

rates of interest used under the plan to determine costs.

(7) Special rules relating to charges and credits to funding standard account

For purposes of this part—

(A) Withdrawal liability

Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) Adjustments when a multiemployer plan leaves reorganization

If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) of such Act as of the end of the last plan year that the plan was in reorganization.

(C) Plan payments to supplemental program or withdrawal liability payment fund

Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Interim withdrawal liability payments

Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

(E) Election for deferral of charge for portion of net experience loss

If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iii) shall not apply to the amount so charged).

(F) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

(G) Short-term benefits

To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are not payable as a life annuity but are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(ii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for ''15''.

(8) Special relief rules

Notwithstanding any other provision of this subsection—

(A) Amortization of net investment losses

(i) In general

A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period—

(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

(ii) Coordination with extensions

If this subparagraph applies for any plan year—

(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to the plan year, such extension shall not result in such amortization period exceeding 30 years.

(iii) Net investment losses

For purposes of this subparagraph—

(I) In general

Net investment losses shall be determined in the manner prescribed by the Secretary on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

(II) Criminally fraudulent investment arrangements

The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

(B) Expanded smoothing period

(i) In general

A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change its asset valuation method in a manner which—

(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

(II) provides that for either or both of the first 2 plan years beginning after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

(III) makes both changes described in subclauses (I) and (II) to such method.

(ii) Asset valuation methods

If this subparagraph applies for any plan year—

(I) the Secretary shall not treat the asset valuation method of the plan as unreasonable solely because of the changes in such method described in clause (i), and

(II) such changes shall be deemed approved by the Secretary under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(d)(1).

(iii) Amortization of reduction in unfunded accrued liability

If this subparagraph and subparagraph (A) both apply for any plan year, the plan shall treat any reduction in unfunded accrued liability resulting from the application of this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

(C) Solvency test

The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

(D) Restriction on benefit increases

If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

(i) the plan actuary certifies that—

(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

(II) the plan's funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

(ii) the amendment is required as a condition of qualification under part I of subchapter D or to comply with other applicable law.

(E) Reporting

A plan sponsor of a plan to which this paragraph applies shall—

(i) give notice of such application to participants and beneficiaries of the plan, and

(ii) inform the Pension Benefit Guaranty Corporation of such application in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

(c) Additional rules

(1) Determinations to be made under funding method

For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) Valuation of assets

(A) In general

For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

(B) Election with respect to bonds

The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

(3) Actuarial assumptions must be reasonable

For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) Treatment of certain changes as experience gain or loss

For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term ''wages'' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) Full funding

If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

(6) Full-funding limitation

(A) In general

For purposes of paragraph (5), the term ''full-funding limitation'' means the excess (if any) of—

(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of—

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

(B) Minimum amount

(i) In general

In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) Assets

For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(C) Full funding limitation

For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

(D) Current liability

For purposes of this paragraph—

(i) In general

The term ''current liability'' means all liabilities to employees and their beneficiaries under the plan.

(ii) Treatment of unpredictable contingent event benefits

For purposes of clause (i), any benefit contingent on an event other than—

(I) age, service, compensation, death, or disability, or

(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

(iii) Interest rate used

The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

(iv) Mortality tables

(I) Commissioners' standard table

In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A))[1] used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) Secretarial authority

The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(v) Separate mortality tables for the disabled

Notwithstanding clause (iv)—

(I) In general

The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individ-

[1] See References in Text note below.

uals whose disabilities occur in plan years beginning on or after such date.

(II) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(vi) Periodic review

The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(E) Required change of interest rate

For purposes of determining a plan's current liability for purposes of this paragraph—

(i) In general

If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) Permissible range

For purposes of this subparagraph—

(I) In general

Except as provided in subclause (II), the term ''permissible range'' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) Secretarial authority

If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) Assumptions

Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(7) Annual valuation

(A) In general

For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(B) Valuation date

(i) Current year

Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) Use of prior year valuation

The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) Limitation

A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(8) Time when certain contributions deemed made

For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

(d) Extension of amortization periods for multiemployer plans

(1) Automatic extension upon application by certain plans

(A) In general

If the plan sponsor of a multiemployer plan—

(i) submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary shall extend the amortization period for the period of time (not in excess of

5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

(B) Criteria

A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

(iv) the notice required under paragraph (3)(A) has been provided.

(2) Alternative extension

(A) In general

If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary may extend the amortization period for a period of time (not in excess of 10 years reduced by the number of years of any extension under paragraph (1) with respect to such unfunded liability) if the Secretary makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

(B) Determination

The Secretary may grant an extension under subparagraph (A) if the Secretary determines that—

(i) such extension would carry out the purposes of this Act[2] and would provide adequate protection for participants under the plan and their beneficiaries, and

(ii) the failure to permit such extension would—

(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

(II) be adverse to the interests of plan participants in the aggregate.

(C) Action by Secretary

The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

(3) Advance notice

(A) In general

The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

(B) Consideration of relevant information

The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

(Added Pub. L. 109–280, title II, §211(a), Aug. 17, 2006, 120 Stat. 890; amended Pub. L. 111–192, title II, §211(a)(2), June 25, 2010, 124 Stat. 1304; Pub. L. 113–235, div. O, title I, §§101(b)(2), 108(b)(3)(A), Dec. 16, 2014, 128 Stat. 2774, 2788; Pub. L. 113–295, div. A, title I, §171(a), Dec. 19, 2014, 128 Stat. 4023.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(7)(A) to (D), (8)(B)(ii)(II) and (d)(3)(A), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29, Labor. Part 1 of subtitle E of title IV of the Act is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 302, 4001, 4222, 4223, and 4243 of the Act are classified to sections 1082, 1301, 1402, 1403, and 1423, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Pension Protection Act of 2006, referred to in subsec. (b)(2)(D), (E), (3)(D), (4), (7)(E), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The Social Security Act, referred to in subsec. (c)(4)(A), (6)(D)(v)(II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 807(d)(5), referred to in subsec. (c)(6)(D)(iv)(I), was repealed by Pub. L. 115–97, title I, §13517(a)(2)(A), Dec. 22, 2017, 131 Stat. 2144.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–235, §108(b)(3)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to accumulated funding deficiency of multiemployer plan.

Subsec. (d)(1)(C). Pub. L. 113–295, which directed amendment of subpar. (C) by substituting ''December 31, 2015'' for ''December 31, 2014'', could not be executed because of previous repeal of subpar. (C) by Pub. L. 113–235, §101(b)(2). See below.

Pub. L. 113–235, §101(b)(2), struck out subpar. (C). Text read as follows: ''The preceding provisions of this paragraph shall not apply with respect to any application submitted after December 31, 2014.''

2010—Subsec. (b)(8). Pub. L. 111–192 added par. (8).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, §171(c), Dec. 19, 2014, 128 Stat. 4023, provided that: ''The amendments made by this section [amending this section and section 1084 of Title 29, Labor] shall apply to applications submitted under section 431(d)(1)(A) of the Internal Revenue Code

[2] So in original. Probably should be ''title''.

of 1986 and section 304(d)(1)(C) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1084(d)(1)(C)] after December 31, 2014.''

Amendment by section 108(b)(3)(A) of Pub. L. 113–235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 108(c) of div. O of Pub. L. 113–235, set out as an Effective Date of Repeal note under section 418 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, § 211(b), June 25, 2010, 124 Stat. 1306, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1084 of Title 29, Labor] shall take effect as of the first day of the first plan year ending after August 31, 2008, except that any election a plan makes pursuant to this section that affects the plan's funding standard account for the first plan year beginning after August 31, 2008, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 to such plan year.

''(2) RESTRICTIONS ON BENEFIT INCREASES.—Notwithstanding paragraph (1), the restrictions on plan amendments increasing benefits in sections 304(b)(8)(D) of such Act [29 U.S.C. 1084(b)(8)(D)] and 431(b)(8)(D) of such Code, as added by this section, shall take effect on the date of enactment of this Act [June 25, 2010].''

EFFECTIVE DATE

Pub. L. 109–280, title II, § 211(b), Aug. 17, 2006, 120 Stat. 898, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to plan years beginning after 2007.

''(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1084] and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act [Aug. 17, 2006], including the use of the rate of interest determined under section 6621(b) of such Code.''

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

For applicability of this section 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.

§ 432. Additional funding rules for multiemployer plans in endangered status or critical status

(a) General rule

For purposes of this part, in the case of a multiemployer plan in effect on July 16, 2006—

(1) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period,

(2) if the plan is in critical status—

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period, and

(3) if the plan is in critical and declining status—

(A) the requirements of paragraph (2) shall apply to the plan; and

(B) the plan sponsor may, by plan amendment, suspend benefits in accordance with the requirements of subsection (e)(9).

(b) Determination of endangered and critical status

For purposes of this section—

(1) Endangered status

A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and is not described in paragraph (5), and, as of the beginning of the plan year, either—

(A) the plan's funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) Critical status

A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

(A) A plan is described in this subparagraph if—

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of—

(I) the fair market value of plan assets, plus

(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if—

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

(C) A plan is described in this subparagraph if—

(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

(D) A plan is described in this subparagraph if the sum of—

(i) the fair market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(3) Annual certification by plan actuary

(A) In general

Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary and to the plan sponsor—

(i) whether or not the plan is in endangered status for such plan year, or would be in endangered status for such plan year but for paragraph (5),,[1] whether or not the plan is or will be in critical status for such plan year or for any of the succeeding 5 plan years, and whether or not the plan is or will be in critical and declining status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(B) Actuarial projections of assets and liabilities

(i) In general

Except as provided in clause (iv), in making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either—

(I) the actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

(ii) Determinations of future contributions

Any actuarial projection of plan assets shall assume—

(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) Projected industry activity

Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(iv)[2] Projections relating to critical status in succeeding plan years

Clauses (i) and (ii) (other than the 2nd sentence of clause (i)) may be disregarded by a plan actuary in the case of any certification of whether a plan will be in critical status in a succeeding plan year, except that a plan sponsor may not elect to be in critical status for a plan year under paragraph (4) in any case in which the certification upon which such election would be based is made without regard to such clauses.

[1] So in original.

[2] So in original. Two cls. (iv) have been enacted.

(iv)[2] Projections of critical and declining status

In determining whether a plan is in critical and declining status as described in subsection (e)(9), clauses (i), (ii), and (iii) shall apply, except that—

(I) if reasonable, the plan actuary shall assume that each contributing employer in compliance continues to comply through the end of the rehabilitation period or such later time as provided in subsection (e)(3)(A)(ii) with the terms of the rehabilitation plan that correspond to the schedule adopted or imposed under subsection (e), and

(II) the plan actuary shall take into account any suspensions of benefits described in subsection (e)(9) adopted in a prior plan year that are still in effect.

(C) Penalty for failure to secure timely actuarial certification

Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(1) of such Act.

(D) Notice

(i) In general

In any case in which it is certified under subparagraph (A) that a multiemployer plan is or will be in endangered or critical status for a plan year or in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor. In any case in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall notify the Secretary of such election not later than 30 days after the date of such certification or such other time as the Secretary may prescribe by regulations or other guidance.

(ii) Plans in critical status

If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that—

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) In the case of a multiemployer plan that would be in endangered status but for paragraph (5), the plan sponsor shall provide notice to the bargaining parties and the Pension Benefit Guaranty Corporation that the plan would be in endangered status but for such paragraph.

(iv) Model notice

The Secretary, in consultation with the Secretary of Labor[3] shall prescribe a model notice that a multiemployer plan may use to satisfy the requirements under clauses (ii) and (iii).

(v) Notice of projection to be in critical status in a future plan year

In any case in which it is certified under subparagraph (A)(i) that a multiemployer plan will be in critical status for any of 5 succeeding plan years (but not for the current plan year) and the plan sponsor of such plan has not made an election to be in critical status for the plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the projected critical status to the Pension Benefit Guaranty Corporation.

(4) Election to be in critical status

Notwithstanding paragraph (2) and subject to paragraph (3)(B)(iv)—

(A) the plan sponsor of a multiemployer plan that is not in critical status for a plan year but that is projected by the plan actuary, pursuant to the determination under paragraph (3), to be in critical status in any of the succeeding 5 plan years may, not later than 30 days after the date of the certification under paragraph (3)(A), elect to be in critical status effective for the current plan year,

(B) the plan year in which the plan sponsor elects to be in critical status under subparagraph (A) shall be treated for purposes of this section as the first year in which the plan is in critical status, regardless of the date on which the plan first satisfies the criteria for critical status under paragraph (2), and

(C) a plan that is in critical status under this paragraph shall not emerge from critical status except in accordance with subsection (e)(4)(B).

(5) Special rule

A plan is described in this paragraph if—

(A) as part of the actuarial certification of endangered status under paragraph (3)(A) for the plan year, the plan actuary certifies that the plan is projected to no longer be described in either paragraph (1)(A) or paragraph (1)(B) as of the end of the tenth plan year ending after the plan year to which the certification relates, and

(B) the plan was not in critical or endangered status for the immediately preceding plan year.

(6) Critical and declining status

For purposes of this section, a plan in critical status shall be treated as in critical and

[3] So in original. Probably should be followed by a comma.

declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2) and the plan is projected to become insolvent within the meaning of section 418E during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80 percent).

(c) Funding improvement plan must be adopted for multiemployer plans in endangered status

(1) In general

In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the funding improvement plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including—

(I) one proposal for reductions in the amount of future benefit accruals necessary to achieve the applicable benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the applicable benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) one proposal for increases in contributions under the plan necessary to achieve the applicable benchmarks, assuming no amendments reducing future benefit accruals under the plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the applicable benchmarks in accordance with the funding improvement plan.

For purposes of this section, the term ''applicable benchmarks'' means the requirements applicable to the multiemployer plan under paragraph (3) (as modified by paragraph (5)).

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

(3) Funding improvement plan

For purposes of this section—

(A) In general

A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan during the funding improvement period of the following requirements:

(i) Increase in plan's funding percentage

The plan's funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of—

(I) such percentage as of the beginning of the first plan year for which the plan is certified to be in endangered status pursuant to paragraph (b)(3), plus

(II) 33 percent of the difference between 100 percent and the percentage under subclause (I).

(ii) Avoidance of accumulated funding deficiencies

No accumulated funding deficiency for the last plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A)(i)(II) shall be applied by substituting ''20 percent'' for ''33 percent''.

(4) Funding improvement period

For purposes of this section—

(A) In general

The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

(i) the second anniversary of the date of the adoption of the funding improvement plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A) shall be applied by substituting ''15-year period'' for ''10-year period''.

(C) Coordination with changes in status

(i) Plans no longer in endangered status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

(ii) Plans in critical status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

(D) Plans in endangered status at end of period

If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

(5) Special rules for seriously endangered plans more than 70 percent funded

(A) In general

If the funded percentage of a plan in seriously endangered status was more than 70 percent as of the beginning of the initial determination year—

(i) paragraphs (3)(B) and (4)(B) shall apply only if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), and

(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of paragraph (3)(B) and (4)(B) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

(B) Special rule after expiration of agreements

Notwithstanding subparagraph (A)(ii), if, for any plan year ending after the date described in subparagraph (A)(ii), the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), paragraphs (3)(B) and (4)(B) shall continue to apply for such year.

(6) Updates to funding improvement plans and schedules

(A) Funding improvement plan

The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(B) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(C) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(7) Imposition of schedule where failure to adopt funding improvement plan

(A) Initial contribution schedule

If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered endangered status expires, and

(ii) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,

the plan sponsor shall implement the schedule described in paragraph (1)(B)(i)(I) beginning on the date specified in subparagraph (C).

(B) Subsequent contribution schedule

If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan in accordance with a schedule provided by the plan sponsor pursuant to a funding improvement plan (or imposed under subparagraph (A)) expires while the plan is still in endangered status, and

(ii) after receiving one or more updated schedules from the plan sponsor under paragraph (6)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the updated funding im-

provement plan and a schedule from the plan sponsor,

then the contribution schedule applicable under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented by the plan sponsor beginning on the date specified in subparagraph (C).

(C) Date of implementation

The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) or (B) expires.

(8) Funding plan adoption period

For purposes of this section, the term ''funding plan adoption period'' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

(d) Rules for operation of plan during adoption and improvement periods

(1) Compliance with funding improvement plan

(A) In general

A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

(B) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the funding improvement plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to meet the applicable benchmark on the schedule contemplated in the funding improvement plan.

(2) Special rules for plan adoption period

During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the date of the adoption of a funding improvement plan—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

(e) Rehabilitation plan must be adopted for multiemployer plans in critical status

(1) In general

In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the rehabilitation plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and adjustable benefits, and increases in contributions, that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

(3) Rehabilitation plan

For purposes of this section—

(A) In general

A rehabilitation plan is a plan which consists of—

(i) actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the plan to

cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

A rehabilitation plan must provide annual standards for meeting the requirements of such rehabilitation plan. Such plan shall also include the schedules required to be provided under paragraph (1)(B)(i) and if clause (ii) applies, shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) Updates to rehabilitation plan and schedules

(i) Rehabilitation plan

The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(ii) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(iii) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(C) Imposition of schedule where failure to adopt rehabilitation plan

(i) Initial contribution schedule

If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires, and

(II) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),

the plan sponsor shall implement the schedule described in the last sentence of paragraph (1) beginning on the date specified in clause (iii).

(ii) Subsequent contribution schedule

If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan in accordance with a schedule provided by the plan sponsor pursuant to a rehabilitation plan (or imposed under subparagraph (C)(i)) expires while the plan is still in critical status, and

(II) after receiving one or more updated schedules from the plan sponsor under subparagraph (B)(ii), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the updated rehabilitation plan and a schedule from the plan sponsor,

then the contribution schedule applicable under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented by the plan sponsor beginning on the date specified in clause (iii).

(iii) Date of implementation

The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in clause (ii) or (iii) expires.

(4) Rehabilitation period

For purposes of this section—

(A) In general

The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

(B) Emergence

(i) In general

A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that—

(I) the plan is not described in one or more of the subparagraphs in subsection (b)(2) as of the beginning of the plan year,

(II) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d)(2) or section 412(e) (as in effect prior to the enactment of the Pension Protection Act of 2006), and

(III) the plan is not projected to become insolvent within the meaning of section 418E for any of the 30 succeeding plan years.

(ii) Plans with certain amortization extensions

(I) Special emergence rule

Notwithstanding clause (i), a plan in critical status that has an automatic extension of amortization periods under section 431(d)(1) shall no longer be in critical status if the plan actuary certifies for a plan year, in accordance with subsection (b)(3)(A), that—

(aa) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d)(1), and

(bb) the plan is not projected to become insolvent within the meaning of section 418E for any of the 30 succeeding plan years,

regardless of whether the plan is described in one or more of the subparagraphs in subsection (b)(2) as of the beginning of the plan year.

(II) Reentry into critical status

A plan that emerges from critical status under subclause (I) shall not reenter critical status for any subsequent plan year unless—

(aa) the plan is projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d), or

(bb) the plan is projected to become insolvent within the meaning of section 418E for any of the 30 succeeding plan years.

(5) Rehabilitation plan adoption period

For purposes of this section, the term ''rehabilitation plan adoption period'' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

(6) Limitation on reduction in rates of future accruals

Any reduction in the rate of future accruals under the default schedule described in the last sentence of paragraph (1) shall not reduce the rate of future accruals below—

(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

(7) Automatic employer surcharge

(A) Imposition of surcharge

Each employer otherwise obligated to make a contribution for the initial critical year shall be obligated to pay to the plan for such year a surcharge equal to 5 percent of the contribution otherwise required under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each succeeding plan year in which the plan is in critical status for a consecutive period of years beginning with the initial critical year, the surcharge shall be 10 percent of the contribution otherwise so required.

(B) Enforcement of surcharge

The surcharges under subparagraph (A) shall be due and payable on the same schedule as the contributions on which the surcharges are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 of the Employee Retirement Income Security Act of 1974 and shall be enforceable as such.

(C) Surcharge to terminate upon collective bargaining agreement renegotiation

The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other such agreement) that includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i), as modified under subparagraph (B) of paragraph (3).

(D) Surcharge not to apply until employer receives notice

The surcharge under this paragraph shall not apply to an employer until 30 days after the employer has been notified by the plan sponsor that the plan is in critical status and that the surcharge is in effect.

(E) Surcharge not to generate increased benefit accruals

Notwithstanding any provision of a plan to the contrary, the amount of any surcharge under this paragraph shall not be the basis for any benefit accrual under the plan.

(8) Benefit adjustments

(A) Adjustable benefits

(i) In general

Notwithstanding section 411(d)(6), the plan sponsor shall, subject to the notice requirement under subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

(ii) Exception for retirees

Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

(iii) Plan sponsor flexibility

The plan sponsor shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate by the plan sponsor based on the plan's then current overall funding status.

(iv) Adjustable benefit defined

For purposes of this paragraph, the term ''adjustable benefit'' means—

(I) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(II) any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) and any benefit payment option (other than the qualified joint and survivor annuity), and

(III) benefit increases that would not be eligible for a guarantee under section 4022A of the Employee Retirement Income Security Act of 1974 on the first day of initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

(B) Normal retirement benefits protected

Except as provided in subparagraph (A)(iv)(III), nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age.

(C) Notice requirements

(i) In general

No reduction may be made to adjustable benefits under subparagraph (A) unless notice of such reduction has been given at least 30 days before the general effective date of such reduction for all participants and beneficiaries to—

(I) plan participants and beneficiaries,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(ii) Content of notice

The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any reduction on their benefits, including an estimate (on an annual or monthly basis) of any affected adjustable benefit that a participant or beneficiary would otherwise have been eligible for as of the general effective date described in clause (i), and

(II) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(iii) Form and manner

Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in regulations of the Secretary, in consultation with the Secretary of Labor,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

the[4] Secretary shall in the regulations prescribed under subclause (I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(9) Benefit suspensions for multiemployer plans in critical and declining status

(A) In general

Notwithstanding section 411(d)(6) and subject to subparagraphs (B) through (I), the

[4] So in original. Probably should be capitalized.

plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits which the sponsor deems appropriate.

(B) Suspension of benefits

(i) Suspension of benefits defined

For purposes of this subsection, the term ''suspension of benefits'' means the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits.

(ii) Length of suspensions

Any suspension of benefits made under subparagraph (A) shall remain in effect until the earlier of when the plan sponsor provides benefit improvements in accordance with subparagraph (E) or the suspension of benefits expires by its own terms.

(iii) No liability

The plan shall not be liable for any benefit payments not made as a result of a suspension of benefits under this paragraph.

(iv) Applicability

For purposes of this paragraph, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants shall also apply with respect to benefits of beneficiaries or alternative payees of participants.

(v) Retiree representative

(I) In general

In the case of a plan with 10,000 or more participants, not later than 60 days prior to the plan sponsor submitting an application to suspend benefits, the plan sponsor shall select a participant of the plan in pay status to act as a retiree representative. The retiree representative shall advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process.

(II) Reasonable expenses from plan

The plan shall provide for reasonable expenses by the retiree representative, including reasonable legal and actuarial support, commensurate with the plan's size and funded status.

(III) Special rule relating to fiduciary status

Duties performed pursuant to subclause (I) shall not be subject to section 4975. The preceding sentence shall not apply to those duties associated with an application to suspend benefits pursuant to subparagraph (G) that are performed by the retiree representative who is also a plan trustee.

(C) Conditions for suspensions

The plan sponsor of a plan in critical and declining status for a plan year may suspend benefits only if the following conditions are met:

(i) Taking into account the proposed suspensions of benefits (and, if applicable, a proposed partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974), the plan actuary certifies that the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspensions of benefits continue until the suspensions of benefits expire by their own terms or if no such expiration date is set, indefinitely.

(ii) The plan sponsor determines, in a written record to be maintained throughout the period of the benefit suspension, that the plan is still projected to become insolvent unless benefits are suspended under this paragraph, although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of the benefit suspension). In its determination, the plan sponsor may take into account factors including the following:

(I) Current and past contribution levels.

(II) Levels of benefit accruals (including any prior reductions in the rate of benefit accruals).

(III) Prior reductions (if any) of adjustable benefits.

(IV) Prior suspensions (if any) of benefits under this subsection.

(V) The impact on plan solvency of the subsidies and ancillary benefits available to active participants.

(VI) Compensation levels of active participants relative to employees in the participants' industry generally.

(VII) Competitive and other economic factors facing contributing employers.

(VIII) The impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan.

(IX) The impact of past and anticipated contribution increases under the plan on employer attrition and retention levels.

(X) Measures undertaken by the plan sponsor to retain or attract contributing employers.

(D) Limitations on suspensions

Any suspensions of benefits made by a plan sponsor pursuant to this paragraph shall be subject to the following limitations:

(i) The monthly benefit of any participant or beneficiary may not be reduced below 110 percent of the monthly benefit which is guaranteed by the Pension Benefit Guaranty Corporation under section 4022A of the Employee Retirement Income Security Act of 1974 on the date of the suspension.

(ii)(I) In the case of a participant or beneficiary who has attained 75 years of age as of the effective date of the suspension, not more than the applicable percentage of the maximum suspendable benefits of such

participant or beneficiary may be suspended under this paragraph.

(II) For purposes of subclause (I), the maximum suspendable benefits of a participant or beneficiary is the portion of the benefits of such participant or beneficiary that would be suspended pursuant to this paragraph without regard to this clause;

(III) For purposes of subclause (I), the applicable percentage is a percentage equal to the quotient obtained by dividing—

(aa) the number of months during the period beginning with the month after the month in which occurs the effective date of the suspension and ending with the month during which the participant or beneficiary attains the age of 80, by

(bb) 60 months.

(iii) No benefits based on disability (as defined under the plan) may be suspended under this paragraph.

(iv) Any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974), shall be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

(v) In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974, the suspension of benefits may not take effect prior to the effective date of such partition.

(vi) Any suspensions of benefits shall be equitably distributed across the participant and beneficiary population, taking into account factors, with respect to participants and beneficiaries and their benefits, that may include one or more of the following:

(I) Age and life expectancy.

(II) Length of time in pay status.

(III) Amount of benefit.

(IV) Type of benefit: survivor, normal retirement, early retirement.

(V) Extent to which participant or beneficiary is receiving a subsidized benefit.

(VI) Extent to which participant or beneficiary has received post-retirement benefit increases.

(VII) History of benefit increases and reductions.

(VIII) Years to retirement for active employees.

(IX) Any discrepancies between active and retiree benefits.

(X) Extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status.

(XI) Extent to which benefits are attributed to service with an employer that failed to pay its full withdrawal liability.

(vii) In the case of a plan that includes the benefits described in clause (III), benefits suspended under this paragraph shall—

(I) first, be applied to the maximum extent permissible to benefits attributable to a participant's service for an employer which withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of the Employee Retirement Income Security Act of 1974 or an agreement with the plan,

(II) second, except as provided by subclause (III), be applied to all other benefits that may be suspended under this paragraph, and

(III) third, be applied to benefits under a plan that are directly attributable to a participant's service with any employer which has, prior to the date of enactment of the Multiemployer Pension Reform Act of 2014—

(aa) withdrawn from the plan in a complete withdrawal under section 4203 of the Employee Retirement Income Security Act of 1974 and has paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of such Act or an agreement with the plan, and

(bb) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

(E) Benefit improvements

(i) In general

The plan sponsor may, in its sole discretion, provide benefit improvements while any suspension of benefits under the plan remains in effect, except that the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary not in pay status by the first day of the plan year for which the benefit improvement takes effect, unless—

(I) such action is accompanied by equitable benefit improvements in accordance with clause (ii) for all participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement for such participant or beneficiary not in pay status took effect; and

(II) the plan actuary certifies that after taking into account such benefits improvements the plan is projected to avoid insolvency indefinitely under section 418E.

(ii) Equitable distribution of benefit improvements

(I) Limitation

The projected value of the total liabilities for benefit improvements for participants and beneficiaries not in pay status by the date of the first day of the plan year in which the benefit improvements are proposed to take effect, as determined as of such date, may not exceed the projected value of the liabilities arising from benefit improvements for participants and beneficiaries with benefit commencement dates prior to the first day of such plan year, as so determined.

(II) Equitable distribution of benefits

The plan sponsor shall equitably distribute any increase in total liabilities for benefit improvements in clause (i) to some or all of the participants and beneficiaries whose benefit commencement date is before the date of the first day of the plan year in which the benefit improvements are proposed to take effect, taking into account the relevant factors described in subparagraph (D)(vi) and the extent to which the benefits of the participants and beneficiaries were suspended.

(iii) Special rule for resumptions of benefits only for participants in pay status

The plan sponsor may increase liabilities of the plan through a resumption of benefits for participants and beneficiaries in pay status only if the plan sponsor equitably distributes the value of resumed benefits to some or all of the participants and beneficiaries in pay status, taking into account the relevant factors described in subparagraph (D)(vi).

(iv) Special rule for certain benefit increases

This subparagraph shall not apply to a resumption of suspended benefits or plan amendment which increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvements took effect which—

(I) the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan, or

(II) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A or to comply with other applicable law, as determined by the Secretary of the Treasury.

(v) Additional limitations

Except for resumptions of suspended benefits described in clause (iii), the limitations on benefit improvements while a suspension of benefits is in effect under this paragraph shall be in addition to any other applicable limitations on increases in benefits imposed on a plan.

(vi) Definition of benefit improvement

For purposes of this subparagraph, the term ''benefit improvement'' means, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan.

(F) Notice requirements

(i) In general

No suspension of benefits may be made pursuant to this paragraph unless notice of such proposed suspension has been given by the plan sponsor concurrently with an application for approval of such suspension submitted under subparagraph (G) to the Secretary of the Treasury to—

(I) such plan participants and beneficiaries who may be contacted by reasonable efforts,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(ii) Content of notice

The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any suspensions of benefits, including an individualized estimate (on an annual or monthly basis) of such effect on each participant or beneficiary,

(II) a description of the factors considered by the plan sponsor in designing the benefit suspensions,

(III) a statement that the application for approval of any suspension of benefits shall be available on the website of the Department of the Treasury and that comments on such application will be accepted,

(IV) information as to the rights and remedies of plan participants and beneficiaries,

(V) if applicable, a statement describing the appointment of a retiree representative, the date of appointment of such representative, identifying information about the retiree representative (including whether the representative is a plan trustee), and how to contact such representative, and

(VI) information on how to contact the Department of the Treasury for further information and assistance where appropriate.

(iii) Form and manner

Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in guidance by the

Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, notwithstanding any other provision of law,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

(iv) Other notice requirement

Any notice provided under clause (i) shall fulfill the requirement for notice of a significant reduction in benefits described in section 4980F.

(v) Model notice

The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall in the guidance prescribed under clause (iii)(I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(G) Approval process by the secretary of the treasury in consultation with the pension benefit guaranty corporation and the secretary of labor.—

(i) In general

The plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application to the Secretary of the Treasury for approval of the suspensions of benefits. If the plan sponsor submits an application for approval of the suspensions, the Secretary of the Treasury shall approve, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, the application upon finding that the plan is eligible for the suspensions and has satisfied the criteria of subparagraphs (C), (D), (E), and (F).

(ii) Solicitation of comments

Not later than 30 days after receipt of the application under clause (i), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish a notice in the Federal Register soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made and other interested parties. The application for approval of the suspension of benefits shall be published on the website of the Department of the Treasury.

(iii) Required action; deemed approval

The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve or deny any application for suspensions of benefits under this paragraph within 225 days after the submission of such application. An application for suspension of benefits shall be deemed approved unless, within such 225 days, the Secretary of the Treasury notifies the plan sponsor that it has failed to satisfy one or more of the criteria described in this paragraph. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, rejects a plan sponsor's application, the Secretary of the Treasury shall provide notice to the plan sponsor detailing the specific reasons for the rejection, including reference to the specific requirement not satisfied. Approval or denial by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of an application shall be treated as final agency action for purposes of section 704 of title 5, United States Code.

(iv) Agency review

In evaluating whether the plan sponsor has met the criteria specified in clause (ii) of subparagraph (C), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall review the plan sponsor's consideration of factors under such clause.

(v) Standard for accepting plan sponsor determinations

In evaluating the plan sponsor's application, the Secretary of the Treasury shall accept the plan sponsor's determinations unless it concludes, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan sponsor's determinations were clearly erroneous.

(H) Participant ratification process

(i) In general

No suspension of benefits may take effect pursuant to this paragraph prior to a vote of the participants of the plan with respect to the suspension.

(ii) Administration of vote

Not later than 30 days after approval of the suspension by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (G), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall administer a vote of participants and beneficiaries of the plan. Except as provided in clause (v), the suspension shall go into effect following the vote unless a majority of all participants and beneficiaries of the plan vote to reject the suspension. The plan sponsor may submit a new suspension application to the Secretary of the Treasury for approval in any case in which a suspension is prohibited from taking effect pursuant to a vote under this subparagraph.

(iii) Ballots

The plan sponsor shall provide a ballot for the vote (subject to approval by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor) that includes the following:

(I) A statement from the plan sponsor in support of the suspension.

(II) A statement in opposition to the suspension compiled from comments received pursuant to subparagraph (G)(ii).

(III) A statement that the suspension has been approved by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor.

(IV) A statement that the plan sponsor has determined that the plan will become insolvent unless the suspension takes effect.

(V) A statement that insolvency of the plan could result in benefits lower than benefits paid under the suspension.

(VI) A statement that insolvency of the Pension Benefit Guaranty Corporation would result in benefits lower than benefits paid in the case of plan insolvency.

(iv) Communication by plan sponsor

It is the sense of Congress that, depending on the size and resources of the plan and geographic distribution of the plan's participants, the plan sponsor should take such steps as may be necessary to inform participants about proposed benefit suspensions through in-person meetings, telephone or internet-based communications, mailed information, or by other means.

(v) Systemically important plans

(I) In general

Not later than 14 days after a vote under this subparagraph rejecting a suspension, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall determine whether the plan is a systemically important plan. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines that the plan is a systemically important plan, not later than the end of the 90-day period beginning on the date the results of the vote are certified, the Secretary of the Treasury shall, notwithstanding such adverse vote—

(aa) permit the implementation of the suspension proposed by the plan sponsor; or

(bb) permit the implementation of a modification by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of such suspension (so long as the plan is projected to avoid insolvency within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974 under such modification).

(II) Recommendations

Not later than 30 days after a determination by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan is systemically important, the Participant and Plan Sponsor Advocate selected under section 4004 of the Employee Retirement Income Security Act of 1974 may submit recommendations to the Secretary of the Treasury with respect to the suspension or any revisions to the suspension.

(III) Systemically important plan defined

(aa) In general

For purposes of this subparagraph, a systemically important plan is a plan with respect to which the Pension Benefit Guaranty Corporation projects the present value of projected financial assistance payments exceeds $1,000,000,000 if suspensions are not implemented.

(bb) Indexing

For calendar years beginning after 2015, there shall be substituted for the dollar amount specified in item (aa) an amount equal to the product of such dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) for the preceding calendar year and the denominator of which is such contribution and benefit base for calendar year 2014. If the amount otherwise determined under this item is not a multiple of $1,000,000, such amount shall be rounded to the next lowest multiple of $1,000,000.

(vi) Final authorization to suspend

In any case in which a suspension goes into effect following a vote pursuant to clause (ii) (or following a determination under clause (v) that the plan is a systemically important plan), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall issue a final authorization to suspend with respect to the suspension not later than 7 days after such vote (or, in the case of a suspension that goes into effect under clause (v), at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period described in clause (v)(I)).

(I) Judicial review

(i) Denial of application

An action by the plan sponsor challenging the denial of an application for suspension of benefits by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Sec-

retary of Labor, may only be brought following such denial.

(ii) Approval of suspension of benefits

(I) Timing of action

An action challenging a suspension of benefits under this paragraph may only be brought following a final authorization to suspend by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (H)(vi).

(II) Standards of review

(aa) In general

A court shall review an action challenging a suspension of benefits under this paragraph in accordance with section 706 of title 5, United States Code.

(bb) Temporary injunction

A court reviewing an action challenging a suspension of benefits under this paragraph may not grant a temporary injunction with respect to such suspension unless the court finds a clear and convincing likelihood that the plaintiff will prevail on the merits of the case.

(iii) Restricted cause of action

A participant or beneficiary affected by a benefit suspension under this paragraph shall not have a cause of action under this title.

(iv) Limitation on action to suspend benefits

No action challenging a suspension of benefits following the final authorization to suspend or the denial of an application for suspension of benefits pursuant to this paragraph may be brought after one year after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(J) Special rule for emergence from critical status

A plan certified to be in critical and declining status pursuant to projections made under subsection (b)(3) for which a suspension of benefits has been made by the plan sponsor pursuant to this paragraph shall not emerge from critical status under paragraph (4)(B), until such time as—

(i) the plan is no longer certified to be in critical or endangered status under paragraphs (1) and (2) of subsection (b), and

(ii) the plan is projected to avoid insolvency under section 418E.

(f) Rules for operation of plan during adoption and rehabilitation period

(1) Compliance with rehabilitation plan

(A) In general

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

(B) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

(2) Restriction on lump sums and similar benefits

(A) In general

Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(B) Exception

Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(3) Special rules for plan adoption period

During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the date of the adoption of a rehabilitation plan—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

(g) Adjustments disregarded in withdrawal liability determination

(1) Benefit reduction

Any benefit reductions under subsection (e)(8) or (f), or benefit reductions or suspensions while in critical and declining status under subsection (e)(9)),[5] unless the withdrawal occurs more than ten years after the effective date of a benefit suspension by a plan in critical and declining status, shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

(2) Surcharges

Any surcharges under subsection (e)(7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 of the Employee Retirement Income Security Act of 1974 and in determining the highest contribution rate under section 4219(c) of such Act, except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) of such Act or a comparable method approved under section 4211(c)(5) of such Act.

(3) Contribution increases required by funding improvement or rehabilitation plan

(A) In general

Any increase in the contribution rate (or other increase in contribution requirements unless due to increased levels of work, employment, or periods for which compensation is provided) that is required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 of such Act and in determining the highest contribution rate under section 4219(c) of such Act, except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) of such Act or a comparable method approved under section 4211(c)(5) of such Act.

(B) Special rules

For purposes of this paragraph, any increase in the contribution rate (or other increase in contribution requirements) shall be deemed to be required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan except for increases in contribution requirements due to increased levels of work, employment, or periods for which compensation is provided or additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by subsection (d)(1)(B) or (f)(1)(B).

(4) Emergence from endangered or critical status

In the case of increases in the contribution rate (or other increases in contribution requirements unless due to increased levels of work, employment, or periods for which compensation is provided) disregarded pursuant to paragraph (3), this subsection shall cease to apply as of the expiration date of the collective bargaining agreement in effect when the plan emerges from endangered or critical status. Notwithstanding the preceding sentence, once the plan emerges from critical or endangered status, increases in the contribution rate disregarded pursuant to paragraph (3) shall continue to be disregarded in determining the highest contribution rate under section 4219(c) of such Act for plan years during which the plan was in endangered or critical status.

(5) Simplified calculations

The Pension Benefit Guaranty Corporation shall prescribe simplified methods for the application of this subsection in determining withdrawal liability and payment amounts under section 4219(c) of such Act.

(h) Expedited resolution of plan sponsor decisions

If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

(i) Nonbargained participation

(1) Both bargained and nonbargained employee-participants

In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

(2) Nonbargained employees only

In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(j) Definitions; actuarial method

For purposes of this section—

(1) Bargaining party

The term ''bargaining party'' means—

[5] So in original. The second parenthesis probably should not appear.

(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

(ii) in the case of a plan described under section 404(c), or a continuation of such a plan, the association of employers that is the employer settlor of the plan; and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

(2) Funded percentage

The term ''funded percentage'' means the percentage equal to a fraction—

(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 431(c)(3).

(3) Accumulated funding deficiency

The term ''accumulated funding deficiency'' has the meaning given such term in section 431(a).

(4) Active participant

The term ''active participant'' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

(5) Inactive participant

The term ''inactive participant'' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

(A) is not in covered service under the plan, and

(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

(6) Pay status

A person is in pay status under a multiemployer plan if—

(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

(7) Obligation to contribute

The term ''obligation to contribute'' has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

(8) Actuarial method

Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

(9) Plan sponsor

For purposes of this section, section 431, and section 4971(g):

(A) In general

The term ''plan sponsor'' means, with respect to any multiemployer plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(B) Special rule for section 404(c) plans

In the case of a plan described in section 404(c) (or a continuation of such plan), such term means the bargaining parties described in paragraph (1).

(10) Benefit commencement date

The term ''benefit commencement date'' means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

(Added Pub. L. 109–280, title II, § 212(a), Aug. 17, 2006, 120 Stat. 899; amended Pub. L. 110–458, title I, § 102(b)(2)(A)–(G), Dec. 23, 2008, 122 Stat. 5101, 5102; Pub. L. 113–235, div. O, title I, §§ 102(b), 103(b), 104(b), 105(b), 106(b), 107(b), 109(b), title II, § 201(b)(1)–(6), Dec. 16, 2014, 128 Stat. 2776, 2778, 2780–2782, 2784, 2790, 2810–2822.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Sections 101, 103, 104, 502, 515, 4004, 4022A, 4201, 4203, 4211, 4212, 4219, 4233, and 4245 of the Act are classified to sections 1021, 1023, 1024, 1132, 1145, 1304, 1322a, 1381, 1383, 1391, 1392, 1399, 1413, and 1426, respectively, of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The enactment of the Pension Protection Act of 2006, referred to in subsec. (e)(4)(B)(i)(II), means the enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The date of enactment of the Multiemployer Pension Reform Act of 2014, referred to in subsec. (e)(9)(D)(vii)(III), is the date of enactment of div. O of Pub. L. 113–235, which was approved Dec. 16, 2014.

Section 230 of the Social Security Act, referred to in subsec. (e)(9)(H)(v)(III)(bb), is classified to section 430 of Title 42, The Public Health and Welfare.

AMENDMENTS

2014—Subsec. (a)(3). Pub. L. 113–235, § 201(b)(1), added par. (3).

Subsec. (b)(1). Pub. L. 113–235, § 104(b)(1)(A), substituted ''the plan is not in critical status for the plan year and is not described in paragraph (5),'' for ''the plan is not in critical status for the plan year''.

Subsec. (b)(3)(A)(i). Pub. L. 113–235, § 201(b)(3), substituted '', whether'' for ''and whether'' and inserted '', and whether or not the plan is or will be in critical and declining status for such plan year'' before '', and'' at end.

Pub. L. 113–235, § 104(b)(3), which directed insertion of '', or would be in endangered status for such plan year but for paragraph (5),'' after ''endangered status for a plan year'', was executed by making the insertion after ''endangered status for such plan year'' to reflect the probable intent of Congress.

Pub. L. 113–235, §102(b)(2)(A), substituted ''or for any of the succeeding 5 plan years, and'' for '', and'' at end.

Subsec. (b)(3)(B)(i). Pub. L. 113–235, §102(b)(2)(B)(i), substituted ''Except as provided in clause (iv), in making the determinations'' for ''In making the determinations''.

Subsec. (b)(3)(B)(iv). Pub. L. 113–235, §201(b)(4), added cl. (iv) relating to projections of critical and declining status.

Pub. L. 113–235, §102(b)(2)(B)(ii), added cl. (iv) relating to projections relating to critical status in succeeding plan years.

Subsec. (b)(3)(D)(i). Pub. L. 113–235, §102(b)(3)(A)(ii), inserted at end ''In any case in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall notify the Secretary of the Treasury of such election not later than 30 days after the date of such certification or such other time as the Secretary of the Treasury may prescribe by regulations or other guidance.''

Pub. L. 113–235, §102(b)(3)(A)(i), inserted ''or in which a plan sponsor elects to be in critical status for a plan year under paragraph (4)'' after ''endangered or critical status for a plan year''.

Subsec. (b)(3)(D)(iii). Pub. L. 113–235, §104(b)(2)(B), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (b)(3)(D)(iv). Pub. L. 113–235, §104(b)(2)(A), (C), redesignated cl. (iii) as (iv) and substituted ''clauses (ii) and (iii)'' for ''clause (ii)''.

Pub. L. 113–235, §102(b)(3)(B), added cl. (iv).

Subsec. (b)(3)(D)(v). Pub. L. 113–235, §104(b)(2)(A), redesignated cl. (iv) as (v).

Subsec. (b)(4). Pub. L. 113–235, §102(b)(1), added par. (4).

Subsec. (b)(5). Pub. L. 113–235, §104(b)(1)(B), added par. (5).

Subsec. (b)(6). Pub. L. 113–235, §201(b)(2), added par. (6).

Subsec. (c)(3)(A)(i)(I). Pub. L. 113–235, §105(b)(1), substituted ''of the first plan year for which the plan is certified to be in endangered status pursuant to paragraph (b)(3)'' for ''of such period''.

Subsec. (c)(3)(A)(ii). Pub. L. 113–235, §105(b)(2), substituted ''the last plan year'' for ''any plan year''.

Subsec. (c)(7). Pub. L. 113–235, §107(b)(1), amended par. (7) generally. Prior to amendment, par. (7) related to imposition of default schedule where failure to adopt funding improvement plan.

Subsec. (d). Pub. L. 113–235, §106(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) related to rules for operation of plan during adoption and improvement periods.

Subsec. (e)(3)(C). Pub. L. 113–235, §107(b)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) related to imposition of default schedule where failure to adopt rehabilitation plan.

Subsec. (e)(4)(B). Pub. L. 113–235, §103(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) related to emergence of a plan from critical status.

Subsec. (e)(9). Pub. L. 113–235, §201(b)(5), added par. (9).

Pub. L. 113–235, §109(b)(1), struck out par. (9) which related to adjustments disregarded in withdrawal liability determination.

Subsec. (f)(3). Pub. L. 113–235, §109(b)(2)(B), which directed amendment of par. (4) as redesignated by section 109(b)(2)(A) of Pub. L. 113–235 by substituting ''During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the date of the adoption of a rehabilitation plan—'' for ''During the rehabilitation plan adoption period—'', was executed by making the substitution in par. (3) as so redesignated, to reflect the probable intent of Congress. See below.

Pub. L. 113–235, §109(b)(2)(A), redesignated par. (4) as (3) and struck out former par. (3). Prior to amendment, text of par. (3) read as follows ''Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.''

Subsec. (f)(4). Pub. L. 113–235, §109(b)(2)(A), redesignated par. (4) as (3).

Subsec. (g). Pub. L. 113–235, §109(b)(4), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 113–235, §201(b)(6), inserted '', or benefit reductions or suspensions while in critical and declining status under subsection (e)(9)), unless the withdrawal occurs more than ten years after the effective date of a benefit suspension by a plan in critical and declining status,'' after ''benefit reductions under subsection (e)(8) or (f)''.

Subsecs. (h) to (j). Pub. L. 113–235, §109(b)(3), redesignated subsecs. (g) to (i) as (h) to (j), respectively.

2008—Subsec. (b)(3)(C). Pub. L. 110–458, §102(b)(2)(A), substituted ''section 101(b)(1)'' for ''section 101(b)(4)''.

Subsec. (b)(3)(D)(iii). Pub. L. 110–458, §102(b)(2)(B), substituted ''The Secretary, in consultation with the Secretary of Labor'' for ''The Secretary of Labor''.

Subsec. (c)(3)(A)(ii). Pub. L. 110–458, §102(b)(2)(C)(i), substituted ''section 431(d)'' for ''section 304(d)''.

Subsec. (c)(7)(A)(ii). Pub. L. 110–458, §102(b)(2)(C)(ii)(I), substituted ''to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,'' for ''to agree on changes to contribution or benefit schedules necessary to meet the applicable benchmarks in accordance with the funding improvement plan,''.

Subsec. (c)(7)(B). Pub. L. 110–458, §102(b)(2)(C)(ii)(II), added subpar. (B), and struck out former subpar. (B). Prior to amendment, text read as follows: ''The date specified in this subparagraph is the earlier of the date—

''(i) on which the Secretary of Labor certifies that the parties are at an impasse, or

''(ii) which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.''

Subsec. (e)(3)(C)(i)(II). Pub. L. 110–458, §102(b)(2)(D)(i)(I), substituted ''to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),'' for ''contribution or benefit schedules with terms consistent with the rehabilitation plan and the schedule from the plan sponsor under paragraph (1)(B)(i),''.

Subsec. (e)(3)(C)(ii). Pub. L. 110–458, §102(b)(2)(D)(i)(II), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: ''The date specified in this clause is the earlier of the date—

''(I) on which the Secretary of Labor certifies that the parties are at an impasse, or

''(II) which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.''

Subsec. (e)(4)(A)(ii). Pub. L. 110–458, §102(b)(2)(D)(ii)(I), struck out ''the date of'' after ''in effect on''.

Subsec. (e)(4)(B). Pub. L. 110–458, §102(b)(2)(D)(ii)(II), substituted ''but taking'' for ''and taking''.

Subsec. (e)(6). Pub. L. 110–458, §102(b)(2)(D)(iii), substituted ''the last sentence of paragraph (1)'' for ''paragraph (1)(B)(i)'' in introductory provisions and ''establish'' for ''established'' in concluding provisions.

Subsec. (e)(8)(A)(i). Pub. L. 110–458, §102(b)(2)(D)(iv)(I), substituted ''section 411(d)(6)'' for ''section 204(g)''.

Subsec. (e)(8)(C)(i)(II). Pub. L. 110–458, §102(b)(2)(D)(iv)(II), inserted ''of the Employee Retirement Income Security Act of 1974'' after ''section 4212(a)''.

Subsec. (e)(8)(C)(iii). Pub. L. 110–458, §102(b)(2)(D)(iv)(IV), which directed substitution of ''the Secretary'' for ''the Secretary of Labor'' in last sentence, was executed by making the substitution for ''The Secretary of Labor'', to reflect the probable intent of Congress.

Subsec. (e)(8)(C)(iii)(I). Pub. L. 110–458, §102(b)(2)(D)(iv)(III), substituted ''the Secretary, in consultation with the Secretary of Labor'' for ''the Secretary of Labor''.

Subsec. (e)(9)(B). Pub. L. 110–458, § 102(b)(2)(D)(v), substituted ''the allocation of unfunded vested benefits to an employer'' for ''an employer's withdrawal liability''.

Subsec. (f)(2)(A)(i). Pub. L. 110–458, § 102(b)(2)(E), substituted ''section 411(a)(9)'' for ''411(b)(1)(A)'' and inserted at end ''to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,''.

Subsec. (g). Pub. L. 110–458, § 102(b)(2)(F), inserted ''under subsection (c)'' after ''for adoption of a funding improvement plan''.

Subsec. (i)(3). Pub. L. 110–458, § 102(b)(2)(G)(i), substituted ''section 431(a)'' for ''section 412(a)''.

Subsec. (i)(9). Pub. L. 110–458, § 102(b)(2)(G)(ii), added par. (9) and struck out former par. (9). Prior to amendment, text read as follows: ''In the case of a plan described under section 404(c), or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–235, div. O, title I, § 102(c), Dec. 16, 2014, 128 Stat. 2777, provided that: ''The amendments made by this section [amending this section and section 1085 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2014.''

Pub. L. 113–235, div. O, title I, § 103(c), Dec. 16, 2014, 128 Stat. 2779, provided that: ''The amendments made by this section [amending this section and section 1085 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2014.''

Pub. L. 113–235, div. O, title I, § 104(c), Dec. 16, 2014, 128 Stat. 2781, provided that: ''The amendments made by this section [amending this section and section 1085 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2014.''

Pub. L. 113–235, div. O, title I, § 105(c), Dec. 16, 2014, 128 Stat. 2781, provided that: ''The amendments made by this section [amending this section and section 1085 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2014.''

Pub. L. 113–235, div. O, title I, § 106(c), Dec. 16, 2014, 128 Stat. 2783, provided that: ''The amendments made by this section [amending this section and section 1085 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2014.''

Pub. L. 113–235, div. O, title I, § 107(c), Dec. 16, 2014, 128 Stat. 2786, provided that: ''The amendments made by this section [amending this section and section 1085 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2014.''

Pub. L. 113–235, div. O, title I, § 109(c), Dec. 16, 2014, 128 Stat. 2792, provided that: ''The amendments made by this section [amending this section and section 1085 of Title 29, Labor] shall apply to benefit reductions and increases in the contribution rate or other required contribution increases that go into effect during plan years beginning after December 31, 2014 and to surcharges the obligation for which accrue on or after December 31, 2014.''

Pub. L. 113–235, div. O, title II, § 201(c), Dec. 16, 2014, 128 Stat. 2822, provided that: ''The amendments made by this section [amending this section and sections 1021, 1085, 1303 and 1399 of Title 29, Labor] shall take effect on the date of the enactment of this Act [Dec. 16, 2014].''

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

Section applicable with respect to plan years beginning after 2007, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendment note under section 412 of this title.

GUIDANCE

Pub. L. 113–235, div. O, title II, § 201(b)(7), Dec. 16, 2014, 128 Stat. 2822, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 16, 2014], the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish appropriate guidance to implement section 432(e)(9) of the Internal Revenue Code of 1986.''

TEMPORARY DELAY OF DESIGNATION OF MULTIEMPLOYER PLANS AS IN ENDANGERED OR CRITICAL STATUS

Pub. L. 110–458, title II, § 204, Dec. 23, 2008, 122 Stat. 5118, provided that:

''(a) IN GENERAL.—Notwithstanding the actuarial certification under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of the Internal Revenue Code of 1986, if a plan sponsor of a multiemployer plan elects the application of this section, then, for purposes of section 305 of such Act and section 432 of such Code—

''(1) the status of the plan for its first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, shall be the same as the status of such plan under such sections for the plan year preceding such plan year, and

''(2) in the case of a plan which was in endangered or critical status for the preceding plan year described in paragraph (1), the plan shall not be required to update its plan or schedules under section 305(c)(6) of such Act and section 432(c)(6) of such Code, or section 305(e)(3)(B) of such Act and section 432(e)(3)(B) of such Code, whichever is applicable, until the plan year following the first plan year described in paragraph (1).

If section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 did not apply to the preceding plan year described in paragraph (1), the plan actuary shall make a certification of the status of the plan under section 305(b)(3) of such Act and section 432(b)(3) of such Code for the preceding plan year in the same manner as if such sections had applied to such preceding plan year.

''(b) EXCEPTION FOR PLANS BECOMING CRITICAL DURING ELECTION.—If—

''(1) an election was made under subsection (a) with respect to a multiemployer plan, and

''(2) such plan has, without regard to such election, been certified by the plan actuary under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code to be in critical status for the first plan year described in subsection (a)(1),

then such plan shall be treated as a plan in critical status for such plan year for purposes of applying section 4971(g)(1)(A) of such Code, section 302(b)(3) of such Act [29 U.S.C. 1082(b)(3)] (without regard to the second sentence thereof), and section 412(b)(3) of such Code (without regard to the second sentence thereof).

''(c) ELECTION AND NOTICE.—

''(1) ELECTION.—An election under subsection (a) shall—

''(A) be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe and, once made, may be revoked only with the consent of the Secretary, and

''(B) if the election is made—

''(i) before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code, be included with such annual certification, and

''(ii) after such date, be submitted to the Secretary or the Secretary's delegate not later than 30 days after the date of the election.

''(2) NOTICE TO PARTICIPANTS.—

''(A) IN GENERAL.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of

such Code, if the plan is neither in endangered nor critical status by reason of an election made under subsection (a)—

''(i) the plan sponsor of a multiemployer plan shall not be required to provide notice under such sections, and

''(ii) the plan sponsor shall provide to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor a notice of the election and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require—

''(I) if the election is made before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, not later than 30 days after the date of the certification, and

''(II) if the election is made after such date, not later than 30 days after the date of the election.

''(B) NOTICE OF ENDANGERED STATUS.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is certified to be in critical status for any plan year but is in endangered status by reason of an election made under subsection (a), the notice provided under such sections shall be the notice which would have been provided if the plan had been certified to be in endangered status.''

TEMPORARY EXTENSION OF THE FUNDING IMPROVEMENT AND REHABILITATION PERIODS FOR MULTIEMPLOYER PENSION PLANS IN CRITICAL AND ENDANGERED STATUS FOR 2008 OR 2009

Pub. L. 110–458, title II, §205, Dec. 23, 2008, 122 Stat. 5120, provided that:

''(a) IN GENERAL.—If the plan sponsor of a multiemployer plan which is in endangered or critical status for a plan year beginning in 2008 or 2009 (determined after application of section 204 [of Pub. L. 110–458, set out above]) elects the application of this section, then, for purposes of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986—

''(1) except as provided in paragraph (2), the plan's funding improvement period or rehabilitation period, whichever is applicable, shall be 13 years rather than 10 years, and

''(2) in the case of a plan in seriously endangered status, the plan's funding improvement period shall be 18 years rather than 15 years.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELECTION.—An election under this section shall be made at such time, and in such manner and form, as (in consultation with the Secretary of Labor) the Secretary of the Treasury or the Secretary's delegate may prescribe.

''(2) DEFINITIONS.—Any term which is used in this section which is also used in section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such sections.

''(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2007.''

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

For applicability of this section 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.

§ 433. Minimum funding standards

(a) General rule

For purposes of section 412, the term ''accumulated funding deficiency'' for a CSEC plan means the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which section 412 applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

(b) Funding standard account

(1) Account required

Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account

For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, but before the first day of the first plan year beginning after December 31, 2013, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 30 plan years,

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 5 plan years, and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 5 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of sec-

tion 412(c)(7)(A)(i)(I) (as in effect on the day before the enactment of the Pension Protection Act of 2006).

(3) Credits to account

For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 5 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Combining and offsetting amounts to be amortized

Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) Interest

(A) In general

Except as provided in subparagraph (B), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(B) Exception

The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) or for purposes of any arrangement under subsection (d) for any plan year shall be the greater of—

(i) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

(ii) the rate of interest determined under subparagraph (A).

(6) Amortization schedules in effect

Amortization schedules for amounts described in paragraphs (2) and (3) that are in effect as of the last day of the last plan year beginning before January 1, 2014, by reason of section 104 of the Pension Protection Act of 2006 shall remain in effect pursuant to their terms and this section, except that such amounts shall not be amortized again under this section.

(c) Special rules

(1) Determinations to be made under funding method

For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) Valuation of assets

(A) In general

For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

(B) Dedicated bond portfolio

The Secretary may by regulations provide that the value of any dedicated bond portfolio of a plan shall be determined by using the interest rate under section 412(b)(5) (as in effect on the day before the enactment of the Pension Protection Act of 2006).

(3) Actuarial assumptions must be reasonable

For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) Treatment of certain changes as experience gain or loss

For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term ''wages'' under section 3121 or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) Funding method and plan year

(A) Funding methods available

All funding methods available to CSEC plans under section 412 (as in effect on the day before the enactment of the Pension Protection Act of 2006) shall continue to be available under this section.

(B) Changes

If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary.

(C) Approval required for certain changes in assumptions by certain single-employer plans subject to additional funding requirement

(i) In general

No actuarial assumption (other than the assumptions described in subsection (h)(3)) used to determine the current liability for a plan to which this subparagraph applies may be changed without the approval of the Secretary.

(ii) Plans to which subparagraph applies

This subparagraph shall apply to a plan only if—

(I) the plan is a CSEC plan,

(II) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV[1] (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

(III) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the current liability of the plan before such change.

(6) Full funding

If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (e)) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2)(B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) Full-funding limitation

For purposes of paragraph (6), the term ''full-funding limitation'' means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of—

(i) the fair market value of the plan's assets, or

(ii) the value of such assets determined under paragraph (2).

(C) MINIMUM AMOUNT.—

(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability (determined without regard to paragraph (4) of subsection (h)) of the plan (including the expected increase in such current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(8) Annual valuation

(A) In general

For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(B) Valuation date

(i) Current year

Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) Use of prior year valuation

The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability.

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially

[1] So in original. Probably should be followed by ''of such Act''.

adjusted to reflect significant differences in participants.

(iv) Limitation

A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability.

(9) Time when certain contributions deemed made

For purposes of this section, any contributions for a plan year made by an employer during the period—

(A) beginning on the day after the last day of such plan year, and

(B) ending on the day which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

(10) Anticipation of benefit increases effective in the future

In determining projected benefits, the funding method of a collectively bargained CSEC plan described in section 413(a) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.

(d) Extension of amortization periods

The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if the Secretary determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and provide adequate protection for participants under the plan and their beneficiaries, and if the Secretary determines that the failure to permit such extension would result in—

(1) a substantial risk to the voluntary continuation of the plan, or

(2) a substantial curtailment of pension benefit levels or employee compensation.

(e) Alternative minimum funding standard

(1) In general

A CSEC plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this subsection.

(2) Charges and credits to account

For a plan year the alternative minimum funding standard account shall be—

(A) charged with the sum of—

(i) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(ii) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(iii) an amount equal to the excess (if any) of credits to the alternative minimum standard account for all prior plan years over charges to such account for all such years, and

(B) credited with the amount considered contributed by the employer to or under the plan for the plan year.

(3) Interest

The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under subsection (b)(5) with respect to the funding standard account.

(f) Quarterly contributions required

(1) In general

If a CSEC plan which has a funded current liability percentage for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

(B) the rate of interest used under the plan in determining costs.

(2) Amount of underpayment, period of underpayment

For purposes of paragraph (1)—

(A) Amount

The amount of the underpayment shall be the excess of—

(i) the required installment, over

(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(B) Period of underpayment

The period for which interest is charged under this subsection with regard to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(9)).

(C) Order of crediting contributions

For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(3) Number of required installments; due dates

For purposes of this subsection—

(A) Payable in 4 installments

There shall be 4 required installments for each plan year.

(B) Time for payment of installments

In the case of the following required installments:	The due date is:
1st	April 15

In the case of the following required installments:	The due date is:
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

(4) Amount of required installment

For purposes of this subsection—

(A) In general

The amount of any required installment shall be 25 percent of the required annual payment.

(B) Required annual payment

For purposes of subparagraph (A), the term ''required annual payment'' means the lesser of—

(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 (without regard to any waiver under subsection (c) thereof), or

(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

(5) Liquidity requirement

(A) In general

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies

This paragraph shall apply to a CSEC plan other than a plan described in section 412(*l*)(6)(A) (as in effect on the day before the enactment of the Pension Protection Act of 2006) which—

(i) is required to pay installments under this subsection for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment

For purposes of paragraph (1), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall

The term ''liquidity shortfall'' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of the base amount with respect to such quarter over the value (as of such last day) of the plan's liquid assets.

(ii) Base amount

(I) In general

The term ''base amount'' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule

If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan

The term ''disbursements from the plan'' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements

The term ''adjusted disbursements'' means disbursements from the plan reduced by the product of—

(I) the plan's funded current liability percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

(v) Liquid assets

The term ''liquid assets'' means cash, marketable securities and such other assets as specified by the Secretary in regulations.

(vi) Quarter

The term ''quarter'' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) Regulations

The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

(6) Fiscal years and short years

(A) Fiscal years

In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months

specified in this subsection, the months which correspond thereto.

(B) Short plan year

This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

(g) Imposition of lien where failure to make required contributions

(1) In general

In the case of a plan to which this section applies, if—

(A) any person fails to make a required installment under subsection (f) or any other payment required under this section before the due date for such installment or other payment, and

(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies

This subsection shall apply to a CSEC plan for any plan year for which the funded current liability percentage of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Retirement Protection Act of 1994).

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

(A) for plan years beginning after 1987, and

(B) for which payment has not been made before the due date.

(4) Notice of failure; lien

(A) Notice of failure

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

(B) Period of lien

The lien imposed by paragraph (1) shall arise on the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) Enforcement

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by any contributing employer (or any member of the controlled group of the contributing employer).

(6) Definitions

For purposes of this subsection—

(A) Due date; required installment

The terms ''due date'' and ''required installment'' have the meanings given such terms by subsection (f), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section.

(B) Controlled group

The term ''controlled group'' means any group treated as a single employer under subsections (b), (c), (m), and (*o*) of section 414.

(h) Current liability

For purposes of this section—

(1) In general

The term ''current liability'' means all liabilities to employees and their beneficiaries under the plan.

(2) Treatment of unpredictable contingent event benefits

(A) In general

For purposes of paragraph (1), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

(B) Unpredictable contingent event benefit

The term ''unpredictable contingent event benefit'' means any benefit contingent on an event other than—

(i) age, service, compensation, death, or disability, or

(ii) an event which is reasonably and reliably predictable (as determined by the Secretary).

(3) Interest rate and mortality assumptions used

(A) Interest rate

The rate of interest used to determine current liability under this section shall be the third segment rate determined under section 430(h)(2)(C).

(B) Mortality tables

(i) Secretarial authority

The Secretary may by regulation prescribe mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(ii) Periodic review

The Secretary shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(C) Separate mortality tables for the disabled

Notwithstanding subparagraph (B)—

(i) In general

In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (B)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(ii) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(4) Certain service disregarded

(A) In general

In the case of a participant to whom this paragraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

(B) Applicable percentage

For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.

(C) Participants to whom paragraph applies

This subparagraph shall apply to any participant who, at the time of becoming a participant—

(i) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member,

(ii) who first becomes a participant under the plan in a plan year beginning after December 31, 1987, and

(iii) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.

(D) Election

An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary.

(i) Funded current liability percentage

For purposes of this section, the term ''funded current liability percentage'' means, with respect to any plan year, the percentage which—

(1) the value of the plan's assets determined under subsection (c)(2), is of

(2) the current liability under the plan.

(j) Funding restoration status

Notwithstanding any other provisions of this section—

(1) Normal cost payment

(A) In general

In the case of a CSEC plan that is in funding restoration status for a plan year, for purposes of section 412, the term ''accumulated funding deficiency'' means, for such plan year, the greater of—

(i) the amount described in subsection (a), or

(ii) the excess of the normal cost of the plan for the plan year over the amount actually contributed to or under the plan for the plan year.

(B) Normal cost

In the case of a CSEC plan that uses a spread gain funding method, for purposes of this subsection, the term ''normal cost'' means normal cost as determined under the entry age normal funding method.

(2) Plan amendments

In the case of a CSEC plan that is in funding restoration status for a plan year, no amendment to such plan may take effect during such plan year if such amendment has the effect of increasing liabilities of the plan by means of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable. This paragraph shall not apply to any plan amendment that is required to comply with any applicable law. This paragraph shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment) upon payment by the plan sponsor of a contribution to the plan (in addition

to any contribution required under this section without regard to this paragraph) in an amount equal to the increase in the funding liability of the plan attributable to the plan amendment.

(3) Funding restoration plan

The sponsor of a CSEC plan shall establish a written funding restoration plan within 180 days of the receipt by the plan sponsor of a certification from the plan actuary that the plan is in funding restoration status for a plan year. Such funding restoration plan shall consist of actions that are calculated, based on reasonably anticipated experience and reasonable actuarial assumptions, to increase the plan's funded percentage to 100 percent over a period that is not longer than the greater of 7 years or the shortest amount of time practicable. Such funding restoration plan shall take into account contributions required under this section (without regard to this paragraph). If a plan remains in funding restoration status for 2 or more years, such funding restoration plan shall be updated each year after the 1st such year within 180 days of receipt by the plan sponsor of a certification from the plan actuary that the plan remains in funding restoration status for the plan year.

(4) Annual certification by plan actuary

Not later than the 90th day of each plan year of a CSEC plan, the plan actuary shall certify to the plan sponsor whether or not the plan is in funding restoration status for the plan year, based on the plan's funded percentage as of the beginning of the plan year. For this purpose, the actuary may conclusively rely on an estimate of—

(A) the plan's funding liability, based on the funding liability of the plan for the preceding plan year and on reasonable actuarial estimates, assumptions, and methods, and

(B) the amount of any contributions reasonably anticipated to be made for the preceding plan year.

Contributions described in subparagraph (B) shall be taken into account in determining the plan's funded percentage as of the beginning of the plan year.

(5) Definitions

For purposes of this subsection—

(A) Funding restoration status

A CSEC plan shall be treated as in funding restoration status for a plan year if the plan's funded percentage as of the beginning of such plan year is less than 80 percent.

(B) Funded percentage

The term ''funded percentage'' means the ratio (expressed as a percentage) which—

(i) the value of plan assets (as determined under subsection (c)(2)), bears to

(ii) the plan's funding liability.

(C) Funding liability

The term ''funding liability'' for a plan year means the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, based on the assumptions used by the plan pursuant to this section, including the interest rate described in subsection (b)(5)(A) (without regard to subsection (b)(5)(B)).

(D) Spread gain funding method

The term ''spread gain funding method'' has the meaning given such term under rules and forms issued by the Secretary.

(E) Plan sponsor

The term ''plan sponsor'' means, with respect to a CSEC plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(Added Pub. L. 113–97, title II, § 202(a), Apr. 7, 2014, 128 Stat. 1122.)

REFERENCES IN TEXT

Section 412 (as in effect on the day before the enactment of the Pension Protection Act of 2006), referred to in subsecs. (b)(2)(E), (c)(2)(B), (5)(A), and (f)(5)(B), means section 412 of this title as in effect on the day before the enactment of Pub. L. 109–280, which was approved Aug. 17, 2006. Section 111(a) of Pub. L. 109–280 generally amended section 412.

Section 104 of the Pension Protection Act of 2006, referred to in subsec. (b)(6), is section 104 of Pub. L. 109–280, which is set out as a note under section 401 of this title.

The Social Security Act, referred to in subsecs. (c)(4)(A) and (h)(3)(C)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(5)(C)(ii)(II), (d), and (g)(2), (4)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§ 1301 et seq.) of chapter 18 of Title 29. Sections 4001, 4006, 4021, and 4068 of the Act are classified to sections 1301, 1306, 1321, and 1368 of Title 29, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Retirement Protection Act of 1994, referred to in subsec. (g)(2), is the date of enactment of subtitle F of title VII of Pub. L. 103–465, which was approved Dec. 8, 1994.

EFFECTIVE DATE

Section applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as an Effective Date of 2014 Amendment note under section 401 of this title.

SUBPART B—BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS

Sec.

§ 436. Funding-based limits on benefits and benefit accruals under single-employer plans

(a) General rule

For purposes of section 401(a)(29), a defined benefit plan which is a single-employer plan (other than a CSEC plan) shall be treated as

[1] So in original. Does not conform to section catchline.

meeting the requirements of this section if the plan meets the requirements of subsections (b), (c), (d), and (e).

(b) Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans

(1) In general

If a participant of a defined benefit plan which is a single-employer plan is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during any plan year, the plan shall provide that such benefit may not be provided if the adjusted funding target attainment percentage for such plan year—

(A) is less than 60 percent, or

(B) would be less than 60 percent taking into account such occurrence.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the occurrence referred to in paragraph (1), and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(3) Unpredictable contingent event benefit

For purposes of this subsection, the term ''unpredictable contingent event benefit'' means any benefit payable solely by reason of—

(A) a plant shutdown (or similar event, as determined by the Secretary), or

(B) an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

(c) Limitations on plan amendments increasing liability for benefits

(1) In general

No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage for such plan year is—

(A) less than 80 percent, or

(B) would be less than 80 percent taking into account such amendment.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

(3) Exception for certain benefit increases

Paragraph (1) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

(d) Limitations on accelerated benefit distributions

(1) Funding percentage less than 60 percent

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan may not pay any prohibited payment after the valuation date for the plan year.

(2) Bankruptcy

A defined benefit plan which is a single-employer plan shall provide that, during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, the plan may not pay any prohibited payment. The preceding sentence shall not apply on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage of such plan (determined by not taking into account any adjustment of segment rates under section 430(h)(2)(C)(iv)) is not less than 100 percent.

(3) Limited payment if percentage at least 60 percent but less than 80 percent

(A) In general

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or greater but less than 80 percent, the plan may not pay any prohibited payment after the valuation date for the plan year to the extent the amount of the payment exceeds the lesser of—

(i) 50 percent of the amount of the payment which could be made without regard to this section, or

(ii) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum guarantee with respect to the participant under section 4022 of the Employee Retirement Income Security Act of 1974.

(B) One-time application

(i) In general

The plan shall also provide that only 1 prohibited payment meeting the require-

ments of subparagraph (A) may be made with respect to any participant during any period of consecutive plan years to which the limitations under either paragraph (1) or (2) or this paragraph applies.

(ii) Treatment of beneficiaries

For purposes of this subparagraph, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 414(p)(8)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under subparagraph (A) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 414(p)(1)(A)) provides otherwise.

(4) Exception

This subsection shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on September 1, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

(5) Prohibited payment

For purpose of this subsection, the term ''prohibited payment'' means—

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during any period a limitation under paragraph (1) or (2) is in effect,

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary by regulations.

Such term shall not include the payment of a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant.

(e) Limitation on benefit accruals for plans with severe funding shortfalls

(1) In general

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, benefit accruals under the plan shall cease as of the valuation date for the plan year.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(f) Rules relating to contributions required to avoid benefit limitations

(1) Security may be provided

(A) In general

For purposes of this section, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of subparagraph (B).

(B) Form of security

The security required under subparagraph (A) shall consist of—

(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

(C) Enforcement

Any security provided under subparagraph (A) may be perfected and enforced at any time after the earlier of—

(i) the date on which the plan terminates,

(ii) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 430(j), or

(iii) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

(D) Release of security

The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the adjusted funding target attainment percentage.

(2) Prefunding balance or funding standard carryover balance may not be used

No prefunding balance or funding standard carryover balance under section 430(f) may be used under subsection (b), (c), or (e) to satisfy any payment an employer may make under any such subsection to avoid or terminate the application of any limitation under such subsection.

(3) Deemed reduction of funding balances

(A) In general

Subject to subparagraph (C), in any case in which a benefit limitation under subsection (b), (c), (d), or (e) would (but for this subparagraph and determined without regard to subsection (b)(2), (c)(2), or (e)(2)) apply to such plan for the plan year, the plan sponsor

of such plan shall be treated for purposes of this title as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

(B) Exception for insufficient funding balances

Subparagraph (A) shall not apply with respect to a benefit limitation for any plan year if the application of subparagraph (A) would not result in the benefit limitation not applying for such plan year.

(C) Restrictions of certain rules to collectively bargained plans

With respect to any benefit limitation under subsection (b), (c), or (e), subparagraph (A) shall only apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) New plans

Subsections (b), (c), and (e) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

(h) Presumed underfunding for purposes of benefit limitations

(1) Presumption of continued underfunding

In any case in which a benefit limitation under subsection (b), (c), (d), or (e) has been applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan for the current plan year.

(2) Presumption of underfunding after 10th month

In any case in which no certification of the adjusted funding target attainment percentage for the current plan year is made with respect to the plan before the first day of the 10th month of such year, for purposes of subsections (b), (c), (d), and (e), such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of such first day.

(3) Presumption of underfunding after 4th month for nearly underfunded plans

In any case in which—

(A) a benefit limitation under subsection (b), (c), (d), or (e) did not apply to a plan with respect to the plan year preceding the current plan year, but the adjusted funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual adjusted funding target attainment percentage of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the adjusted funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage of the plan for such preceding plan year.

(i) Treatment of plan as of close of prohibited or cessation period

For purposes of applying this title—

(1) Operation of plan after period

Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of the period for which any limitation of payment or accrual of benefits under subsection (d) or (e) applies.

(2) Treatment of affected benefits

Nothing in this subsection shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this section.

(j) Terms relating to funding target attainment percentage

For purposes of this section—

(1) In general

The term ''funding target attainment percentage'' has the same meaning given such term by section 430(d)(2).

(2) Adjusted funding target attainment percentage

The term ''adjusted funding target attainment percentage'' means the funding target attainment percentage which is determined under paragraph (1) by increasing each of the amounts under subparagraphs (A) and (B) of section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

(3) Application to plans which are fully funded without regard to reductions for funding balances

In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to the reduction in the value of assets under section 430(f)(4)), the funding target attainment percentage for purposes of paragraphs (1) and (2) shall be determined without regard to such reduction.

(k) Secretarial authority for plans with alternate valuation date

In the case of a plan which has designated a valuation date other than the first day of the

plan year, the Secretary may prescribe rules for the application of this section which are necessary to reflect the alternate valuation date.

(*l*) Single-employer plan

For purposes of this section, the term ''single-employer plan'' means a plan which is not a multiemployer plan.

(Added Pub. L. 109–280, title I, § 113(a)(1)(B), Aug. 17, 2006, 120 Stat. 847; amended Pub. L. 110–458, title I, § 101(c)(2), Dec. 23, 2008, 122 Stat. 5097; Pub. L. 111–192, title II, § 203(a)(2), June 25, 2010, 124 Stat. 1300; Pub. L. 113–97, title II, § 202(c)(3)(B), Apr. 7, 2014, 128 Stat. 1136; Pub. L. 113–159, title II, § 2003(c)(1), Aug. 8, 2014, 128 Stat. 1850; Pub. L. 113–295, div. A, title II, § 221(a)(57)(E)(i), (F)(i), (G)(i), Dec. 19, 2014, 128 Stat. 4046.)

REFERENCES IN TEXT

Section 4022 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A)(ii), is classified to section 1322 of Title 29, Labor.

Section 412 of the Employee Retirement Income Security Act of 1974, referred to in subsec (f)(1)(B)(i), is classified to section 1112 of Title 29, Labor.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–97 substituted ''single-employer plan (other than a CSEC plan)'' for ''single-employer plan''.

Subsec. (d)(2). Pub. L. 113–159, § 2003(c)(1), substituted ''of such plan (determined by not taking into account any adjustment of segment rates under section 430(h)(2)(C)(iv))'' for ''of such plan''.

Subsec. (j)(3). Pub. L. 113–295, § 221(a)(57)(F)(i), struck out par. (3) which related to a special rule for plan years beginning on or after Oct. 1, 2008, and before Oct. 1, 2010.

Pub. L. 113–295, § 221(a)(57)(E)(i), in par. (3) relating to application to plans which are fully funded without regard to reductions for funding balances, struck out subpar. (A) designation and heading and struck out subpars. (B) and (C) which related to a transition rule for plan years beginning after 2007 and before 2011 and a limitation for plan years beginning after 2008, respectively.

Subsec. (m). Pub. L. 113–295, § 221(a)(57)(G)(i), struck out subsec. (m). Text read as follows: ''For purposes of this section, in the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.''

2010—Subsec. (j)(3). Pub. L. 111–192 added par. (3) relating to a special rule for plan years beginning on or after Oct. 1, 2008, and before Oct. 1, 2010.

2008—Subsec. (b)(2). Pub. L. 110–458, § 101(c)(2)(A), substituted ''section 430'' for ''section 303'' in introductory provisions and ''an adjusted funding'' for ''a funding'' in subpar. (B).

Subsec. (b)(3). Pub. L. 110–458, § 101(c)(2)(B), inserted ''benefit'' after ''event'' in heading and substituted ''an event'' for ''any event'' in subpar. (B).

Subsec. (d)(5). Pub. L. 110–458, § 101(c)(2)(C), inserted concluding provisions.

Subsec. (f)(1)(D). Pub. L. 110–458, § 101(c)(2)(D)(i), inserted ''adjusted'' before ''funding''.

Subsec. (f)(2). Pub. L. 110–458, § 101(c)(2)(D)(ii), substituted ''prefunding balance or funding standard carryover balance under section 430(f)'' for ''prefunding balance under section 430(f) or funding standard carryover balance''.

Subsec. (j)(3)(A). Pub. L. 110–458, § 101(c)(2)(E)(i), struck out ''without regard to this paragraph and'' before ''without regard to the reduction'' and substituted ''section 430(f)(4)'' for ''section 430(f)(4)(A)'' and ''paragraphs (1) and (2)'' for ''paragraph (1)''.

Subsec. (j)(3)(C). Pub. L. 110–458, § 101(c)(2)(E)(ii), substituted ''without regard to the reduction in the value of assets under section 430(f)(4)'' for ''without regard to this paragraph'' and inserted ''beginning'' before ''after'' in two places.

Subsecs. (k) to (m). Pub. L. 110–458, § 101(c)(2)(F), added subsecs. (k) and (*l*) and redesignated former subsec. (k) as (m).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

Pub. L. 113–159, title II, § 2003(c)(3), Aug. 8, 2014, 128 Stat. 1850, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 1056 of Title 29, Labor] shall apply to plan years beginning after December 31, 2014.

''(B) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements, the amendments made by this subsection shall apply to plan years beginning after December 31, 2015.''

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 2010 AMENDMENT

Pub. L. 111–192, title II, § 203(c), June 25, 2010, 124 Stat. 1300, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to plan years beginning on or after October 1, 2008.

''(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2007.''

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

Pub. L. 109–280, title I, § 113(b), Aug. 17, 2006, 120 Stat. 852, as amended by Pub. L. 110–458, title I, § 101(c)(3), Dec. 23, 2008, 122 Stat. 5098, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this subpart] shall apply to plan years beginning after December 31, 2007.

''(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2008, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Aug. 17, 2006]), or

''(ii) the first day of the first plan year to which the amendments made by this section [enacting this subpart] would (but for this paragraph) apply, or

''(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

PROVISIONS RELATING TO PLAN AMENDMENTS

Pub. L. 113–159, title II, § 2003(c)(4), Aug. 8, 2014, 128 Stat. 1850, provided that:

''(A) IN GENERAL.—If this paragraph applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii).

''(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

''(i) IN GENERAL.—This paragraph shall apply to any amendment to any plan or annuity contract which is made—

''(I) pursuant to the amendments made by this subsection [amending this section and section 1056 of Title 29, Labor], or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under any provision as so amended, and

''(II) on or before the last day of the first plan year beginning on or after January 1, 2016, or such later date as the Secretary of the Treasury may prescribe.

''(ii) CONDITIONS.—This subsection [amending this section and section 1056 of Title 29, Labor, and enacting provisions set out as a note under this section] shall not apply to any amendment unless, during the period—

''(I) beginning on the date that the amendments made by this subsection or the regulation described in clause (i)(I) takes effect (or in the case of a plan or contract amendment not required by such amendments or such regulation, the effective date specified by the plan), and

''(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and such plan or contract amendment applies retroactively for such period.

''(C) ANTI-CUTBACK RELIEF.—A plan shall not be treated as failing to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) and section 411(d)(6) of the Internal Revenue Code of 1986 [26 U.S.C. 411(d)(6)] solely by reason of a plan amendment to which this paragraph applies.''

TEMPORARY MODIFICATION OF APPLICATION OF LIMITATION ON BENEFIT ACCRUALS

Pub. L. 111–192, title II, §203(b), June 25, 2010, 124 Stat. 1300, provided that: ''Section 203 of the Worker, Retiree, and Employer Recovery Act of 2008 [Pub. L. 110–458, set out below] shall apply to a plan for any plan year in lieu of the amendments made by this section applying to sections 206(g)(4) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1056(g)(4)] and 436(e) of the Internal Revenue Code of 1986 only to the extent that such section produces a higher adjusted funding target attainment percentage for such plan for such year.''

Pub. L. 110–458, title II, §203, Dec. 23, 2008, 122 Stat. 5118, provided that: ''In the case of the first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, sections 206(g)(4)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(g)(4)(A)) and 436(e)(1) of the Internal Revenue Code of 1986 shall be applied by substituting the plan's adjusted funding target attainment percentage for the preceding plan year for such percentage for such plan year but only if the adjusted funding target attainment percentage for the preceding plan year is greater.''

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.

Subchapter E—Accounting Periods and Methods of Accounting

PART I—ACCOUNTING PERIODS

AMENDMENTS

1987—Pub. L. 100–203, title X, §10206(a)(2), Dec. 22, 1987, 101 Stat. 1330–398, added item 444.

§ 441. Period for computation of taxable income

(a) Computation of taxable income

Taxable income shall be computed on the basis of the taxpayer's taxable year.

(b) Taxable year

For purposes of this subtitle, the term ''taxable year'' means—

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies;

(3) the period for which the return is made, if a return is made for a period of less than 12 months; or

(4) in the case of a DISC filing a return for a period of at least 12 months, the period determined under subsection (h).

(c) Annual accounting period

For purposes of this subtitle, the term ''annual accounting period'' means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

(d) Calendar year

For purposes of this subtitle, the term ''calendar year'' means a period of 12 months ending on December 31.

(e) Fiscal year

For purposes of this subtitle, the term ''fiscal year'' means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f) the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) Election of year consisting of 52–53 weeks

(1) General rule

A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) on whatever date such same day of the week last occurs in a calendar month, or

(B) on whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute

his taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

(2) Special rules for 52–53-week year

(A) Effective dates

In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 15) be treated—

(i) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) as ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be.

(B) Change in accounting period

In the case of a change from or to a taxable year described in paragraph (1)—

(i) if such change results in a short period (within the meaning of section 443) of 359 days or more, or of less than 7 days, section 443(b) (relating to alternative tax computation) shall not apply;

(ii) if such change results in a short period of less than 7 days, such short period shall, for purposes of this subtitle, be added to and deemed a part of the following taxable year; and

(iii) if such change results in a short period to which subsection (b) of section 443 applies, the taxable income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) Special rule for partnerships, S corporations, and personal service corporations

The Secretary may by regulation provide terms and conditions for the application of this subsection to a partnership, S corporation, or personal service corporation (within the meaning of section 441(i)(2)).

(4) Regulations

The Secretary shall prescribe such regulations as he deems necessary for the application of this subsection.

(g) No books kept; no accounting period

Except as provided in section 443 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) the taxpayer keeps no books;

(2) the taxpayer does not have an annual accounting period; or

(3) the taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

(h) Taxable year of DISC's

(1) In general

For purposes of this subtitle, the taxable year of any DISC shall be the taxable year of that shareholder (or group of shareholders with the same 12-month taxable year) who has the highest percentage of voting power.

(2) Special rule where more than one shareholder (or group) has highest percentage

If 2 or more shareholders (or groups) have the highest percentage of voting power under paragraph (1), the taxable year of the DISC shall be the same 12-month period as that of any such shareholder (or group).

(3) Subsequent changes of ownership

The Secretary shall prescribe regulations under which paragraphs (1) and (2) shall apply to a change of ownership of a corporation after the taxable year of the corporation has been determined under paragraph (1) or (2) only if such change is a substantial change of ownership.

(4) Voting power determined

For purposes of this subsection, voting power shall be determined on the basis of total combined voting power of all classes of stock of the corporation entitled to vote.

(i) Taxable year of personal service corporations

(1) In general

For purposes of this subtitle, the taxable year of any personal service corporation shall be the calendar year unless the corporation establishes, to the satisfaction of the Secretary, a business purpose for having a different period for its taxable year. For purposes of this paragraph, any deferral of income to shareholders shall not be treated as a business purpose.

(2) Personal service corporation

For purposes of this subsection, the term ''personal service corporation'' has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting ''any'' for ''more than 10 percent'', and

(B) by substituting ''any'' for ''50 percent or more in value'' in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 148; Pub. L. 88–272, title II, § 235(c)(3), Feb. 26, 1964, 78 Stat.

127; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title I, §102(b)(5), May 23, 1977, 91 Stat. 137; Pub. L. 98–369, div. A, title IV, §474(b)(2), title VIII, §803, July 18, 1984, 98 Stat. 830, 1000; Pub. L. 99–514, title I, §104(b)(6), title VIII, §806(c)(1), (d), Oct. 22, 1986, 100 Stat. 2105, 2364; Pub. L. 100–647, title I, §1008(e)(4), Nov. 10, 1988, 102 Stat. 3440; Pub. L. 110–172, §11(g)(7), Dec. 29, 2007, 121 Stat. 2490.)

AMENDMENTS

2007—Subsec. (b)(4). Pub. L. 110–172, §11(g)(7)(A), struck out ''FSC or'' before ''DISC filing''.

Subsec. (h). Pub. L. 110–172, §11(g)(7)(B), struck out ''FSC's and'' before ''DISC's'' in heading and ''FSC or'' before ''DISC'' in pars. (1) and (2).

1988—Subsec. (i)(2). Pub. L. 100–647 inserted at end ''A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation.''

1986—Subsec. (f)(2)(B)(iii). Pub. L. 99–514, §104(b)(6), struck out ''and by adding the zero bracket amount,'' after ''in the short period,''.

Subsec. (f)(3), (4). Pub. L. 99–514, §806(d), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 99–514, §806(c)(1), added subsec. (i).

1984—Subsec. (b)(4). Pub. L. 98–369, §803(a), added par. (4).

Subsec. (f)(2)(A). Pub. L. 98–369, §474(b)(2), substituted ''section 15'' for ''section 21'' in provisions preceding cl. (i).

Subsec. (h). Pub. L. 98–369, §803(b), added subsec. (h).

1977—Subsec. (f)(2)(B)(iii). Pub. L. 95–30 substituted ''multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and by adding the zero bracket amount'' for ''multiplying such income by 365 and dividing the result by the number of days in the short period''.

1976—Subsec. (f)(3). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (f)(2)(A). Pub. L. 88–272 inserted '', including,'' before ''or ending with reference to''.

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 OF 1986 AMENDMENT

Amendment by section 104(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 806(c)(1), (d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(b)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 803 of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 805(a)(4) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as a note under section 269 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

§ 442. Change of annual accounting period

If a taxpayer changes his annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary. For purposes of this subtitle, if a taxpayer to whom section 441(g) applies adopts an annual accounting period (as defined in section 441(c)) other than a calendar year, the taxpayer shall be treated as having changed his annual accounting period.

(Aug. 16, 1954, ch. 736, 68A Stat. 149; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 443. Returns for a period of less than 12 months

(a) Returns for short period

A return for a period of less than 12 months (referred to in this section as ''short period'') shall be made under any of the following circumstances:

(1) Change of annual accounting period

When the taxpayer, with the approval of the Secretary, changes his annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) Taxpayer not in existence for entire taxable year

When the taxpayer is in existence during only part of what would otherwise be his taxable year.

(b) Computation of tax on change of annual accounting period

(1) General rule

If a return is made under paragraph (1) of subsection (a), the taxable income for the short period shall be placed on an annual basis

by multiplying the modified taxable income for such short period by 12, dividing the result by the number of months in the short period. The tax shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months.

(2) Exception

(A) Computation based on 12-month period

If the taxpayer applies for the benefits of this paragraph and establishes the amount of this taxable income for the 12-month period described in subparagraph (B), computed as if that period were a taxable year and under the law applicable to that year, then the tax for the short period, computed under paragraph (1), shall be reduced to the greater of the following:

(i) an amount which bears the same ratio to the tax computed on the taxable income for the 12-month period as the modified taxable income computed on the basis of the short period bears to the modified taxable income for the 12-month period; or

(ii) the tax computed on the modified taxable income for the short period.

The taxpayer (other than a taxpayer to whom subparagraph (B)(ii) applies) shall compute the tax and file his return without the application of this paragraph.

(B) 12-month period

The 12-month period referred to in subparagraph (A) shall be—

(i) the period of 12 months beginning on the first day of the short period, or

(ii) the period of 12 months ending at the close of the last day of the short period, if at the end of the 12 months referred to in clause (i) the taxpayer is not in existence or (if a corporation) has theretofore disposed of substantially all of its assets.

(C) Application for benefits

Application for the benefits of this paragraph shall be made in such manner and at such time as the regulations prescribed under subparagraph (D) may require; except that the time so prescribed shall not be later than the time (including extensions) for filing the return for the first taxable year which ends on or after the day which is 12 months after the first day of the short period. Such application, in case the return was filed without regard to this paragraph, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this paragraph.

(D) Regulations

The Secretary shall prescribe such regulations as he deems necessary for the application of this paragraph.

(3) Modified taxable income defined

For purposes of this subsection the term ''modified taxable income'' means, with respect to any period, the gross income for such period minus the deductions allowed by this chapter for such period (but, in the case of a short period, only the adjusted amount of the deductions for personal exemptions).

(c) Adjustment in deduction for personal exemption

In the case of a taxpayer other than a corporation, if a return is made for a short period by reason of subsection (a)(1) and if the tax is not computed under subsection (b)(2), then the exemptions allowed as a deduction under section 151 (and any deduction in lieu thereof) shall be reduced to amounts which bear the same ratio to the full exemptions as the number of months in the short period bears to 12.

(d) Adjustment in computing minimum tax and tax preferences

If a return is made for a short period by reason of subsection (a)—

(1) the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying such amount by 12 and dividing the result by the number of months in the short period, and

(2) the amount computed under paragraph (1) of section 55(a) shall bear the same relation to the tax computed on the annual basis as the number of months in the short period bears to 12.

(e) Cross references

For inapplicability of subsection (b) in computing—

(1) Accumulated earnings tax, see section 536.

(2) Personal holding company tax, see section 546.

(3) The taxable income of a regulated investment company, see section 852(b)(2)(E).

(4) The taxable income of a real estate investment trust, see section 857(b)(2)(C).

For returns for a period of less than 12 months in the case of a debtor's election to terminate a taxable year, see section 1398(d)(2)(E).

(Aug. 16, 1954, ch. 736, 68A Stat. 149; Pub. L. 86–779, § 10(i), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 91–172, title III, § 301(b)(6), Dec. 30, 1969, 83 Stat. 585; Pub. L. 94–455, title III, § 301(e), title XII, § 1204(c)(2), title XVI, § 1607(b)(1)(C), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1553, 1697, 1757, 1834; Pub. L. 95–30, title I, § 102(b)(6), May 23, 1977, 91 Stat. 137; Pub. L. 95–600, title IV, § 421(e)(2), title VII, § 703(*o*)(1)–(3), Nov. 6, 1978, 92 Stat. 2876, 2943; Pub. L. 96–222, title I, § 104(a)(4)(H)(iii), Apr. 1, 1980, 94 Stat. 217; Pub. L. 96–589, § 3(d), Dec. 24, 1980, 94 Stat. 3401; Pub. L. 97–448, title III, § 304(a), Jan. 12, 1983, 96 Stat. 2398; Pub. L. 99–514, title I, § 104(b)(7), title VII, § 701(e)(3), Oct. 22, 1986, 100 Stat. 2105, 2342; Pub. L. 108–357, title IV, § 413(c)(6), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (e)(3) to (5). Pub. L. 108–357 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''Undistributed foreign personal holding company income, see section 557.''

1986—Subsec. (b)(1). Pub. L. 99–514, § 104(b)(7)(A), struck out '', and adding the zero bracket amount'' after ''by the number of months in the short period''.

Subsec. (b)(2)(A)(ii). Pub. L. 99–514, § 104(b)(7)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the tax computed on the sum of the modified taxable income for the short period plus the zero bracket amount.''

Subsec. (d). Pub. L. 99–514, § 701(e)(3), substituted ''and tax preferences'' for ''for tax preferences'' in heading and amended text generally. Prior to amendment, subsec. (d) read as follows: ''If a return is made for a short period by reason of subsection (a), then—

''(1) in the case of a taxpayer other than a corporation, the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying that amount by 12 and dividing the result by the number of months in the short period, and the amount computed under paragraph (1) of section 55(a) shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months; and

''(2) the $10,000 amount specified in section 56 (relating to minimum tax for tax preferences), modified as provided by section 58, shall be reduced to the amount which bears the same ratio to such specified amount as the number of days in the short period bears to 365.''

1983—Subsec. (e). Pub. L. 97–448 substituted ''section 1398(d)(2)(E)'' for ''section 1398(d)(3)(E)''.

1980—Subsec. (d)(2). Pub. L. 96–222 struck out ''in the case of a corporation,'' before ''the $10,000 amount''.

Subsec. (e). Pub. L. 96–589 inserted cross reference to section 1398(d)(3)(E) for returns for a period of less than 12 months in the case of a debtor's election to terminate a taxable year.

1978—Subsec. (b)(1). Pub. L. 95–600, §703(*o*)(2), substituted ''modified taxable income for such short period'' for ''gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions)''.

Subsec. (b)(2). Pub. L. 95–600, §703(*o*)(1), substituted in cl. (i) ''modified taxable income'' for ''taxable income'' in two places and in cl. (ii) ''the sum of the modified taxable income'' for ''the taxable income'' and ''plus the zero bracket amount'' for ''without placing the taxable income on an annual basis''.

Subsec. (b)(3). Pub. L. 95–600, §703(*o*)(3), added par. (3).

Subsec. (d). Pub. L. 95–600, §421(e)(2), substituted ''Adjustment in computing minimum tax for tax preferences'' for ''Adjustment in exclusion for computing minimum tax for tax preferences'' in heading, redesignated existing provisions as par. (2) and as so redesignated applied par. (2) to corporations, and added par. (1).

1977—Subsec. (b)(1). Pub. L. 95–30 substituted ''multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions) by 12, dividing the result by the number of months in the short period, and adding the zero bracket amount'' for ''multiplying such income by 12, and dividing the result by the number of months in the short period''.

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(3). Pub. L. 94–455, §1204(c)(2), struck out par. (3) which made termination of taxpayer's taxable year under section 6851 as one of the circumstances under which a tax return for a period of less than 12 months shall be made.

Subsec. (b)(2)(D). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §301(e), substituted ''$10,000'' for ''$30,000''.

Subsec. (e)(5). Pub. L. 94–455, §1607(b)(1)(C), substituted ''section 857(b)(2)(C)'' for ''section 857(b)(2)(D)''.

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (d)(5). Pub. L. 86–779 added par. (5).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 701(e)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §311(b)(1), Jan. 12, 1983, 96 Stat. 2411, provided that: ''The amendment made by subsection (a) of section 304 [amending this section] shall take effect as if included in the amendments made by section 3 of the Bankruptcy Tax Act of 1980 [section 3 of Pub. L. 96–589, which amended this section and sections 6012 and 6103 of this title].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §703(*o*)(4), Nov. 6, 1978, 92 Stat. 2943, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 421(e)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title III, §301(g)(1), Oct. 4, 1976, 90 Stat. 1553, provided that the amendment made by section 301(e) of Pub. L. 94–455 is effective for items of tax preferences for taxable years beginning after Dec. 31, 1975, with certain exceptions.

Amendment by section 1204(c)(2) of Pub. L. 94–455 effective with respect to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

For effective date of amendment by section 1607(b)(1)(C) of Pub. L. 94–455, see section 1608(c) of Pub. L. 94–455, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(3) of Pub. L. 99–514 notwithstanding any treaty obligation of

the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 444. Election of taxable year other than required taxable year

(a) General rule

Except as otherwise provided in this section, a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

(b) Limitations on taxable years which may be elected

(1) In general

Except as provided in paragraphs (2) and (3), an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than 3 months.

(2) Changes in taxable year

Except as provided in paragraph (3), in the case of an entity changing a taxable year, an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than the shorter of—

(A) 3 months, or

(B) the deferral period of the taxable year which is being changed.

(3) Special rule for entities retaining 1986 taxable years

In the case of an entity's 1st taxable year beginning after December 31, 1986, an entity may elect a taxable year under subsection (a) which is the same as the entity's last taxable year beginning in 1986.

(4) Deferral period

For purposes of this subsection, except as provided in regulations, the term ''deferral period'' means, with respect to any taxable year of the entity, the months between—

(A) the beginning of such year, and

(B) the close of the 1st required taxable year ending within such year.

(c) Effect of election

If an entity makes an election under subsection (a), then—

(1) in the case of a partnership or S corporation, such entity shall make the payments required by section 7519, and

(2) in the case of a personal service corporation, such corporation shall be subject to the deduction limitations of section 280H.

(d) Elections

(1) Person making election

An election under subsection (a) shall be made by the partnership, S corporation, or personal service corporation.

(2) Period of election

(A) In general

Any election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation changes its taxable year or otherwise terminates such election. Any change to a required taxable year may be made without the consent of the Secretary.

(B) No further election

If an election is terminated under subparagraph (A) or paragraph (3)(A), the partnership, S corporation, or personal service corporation may not make another election under subsection (a).

(3) Tiered structures, etc.

(A) In general

Except as otherwise provided in this paragraph—

(i) no election may be under subsection (a) with respect to any entity which is part of a tiered structure, and

(ii) an election under subsection (a) with respect to any entity shall be terminated if such entity becomes part of a tiered structure.

(B) Exceptions for structures consisting of certain entities with same taxable year

Subparagraph (A) shall not apply to any tiered structure which consists only of partnerships or S corporations (or both) all of which have the same taxable year.

(e) Required taxable year

For purposes of this section, the term ''required taxable year'' means the taxable year determined under section 706(b), 1378, or 441(i) without taking into account any taxable year which is allowable by reason of business purposes. Solely for purposes of the preceding sentence, sections 706(b), 1378, and 441(i) shall be treated as in effect for taxable years beginning before January 1, 1987.

(f) Personal service corporation

For purposes of this section, the term ''personal service corporation'' has the meaning given to such term by section 441(i)(2).

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of subsection (b)(2)(B) or (d)(2)(B) through the change in form of an entity.

(Added Pub. L. 100–203, title X, § 10206(a)(1), Dec. 22, 1987, 101 Stat. 1330–397; amended Pub. L. 100–647, title II, § 2004(e)(1), (2)(A), (12), (13), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 2004(e)(1)(A), substituted ''as otherwise provided in this section'' for ''as provided in subsections (b) and (c)''.

Subsec. (b)(4). Pub. L. 100–647, § 2004(e)(13), inserted ''except as provided in regulations,'' before ''the term''.

Subsec. (d)(2)(A). Pub. L. 100–647, § 2004(e)(12), inserted ''or otherwise terminates such election'' after ''its taxable year''.

Subsec. (d)(2)(B). Pub. L. 100–647, § 2004(e)(1)(C), inserted ''or paragraph (3)(A)'' after ''under subparagraph (A)''.

Subsec. (d)(3). Pub. L. 100–647, § 2004(e)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''No election may be made under subsection (a) with respect to an entity which is part of a tiered structure other than a tiered structure comprised of 1 or more partnerships or S corporations all of which have the same taxable year.''

Subsecs. (f), (g). Pub. L. 100–647, § 2004(e)(2)(A), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Pub. L. 100–203, title X, §10206(d), Dec. 22, 1987, 101 Stat. 1330–403, as amended by Pub. L. 100–647, title II, §2004(e)(11), Nov. 10, 1988, 102 Stat. 3602, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and sections 280H and 7519 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) REQUIRED PAYMENTS.—The amendments made by subsection (b) [enacting section 7519 of this title] shall apply to applicable election years beginning after December 31, 1986.

''(3) ELECTIONS.—Any election under section 444 of the Internal Revenue Code of 1986 (as added by subsection (a)) for an entity's 1st taxable year beginning after December 31, 1986, shall not be required to be made before the 90th day after the date of the enactment of this Act [Dec. 22, 1987].

''(4) SPECIAL RULE FOR EXISTING ENTITIES ELECTING S CORPORATION STATUS.—If a C corporation (within the meaning of section 1361(a)(2) of the Internal Revenue Code of 1986) with a taxable year other than the calendar year—

''(A) made an election after September 18, 1986, and before January 1, 1988, under section 1362 of such Code to be treated as an S corporation, and

''(B) elected to have the calendar year as the taxable year of the S corporation,

then section 444(b)(2)(B) of such Code shall be applied by taking into account the deferral period of the last taxable year of the C corporation rather than the deferral period of the taxable year being changed. The preceding sentence shall apply only in the case of an election under section 444 of such Code made for a taxable year beginning before 1989.''

PART II—METHODS OF ACCOUNTING

SUBPART A—METHODS OF ACCOUNTING IN GENERAL

AMENDMENTS

1986—Pub. L. 99–514, title VIII, §801(c), Oct. 22, 1986, 100 Stat. 2348, added item 448.

1976—Pub. L. 94–455, title II, §207(c)(1)(B), Oct. 4, 1976, 90 Stat. 1541, added item 447.

§ 446. General rule for methods of accounting

(a) General rule

Taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books.

(b) Exceptions

If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, the computation of taxable income shall be made under such method as, in the opinion of the Secretary, does clearly reflect income.

(c) Permissible methods

Subject to the provisions of subsections (a) and (b), a taxpayer may compute taxable income under any of the following methods of accounting—

(1) the cash receipts and disbursements method;

(2) an accrual method;

(3) any other method permitted by this chapter; or

(4) any combination of the foregoing methods permitted under regulations prescribed by the Secretary.

(d) Taxpayer engaged in more than one business

A taxpayer engaged in more than one trade or business may, in computing taxable income, use a different method of accounting for each trade or business.

(e) Requirement respecting change of accounting method

Except as otherwise expressly provided in this chapter, a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income under the new method, secure the consent of the Secretary.

(f) Failure to request change of method of accounting

If the taxpayer does not file with the Secretary a request to change the method of accounting, the absence of the consent of the Secretary to a change in the method of accounting shall not be taken into account—

(1) to prevent the imposition of any penalty, or the addition of any amount to tax, under this title, or

(2) to diminish the amount of such penalty or addition to tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 151; Pub. L. 94–455, title XIX, §1906 (b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §161(a), July 18, 1984, 98 Stat. 696.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f).

1976—Subsecs. (b), (c), (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §161(b), July 18, 1984, 98 Stat. 697, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

§ 447. Method of accounting for corporations engaged in farming

(a) General rule

Except as otherwise provided by law, the taxable income from farming of—

(1) a corporation engaged in the trade or business of farming, or

(2) a partnership engaged in the trade or business of farming, if a corporation is a partner in such partnership,

shall be computed on an accrual method of accounting. This section shall not apply to the trade or business of operating a nursery or sod farm or to the raising or harvesting of trees (other than fruit and nut trees).

(b) Preproductive period expenses

For rules requiring capitalization of certain preproductive period expenses, see section 263A.

(c) Exception for certain corporations

For purposes of subsection (a), a corporation shall be treated as not being a corporation for any taxable year if it is—

(1) an S corporation, or

(2) a corporation which meets the gross receipts test of section 448(c) for such taxable year.

(d) Coordination with section 481

Any change in method of accounting made pursuant to this section shall be treated for purposes of section 481 as initiated by the taxpayer and made with the consent of the Secretary.

(e) Certain annual accrual accounting methods

(1) In general

Notwithstanding subsection (a) or section 263A, if—

(A) for its 10 taxable years ending with its first taxable year beginning after December 31, 1975, a corporation or qualified partnership used an annual accrual method of accounting with respect to its trade or business of farming,

(B) such corporation or qualified partnership raises crops which are harvested not less than 12 months after planting, and

(C) such corporation or qualified partnership has used such method of accounting for all taxable years intervening between its first taxable year beginning after December 31, 1975, and the taxable year,

such corporation or qualified partnership may continue to employ such method of accounting for the taxable year with respect to its qualified farming trade or business.

(2) Annual accrual method of accounting defined

For purposes of paragraph (1), the term ''annual accrual method of accounting'' means a method under which revenues, costs, and expenses are computed on an accrual method of accounting and the preproductive period expenses incurred during the taxable year are charged to harvested crops or deducted in determining the taxable income for such years.

(3) Certain nonrecognition transfers

For purposes of this subsection, if—

(A) a corporation acquired substantially all the assets of a qualified farming trade or business from another corporation in a transaction in which no gain or loss was recognized to the transferor or transferee corporation, or

(B) a qualified partnership acquired substantially all the assets of a qualified farming trade or business from one of its partners in a transaction to which section 721 applies,

the transferee corporation or qualified partnership shall be deemed to have computed its taxable income on an annual accrual method of accounting during the period for which the transferor corporation or partnership computed its taxable income from such trade or business on an annual accrual method.

(4) Qualified partnership defined

For purposes of this subsection—

(A) Qualified partnership

The term ''qualified partnership'' means a partnership which is engaged in a qualified farming trade or business and each of the partners of which is a corporation other than—

(i) an S corporation, or

(ii) a personal holding company (within the meaning of section 542(a)).

(B) Qualified farming trade or business

(i) In general

The term ''qualified farming trade or business'' means the trade or business of farming—

(I) sugar cane,

(II) any plant with a preproductive period (as defined in section 263A(e)(3)) of 2 years or less, and

(III) any other plant (other than any citrus or almond tree) if an election by the corporation under this subparagraph is in effect.

In the case of a partnership and for purposes of paragraph (3)(A), subclauses (II) and (III) shall not apply.

(ii) Effect of election

For purposes of paragraphs (1) and (2) of section 263A(e), any election under this subparagraph shall be treated as if it were an election under subsection (d)(3) of section 263A.

(iii) Election

Unless the Secretary otherwise consents, an election under this subparagraph may be made only for the corporation's 1st taxable year which begins after December 31, 1986, and during which the corporation engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(Added Pub. L. 94–455, title II, § 207(c)(1)(A), Oct. 4, 1976, 90 Stat. 1538; amended Pub. L. 95–600, title III, §§ 351(a), 353(a), title VII, §§ 701(*l*)(1), 703(d), Nov. 6, 1978, 92 Stat. 2846, 2847, 2906, 2939; Pub. L. 97–248, title II, § 230(a), Sept. 3, 1982, 96 Stat. 495; Pub. L. 97–354, § 5(a)(28), (29), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 99–514, title VIII, § 803(b)(7), Oct. 22, 1986, 100 Stat. 2356; Pub. L. 100–203, title X, § 10205(a)–(c), Dec. 22, 1987, 101 Stat. 1330–395 to 1330–397; Pub. L. 100–647, title I, § 1008(b)(5), (6), Nov. 10, 1988, 102 Stat. 3438; Pub. L. 101–508, title XI, § 11702(b), Nov. 5, 1990, 104 Stat. 1388–514; Pub. L. 105–34, title X, § 1081(a), Aug. 5, 1997, 111 Stat. 949; Pub. L. 115–97, title I, § 13102(a)(5), Dec. 22, 2017, 131 Stat. 2102.)

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–97, § 13102(a)(5)(A)(i), in introductory provisions, inserted ''for any taxable year'' after ''not being a corporation''.

Subsec. (c)(2). Pub. L. 115–97, §13102(a)(5)(A)(ii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''a corporation the gross receipts of which meet the requirements of subsection (d).''

Subsec. (d). Pub. L. 115–97, §13102(a)(5)(C), redesignated subsec. (f) as (d) and struck out former subsec. (d) which related to gross receipts requirements.

Subsec. (e). Pub. L. 115–97, §13102(a)(5)(C), redesignated subsec. (g) as (e) and struck out former subsec. (e) which related to members of the same family.

Subsec. (f). Pub. L. 115–97, §13102(a)(5)(C)(ii), redesignated subsec. (f) as (d).

Pub. L. 115–97, §13102(a)(5)(B), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to coordination with section 481.

Subsec. (g). Pub. L. 115–97, §13102(a)(5)(C)(ii), redesignated subsec. (g) as (e).

Subsecs. (h), (i). Pub. L. 115–97, §13102(a)(5)(C)(i), struck out subsecs. (h) and (i) which related to exception for certain closely held corporations and suspense account for family corporations, respectively.

1997—Subsec. (i)(3). Pub. L. 105–34 redesignated par. (5) as (3) and struck out heading and text of former par. (3). Text read as follows: ''If—

''(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

''(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B).''

Subsec. (i)(4). Pub. L. 105–34 redesignated par. (6) as (4) and struck out heading and text of former par. (4). Text read as follows: ''Any reduction in the suspense account under paragraph (3) shall be included in gross income for the taxable year of the reduction.''

Subsec. (i)(5), (6). Pub. L. 105–34 added par. (5) and redesignated former pars. (5) and (6) as (3) and (4), respectively.

1990—Subsec. (g)(1)(A). Pub. L. 101–508, §11702(b)(2), substituted ''trade or business of farming'' for ''qualified farming trade or business''.

Subsec. (g)(4)(B). Pub. L. 101–508, §11702(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'qualified farming trade or business' means the trade or business of farming sugar cane.''

1988—Subsec. (b). Pub. L. 100–647, §1008(b)(5), substituted ''period expenses'' for ''period of expenses'' in heading and in text.

Subsec. (g)(1). Pub. L. 100–647, §1008(b)(6), substituted ''qualified farming trade or business'' for ''trade or business of farming'' in subpar. (A) and in concluding provisions.

1987—Subsec. (c). Pub. L. 100–203, §10205(a), added subsec. (c), substituting ''certain corporations'' for ''small business and family corporations'' in heading and striking out former text which read as follows: ''For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

''(1) an S corporation,

''(2) a corporation of which at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of the corporation, are owned by members of the same family, or

''(3) a corporation the gross receipts of which meet the requirements of subsection (e).''

Subsec. (d). Pub. L. 100–203, §10205(a), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–203, §10205(c)(1), substituted ''subsection (d)'' for ''subsection (c)(2)''.

Pub. L. 100–203, §10205(a), redesignated former subsec. (d) as (e) and struck out former subsec. (e), ''Corporation having gross receipts of $1,000,000 or less'', which read as follows: ''A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one corporation.''

Subsec. (h)(1). Pub. L. 100–203, §10205(c)(2)(A), substituted ''A corporation is described in this subsection'' for ''This section shall not apply to any corporation''.

Subsec. (h)(1)(A), (B). Pub. L. 100–203, §10205(c)(2)(B), (C), substituted ''subsection (e)'' for ''subsection (d)'' and ''subsection (e)(1)'' for ''subsection (d)(1)'' wherever appearing.

Subsec. (i). Pub. L. 100–203, §10205(b), added subsec. (i).

1986—Subsec. (a). Pub. L. 99–514, §803(b)(7)(B), which directed that subsec. (a) be amended by striking out ''and with the capitalization of preproductive period of expenses described in subsection (b)'', was executed by striking out ''and with the capitalization of preproductive period expenses described in subsection (b)'' after ''accrual method of accounting'', as the probable intent of Congress.

Subsec. (b). Pub. L. 99–514, §803(b)(7)(A), in amending subsec. (b) generally, substituted in heading ''period of expenses'' for ''period expenses'' and in text the cross reference to section 263A for former par. (1) defining ''preproductive period expenses'', par. (2) relating to exceptions, and par. (3) defining ''preproductive period''.

Subsec. (g)(1). Pub. L. 99–514, §803(b)(7)(C), substituted ''Notwithstanding subsection (a) or section 263A, if'' for ''If''.

1982—Subsec. (c)(1). Pub. L. 97–354, §5(a)(28), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))''.

Subsec. (g)(1). Pub. L. 97–248, §230(a)(1), inserted ''or qualified partnership'' after ''corporation'' wherever appearing.

Subsec. (g)(3). Pub. L. 97–248, §230(a)(2), designated existing provisions from ''a corporation acquired'' through ''transferee corporation'', as subpar. (A), inserted ''qualified'' before ''farming trade'', and added subpar. (B).

Subsec. (g)(4). Pub. L. 97–354, §5(a)(29), substituted in subpar. (A)(i) ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))''.

Pub. L. 97–248, §230(a)(3), added par. (4).

1978—Subsec. (a). Pub. L. 95–600, §§353(a), 703(d), substituted in provisions following par. (2) ''preproductive period expenses'' for ''preproductive expenses'' and ''nursery or sod farm'' for ''nursery''.

Subsec. (f)(3). Pub. L. 95–600, §701(*l*)(1), struck out ''(except as otherwise provided in such regulations)'' before ''be taken'' and inserted ''(or the remaining taxable years where there is a stated future life of less than 10 taxable years)'' after ''10 taxable years''.

Subsec. (g)(2). Pub. L. 95–600, §703(d), substituted ''preproductive period expenses'' for ''preproductive expenses''.

Subsec. (h). Pub. L. 95–600, §351(a), added subsec. (h).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, with provision for preservation of suspense account rules with respect to any existing suspense accounts, see section 13102(e) of Pub. L. 115–97, set out as a note under section 263A of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1081(b), Aug. 5, 1997, 111 Stat. 950, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after June 8, 1997.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 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 OF 1987 AMENDMENT

Pub. L. 100–203, title X, § 10205(d), Dec. 22, 1987, 101 Stat. 1330–397, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Pub. L. 97–248, title II, § 230(b), Sept. 3, 1982, 96 Stat. 496, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, § 351(b), Nov. 6, 1978, 92 Stat. 2846, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1977.''

Pub. L. 95–600, title III, § 353(b), Nov. 6, 1978, 92 Stat. 2847, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Pub. L. 95–600, title VII, § 703(*l*)(4), Nov. 6, 1978, 92 Stat. 2907, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraphs (1) [amending this section] and (3) [amending section 464 of this title] shall take effect as if included in section 447 or 464 (as the case may be) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] at the time of the enactment of such sections [Oct. 4, 1976].''

Amendment by section 703(d) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title II, § 207(c)(2), Oct. 4, 1976, 90 Stat. 1541, as amended by Pub. L. 95–30, title IV, § 404, May 23, 1977, 91 Stat. 155; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraph (1) [enacting this section] shall apply to taxable years beginning after December 31, 1976.

''(B) SPECIAL RULE FOR CERTAIN CORPORATIONS.—In the case of a corporation engaged in the trade or business of farming and with respect to which—

''(i) members of two families (within the meaning of paragraph (1) of [former] section 447(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by paragraph (1)) owned, on October 4, 1976 (directly or through the application of such [former] section 447(d)), at least 65 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 65 percent of the total number of shares of all other classes of stock of such corporation; or

''(ii) members of three families (within the meaning of paragraph (1) of such [former] section 447(d)) owned, on October 4, 1976 (directly or through the application of such [former] section 447(d)), at least 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of such corporation; and substantially all of the stock of such corporation which was not so owned (directly or through the application of such [former] section 447(d)), by members of such three families was owned, on October 4, 1976, directly—

''(I) by employees of the corporation or members of the families (within the meaning of section 267(c)(4) of such Code) of such employees, or

''(II) by a trust for the benefit of the employees of such corporation which is described in section 401(a) of such Code and which is exempt from taxation under section 501(a) of such Code,

the amendments made by paragraph (1) shall apply to taxable years beginning after December 31, 1977.''

ACCOUNTING FOR GROWING CROPS

Pub. L. 95–600, title III, § 352, Nov. 6, 1978, 92 Stat. 2846, provided that:

''(a) APPLICATION OF SECTION.—This section shall apply to a taxpayer who—

''(1) is a farmer, nurseryman, or florist,

''(2) is on an accrual method of accounting, and

''(3) is not required by section 447 of the Internal Revenue Code of 1954 to capitalize preproductive period expenses.

''(b) TAXPAYER MAY NOT BE REQUIRED TO INVENTORY GROWING CROPS.—A taxpayer to whom this section applies may not be required to inventory growing crops for any taxable year beginning after December 31, 1977.

''(c) TAXPAYER MAY ELECT TO CHANGE TO CASH METHOD.—A taxpayer to whom this section applies may, for any taxable year beginning after December 31, 1977 and before January 1, 1981, change to the cash receipts and disbursements method of accounting with respect to any trade or business in which the principal activity is growing crops.

''(d) SECTION 481 OF CODE TO APPLY.—Any change in the way in which a taxpayer accounts for the costs of growing crops resulting from the application of subsection (b) or (c)—

''(1) shall not require the consent of the Secretary of the Treasury or his delegate, and

''(2) shall be treated, for purposes of section 481 of the Internal Revenue Code of 1954 as a change in the method of accounting initiated by the taxpayer.

''(e) GROWING CROPS.—For purposes of this section, the term 'Growing crops' does not include trees grown for lumber, pulp, or other nonlife purposes.''

AUTOMATIC TEN-YEAR ADJUSTMENT FOR FARMING SYNDICATES CHANGING TO ACCRUAL ACCOUNTING

Pub. L. 95–600, title VII, § 703(*l*)(2), Nov. 6, 1978, 92 Stat. 2906, provided that: ''If—

''(A) a farming syndicate (within the meaning of [former] section 464(c) of the Internal Revenue Code of 1954 [now 26 U.S.C. 461(j)]) was in existence on December 31, 1975, and

''(B) such syndicate elects an accrual method of accounting (including the capitalization of preproductive period expenses described in section 447(b) of such Code) for a taxable year beginning before January 1, 1979,

then such election shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change.''

ELECTION TO CHANGE FROM STATIC VALUE METHOD TO ACCRUAL METHOD OF ACCOUNTING

Pub. L. 94–455, title II, §207(c)(3), Oct. 4, 1976, 90 Stat. 1541, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—If—

''(i) a corporation has computed its taxable income on an annual accrual method of accounting together with a static value method of accounting for deferred costs of growing crops for the 10 taxable years ending with its first taxable year beginning after December 31, 1975,

''(ii) such corporation raises crops which are harvested not less than 12 months after planting, and

''(iii) such corporation elects, within one year after the date of the enactment of this Act [Oct. 4, 1976] and in such manner as the Secretary of the Treasury or his delegate prescribes, to change to the annual accrual method of accounting (within the meaning of section 447(g)(2) [now section 447(e)(2)] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for taxable years beginning after December 31, 1976,

such change shall be treated as having been made with the consent of the Secretary of the Treasury, and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of the Internal Revenue Code of 1986 to be taken into account by the taxpayer in computing taxable income shall (except as otherwise provided in such regulations) be taken into account in each of the 10 taxable years beginning with the year of change.

''(B) COORDINATION WITH SECTION 447 OF THE CODE.—A corporation which elects under subparagraph (A) to change to the annual accrual method of accounting shall, for purposes of section 447(g) [now section 447(e)] of the Internal Revenue Code of 1986, be deemed to be a corporation which has computed its taxable income on an annual accrual method of accounting for its 10 taxable years ending with its first taxable year beginning after December 31, 1975.

''(C) CERTAIN CORPORATE REORGANIZATIONS.—For purposes of this paragraph, if a corporation acquired substantially all the assets of a farming trade or business from another corporation in a transaction in which no gain or loss was recognized to the transferor or transferee corporation, the transferee corporation shall be deemed to have computed its taxable income on an annual accrual method of accounting together with a static value method of accounting for deferred costs of growing crops during the period for which the transferor corporation computed its taxable income from such trade or business on such accrual and static value method.''

§ 448. Limitation on use of cash method of accounting

(a) General rule

Except as otherwise provided in this section, in the case of a—

(1) C corporation,

(2) partnership which has a C corporation as a partner, or

(3) tax shelter,

taxable income shall not be computed under the cash receipts and disbursements method of accounting.

(b) Exceptions

(1) Farming business

Paragraphs (1) and (2) of subsection (a) shall not apply to any farming business.

(2) Qualified personal service corporations

Paragraphs (1) and (2) of subsection (a) shall not apply to a qualified personal service corporation, and such a corporation shall be treated as an individual for purposes of determining whether paragraph (2) of subsection (a) applies to any partnership.

(3) Entities which meet gross receipts test

Paragraphs (1) and (2) of subsection (a) shall not apply to any corporation or partnership for any taxable year if such entity (or any predecessor) meets the gross receipts test of subsection (c) for such taxable year.

(c) Gross receipts test

For purposes of this section—

(1) In general

A corporation or partnership meets the gross receipts test of this subsection for any taxable year if the average annual gross receipts of such entity for the 3-taxable-year period ending with the taxable year which precedes such taxable year does not exceed $25,000,000.

(2) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as one person for purposes of paragraph (1).

(3) Special rules

For purposes of this subsection—

(A) Not in existence for entire 3-year period

If the entity was not in existence for the entire 3-year period referred to in paragraph (1), such paragraph shall be applied on the basis of the period during which such entity (or trade or business) was in existence.

(B) Short taxable years

Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.

(C) Gross receipts

Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

(D) Treatment of predecessors

Any reference in this subsection to an entity shall include a reference to any predecessor of such entity.

(4) Adjustment for inflation

In the case of any taxable year beginning after December 31, 2018, the dollar amount in

paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 2017'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

If any amount as increased under the preceding sentence is not a multiple of $1,000,000, such amount shall be rounded to the nearest multiple of $1,000,000.

(d) Definitions and special rules

For purposes of this section—

(1) Farming business

(A) In general

The term ''farming business'' means the trade or business of farming (within the meaning of section 263A(e)(4)).

(B) Timber and ornamental trees

The term ''farming business'' includes the raising, harvesting, or growing of trees to which section 263A(c)(5) applies.

(2) Qualified personal service corporation

The term ''qualified personal service corporation'' means any corporation—

(A) substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and

(B) substantially all of the stock of which (by value) is held directly (or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a)) by—

(i) employees performing services for such corporation in connection with the activities involving a field referred to in subparagraph (A),

(ii) retired employees who had performed such services for such corporation,

(iii) the estate of any individual described in clause (i) or (ii), or

(iv) any other person who acquired such stock by reason of the death of an individual described in clause (i) or (ii) (but only for the 2-year period beginning on the date of the death of such individual).

To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B).

(3) Tax shelter defined

The term ''tax shelter'' has the meaning given such term by section 461(i)(3) (determined after application of paragraph (4) thereof). An S corporation shall not be treated as a tax shelter for purposes of this section merely by reason of being required to file a notice of exemption from registration with a State agency described in section 461(i)(3)(A), but only if there is a requirement applicable to all corporations offering securities for sale in the State that to be exempt from such registration the corporation must file such a notice.

(4) Special rules for application of paragraph (2)

For purposes of paragraph (2)—

(A) community property laws shall be disregarded,

(B) stock held by a plan described in section 401(a) which is exempt from tax under section 501(a) shall be treated as held by an employee described in paragraph (2)(B)(i), and

(C) at the election of the common parent of an affiliated group (within the meaning of section 1504(a)), all members of such group may be treated as 1 taxpayer for purposes of paragraph (2)(B) if 90 percent or more of the activities of such group involve the performance of services in the same field described in paragraph (2)(A).

(5) Special rule for certain services

(A) In general

In the case of any person using an accrual method of accounting with respect to amounts to be received for the performance of services by such person, such person shall not be required to accrue any portion of such amounts which (on the basis of such person's experience) will not be collected if—

(i) such services are in fields referred to in paragraph (2)(A), or

(ii) such person meets the gross receipts test of subsection (c) for all prior taxable years.

(B) Exception

This paragraph shall not apply to any amount if interest is required to be paid on such amount or there is any penalty for failure to timely pay such amount.

(C) Regulations

The Secretary shall prescribe regulations to permit taxpayers to determine amounts referred to in subparagraph (A) using computations or formulas which, based on experience, accurately reflect the amount of income that will not be collected by such person. A taxpayer may adopt, or request consent of the Secretary to change to, a computation or formula that clearly reflects the taxpayer's experience. A request under the preceding sentence shall be approved if such computation or formula clearly reflects the taxpayer's experience.

(6) Treatment of certain trusts subject to tax on unrelated business income

For purposes of this section, a trust subject to tax under section 511(b) shall be treated as a C corporation with respect to its activities constituting an unrelated trade or business.

(7) Coordination with section 481

Any change in method of accounting made pursuant to this section shall be treated for purposes of section 481 as initiated by the taxpayer and made with the consent of the Secretary.

(8) Use of related parties, etc.

The Secretary shall prescribe such regulations as may be necessary to prevent the use

of related parties, pass-thru entities, or intermediaries to avoid the application of this section.

(Added Pub. L. 99–514, title VIII, § 801(a), Oct. 22, 1986, 100 Stat. 2345; amended Pub. L. 100–647, title I, § 1008(a)(1), (2), (7)–(9), title VI, § 6032(a), Nov. 10, 1988, 102 Stat. 3436, 3437, 3695; Pub. L. 107–147, title IV, § 403(a), Mar. 9, 2002, 116 Stat. 40; Pub. L. 115–97, title I, § 13102(a)(1)–(4), Dec. 22, 2017, 131 Stat. 2102.)

AMENDMENTS

2017—Subsec. (b)(3). Pub. L. 115–97, § 13102(a)(2), amended par. (3) generally. Prior to amendment, text read as follows: ''Paragraphs (1) and (2) of subsection (a) shall not apply to any corporation or partnership for any taxable year if, for all prior taxable years beginning after December 31, 1985, such entity (or any predecessor) met the $5,000,000 gross receipts test of subsection (c).''

Subsec. (c). Pub. L. 115–97, § 13102(a)(1), substituted ''Gross receipts test'' for ''$5,000,000 gross receipts test'' in heading and amended introductory provisions and par. (1) generally. Prior to amendment, text read as follows: ''For purposes of this section—

''(1) IN GENERAL.—A corporation or partnership meets the $5,000,000 gross receipts test of this subsection for any prior taxable year if the average annual gross receipts of such entity for the 3-taxable-year period ending with such prior taxable year does not exceed $5,000,000.''

Subsec. (c)(4). Pub. L. 115–97, § 13102(a)(3), added par. (4).

Subsec. (d)(7). Pub. L. 115–97, § 13102(a)(4), amended par. (7) generally. Prior to amendment, par. (7) related to coordination with section 481.

2002—Subsec. (d)(5). Pub. L. 107–147 amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''In the case of any person using an accrual method of accounting with respect to amounts to be received for the performance of services by such person, such person shall not be required to accrue any portion of such amounts which (on the basis of experience) will not be collected. This paragraph shall not apply to any amount if interest is required to be paid on such amount or there is any penalty for failure to timely pay such amount.''

1988—Subsec. (c)(3)(D). Pub. L. 100–647, § 1008(a)(9), added subpar. (D).

Subsec. (d)(2). Pub. L. 100–647, § 6032(a), inserted at end ''To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B).''

Subsec. (d)(2)(B). Pub. L. 100–647, § 1008(a)(1)(A), substituted ''(or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a))'' for ''or indirectly''.

Subsec. (d)(3). Pub. L. 100–647, § 1008(a)(7), inserted sentence at end relating to treatment of S corporation as tax shelter.

Subsec. (d)(4)(C). Pub. L. 100–647, § 1008(a)(8), substituted ''90 percent or more of'' for ''substantially all of''.

Pub. L. 100–647, § 1008(a)(2), substituted ''such group'' for ''all such members''.

Subsec. (d)(8). Pub. L. 100–647, § 1008(a)(1)(B), added par. (8).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13102(e) of Pub. L. 115–97, set out as a note under section 263A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 403(b), Mar. 9, 2002, 116 Stat. 41, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Mar. 9, 2002].

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period of 4 years (or if less, the number of taxable years that the taxpayer used the method permitted under section 448(d)(5) of such Code as in effect before the date of the enactment of this Act) beginning with such first taxable year.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(a)(1), (2), (7)–(9) 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.

Pub. L. 100–647, title VI, § 6032(b), Nov. 10, 1988, 102 Stat. 3695, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE

Pub. L. 99–514, title VIII, § 801(d), Oct. 22, 1986, 100 Stat. 2348, as amended by Pub. L. 100–647, title I, § 1008(a)(5), (6), Nov. 10, 1988, 102 Stat. 3437, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 461 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) ELECTION TO RETAIN CASH METHOD FOR CERTAIN TRANSACTIONS.—A taxpayer may elect not to have the amendments made by this section apply to any loan or lease, or any transaction with a related party (within the meaning of section 267(b) of the Internal Revenue Code of 1954, as in effect before the enactment of this Act), entered into on or before September 25, 1985. Any election under the preceding sentence may be made separately with respect to each transaction.

''(3) CERTAIN CONTRACTS.—The amendments made by this section shall not apply to—

''(A) contracts for the acquisition or transfer of real property, and

''(B) contracts for services related to the acquisition or development of real property,

but only if such contracts were entered into before September 25, 1985, and the sole element of the contract which has not been performed as of September 25, 1985, is payment for such property or services.

''(4) TREATMENT OF AFFILIATED GROUP PROVIDING ENGINEERING SERVICES.—Each member of an affiliated group of corporations (within the meaning of section 1504(a) of the Internal Revenue Code of 1986) shall be allowed to use the cash receipts and disbursements method of accounting for any trade or business of providing engineering services with respect to taxable years ending after December 31, 1986, if the common parent of such group—

''(A) was incorporated in the State of Delaware in 1970,

''(B) was the successor to a corporation that was incorporated in the State of Illinois in 1949, and

''(C) used a method of accounting for long-term contracts of accounting [sic] for a substantial part of its income from the performance of engineering services.

''(5) SPECIAL RULE FOR PARAGRAPHS (2) AND (3).—If any loan, lease, contract, or evidence of any transaction to which paragraph (2) or (3) applies is transferred after June 10, 1987, to a person other than a related party (within the meaning of paragraph (2)), paragraph (2) or (3) shall cease to apply on and after the date of such transfer.''

SUBPART B—TAXABLE YEAR FOR WHICH ITEMS OF GROSS INCOME INCLUDED

AMENDMENTS

Pub. L. 110–343, div. C, title VIII, § 801(c), Oct. 3, 2008, 122 Stat. 3931, added item 457A.

1988—Pub. L. 100–647, title V, § 5076(b)(2), Nov. 10, 1988, 102 Stat. 3683, struck out ''of real property'' after ''rules for nondealers'' in item 453A.

1987—Pub. L. 100–203, title X, § 10202(a)(2), (c)(2), Dec. 22, 1987, 101 Stat. 1330–388, 1330–392, substituted ''Special rules for nondealers of real property'' for ''Installment method for dealers in personal property'' in item 453A, and struck out item 453C ''Certain indebtedness treated as payments on installment obligations''.

1986—Pub. L. 99–514, title XI, § 1107(b), (c), Oct. 22, 1986, 101 Stat. 2430, added item 457, applicable to taxable years beginning after Dec. 31, 1988, with certain exceptions, and struck out former item 457 ''Deferred compensation plans with respect to service for State and local governments''.

Pub. L. 99–514, title VIII, §§ 804(c), 811(b), Oct. 22, 1986, 100 Stat. 2361, 2368, added items 453C and 460.

1980—Pub. L. 96–471, § 2(d), Oct. 19, 1980, 94 Stat. 2254, added items 453 to 453B and struck out former item 453 ''Installment method''.

1978—Pub. L. 95–600, title I, § 131(b), title III, § 372(b), Nov. 6, 1978, 92 Stat. 2782, 2862, added items 457 and 458.

1961—Pub. L. 87–109, § 1(b), July 26, 1961, 75 Stat. 224, added item 456.

1958—Pub. L. 85–866, title I, § 28(b), Sept. 2, 1958, 72 Stat. 1626, added item 455, effective with respect to taxable years beginning after Dec. 31, 1957. See section 28(c) of Pub. L. 85–866 set out as an Effective Date note under section 455 of this title.

1955—Act June 15, 1955, ch. 143, § 2(2), 69 Stat. 135, struck out item 452 ''Adjustment in case of position inconsistent with prior income tax liability''.

§ 451. General rule for taxable year of inclusion

(a) General rule

The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

(b) Inclusion not later than for financial accounting purposes

(1) Income taken into account in financial statement

(A) In general

In the case of a taxpayer the taxable income of which is computed under an accrual method of accounting, the all events test with respect to any item of gross income (or portion thereof) shall not be treated as met any later than when such item (or portion thereof) is taken into account as revenue in—

(i) an applicable financial statement of the taxpayer, or

(ii) such other financial statement as the Secretary may specify for purposes of this subsection.

(B) Exception

This paragraph shall not apply to—

(i) a taxpayer which does not have a financial statement described in clause (i) or (ii) of subparagraph (A) for a taxable year, or

(ii) any item of gross income in connection with a mortgage servicing contract.

(C) All events test

For purposes of this section, the all events test is met with respect to any item of gross income if all the events have occurred which fix the right to receive such income and the amount of such income can be determined with reasonable accuracy.

(2) Coordination with special methods of accounting

Paragraph (1) shall not apply with respect to any item of gross income for which the taxpayer uses a special method of accounting provided under any other provision of this chapter, other than any provision of part V of subchapter P (except as provided in clause (ii) of paragraph (1)(B)).

(3) Applicable financial statement

For purposes of this subsection, the term ''applicable financial statement'' means—

(A) a financial statement which is certified as being prepared in accordance with generally accepted accounting principles and which is—

(i) a 10–K (or successor form), or annual statement to shareholders, required to be filed by the taxpayer with the United States Securities and Exchange Commission,

(ii) an audited financial statement of the taxpayer which is used for—

(I) credit purposes,

(II) reporting to shareholders, partners, or other proprietors, or to beneficiaries, or

(III) any other substantial nontax purpose,

but only if there is no statement of the taxpayer described in clause (i), or

(iii) filed by the taxpayer with any other Federal agency for purposes other than Federal tax purposes, but only if there is

[1] So in original. Does not conform to section catchline.

no statement of the taxpayer described in clause (i) or (ii),

(B) a financial statement which is made on the basis of international financial reporting standards and is filed by the taxpayer with an agency of a foreign government which is equivalent to the United States Securities and Exchange Commission and which has reporting standards not less stringent than the standards required by such Commission, but only if there is no statement of the taxpayer described in subparagraph (A), or

(C) a financial statement filed by the taxpayer with any other regulatory or governmental body specified by the Secretary, but only if there is no statement of the taxpayer described in subparagraph (A) or (B).

(4) Allocation of transaction price

For purposes of this subsection, in the case of a contract which contains multiple performance obligations, the allocation of the transaction price to each performance obligation shall be equal to the amount allocated to each performance obligation for purposes of including such item in revenue in the applicable financial statement of the taxpayer.

(5) Group of entities

For purposes of paragraph (1), if the financial results of a taxpayer are reported on the applicable financial statement (as defined in paragraph (3)) for a group of entities, such statement shall be treated as the applicable financial statement of the taxpayer.

(c) Treatment of advance payments

(1) In general

A taxpayer which computes taxable income under the accrual method of accounting, and receives any advance payment during the taxable year, shall—

(A) except as provided in subparagraph (B), include such advance payment in gross income for such taxable year, or

(B) if the taxpayer elects the application of this subparagraph with respect to the category of advance payments to which such advance payment belongs, the taxpayer shall—

(i) to the extent that any portion of such advance payment is required under subsection (b) to be included in gross income in the taxable year in which such payment is received, so include such portion, and

(ii) include the remaining portion of such advance payment in gross income in the taxable year following the taxable year in which such payment is received.

(2) Election

(A) In general

Except as otherwise provided in this paragraph, the election under paragraph (1)(B) shall be made at such time, in such form and manner, and with respect to such categories of advance payments, as the Secretary may provide.

(B) Period to which election applies

An election under paragraph (1)(B) shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to revoke such election. For purposes of this title, the computation of taxable income under an election made under paragraph (1)(B) shall be treated as a method of accounting.

(3) Taxpayers ceasing to exist

Except as otherwise provided by the Secretary, the election under paragraph (1)(B) shall not apply with respect to advance payments received by the taxpayer during a taxable year if such taxpayer ceases to exist during (or with the close of) such taxable year.

(4) Advance payment

For purposes of this subsection—

(A) In general

The term ''advance payment'' means any payment—

(i) the full inclusion of which in the gross income of the taxpayer for the taxable year of receipt is a permissible method of accounting under this section (determined without regard to this subsection),

(ii) any portion of which is included in revenue by the taxpayer in a financial statement described in clause (i) or (ii) of subsection (b)(1)(A) for a subsequent taxable year, and

(iii) which is for goods, services, or such other items as may be identified by the Secretary for purposes of this clause.

(B) Exclusions

Except as otherwise provided by the Secretary, such term shall not include—

(i) rent,

(ii) insurance premiums governed by subchapter L,

(iii) payments with respect to financial instruments,

(iv) payments with respect to warranty or guarantee contracts under which a third party is the primary obligor,

(v) payments subject to section 871(a), 881, 1441, or 1442,

(vi) payments in property to which section 83 applies, and

(vii) any other payment identified by the Secretary for purposes of this subparagraph.

(C) Receipt

For purposes of this subsection, an item of gross income is received by the taxpayer if it is actually or constructively received, or if it is due and payable to the taxpayer.

(D) Allocation of transaction price

For purposes of this subsection, rules similar to subsection (b)(4) shall apply.

(d) Special rule in case of death

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued only by reason of the death of the taxpayer shall not be included in computing taxable income for the period in which falls the date of the taxpayer's death.

(e) Special rule for employee tips

For purposes of subsection (a), tips included in a written statement furnished an employer by an employee pursuant to section 6053(a) shall be deemed to be received at the time the written statement including such tips is furnished to the employer.

(f) Special rule for crop insurance proceeds or disaster payments

In the case of insurance proceeds received as a result of destruction or damage to crops, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such proceeds in income for the taxable year following the taxable year of destruction or damage, if he establishes that, under his practice, income from such crops would have been reported in a following taxable year. For purposes of the preceding sentence, payments received under the Agricultural Act of 1949, as amended, or title II of the Disaster Assistance Act of 1988, as a result of (1) destruction or damage to crops caused by drought, flood, or any other natural disaster, or (2) the inability to plant crops because of such a natural disaster shall be treated as insurance proceeds received as a result of destruction or damage to crops. An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary prescribes.

(g) Special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions

(1) In general

In the case of income derived from the sale or exchange of livestock in excess of the number the taxpayer would sell if he followed his usual business practices, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such income for the taxable year following the taxable year in which such sale or exchange occurs if he establishes that, under his usual business practices, the sale or exchange would not have occurred in the taxable year in which it occurred if it were not for drought, flood, or other weather-related conditions, and that such conditions had resulted in the area being designated as eligible for assistance by the Federal Government.

(2) Limitation

Paragraph (1) shall apply only to a taxpayer whose principal trade or business is farming (within the meaning of section 6420(c)(3)).

(3) Special election rules

If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.

(h) Special rule for utility services

(1) In general

In the case of a taxpayer the taxable income of which is computed under an accrual method of accounting, any income attributable to the sale or furnishing of utility services to customers shall be included in gross income not later than the taxable year in which such services are provided to such customers.

(2) Definition and special rule

For purposes of this subsection—

(A) Utility services

The term ''utility services'' includes—

(i) the providing of electrical energy, water, or sewage disposal,

(ii) the furnishing of gas or steam through a local distribution system,

(iii) telephone or other communication services, and

(iv) the transporting of gas or steam by pipeline.

(B) Year in which services provided

The taxable year in which services are treated as provided to customers shall not, in any manner, be determined by reference to—

(i) the period in which the customers' meters are read, or

(ii) the period in which the taxpayer bills (or may bill) the customers for such service.

(i) Treatment of interest on frozen deposits in certain financial institutions

(1) In general

In the case of interest credited during any calendar year on a frozen deposit in a qualified financial institution, the amount of such interest includible in the gross income of a qualified individual shall not exceed the sum of—

(A) the net amount withdrawn by such individual from such deposit during such calendar year, and

(B) the amount of such deposit which is withdrawable as of the close of the taxable year (determined without regard to any penalty for premature withdrawals of a time deposit).

(2) Interest tested each year

Any interest not included in gross income by reason of paragraph (1) shall be treated as credited in the next calendar year.

(3) Deferral of interest deduction

No deduction shall be allowed to any qualified financial institution for interest not includible in gross income under paragraph (1) until such interest is includible in gross income.

(4) Frozen deposit

For purposes of this subsection, the term ''frozen deposit'' means any deposit if, as of the close of the calendar year, any portion of such deposit may not be withdrawn because of—

(A) the bankruptcy or insolvency of the qualified financial institution (or threat thereof), or

(B) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in the State.

(5) Other definitions

For purposes of this subsection, the terms ''qualified individual'', ''qualified financial in-

stitution'', and ''deposit'' have the same respective meanings as when used in section 165(*l*).

(j) Special rule for cash options for receipt of qualified prizes

(1) In general

For purposes of this title, in the case of an individual on the cash receipts and disbursements method of accounting, a qualified prize option shall be disregarded in determining the taxable year for which any portion of the qualified prize is properly includible in gross income of the taxpayer.

(2) Qualified prize option; qualified prize

For purposes of this subsection—

(A) In general

The term ''qualified prize option'' means an option which—

(i) entitles an individual to receive a single cash payment in lieu of receiving a qualified prize (or remaining portion thereof), and

(ii) is exercisable not later than 60 days after such individual becomes entitled to the qualified prize.

(B) Qualified prize

The term ''qualified prize'' means any prize or award which—

(i) is awarded as a part of a contest, lottery, jackpot, game, or other similar arrangement,

(ii) does not relate to any past services performed by the recipient and does not require the recipient to perform any substantial future service, and

(iii) is payable over a period of at least 10 years.

(3) Partnership, etc.

The Secretary shall provide for the application of this subsection in the case of a partnership or other pass-through entity consisting entirely of individuals described in paragraph (1).

(k) Special rule for sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy

(1) In general

In the case of any qualifying electric transmission transaction for which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

(ii) any portion of such cost previously taken into account under this subsection, and

(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

(2) Qualified gain

For purposes of this subsection, the term ''qualified gain'' means, with respect to any qualifying electric transmission transaction in any taxable year—

(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

(3) Qualifying electric transmission transaction

For purposes of this subsection, the term ''qualifying electric transmission transaction'' means any sale or other disposition before January 1, 2008 (before January 1, 2017, in the case of a qualified electric utility), of—

(A) property used in the trade or business of providing electric transmission services, or

(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

(4) Independent transmission company

For purposes of this subsection, the term ''independent transmission company'' means—

(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

(B) a person—

(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the date which is 4 years after the close of the taxable year in which the transaction occurs, or

(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

(ii) a political subdivision or affiliate thereof whose transmission facilities are

under the operational control of a person described in clause (i).

(5) Exempt utility property

For purposes of this subsection:

(A) In general

The term ''exempt utility property'' means property used in the trade or business of—

(i) generating, transmitting, distributing, or selling electricity, or

(ii) producing, transmitting, distributing, or selling natural gas.

(B) Nonrecognition of gain by reason of acquisition of stock

Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

(C) Exception for property located outside the United States

The term ''exempt utility property'' shall not include any property which is located outside the United States.

(6) Qualified electric utility

For purposes of this subsection, the term ''qualified electric utility'' means a person that, as of the date of the qualifying electric transmission transaction, is vertically integrated, in that it is both—

(A) a transmitting utility (as defined in section 3(23) of the Federal Power Act (16 U.S.C. 796(23))) with respect to the transmission facilities to which the election under this subsection applies, and

(B) an electric utility (as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22))).

(7) Special rule for consolidated groups

In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

(8) Time for assessment of deficiencies

If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

(9) Purchase

For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

(10) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

(11) Nonapplication of installment sales treatment

Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 152; Pub. L. 89–97, title III, § 313(b), July 30, 1965, 79 Stat. 382; Pub. L. 91–172, title II, § 215(a), Dec. 30, 1969, 83 Stat. 573; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, §§ 2102(a), (b), 2141(a), Oct. 4, 1976, 90 Stat. 1834, 1900, 1933; Pub. L. 99–514, title VIII, § 821(a), title IX, § 905(b), Oct. 22, 1986, 100 Stat. 2372, 2386; Pub. L. 100–647, title I, § 1009(d)(3), title VI, §§ 6030(a), 6033(a), Nov. 10, 1988, 102 Stat. 3450, 3694, 3695; Pub. L. 105–34, title IX, § 913(a), Aug. 5, 1997, 111 Stat. 878; Pub. L. 105–277, div. J, title V, § 5301(a), Oct. 21, 1998, 112 Stat. 2681–918; Pub. L. 108–357, title III, § 311(c), title VIII, § 909(a), Oct. 22, 2004, 118 Stat. 1467, 1657; Pub. L. 109–58, title XIII, § 1305(a), (b), Aug. 8, 2005, 119 Stat. 997; Pub. L. 110–343, div. B, title I, § 109(a)–(c), Oct. 3, 2008, 122 Stat. 3821; Pub. L. 111–312, title VII, § 705(a), Dec. 17, 2010, 124 Stat. 3311; Pub. L. 112–240, title IV, § 411(a), Jan. 2, 2013, 126 Stat. 2343; Pub. L. 113–295, div. A, title I, § 159(a), Dec. 19, 2014, 128 Stat. 4022; Pub. L. 114–113, div. Q, title I, § 191(a), Dec. 18, 2015, 129 Stat. 3075; Pub. L. 115–97, title I, § 13221(a), (b), Dec. 22, 2017, 131 Stat. 2113, 2115.)

REFERENCES IN TEXT

The Agricultural Act of 1949, as amended, referred to in subsec. (f), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Disaster Assistance Act of 1988, referred to in subsec. (f), is Pub. L. 100–387, Aug. 11, 1988, 102 Stat. 924. Title II of the Disaster Assistance Act of 1988 is set out as a note under section 1421 of Title 7. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2017—Subsecs. (b) to (k). Pub. L. 115–97 first added subsec. (b) and then added subsec. (c) and correspondingly redesignated former subsecs. (b) to (i) first as (c) to (j) and then as (d) to (k), respectively.

2015—Subsec. (i)(3). Pub. L. 114–113 substituted ''January 1, 2017'' for ''January 1, 2015'' in introductory provisions.

2014—Subsec. (i)(3). Pub. L. 113–295 substituted ''January 1, 2015'' for ''January 1, 2014'' in introductory provisions.

2013—Subsec. (i)(3). Pub. L. 112–240 substituted ''January 1, 2014'' for ''January 1, 2012'' in introductory provisions.

2010—Subsec. (i)(3). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010'' in introductory provisions.

2008—Subsec. (i)(3). Pub. L. 110–343, § 109(a)(1), inserted ''(before January 1, 2010, in the case of a qualified elec-

tric utility)'' after ''January 1, 2008'' in introductory provisions.

Subsec. (i)(4)(B)(ii). Pub. L. 110–343, §109(b), substituted ''the date which is 4 years after the close of the taxable year in which the transaction occurs'' for ''December 31, 2007''.

Subsec. (i)(5)(C). Pub. L. 110–343, §109(c), added subpar. (C).

Subsec. (i)(6) to (11). Pub. L. 110–343, §109(a)(2), added par. (6) and redesignated former pars. (6) to (10) as (7) to (11), respectively.

2005—Subsec. (i)(3). Pub. L. 109–58, §1305(a), substituted ''2008'' for ''2007'' in introductory provisions.

Subsec. (i)(4)(B)(ii). Pub. L. 109–58, §1305(b), substituted ''December 31, 2007'' for ''the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2)''.

2004—Subsec. (e)(3). Pub. L. 108–357, §311(c), added par. (3).

Subsec. (i). Pub. L. 108–357, §909(a), added subsec. (i).

1998—Subsec. (h). Pub. L. 105–277 added subsec. (h).

1997—Subsec. (e). Pub. L. 105–34 inserted '', flood, or other weather-related conditions'' after ''drought'' in heading and substituted ''drought, flood, or other weather-related conditions, and that such conditions'' for ''drought conditions, and that these drought conditions'' in par. (1).

1988—Subsec. (d). Pub. L. 100–647, §6033(a), inserted ''or title II of the Disaster Assistance Act of 1988,'' after ''the Agricultural Act of 1949, as amended,''.

Subsec. (e)(1). Pub. L. 100–647, §6030(a), struck out ''(other than livestock described in section 1231(b)(3))'' after ''exchange of livestock''.

Subsecs. (f), (g). Pub. L. 100–647, §1009(d)(3), redesignated subsec. (f), relating to treatment of interest on frozen deposits in certain financial institutions, as (g).

1986—Subsec. (f). Pub. L. 99–514, §905(b), added subsec. (f) relating to treatment of interest on frozen deposits in certain financial institutions.

Pub. L. 99–514, §821(a), added subsec. (f) relating to special rule for utility services.

1976—Subsec. (d). Pub. L. 94–455, §§1906(b)(13)(A), 2102(a), (b), inserted reference to disaster payments in heading, provided that payments received under the Agricultural Act of 1949, as amended, be treated as insurance proceeds received as a result of destruction or damage to crops if the payments are received as the result of destruction or damage from drought, flood, or other natural disaster, or as the result of inability to plant crops because of drought, flood, or other natural disaster, and struck out ''or his delegate'' after ''Secretary''.

Subsec. (e). Pub. L. 94–455, §2141(a), added subsec. (e).

1969—Subsec. (d). Pub. L. 91–172 added subsec. (d).

1965—Subsec. (c). Pub. L. 89–97 added subsec. (c).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13221(c)–(e), Dec. 22, 2017, 131 Stat. 2116, 2117, provided that:

''(c) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.

''(d) COORDINATION WITH SECTION 481.—

''(1) IN GENERAL.—In the case of any qualified change in method of accounting for the taxpayer's first taxable year beginning after December 31, 2017—

''(A) such change shall be treated as initiated by the taxpayer, and

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury.

''(2) QUALIFIED CHANGE IN METHOD OF ACCOUNTING.—For purposes of this subsection, the term 'qualified change in method of accounting' means any change in method of accounting which—

''(A) is required by the amendments made by this section, or

''(B) was prohibited under the Internal Revenue Code of 1986 prior to such amendments and is permitted under such Code after such amendments.

''(e) SPECIAL RULES FOR ORIGINAL ISSUE DISCOUNT.—Notwithstanding subsection (c), in the case of income from a debt instrument having original issue discount—

''(1) the amendments made by this section shall apply to taxable years beginning after December 31, 2018, and

''(2) the period for taking into account any adjustments under section 481 by reason of a qualified change in method of accounting (as defined in subsection (d)) shall be 6 years.''

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §191(b), Dec. 18, 2015, 129 Stat. 3075, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions after December 31, 2014.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, §159(b), Dec. 19, 2014, 128 Stat. 4022, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions after December 31, 2013.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §411(b), Jan. 2, 2013, 126 Stat. 2343, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions after December 31, 2011.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1305(c), Aug. 8, 2005, 119 Stat. 997, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 8, 2005].

''(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 909 of the American Jobs Creation Act of 2004 [Pub. L. 108–357, amending this section].''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §705(b), Dec. 17, 2010, 124 Stat. 3311, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §109(d), Oct. 3, 2008, 122 Stat. 3822, provided that:

''(1) EXTENSION.—The amendments made by subsection (a) [amending this section] shall apply to transactions after December 31, 2007.

''(2) TRANSFERS OF OPERATIONAL CONTROL.—The amendment made by subsection (b) [amending this section] shall take effect as if included in section 909 of the American Jobs Creation Act of 2004 [Pub. L. 108–357].

''(3) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The amendment made by subsection (c) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §311(d), Oct. 22, 2004, 118 Stat. 1467, provided that: ''The amendments made by this section [amending this section and section 1033 of this title] shall apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.''

Pub. L. 108–357, title VIII, §909(b), Oct. 22, 2004, 118 Stat. 1659, provided that: ''The amendments made by this section [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Oct. 22, 2004], in taxable years ending after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title V, §5301(b), Oct. 21, 1998, 112 Stat. 2681–918, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to any prize to which a person first becomes entitled after the date of enactment of this Act [Oct. 21, 1998].

''(2) TRANSITION RULE.—The amendment made by this section shall apply to any prize to which a person first becomes entitled on or before the date of enactment of this Act, except that in determining whether an option is a qualified prize option as defined in section 451(h)(2)(A) [now 451(j)(2)(A)] of the Internal Revenue Code of 1986 (as added by such amendment)—

''(A) clause (ii) of such section 451(h)(2)(A) [now 451(j)(2)(A)] shall not apply, and

''(B) such option shall be treated as a qualified prize option if it is exercisable only during all or part of the 18-month period beginning on July 1, 1999.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, § 913(c), Aug. 5, 1997, 111 Stat. 878, provided that: ''The amendments made by this section [amending this section and section 1033 of this title] shall apply to sales and exchanges after December 31, 1996.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1009(d)(3) 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.

Pub. L. 100–647, title VI, § 6030(b), Nov. 10, 1988, 102 Stat. 3694, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges occurring after December 31, 1987.''

Pub. L. 100–647, title VI, § 6033(b), Nov. 10, 1988, 102 Stat. 3695, as amended by Pub. L. 101–239, title VII, § 7816(g), Dec. 19, 1989, 103 Stat. 2421, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments received before, on, or after the date of enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, § 821(b), Oct. 22, 1986, 100 Stat. 2373, as amended by Pub. L. 100–647, title I, § 1008(h), Nov. 10, 1988, 102 Stat. 3444, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN METHOD OF ACCOUNTING.—If a taxpayer is required by the amendments made by this section to change its method of accounting for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary, and

''(C) the adjustments under section 481 of the Internal Revenue Code of 1954 [now 1986] by reason of such change shall be taken into account ratably over a period no longer than the first 4 taxable years beginning after December 31, 1986.

''(3) SPECIAL RULE FOR CERTAIN CYCLE BILLING.—If a taxpayer for any taxable year beginning before August 16, 1986, for purposes of chapter 1 of the Internal Revenue Code of 1986 took into account income from services described in section 451(f) [now 451(h)] of such Code (as added by subsection (a)) on the basis of the period in which the customers' meters were read, then such treatment for such year shall be deemed to be proper. The preceding sentence shall also apply to any taxable year beginning after August 16, 1986, and before January 1, 1987, if the taxpayer treated such income in the same manner for the taxable year preceding such taxable year.''

Pub. L. 99–514, title IX, § 905(c), Oct. 22, 1986, 100 Stat. 2387, as amended by Pub. L. 100–647, title I, § 1009(d)(2), Nov. 10, 1988, 102 Stat. 3450, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending section 165 of this title] shall apply to taxable years beginning after December 31, 1981, and, except as provided in paragraph (2), the amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982.

''(2) SPECIAL RULES FOR SUBSECTION (b).—

''(A) The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982, and before January 1, 1987, only if the qualified individual elects to have such amendment apply for all such taxable years.

''(B) In the case of interest attributable to the period beginning January 1, 1983, and ending December 31, 1987, the interest deduction of financial institutions shall be determined without regard to paragraph (3) of section 451(f) [now 451(h)] of the Internal Revenue Code of 1986 (as added by subsection (b)).''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, § 2102(c), Oct. 4, 1976, 90 Stat. 1900, provided that: ''The amendments made by this section [amending this section] shall apply to payments received after December 31, 1973, in taxable years ending after such date.''

Pub. L. 94–455, title XXI, § 2141(b), Oct. 4, 1976, 90 Stat. 1933, provided that: ''The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, § 215(b), Dec. 30, 1969, 83 Stat. 573, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 30, 1969].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Voluntary separation incentives paid to members of Armed Forces under 10 U.S.C. 1175 as includable in gross income only for taxable year in which incentive is paid, see section 662(b) of Pub. L. 102–190, set out as a note under section 1175 of Title 10, Armed Forces.

OVERPAYMENTS OR UNDERPAYMENTS OF TAX ATTRIBUTABLE TO CERTAIN AMENDMENTS BY PUB. L. 99–514 OR PUB. L. 100–647

For provisions relating to credit or refund of overpayments of tax, and assessment of underpayments of tax, due to amendments by section 905 of Pub. L. 99–514 or section 1009(d) of Pub. L. 100–647, see section 1009(d)(4) of Pub. L. 100–647, set out as a note under section 165 of this title.

MODIFICATION OF REGULATIONS ON THE COMPLETED CONTRACT METHOD OF ACCOUNTING

Pub. L. 97–248, title II, § 229, Sept. 3, 1982, 96 Stat. 493, as amended by Pub. L. 98–369, div. A, title VII, § 712(m), July 18, 1984, 98 Stat. 955, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury shall modify the income tax regulations relating to accounting for long-term contracts to—

''(1) clarify the time at which a contract is to be considered completed,

''(2) clarify when—

''(A) one agreement will be treated as more than one contract, and

''(B) two or more agreements will be treated as one contract, and

''(3) properly allocate all costs which directly benefit, or are incurred by reason of, the extended period long-term contract activities of the taxpayer.

''(b) EXTENDED PERIOD LONG-TERM CONTRACTS DEFINED.—For purposes of this section—

''(1) IN GENERAL.—The term 'extended period long-term contract' means any long-term contract which the taxpayer estimates (at the time such contract is entered into) will not be completed within the 2-year period beginning on the contract commencement date of such contract.

''(2) CERTAIN CONSTRUCTION CONTRACTS.—

''(A) IN GENERAL.—The term 'extended period long-term contract' does not include any construction contract entered into by a taxpayer—

''(i) who estimates (at the time such contract is entered into) that such contract will be completed within the 3-year period beginning on the contract commencement date of such contract, or

''(ii) whose average annual gross receipts over the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $25,000,000.

''(B) DETERMINATION OF TAXPAYER'S GROSS RECEIPTS.—For purposes of subparagraph (A), the gross receipts of—

''(i) all trades or businesses (whether or not incorporated) which are under common control with the taxpayer (within the meaning of section 52(b)), and

''(ii) all members of any controlled group of corporations of which the taxpayer is a member,

for the 3 taxable years of such persons preceding the taxable year in which the contract described in subparagraph (A) is entered into shall be included in the gross receipts of the taxpayer for the period described in subparagraph (A). The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who engage in construction contracts through partnerships, joint ventures, and corporations.

''(C) CONTROLLED GROUP OF CORPORATIONS.—The term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

''(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

''(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

''(3) CONSTRUCTION CONTRACT.—The term 'construction contract' means any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, improvements to real property.

''(4) CONTRACT COMMENCEMENT DATE.—The term 'contract commencement date' means, with respect to any contract, the first date on which any costs (other than costs such as bidding expenses or expenses incurred in connection with negotiating the contract) allocable to such contract are incurred.

''(c) EFFECTIVE DATES; SPECIAL RULES.—

''(1) IN GENERAL.—The modifications to regulations which are required to be made under paragraphs (1) and (2) of subsection (a) shall apply with respect to taxable years ending after December 31, 1982.

''(2) COST ALLOCATION.—

''(A) IN GENERAL.—Any modification to Income Tax Regulation 1.451–3 made under subsection (a)(3) which requires additional costs to be allocated to a contract shall apply only to the applicable percentage of such additional costs incurred in taxable years beginning after December 31, 1982, with respect to contracts entered into after such date.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

''If the taxable year begins in calendar year:	**The applicable percentage is:**
1983	33⅓
1984	66⅔
1985 or thereafter	100.

''(3) SPECIAL RULES.—

''(A) TIME OF COMPLETION.—Any contract of a taxpayer which would (but for this paragraph) be treated as having been completed prior to the first taxable year of such taxpayer ending after December 31, 1982, solely by reason of any modification to regulations made under subsection (a)(1), shall be treated as having been completed on the first day of such taxable year.

''(B) AGGREGATION AND SEVERANCE.—Any contract of a taxpayer which would (but for this paragraph) be treated as having been completed prior to the first taxable year of such taxpayer ending after December 31, 1982—

''(i) solely by reason of any modification to regulations made under subsection (a)(2), or

''(ii) solely by reason of any modifications to regulations made under both paragraphs (1) and (2) of subsection (a),

shall be treated as having been completed on the first day after December 31, 1982, on which any contract which was severed from such contract (by reason of the modifications made by subsection (a)(2)) is completed (determined after the application of any modifications to regulations made under subsection (a)(1)).

''(4) UNDERPAYMENTS OF ESTIMATED TAX FOR 1982.—To the extent provided in regulations, no addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 for the taxpayer's first taxable year ending after December 31, 1982, by reason of a long-term contract, but only with respect to installments required to be paid before April 13, 1983.''

PRIVATE DEFERRED COMPENSATION PLANS; TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 1, 1978

Pub. L. 95–600, title I, §132, Nov. 6, 1978, 92 Stat. 2782, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—The taxable year of inclusion in gross income of any amount covered by a private deferred compensation plan shall be determined in accordance with the principles set forth in regulations, rulings, and judicial decisions relating to deferred compensation which were in effect on February 1, 1978.

''(b) PRIVATE DEFERRED COMPENSATION PLAN DEFINED.—

''(1) IN GENERAL.—For purposes of this section, the term 'private deferred compensation plan' means a plan, agreement, or arrangement—

''(A) where the person for whom the service is performed is not a State (within the meaning of paragraph (1) of section 457(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and not an organization which is exempt from tax under section 501 of such Code, and

''(B) under which the payment or otherwise making available of compensation is deferred.

''(2) CERTAIN PLANS EXCLUDED.—Paragraph (1) shall not apply to—

''(A) a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust, exempt from tax under section 501(a) of such Code,

''(B) an annuity plan or contract described in section 403 of such Code,

''(C) a qualified bond purchase plan described in section 405(a) of such Code,

''(D) that portion of any plan which consists of a transfer of property described in section 83 (determined without regard to subsection (e) thereof of such Code, and

''(E) that portion of any plan which consists of a trust to which section 402(b) of such Code applies.

''(c) EFFECTIVE DATE.—This section shall apply to taxable years ending on or after February 1, 1978.''

YEAR OF INCLUSION FOR DISASTER OR DEFICIENCY PAYMENTS RECEIVED IN 1978; ELECTION

Pub. L. 95–258, § 1, Apr. 7, 1978, 92 Stat. 195, provided that:

''(a) IN GENERAL.—In the case of a taxpayer reporting on the cash receipts and disbursements method of accounting, if—

''(1)(A) the taxpayer receives in his first taxable year beginning in 1978 payments under the Agricultural Act of 1949, as amended, [see Short Title note set out under section 1421 of Title 7, Agriculture], as a result of—

''(i) the destruction or damage to crops caused by drought, flood, or any other natural disaster, or

''(ii) the inability to plant crops because of such a natural disaster, and

''(B) the taxpayer establishes that, under his practice, income from such crops could have been reported for his last taxable year beginning in 1977, or

''(2)(A) the taxpayer receives in his first taxable year beginning in 1978 deficiency (or 'target price') payments under the Agricultural Act of 1949, as amended, for any 1977 crop, and

''(B) the fifth month of such crop's marketing year ends before December 1, 1977,

then the taxpayer may elect to include such proceeds in income for his last taxable year beginning in 1977.

''(b) MAKING AND EFFECT OF ELECTION—An election under this section for any taxable year shall be made at such time and in such manner as the Secretary of the Treasury may by regulations prescribe and shall apply with respect to all proceeds described in subsection (a) which were received by the taxpayer.''

[§ 452. Repealed. June 15, 1955, ch. 143, § 1(a), 69 Stat. 134]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 152, related to prepaid income.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 3 of act June 15, 1955, set out as an Effective Date of 1955 Amendment note under section 381 of this title.

SAVINGS PROVISION

For provisions concerning increase in tax in any taxable year ending on or before June 15, 1955 by reason of enactment of act June 15, 1955, see section 4 of act June 15, 1955, set out as a note under section 381 of this title.

§ 453. Installment method

(a) General rule

Except as otherwise provided in this section, income from an installment sale shall be taken into account for purposes of this title under the installment method.

(b) Installment sale defined

For purposes of this section—

(1) In general

The term ''installment sale'' means a disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs.

(2) Exceptions

The term ''installment sale'' does not include—

(A) Dealer dispositions

Any dealer disposition (as defined in subsection (*l*)).

(B) Inventories of personal property

A disposition of personal property of a kind which is required to be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(c) Installment method defined

For purposes of this section, the term ''installment method'' means a method under which the income recognized for any taxable year from a disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

(d) Election out

(1) In general

Subsection (a) shall not apply to any disposition if the taxpayer elects to have subsection (a) not apply to such disposition.

(2) Time and manner for making election

Except as otherwise provided by regulations, an election under paragraph (1) with respect to a disposition may be made only on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed by this chapter for the taxable year in which the disposition occurs. Such an election shall be made in the manner prescribed by regulations.

(3) Election revocable only with consent

An election under paragraph (1) with respect to any disposition may be revoked only with the consent of the Secretary.

(e) Second dispositions by related persons

(1) In general

If—

(A) any person disposes of property to a related person (hereinafter in this subsection referred to as the ''first disposition''), and

(B) before the person making the first disposition receives all payments with respect to such disposition, the related person disposes of the property (hereinafter in this subsection referred to as the ''second disposition''),

then, for purposes of this section, the amount realized with respect to such second disposition shall be treated as received at the time of the second disposition by the person making the first disposition.

(2) 2-year cutoff for property other than marketable securities

(A) In general

Except in the case of marketable securities, paragraph (1) shall apply only if the date of the second disposition is not more than 2 years after the date of the first disposition.

(B) Substantial diminishing of risk of ownership

The running of the 2-year period set forth in subparagraph (A) shall be suspended with respect to any property for any period during which the related person's risk of loss with respect to the property is substantially diminished by—

(i) the holding of a put with respect to such property (or similar property),

(ii) the holding by another person of a right to acquire the property, or

(iii) a short sale or any other transaction.

(3) Limitation on amount treated as received

The amount treated for any taxable year as received by the person making the first disposition by reason of paragraph (1) shall not exceed the excess of—

(A) the lesser of—

(i) the total amount realized with respect to any second disposition of the property occurring before the close of the taxable year, or

(ii) the total contract price for the first disposition, over

(B) the sum of—

(i) the aggregate amount of payments received with respect to the first disposition before the close of such year, plus

(ii) the aggregate amount treated as received with respect to the first disposition for prior taxable years by reason of this subsection.

(4) Fair market value where disposition is not sale or exchange

For purposes of this subsection, if the second disposition is not a sale or exchange, an amount equal to the fair market value of the property disposed of shall be substituted for the amount realized.

(5) Later payments treated as receipt of tax paid amounts

If paragraph (1) applies for any taxable year, payments received in subsequent taxable years by the person making the first disposition shall not be treated as the receipt of payments with respect to the first disposition to the extent that the aggregate of such payments does not exceed the amount treated as received by reason of paragraph (1).

(6) Exception for certain dispositions

For purposes of this subsection—

(A) Reacquisitions of stock by issuing corporation not treated as first dispositions

Any sale or exchange of stock to the issuing corporation shall not be treated as a first disposition.

(B) Involuntary conversions not treated as second dispositions

A compulsory or involuntary conversion (within the meaning of section 1033) and any transfer thereafter shall not be treated as a second disposition if the first disposition occurred before the threat or imminence of the conversion.

(C) Dispositions after death

Any transfer after the earlier of—

(i) the death of the person making the first disposition, or

(ii) the death of the person acquiring the property in the first disposition,

and any transfer thereafter shall not be treated as a second disposition.

(7) Exception where tax avoidance not a principal purpose

This subsection shall not apply to a second disposition (and any transfer thereafter) if it is established to the satisfaction of the Secretary that neither the first disposition nor the second disposition had as one of its principal purposes the avoidance of Federal income tax.

(8) Extension of statute of limitations

The period for assessing a deficiency with respect to a first disposition (to the extent such deficiency is attributable to the application of this subsection) shall not expire before the day which is 2 years after the date on which the person making the first disposition furnishes (in such manner as the Secretary may by regulations prescribe) a notice that there was a second disposition of the property to which this subsection may have applied. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment.

(f) Definitions and special rules

For purposes of this section—

(1) Related person

Except for purposes of subsections (g) and (h), the term ''related person'' means—

(A) a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property, or

(B) a person who bears a relationship described in section 267(b) to the person first disposing of the property.

(2) Marketable securities

The term ''marketable securities'' means any security for which, as of the date of the disposition, there was a market on an established securities market or otherwise.

(3) Payment

Except as provided in paragraph (4), the term ''payment'' does not include the receipt of evidences of indebtedness of the person acquiring the property (whether or not payment of such indebtedness is guaranteed by another person).

(4) Purchaser evidences of indebtedness payable on demand or readily tradable

Receipt of a bond or other evidence of indebtedness which—

(A) is payable on demand, or

(B) is readily tradable,

shall be treated as receipt of payment.

(5) Readily tradable defined

For purposes of paragraph (4), the term ''readily tradable'' means a bond or other evidence of indebtedness which is issued—

(A) with interest coupons attached or in registered form (other than one in registered form which the taxpayer establishes will not be readily tradable in an established securities market), or

(B) in any other form designed to render such bond or other evidence of indebtedness readily tradable in an established securities market.

(6) Like-kind exchanges

In the case of any exchange described in section 1031(b)—

(A) the total contract price shall be reduced to take into account the amount of any property permitted to be received in such exchange without recognition of gain,

(B) the gross profit from such exchange shall be reduced to take into account any amount not recognized by reason of section 1031(b), and

(C) the term ''payment'', when used in any provision of this section other than subsection (b)(1), shall not include any property permitted to be received in such exchange without recognition of gain.

Similar rules shall apply in the case of an exchange which is described in section 356(a) and is not treated as a dividend.

(7) Depreciable property

The term ''depreciable property'' means property of a character which (in the hands of the transferee) is subject to the allowance for depreciation provided in section 167.

(8) Payments to be received defined

The term ''payments to be received'' includes—

(A) the aggregate amount of all payments which are not contingent as to amount, and

(B) the fair market value of any payments which are contingent as to amount.

(g) Sale of depreciable property to controlled entity

(1) In general

In the case of an installment sale of depreciable property between related persons—

(A) subsection (a) shall not apply,

(B) for purposes of this title—

(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

(ii) in the case of any payments which are contingent as to the amount but with respect to which the fair market value may not be reasonably ascertained, the basis shall be recovered ratably, and

(C) the purchaser may not increase the basis of any property acquired in such sale by any amount before the time such amount is includible in the gross income of the seller.

(2) Exception where tax avoidance not a principal purpose

Paragraph (1) shall not apply if it is established to the satisfaction of the Secretary that the disposition did not have as one of its principal purposes the avoidance of Federal income tax.

(3) Related persons

For purposes of this subsection, the term ''related persons'' has the meaning given to such term by section 1239(b), except that such term shall include 2 or more partnerships having a relationship to each other described in section 707(b)(1)(B).

(h) Use of installment method by shareholders in certain liquidations

(1) Receipt of obligations not treated as receipt of payment

(A) In general

If, in a liquidation to which section 331 applies, the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period beginning on the date a plan of complete liquidation is adopted and the liquidation is completed during such 12-month period, then, for purposes of this section, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.

(B) Obligations attributable to sale of inventory must result from bulk sale

Subparagraph (A) shall not apply to an installment obligation acquired in respect of a sale or exchange of—

(i) stock in trade of the corporation,

(ii) other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and

(iii) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

unless such sale or exchange is to 1 person in 1 transaction and involves substantially all of such property attributable to a trade or business of the corporation.

(C) Special rule where obligor and shareholder are related persons

If the obligor of any installment obligation and the shareholder are married to each other or are related persons (within the meaning of section 1239(b)), to the extent such installment obligation is attributable to the disposition by the corporation of depreciable property—

(i) subparagraph (A) shall not apply to such obligation, and

(ii) for purposes of this title, all payments to be received by the shareholder shall be deemed received in the year the shareholder receives the obligation.

(D) Coordination with subsection (e)(1)(A)

For purposes of subsection (e)(1)(A), disposition of property by the corporation shall be treated also as disposition of such property by the shareholder.

(E) Sales by liquidating subsidiaries

For purposes of subparagraph (A), in the case of a controlling corporate shareholder (within the meaning of section 368(c)) of a selling corporation, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by such controlling corporate shareholder. The preceding sentence shall be applied successively to each controlling corporate shareholder above such controlling corporate shareholder.

(2) Distributions received in more than 1 taxable year of shareholder

If—

(A) paragraph (1) applies with respect to any installment obligation received by a shareholder from a corporation, and

(B) by reason of the liquidation such shareholder receives property in more than 1 taxable year,

then, on completion of the liquidation, basis previously allocated to property so received shall be reallocated for all such taxable years so that the shareholder's basis in the stock of the corporation is properly allocated among all property received by such shareholder in such liquidation.

(i) Recognition of recapture income in year of disposition

(1) In general

In the case of any installment sale of property to which subsection (a) applies—

(A) notwithstanding subsection (a), any recapture income shall be recognized in the year of the disposition, and

(B) any gain in excess of the recapture income shall be taken into account under the installment method.

(2) Recapture income

For purposes of paragraph (1), the term ''recapture income'' means, with respect to any installment sale, the aggregate amount which would be treated as ordinary income under section 1245 or 1250 (or so much of section 751 as relates to section 1245 or 1250) for the taxable year of the disposition if all payments to be received were received in the taxable year of disposition.

(j) Regulations

(1) In general

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section.

(2) Selling price not readily ascertainable

The regulations prescribed under paragraph (1) shall include regulations providing for ratable basis recovery in transactions where the gross profit or the total contract price (or both) cannot be readily ascertained.

(k) Current inclusion in case of revolving credit plans, etc.

In the case of—

(1) any disposition of personal property under a revolving credit plan, or

(2) any installment obligation arising out of a sale of—

(A) stock or securities which are traded on an established securities market, or

(B) to the extent provided in regulations, property (other than stock or securities) of a kind regularly traded on an established market,

subsection (a) shall not apply, and, for purposes of this title, all payments to be received shall be treated as received in the year of disposition. The Secretary may provide for the application of this subsection in whole or in part for transactions in which the rules of this subsection otherwise would be avoided through the use of related parties, pass-thru entities, or intermediaries.

***(l)* Dealer dispositions**

For purposes of subsection (b)(2)(A)—

(1) In general

The term ''dealer disposition'' means any of the following dispositions:

(A) Personal property

Any disposition of personal property by a person who regularly sells or otherwise disposes of personal property of the same type on the installment plan.

(B) Real property

Any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

(2) Exceptions

The term ''dealer disposition'' does not include—

(A) Farm property

The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

(B) Timeshares and residential lots

(i) In general

Any dispositions described in clause (ii) on the installment plan if the taxpayer elects to have paragraph (3) apply to any installment obligations which arise from such dispositions. An election under this paragraph shall not apply with respect to an installment obligation which is guaranteed by any person other than an individual.

(ii) Dispositions to which subparagraph applies

A disposition is described in this clause if it is a disposition in the ordinary course of the taxpayer's trade or business to an individual of—

(I) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks per year, or a right to use specified campgrounds for recreational purposes, or

(II) any residential lot, but only if the taxpayer (or any related person) is not to make any improvements with respect to such lot.

For purposes of subclause (I), a timeshare right to use (or timeshare ownership interest in) property held by the spouse, children, grandchildren, or parents of an individual shall be treated as held by such individual.

(C) Carrying charges or interest

Any carrying charges or interest with respect to a disposition described in subparagraph (A) or (B) which are added on the

books of account of the seller to the established cash selling price of the property shall be included in the total contract price of the property and, if such charges or interest are not so included, any payments received shall be treated as applying first against such carrying charges or interest.

(3) Payment of interest on timeshares and residential lots

(A) In general

In the case of any installment obligation to which paragraph (2)(B) applies, the tax imposed by this chapter for any taxable year for which payment is received on such obligation shall be increased by the amount of interest determined in the manner provided under subparagraph (B).

(B) Computation of interest

(i) In general

The amount of interest referred to in subparagraph (A) for any taxable year shall be determined—

(I) on the amount of the tax for such taxable year which is attributable to the payments received during such taxable year on installment obligations to which this subsection applies,

(II) for the period beginning on the date of sale, and ending on the date such payment is received, and

(III) by using the applicable Federal rate under section 1274 (without regard to subsection (d)(2) thereof) in effect at the time of the sale compounded semiannually.

(ii) Interest not taken into account

For purposes of clause (i), the portion of any tax attributable to the receipt of any payment shall be determined without regard to any interest imposed under subparagraph (A).

(iii) Taxable year of sale

No interest shall be determined for any payment received in the taxable year of the disposition from which the installment obligation arises.

(C) Treatment as interest

Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year.

(Added Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2247; amended Pub. L. 97–34, title II, §202(c), Aug. 13, 1981, 95 Stat. 221; Pub. L. 97–448, title III, §303, Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, §112(a), title IV, §421(b)(6)(B), (C), July 18, 1984, 98 Stat. 635, 794; Pub. L. 99–514, title VI, §§631(e)(8), 642(a)(1)(D), (3), (b), title VIII, §812(a), title XVIII, §1809(c), Oct. 22, 1986, 100 Stat. 2274, 2284, 2371, 2821; Pub. L. 100–203, title X, §10202(b), Dec. 22, 1987, 101 Stat. 1330–388; Pub. L. 100–647, title I, §§1006(e)(7), (i)(1), (2), 1008(g)(1), 1018(u)(25), (26), title II, §2004(d)(1), (5), Nov. 10, 1988, 102 Stat. 3401, 3410, 3442, 3591, 3599; Pub. L. 106–170, title V, §536(a), Dec. 17, 1999, 113 Stat. 1936; Pub. L. 106–573, §2(a), Dec. 28, 2000, 114 Stat. 3061; Pub. L. 108–357, title VIII, §897(a), Oct. 22, 2004, 118 Stat. 1649.)

PRIOR PROVISIONS

A prior section 453, acts Aug. 16, 1954, ch. 736, 68A Stat. 154; Sept. 2, 1958, Pub. L. 85–866, title I, §27(a), 72 Stat. 1624; Oct. 16, 1962, Pub. L. 87–834, §13(f)(5), 76 Stat. 1035; Feb. 26, 1964, Pub. L. 88–272, title II, §§222(a), 231(b)(5), 78 Stat. 75, 105; Aug. 22, 1964, Pub. L. 88–484, §1(b)(2), 78 Stat. 597; Aug. 31, 1964, Pub. L. 88–539, §3(a), (b), 78 Stat. 746; Sept. 12, 1966, Pub. L. 89–570, §1(b)(5), 80 Stat. 762; Nov. 13, 1966, Pub. L. 89–809, title II, §202(c), 80 Stat. 1576; Dec. 30, 1969, Pub. L. 91–172, title II, §211(b)(5), title III, §301(b)(7), title IV, §412(a), title IX, §916(a), 83 Stat. 570, 585, 608, 723; Oct. 4, 1976, Pub. L. 94–455, title II, §205(c)(1)(E), title XIX, §§1901(a)(66), 1906(b)(13)(A), 1951(b)(7)(A), 90 Stat. 1535, 1775, 1834, 1838; Nov. 6, 1978, Pub. L. 95–600, title VII, §703(j)(3), 92 Stat. 2941; Apr. 1, 1980, Pub. L. 96–222, title I, §104(a)(4)(H)(iv), 94 Stat. 217; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(2)(B), 94 Stat. 305; Oct. 19, 1980, Pub. L. 96–471, §2(c)(4), 94 Stat. 2254, related to installment method in general, installment method for dealers in personal property, and gain or loss dispositions of installment obligations, prior to repeal by Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2247. See sections 453A and 453B of this title.

AMENDMENTS

2004—Subsec. (f)(4)(B). Pub. L. 108–357 struck out ''is issued by a corporation or a government or political subdivision thereof and'' before ''is readily tradable''.

2000—Subsecs. (a), (d)(1), (i)(1), (k). Pub. L. 106–573 repealed Pub. L. 106–170, §536(a). See 1999 Amendment notes below.

1999—Subsec. (a). Pub. L. 106–170, §536(a)(1), which substituted ''Use of installment method'' for ''General rule'' in subsec. heading, designated existing provisions as par. (1) and inserted heading, and added heading and text of par. (2), text of which read as follows: ''(2) ACCRUAL METHOD TAXPAYER.—The installment method shall not apply to income from an installment sale if such income would be reported under an accrual method of accounting without regard to this section. The preceding sentence shall not apply to a disposition described in subparagraph (A) or (B) of subsection (*l*)(2).'', was repealed by Pub. L. 106–573, §2(a). See Effective Date and Construction of 2000 Amendment note below.

Subsecs. (d)(1), (i)(1), (k). Pub. L. 106–170, §536(a)(2), which substituted ''(a)(1)'' for ''(a)'' wherever appearing, was repealed by Pub. L. 106–573. See Effective Date and Construction of 2000 Amendment note below.

1988—Subsec. (f)(1). Pub. L. 100–647, §1018(u)(25), substituted ''subsections (g)'' for ''subsection (g)''.

Subsec. (f)(8). Pub. L. 100–647, §1018(u)(26), substituted ''payments to be'' for ''payment to be''.

Subsec. (g)(1). Pub. L. 100–647, §1006(i)(2)(B), struck out ''(within the meaning of section 1239(b))'' after ''between related persons''.

Pub. L. 100–647, §1006(i)(1), added subpars. (A) to (C) and struck out former subpars. (A) and (B) which read as follows:

''(A) subsection (a) shall not apply, and

''(B) for purposes of this title—

''(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

''(ii) in the case of any payments which are contingent as to amount but with respect to which the fair market value may not be reasonably ascertained—

''(I) the basis shall be recovered ratably, and

''(II) the purchaser may not increase the basis of any property acquired in such sale by any amount before such time as the seller includes such amount in income.''

Subsec. (g)(3). Pub. L. 100–647, §1006(i)(2)(A), added par. (3).

Subsec. (h)(1)(B). Pub. L. 100–647, §1006(e)(7)(A), substituted ''to 1 person in 1 transaction'' for ''to one person'' in concluding provisions.

Subsec. (h)(1)(E). Pub. L. 100–647, §1006(e)(7)(B), substituted ''section 368(c)'' for ''section 368(c)(1)''.

Subsec. (j). Pub. L. 100–647, §1008(g)(1), redesignated subsec. (j), relating to current inclusion in case of revolving credit plans, etc., as (k).

Subsec. (k). Pub. L. 100–647, §2004(d)(5), struck out ''and section 453A'' after ''subsection (a)'' in second sentence.

Pub. L. 100–647, §1008(g)(1), redesignated subsec. (j), relating to current inclusion in case of revolving credit plans, etc., as (k).

Subsec. (*l*)(1)(A). Pub. L. 100–647, §2004(d)(1), inserted ''of the same type'' after ''disposes of personal property''.

1987—Subsec. (b)(2)(A). Pub. L. 100–203, §10202(b)(1), substituted ''Dealer dispositions'' for ''Dealer disposition of personal property'' in heading and amended text generally. Prior to amendment, text read as follows: ''A disposition of personal property on the installment plan by a person who regularly sells or otherwise disposes of personal property on the installment plan.''

Subsec. (*l*). Pub. L. 100–203, §10202(b)(2), added subsec. (*l*).

1986—Subsec. (f)(1). Pub. L. 99–514, §642(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except for purposes of subsections (g) and (h), the term 'related person' means a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property.''

Subsec. (f)(8). Pub. L. 99–514, §642(b)(1), added par. (8).

Subsec. (g). Pub. L. 99–514, §642(a)(1)(D), substituted ''controlled entity'' for ''80-percent owned entity'' in heading.

Subsec. (g)(1). Pub. L. 99–514, §642(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In the case of an installment sale of depreciable property between related persons within the meaning of section 1239(b), subsection (a) shall not apply, and, for purposes of this title, all payments to be received shall be deemed received in the year of the disposition.''

Subsec. (h). Pub. L. 99–514, §631(e)(8)(C), substituted ''certain liquidations'' for ''section 337 liquidations'' in heading.

Subsec. (h)(1)(A). Pub. L. 99–514, §631(e)(8)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If, in connection with a liquidation to which section 337 applies, in a transaction to which section 331 applies the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period set forth in section 337(a), then, for purposes of this section, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.''

Subsec. (h)(1)(B). Pub. L. 99–514, §631(e)(8)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Subparagraph (A) shall not apply to an installment obligation described in section 337(b)(1)(B) unless such obligation is also described in section 337(b)(2)(B).''

Subsec. (h)(1)(E). Pub. L. 99–514, §631(e)(8)(B), substituted ''subsidiaries'' for ''subsidiary'' in heading and amended text generally. Prior to amendment, subpar. (E) read as follows: ''For purposes of subparagraph (A), in any case to which section 337(c)(3) applies, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by the corporation distributing the obligation to the shareholder.''

Subsec. (i)(2). Pub. L. 99–514, §1809(c), substituted ''section 1245 or 1250 (or so much of section 751 as relates to section 1245 or 1250)'' for ''section 1245 or 1250''.

Subsec. (j). Pub. L. 99–514, §812(a), added subsec. (j) relating to current inclusion in case of revolving credit plans, etc.

1984—Subsec. (g). Pub. L. 98–369, §421(b)(6)(C), struck out ''spouse or'' after ''property to'' in heading.

Subsec. (h)(1)(C). Pub. L. 98–369, §421(b)(6)(B), inserted ''married to each other or are''.

Subsec. (i). Pub. L. 98–369, §112(a), amended subsec. (i) generally, substituting provisions relating to recognition of recapture income in year of disposition for provisions relating to application of subsec. (a) in the case of an installment sale of section 179 property.

1983—Subsec. (f)(6)(C). Pub. L. 97–448 inserted '', when used in any provision of this section other than subsection (b)(1),'' after ''the term 'payment''''.

1981—Subsecs. (i), (j). Pub. L. 97–34 added subsec. (i) and redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §897(b), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendment made by this section [amending this section] shall apply to sales occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE AND CONSTRUCTION OF 2000 AMENDMENT

Pub. L. 106–573, §2, Dec. 28, 2000, 114 Stat. 3061, provided that:

''(a) IN GENERAL.—Subsection (a) of section 536 of the Ticket to Work and Work Incentives Improvement Act of 1999 (relating to modification of installment method and repeal of installment method for accrual method taxpayers) [Pub. L. 106–170, amending this section] is repealed effective with respect to sales and other dispositions occurring on or after the date of the enactment of such Act [Dec. 17, 1999].

''(b) APPLICABILITY.—The Internal Revenue Code of 1986 shall be applied and administered as if that subsection (and the amendments made by that subsection) had not been enacted.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §536(c), Dec. 17, 1999, 113 Stat. 1936, provided that: ''The amendments made by this section [amending this section and section 453A of this title] shall apply to sales or other dispositions occurring on or after the date of the enactment of this Act [Dec. 17, 1999].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1006(e)(7), (i)(1), (2), 1008(g)(1), and 1018(u)(25), (26) 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 2004(d)(1), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10202(e), Dec. 22, 1987, 101 Stat. 1330–392, as amended by Pub. L. 100–647, title II, §2004(d)(3), (4), (6), Nov. 10, 1988, 102 Stat. 3599, 3600, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 56, 381, 453A, and 691 of this title and repealing section 453C of this title] shall apply to dispositions in taxable years beginning after December 31, 1987.

''(2) SPECIAL RULES FOR DEALERS.—

''(A) IN GENERAL.—In the case of dealer dispositions (within the meaning of section 453(*l*)(1) of the Internal Revenue Code of 1986 as added by this section), the amendments made by subsections (a) and (b) [amending this section and repealing section 453C of this title] shall apply to installment obligations arising from dispositions after December 31, 1987.

''(B) SPECIAL RULES FOR OBLIGATIONS ARISING FROM DEALER DISPOSITIONS AFTER FEBRUARY 28, 1986, AND BEFORE JANUARY 1, 1988.—

''(i) IN GENERAL.—In the case of an applicable installment obligation arising from a disposition described in subclause (I) or (II) of section 453C(e)(1)(A)(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) before January 1, 1988, the amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1987.

''(ii) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by clause (i) to change its method of accounting for any taxable year with respect to obligations described in clause (i)—

''(I) such change shall be treated as initiated by the taxpayer,

''(II) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

''(III) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

''(C) CERTAIN RULES MADE APPLICABLE.—For purposes of this paragraph, rules similar to the rules of paragraphs (4) and (5) of section 812(c) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note below] (as added by the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]) shall apply.

''(3) SPECIAL RULE FOR NONDEALERS.—

''(A) ELECTION.—A taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by subsections (a) and (c) [amending sections 381, 453A, and 691 of this title and repealing section 453C of this title] apply to taxable years ending after December 31, 1986, with respect to dispositions and pledges occurring after August 16, 1986.

''(B) PLEDGING RULES.—Except as provided in subparagraph (A)—

''(i) IN GENERAL.—Section 453A(d) of the Internal Revenue Code of 1986 shall apply to any installment obligation which is pledged to secure any secured indebtedness (within the meaning of section 453A(d)(4) of such Code) after December 17, 1987, in taxable years ending after such date.

''(ii) COORDINATION WITH SECTION 453C.—For purposes of section 453C of such Code (as in effect before its repeal), the face amount of any obligation to which section 453A(d) of such Code applies shall be reduced by the amount treated as payments on such obligation under section 453A(d) of such Code and the amount of any indebtedness secured by it shall not be taken into account.

''(C) CERTAIN DISPOSITIONS DEEMED MADE ON 1ST DAY OF TAXABLE YEAR.—If the taxpayer makes an election under subparagraph (A), in the case of the taxpayer's 1st taxable year ending after December 31, 1986—

''(i) dispositions after August 16, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day, and

''(ii) subsections (b)(2)(B) and (c)(4) of section 453A of such Code shall be applied separately with respect to such dispositions by substituting for '$5,000,000' the amount which bears the same ratio to $5,000,000 as the number of days after August 16, 1986, and before such 1st day bears to 365.

''(4) MINIMUM TAX.—The amendment made by subsection (d) [amending section 56 of this title] shall apply to dispositions in taxable years beginning after December 31, 1986.

''(5) COORDINATION WITH TAX REFORM ACT OF 1986.—The amendments made by this section shall not apply to any installment obligation or to any taxpayer during any period to the extent the amendments made by section 811 of the Tax Reform Act of 1986 [section 811 of Pub. L. 99–514, amending former section 453C of this title and enacting provisions set out as a note under former section 453C of this title] do not apply to such obligation or during such period.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(8) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 642(a)(1)(D), (3), (b) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, in taxable years ending after such date, but not applicable to sales made after Aug. 14, 1986, which are made pursuant to a binding contract in effect on Aug. 14, 1986, and at all times thereafter, see section 642(c) of Pub. L. 99–514, set out as a note under section 1239 of this title.

Pub. L. 99–514, title VIII, §812(c), Oct. 22, 1986, 100 Stat. 2372, as amended by Pub. L. 100–647, title I, §1008(g)(3)–(6), Nov. 10, 1988, 102 Stat. 3443, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SALES OF STOCK, ETC.—Section 453(k)(2) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to sales after December 31, 1986, in taxable years ending after such date.

''(3) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under section 453 or 453A of the Internal Revenue Code of 1986 for such taxpayer's last taxable year beginning before January 1, 1987, the amendments made by this section [amending this section and section 453A of this title] shall be treated as a change in method of accounting for its 1st taxable year beginning after December 31, 1986, and—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary,

''(C) the period for taking into account adjustments under section 481 of such Code by reason of such change shall be equal to 4 years, and

''(D) except as provided in paragraph (4), the amount taken into account in each of such 4 years shall be the applicable percentage (determined in accordance with the following table) of the net adjustment:

"In the case of the:	**The applicable percentage is:**
1st taxable year	15
2nd taxable year	25
3rd taxable year	30
4th taxable year	30.

If the taxpayer's last taxable year beginning before January 1, 1987, was the taxpayer's 1st taxable year in which sales were made under a revolving credit plan, all adjustments under section 481 of such Code shall be taken into account in the taxpayer's 1st taxable year beginning after December 31, 1986.

''(4) ACCELERATION OF ADJUSTMENTS WHERE CONTRACTION IN AMOUNT OF INSTALLMENT OBLIGATIONS.—

''(A) IN GENERAL.—If the percentage determined under subparagraph (B) for any taxable year in the adjustment period exceeds the percentage which would otherwise apply under paragraph (3)(D) for such taxable year (determined after the application of this paragraph for prior taxable years in the adjustment period)—

''(i) the percentage determined under subparagraph (B) shall be substituted for the applicable percentage which would otherwise apply under paragraph (3)(D), and

''(ii) any increase in the applicable percentage by reason of clause (i) shall be applied to reduce the applicable percentage determined under paragraph (3)(D) for subsequent taxable years in the adjustment period (beginning with the 1st of such subsequent taxable years).

''(B) DETERMINATION OF PERCENTAGE.—For purposes of subparagraph (A), the percentage determined under this subparagraph for any taxable year in the adjustment period is the excess (if any) of—

''(i) the percentage determined by dividing the aggregate contraction in revolving installment obligations by the aggregate face amount of such obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, over

''(ii) the sum of the applicable percentages under paragraph (3)(D) (as modified by this paragraph) for prior taxable years in the adjustment period.

''(C) AGGREGATE CONTRACTION IN REVOLVING INSTALLMENT OBLIGATIONS.—For purposes of subparagraph (B), the aggregate contraction in revolving installment obligations is the amount by which—

''(i) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, exceeds

''(ii) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxable year involved.

''(D) REVOLVING INSTALLMENT OBLIGATIONS.—For purposes of this paragraph, the term 'revolving installment obligations' means installment obligations arising under a revolving credit plan.

''(E) TREATMENT OF CERTAIN OBLIGATIONS DISPOSED OF ON OR BEFORE OCTOBER 26, 1987.—For purposes of subparagraphs (B)(i) and (C)(i), in determining the aggregate face amount of revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, there shall not be taken into account any obligation—

''(i) which was disposed of to an unrelated person on or before October 26, 1987, or

''(ii) was disposed of to an unrelated person on or after such date pursuant to a binding written contract in effect on October 26, 1987, and at all times thereafter before such disposition.

For purposes of the preceding sentence, the term 'unrelated person' means any person who is not a related person (as defined in section 453(g) of the Internal Revenue Code of 1986).

''(5) LIMITATION ON LOSSES FROM SALES OF OBLIGATIONS UNDER REVOLVING CREDIT PLANS.—If 1 or more obligations arising under a revolving credit plan and taken into account under paragraph (3) are disposed of during the adjustment period, then, notwithstanding any other provision of law—

''(A) no losses from such dispositions shall be recognized, and

''(B) the aggregate amount of the adjustment for taxable years in the adjustment period (in reverse order of time) shall be reduced by the amount of such losses.

''(6) ADJUSTMENT PERIOD.—For purposes of paragraphs (4) and (5), the adjustment period is the 4-year period under paragraph (3).''

Amendment by section 1809(c) of 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 OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §112(b), July 18, 1984, 98 Stat. 635, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply with respect to dispositions made after June 6, 1984.

''(2) EXCEPTION.—The amendments made by this section shall not apply with respect to any disposition conducted pursuant to a contract which was binding on March 22, 1984, and at all times thereafter.

''(3) SPECIAL RULE FOR CERTAIN DISPOSITIONS BEFORE OCTOBER 1, 1984.—The amendments made by this section shall not apply to any disposition before October 1, 1984, of all or substantially all of the personal property of a cable television business pursuant to a written offer delivered by the seller on June 20, 1984, but only if the last payment under the installment contract is due no later than October 1, 1989.''

Amendment by section 421(b)(6)(B), (C) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §311(a), Jan. 12, 1983, 96 Stat. 2411, provided that: ''The amendments made by sections 301, 302, and 303 [amending this section and sections 453B and 1239 of this title] shall apply to dispositions made after October 19, 1980, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE; APPLICATION OF FORMER SECTION 453(b) TO CERTAIN DISPOSITIONS

Pub. L. 96–471, §6(a), Oct. 19, 1980, 94 Stat. 2256, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by sections 2 [enacting this section and sections 453A and 453B of this title and amending sections 311, 336, 337, 381, former section 453, and sections 453B, 481, 644, 691, and 1255 of this title] and 5 [amending section 1239 of this title] shall apply to dispositions made after the date of the enactment of this Act [Oct. 19, 1980] in taxable years ending after such date.

''(2) FOR SECTION 453(e).—Section 453(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 2) shall apply to first dispositions made after May 14, 1980.

''(3) FOR SECTION 453(h).—Paragraphs (1) and (2) of section 453(h) of such Code (as amended by section 2) shall apply in the case of distributions of installment obligations after March 31, 1980.

''(4) FOR SECTION 453a.—Section 453A of the Internal Revenue Code of 1986 (as amended by section 2) shall apply to taxable years ending after the date of enactment of this Act [Oct. 19, 1980].

''(5) FOR SECTION 453b(f).—Section 453B(f) of the Internal Revenue Code of 1986 (as amended by section 2) shall apply to installment obligations becoming unenforceable after the date of the enactment of this Act [Oct. 19, 1980].

''(6) FOR SECTION 2(c).—The amendments made by section 2(c) [amending sections 336, 337, 453B, and former section 453 of this title] shall take effect as if included in the amendments made by section 403(b) of the Crude Oil Windfall Profit Tax Act of 1980 [see section 403(b)(3) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments note under section 337 of this title].

''(7) SPECIAL RULE FOR APPLICATION OF FORMER SECTION 453 TO CERTAIN DISPOSITIONS.—In the case of any disposition made on or before the date of the enactment of this Act [Oct. 19, 1980] in any taxable year ending after such date, the provisions of section 453(b) of the Internal Revenue Code of 1986 [see subsec. (b) of

former section 453 of this title, set out below] as in effect before such date, shall be applied with respect to such disposition without regard to—

''(A) paragraph (2) of such section 453(b), and

''(B) any requirement that more than 1 payment be received.''

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.

§ 453A. Special rules for nondealers

(a) General rule

In the case of an installment obligation to which this section applies—

(1) interest shall be paid on the deferred tax liability with respect to such obligation in the manner provided under subsection (c), and

(2) the pledging rules under subsection (d) shall apply.

(b) Installment obligations to which section applies

(1) In general

This section shall apply to any obligation which arises from the disposition of any property under the installment method, but only if the sales price of such property exceeds $150,000.

(2) Special rule for interest payments

For purposes of subsection (a)(1), this section shall apply to an obligation described in paragraph (1) arising during a taxable year only if—

(A) such obligation is outstanding as of the close of such taxable year, and

(B) the face amount of all such obligations held by the taxpayer which arose during, and are outstanding as of the close of, such taxable year exceeds $5,000,000.

Except as provided in regulations, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as one person for purposes of this paragraph and subsection (c)(4).

(3) Exception for personal use and farm property

An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

(4) Special rule for timeshares and residential lots

An installment obligation shall not be treated as described in paragraph (1) if it arises from a disposition described in section 453(*l*)(2)(B), but the provisions of section 453(*l*)(3) (relating to interest payments on timeshares and residential lots) shall apply to such obligation.

(5) Sales price

For purposes of paragraph (1), all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(c) Interest on deferred tax liability

(1) In general

If an obligation to which this section applies is outstanding as of the close of any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined in the manner provided under paragraph (2).

(2) Computation of interest

For purposes of paragraph (1), the interest for any taxable year shall be an amount equal to the product of—

(A) the applicable percentage of the deferred tax liability with respect to such obligation, multiplied by

(B) the underpayment rate in effect under section 6621(a)(2) for the month with or within which the taxable year ends.

(3) Deferred tax liability

For purposes of this section, the term ''deferred tax liability'' means, with respect to any taxable year, the product of—

(A) the amount of gain with respect to an obligation which has not been recognized as of the close of such taxable year, multiplied by

(B) the maximum rate of tax in effect under section 1 or 11, whichever is appropriate, for such taxable year.

For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) shall be taken into account.

(4) Applicable percentage

For purposes of this subsection, the term ''applicable percentage'' means, with respect to obligations arising in any taxable year, the percentage determined by dividing—

(A) the portion of the aggregate face amount of such obligations outstanding as of the close of such taxable year in excess of $5,000,000, by

(B) the aggregate face amount of such obligations outstanding as of the close of such taxable year.

(5) Treatment as interest

Any amount payable under this subsection shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during the taxable year.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection including regulations providing for the application of this subsection in the case of contingent payments, short taxable years, and pass-thru entities.

(d) Pledges, etc., of installment obligations

(1) In general

For purposes of section 453, if any indebtedness (hereinafter in this subsection referred to as ''secured indebtedness'') is secured by an installment obligation to which this section applies, the net proceeds of the secured indebtedness shall be treated as a payment received on such installment obligation as of the later of—

(A) the time the indebtedness becomes secured indebtedness, or

(B) the time the proceeds of such indebtedness are received by the taxpayer.

(2) Limitation based on total contract price

The amount treated as received under paragraph (1) by reason of any secured indebtedness shall not exceed the excess (if any) of—

(A) the total contract price, over

(B) any portion of the total contract price received under the contract before the later of the times referred to in subparagraph (A) or (B) of paragraph (1) (including amounts previously treated as received under paragraph (1) but not including amounts not taken into account by reason of paragraph (3)).

(3) Later payments treated as receipt of tax paid amounts

If any amount is treated as received under paragraph (1) with respect to any installment obligation, subsequent payments received on such obligation shall not be taken into account for purposes of section 453 to the extent that the aggregate of such subsequent payments does not exceed the aggregate amount treated as received under paragraph (1).

(4) Secured indebtedness

For purposes of this subsection indebtedness is secured by an installment obligation to the extent that payment of principal or interest on such indebtedness is directly secured (under the terms of the indebtedness or any underlying arrangements) by any interest in such installment obligation. A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations—

(1) disallowing the use of the installment method in whole or in part for transactions in which the rules of this section otherwise would be avoided through the use of related persons, pass-thru entities, or intermediaries, and

(2) providing that the sale of an interest in a partnership or other pass-thru entity will be treated as a sale of the proportionate share of the assets of the partnership or other entity.

(Added Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2251; amended Pub. L. 99–514, title VIII, §812(b), Oct. 22, 1986, 100 Stat. 2371; Pub. L. 100–203, title X, §10202(c)[(1)], Dec. 22, 1987, 101 Stat. 1330–390; Pub. L. 100–647, title I, §1008(g)(2), title II, §2004(d)(2), (7), (8), title V, §5076(a), (b)(1), Nov. 10, 1988, 102 Stat. 3442, 3599, 3600, 3682; Pub. L. 101–239, title VII, §§7812(c)(2), 7815(g), 7821(a)(1)–(3), (4)(B), Dec. 19, 1989, 103 Stat. 2412, 2420, 2423, 2424; Pub. L. 103–66, title XIII, §13201(b)(4), Aug. 10, 1993, 107 Stat. 459; Pub. L. 106–170, title V, §536(b), Dec. 17, 1999, 113 Stat. 1936; Pub. L. 115–97, title I, §13001(b)(2)(C), Dec. 22, 2017, 131 Stat. 2096.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 453 of this title.

AMENDMENTS

2017—Subsec. (c)(3). Pub. L. 115–97 struck out ''or 1201 (whichever is appropriate)'' after ''1(h)'' in concluding provisions.

1999—Subsec. (d)(4). Pub. L. 106–170 inserted at end ''A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation.''

1993—Subsec. (c)(3). Pub. L. 103–66 inserted at end ''For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) or 1201 (whichever is appropriate) shall be taken into account.''

1989—Subsec. (b)(2)(B). Pub. L. 101–239, §7821(a)(1), substituted ''such obligations held by the taxpayer'' for ''obligations of the taxpayer described in paragraph (1)''.

Subsec. (b)(3). Pub. L. 101–239, §7815(g), substituted ''Exception for personal use and farm property'' for ''Exception for farm property'' in heading and amended text generally. Prior to amendment, text read as follows: ''An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5).''

Pub. L. 101–239, §7812(c)(2), substituted ''(5)).'' for ''(5).''

Subsec. (c)(5), (6). Pub. L. 101–239, §7821(a)(4)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d)(1)(B). Pub. L. 101–239, §7821(a)(3), substituted ''the time the proceeds'' for ''the proceeds''.

Subsec. (d)(2)(B). Pub. L. 101–239, §7821(a)(2), substituted ''the later of the times referred to in subparagraph (A) or (B) of paragraph (1)'' for ''such secured indebtedness was incurred''.

1988—Pub. L. 100–647, §5076(b)(1), struck out ''of real property'' after ''rules for nondealers'' in section catchline.

Subsec. (b)(1). Pub. L. 100–647, §5076(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''This section shall apply to any obligation which arises from the disposition of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000.''

Subsec. (b)(2). Pub. L. 100–647, §2004(d)(7), inserted ''and subsection (c)(4)'' after ''of this paragraph'' in last sentence.

Subsec. (b)(3). Pub. L. 100–647, §2004(d)(8), substituted ''farm property'' for ''personal use and farm property'' in heading and amended text generally. Prior to amendment, text read as follows: ''An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

''(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

''(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).''

Subsec. (c). Pub. L. 100–647, § 1008(g)(2), substituted ''453(k)'' for ''453(j)'' in subsec. (c) as in effect on date before the date of enactment of Pub. L. 100–203 (Dec. 22, 1987).

Subsec. (e). Pub. L. 100–647, § 2004(d)(2), added subsec. (e).

1987—Pub. L. 100–203 substituted ''Special rules for nondealers of real property'' for ''Installment method for dealers in personal property'' in section catchline and amended text generally, revising and restating as subsecs. (a) to (d) provisions of former subsecs. (a) to (c).

1986—Subsec. (a)(2). Pub. L. 99–514, § 812(b)(1), struck out last sentence which read as follows: ''This paragraph shall not apply with respect to sales of personal property under a revolving credit type plan.''

Subsec. (c). Pub. L. 99–514, § 812(b)(2), added subsec. (c).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to sales or other dispositions occurring on or after Dec. 17, 1999, see section 536(c) of Pub. L. 106–170, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7812(c)(2) and 7815(g) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7821(a)(1)–(3), (4)(B) of Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(g)(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 2004(d)(2), (7), (8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title V, § 5076(c), Nov. 10, 1988, 102 Stat. 3683, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to sales after December 31, 1988.

''(2) BINDING CONTRACT, ETC.—The amendments made by this section shall not apply to any sale on or before December 31, 1990, if—

''(A) such sale is pursuant to a written binding contract in effect on October 21, 1988, and at all times thereafter before such sale,

''(B) such sale is pursuant to a letter of intent in effect on October 21, 1988, or

''(C) there is a board of directors or shareholder approval for such sale on or before October 21, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for non-dealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE

For effective date, see section 6(a)(4) of Pub. L. 96–471, set out as a note under section 453 of this title.

CERTAIN REPLEDGES PERMITTED

Pub. L. 100–647, title VI, § 6031, Nov. 10, 1988, 102 Stat. 3695, provided that:

''(a) GENERAL RULE.—Section 453A(d) of the 1986 Code (relating to pledges, etc., of installment obligations) shall not apply to any pledge after December 17, 1987, of an installment obligation to secure any indebtedness if such indebtedness is incurred to refinance indebtedness which was outstanding on December 17, 1987, and which was secured on such date and all times thereafter before such refinancing by a pledge of such installment obligation.

''(b) LIMITATION.—Subsection (a) shall not apply to the extent that the principal amount of the indebtedness resulting from the refinancing exceeds the principal amount of the refinanced indebtedness immediately before the refinancing.

''(c) CERTAIN REFINANCINGS PERMITTED.—For purposes of subsection (a), if—

''(1) a refinancing is attributable to the calling of indebtedness by the creditor, and

''(2) such refinancing is not with the creditor under the refinanced indebtedness or a person related to such creditor,

such refinancing shall, to the extent the refinanced indebtedness qualifies under subsections (a) and (b), be treated as a continuation of such refinanced indebtedness.''

AMENDMENT BY PUB. L. 99–514 TREATED AS CHANGE IN METHOD OF ACCOUNTING

For provisions requiring change in accounting method in the case of any taxpayer who made sales under revolving credit plan and was on installment method under this section for such taxpayer's last taxable year beginning before Jan. 1, 1987, see section 812(c)(2) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 453 of this title.

§ 453B. Gain or loss disposition of installment obligations

(a) General rule

If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and—

(1) the amount realized, in the case of satisfaction at other than face value or a sale or exchange, or

(2) the fair market value of the obligation at the time of distribution, transmission, or disposition, in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

(b) Basis of obligation

The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(c) Special rule for transmission at death

Except as provided in section 691 (relating to recipients of income in respect of decedents), this section shall not apply to the transmission of installment obligations at death.

(d) Exception for distributions to which section 337(a) applies

Subsection (a) shall not apply to any distribution to which section 337(a) applies.

(e) Life insurance companies

(1) In general

In the case of a disposition of an installment obligation by any person other than a life insurance company (as defined in section 816(a)) to such an insurance company or to a partnership of which such an insurance company is a partner, no provision of this subtitle providing for the nonrecognition of gain shall apply with respect to any gain resulting under subsection (a). If a corporation which is a life insurance company for the taxable year was (for the preceding taxable year) a corporation which was not a life insurance company, such corporation shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year, all installment obligations which it held on such last day. A partnership of which a life insurance company becomes a partner shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year of such partnership, all installment obligations which it holds at the time such insurance company becomes a partner.

(2) Special rule where life insurance company elects to treat income as not related to insurance business

Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

(B) as if such income were an item attributable to a noninsurance business.

(3) Noninsurance business

(A) In general

For purposes of this subsection, the term ''noninsurance business'' means any activity which is not an insurance business.

(B) Certain activities treated as insurance businesses

For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

(i) it is of a type traditionally carried on by life insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

(ii) it involves the performance of administrative services in connection with plans providing life insurance, pension, or accident and health benefits.

(f) Obligation becomes unenforceable

For purposes of this section, if any installment obligation is canceled or otherwise becomes unenforceable—

(1) the obligation shall be treated as if it were disposed of in a transaction other than a sale or exchange, and

(2) if the obligor and obligee are related persons (within the meaning of section 453(f)(1)), the fair market value of the obligation shall be treated as not less than its face amount.

(g) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041 (other than a transfer in trust)—

(1) subsection (a) of this section shall not apply, and

(2) the same tax treatment with respect to the transferred installment obligation shall apply to the transferee as would have applied to the transferor.

(h) Certain liquidating distributions by S corporations

If—

(1) an installment obligation is distributed by an S corporation in a complete liquidation, and

(2) receipt of the obligation is not treated as payment for the stock by reason of section 453(h)(1),

then, except for purposes of any tax imposed by subchapter S, no gain or loss with respect to the distribution of the obligation shall be recognized by the distributing corporation. Under regulations prescribed by the Secretary, the character of the gain or loss to the shareholder shall be determined in accordance with the principles of section 1366(b).

(Added Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2252; amended Pub. L. 96–471, §2(c)(3), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 97–448, title III, §302, Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, §43(c)(2), title II, §211(b)(6), title IV, §§421(b)(3), 492(b)(3), July 18, 1984, 98 Stat. 558, 754, 794, 854; Pub. L. 99–514, title VI, §631(e)(9), title X, §1011(b)(1), title XVIII, §1842(c), Oct. 22, 1986, 100 Stat. 2274, 2389, 2853; Pub. L. 100–647, title I, §1006(e)(22), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–508, title XI, §11702(a)(2), Nov. 5, 1990, 104 Stat. 1388–514; Pub. L. 115–97, title I, §13512(b)(1), Dec. 22, 2017, 131 Stat. 2142.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 453 of this title.

AMENDMENTS

2017—Subsec. (e)(2)(B). Pub. L. 115–97, §13512(b)(1)(A), struck out ''(as defined in section 806(b)(3))'' before period at end.

Subsec. (e)(3). Pub. L. 115–97, §13512(b)(1)(B), added par. (3).

1990—Subsec. (d). Pub. L. 101–508 substituted heading for one which read: ''Effect of distribution in liquida-

tions to which section 332 applies'' and amended text generally. Prior to amendment, text read as follows: ''If—

''(1) an installment obligation is distributed in a liquidation to which section 332 (relating to complete liquidations of subsidiaries) applies, and

''(2) the basis of such obligation in the hands of the distributee is determined under section 334(b)(1),

then no gain or loss with respect to the distribution of such obligation shall be recognized by the distributing corporation.''

1988—Subsec. (h). Pub. L. 100–647 added subsec. (h).

1986—Subsec. (d). Pub. L. 99–514, § 631(e)(9), amended subsec. (d) generally, substituting ''liquidations to which section 332 applies'' for ''certain liquidations'' in heading, striking out par. (1) designation, redesignating subpars. (A) and (B) as pars. (1) and (2), and striking out former par. (2) relating to liquidations to which section 337 applies.

Subsec. (e)(2)(B). Pub. L. 99–514, § 1011(b)(1), substituted ''section 806(b)(3)'' for ''section 806(c)(3)''.

Subsec. (g). Pub. L. 99–514, § 1842(c), inserted ''(other than a transfer in trust)''.

1984—Subsec. (d)(2). Pub. L. 98–369, § 492(b)(3), struck out ''1251(c),'' after ''1250(a),'' in provision following subpar. (B).

Pub. L. 98–369, § 43(c)(2), substituted ''1254(a), or 1276(a)'' for ''or 1254(a)''.

Subsec. (e)(1). Pub. L. 98–369, § 211(b)(6)(A), substituted ''section 816(a)'' for ''section 801(a)''.

Subsec. (e)(2). Pub. L. 98–369, § 211(b)(6)(B), substituted ''as not related to insurance business'' for ''as investment income'' in heading, and in text substituted ''as if such income were an item attributable to a noninsurance business (as defined in section 806(c)(3))'' for ''if such income would not otherwise be returnable as an item referred to in section 804(b) or as long-term capital gain, as if the income on such obligations were income specified in section 804(b)''.

Subsec. (g). Pub. L. 98–369, § 421(b)(3), added subsec. (g).

1983—Subsec. (d)(2). Pub. L. 97–448 substituted ''under subsection (a)'' for ''under paragraph (1)'' in second sentence.

1980—Subsec. (d). Pub. L. 96–471, § 2(c)(3), inserted last sentence providing that in the case of any installment obligation which would have met the requirements of subpars. (A) and (B) of par. (2) but for sections 337(f), gain shall be recognized to such corporation by reason of such distribution only to the extent gain would have been recognized under sections 337(f) if such corporation had sold or exchanged such installment obligation on the date of such distribution.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, § 13512(c), Dec. 22, 2017, 131 Stat. 2143, provided that: ''The amendments made by this section [amending this section and sections 465, 801, 804, 805, 842, and 953 of this title and repealing section 806 of this title] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 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 OF 1986 AMENDMENT

Amendment by section 631(e)(9) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Pub. L. 99–514, title X, § 1011(c)(1), Oct. 22, 1986, 100 Stat. 2389, provided that: ''The amendments made by this section [amending this section and sections 465, 801, 804 to 806, 813, and 815 of this title, enacting provisions set out as a note under section 801 of this title, and amending provisions set out as a note under section 806 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1842(c) of 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 OF 1984 AMENDMENT

Amendment by section 43(c)(2) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 211(b)(6) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 421(b)(3) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 492(b)(3) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 applicable to dispositions made after Oct. 19, 1980, in taxable years ending after such date, see section 311(a) of Pub. L. 97–448, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(6) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE

For effective date, see section 6(a)(1), (5) of Pub. L. 96–471, set out as a note under section 453 of this title.

REPEAL OF MODIFICATION OF INSTALLMENT METHOD

Pub. L. 106–573, § 2, Dec. 28, 2000, 114 Stat. 3061, provided that:

''(a) IN GENERAL.—Subsection (a) of section 536 of the Ticket to Work and Work Incentives Improvement Act of 1999 (relating to modification of installment method and repeal of installment method for accrual method taxpayers) [Pub. L. 106–170, amending this section] is repealed effective with respect to sales and other dispositions occurring on or after the date of the enactment of such Act [Dec. 17, 1999].

''(b) APPLICABILITY.—The Internal Revenue Code of 1986 shall be applied and administered as if that subsection (and the amendments made by that subsection) had not been enacted.''

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.

TREATMENT OF ELECTIONS UNDER SECTION 453B(e)(2)

Pub. L. 98–369, div. A, title II, § 217(b), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If an election is made under section 453B(e)(2) before January 1, 1984, with respect to any installment obligation, any income from such obligation shall be treated as attributable to a noninsurance business (as defined in [former] section 806(c)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]).''

[§ 453C. Repealed. Pub. L. 100–203, title X, § 10202(a)(1), Dec. 22, 1987, 101 Stat. 1330–388]

Section, added Pub. L. 99–514, title VIII, § 811(a), Oct. 22, 1986, 100 Stat. 2365; amended Pub. L. 100–647, title I, § 1008(f)(1)–(5), Nov. 10, 1988, 102 Stat. 3441, 3442, related to treatment of certain indebtedness as payment on installment obligations.

EFFECTIVE DATE OF REPEAL

Repeal applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for dealers and non-dealers, and coordination with Tax Reform Act of 1986, see section 10202(e)(1)–(3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

APPLICABILITY OF AMENDMENTS BY PUB. L. 100–203 AND PUB. L. 100–647

Pub. L. 100–647, title I, § 1008(f)(9), Nov. 10, 1988, 102 Stat. 3442, provided that: ''For purposes of applying the amendments made by this subsection [amending this section and provisions set out below] and the amendments made by section 10202 of the Revenue Act of 1987 [Pub. L. 100–203, amending sections 56, 381, 453, 453A, and 691 of this title and repealing this section], the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987 [Dec. 22, 1987].''

EFFECTIVE DATE; ALLOCATION OF INDEBTEDNESS AS PAYMENT ON INSTALLMENT OBLIGATION

Pub. L. 99–514, title VIII, § 811(c), Oct. 22, 1986, 100 Stat. 2368, as amended by Pub. L. 100–647, title I, § 1008(f)(6)–(8), Nov. 10, 1988, 102 Stat. 3442; Pub. L. 105–34, title X, § 1088(a), Aug. 5, 1997, 111 Stat. 959, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this section [enacting this section] shall apply to taxable years ending after December 31, 1986, with respect to dispositions after February 28, 1986.

''[(2) Repealed. Pub. L. 105–34, title X, § 1088(a), Aug. 5, 1997, 111 Stat. 959.]

''(3) EXCEPTION FOR CERTAIN OBLIGATIONS.—In applying the amendments made by this section to any installment obligation of a corporation incorporated on January 13, 1928, the following indebtedness shall not be taken into account in determining the allocable installment indebtedness of such corporation under section 453C of the Internal Revenue Code of 1986 (as added by this section):

''(A) 12⅝ percent subordinated debentures with a total face amount of $175,000,000 issued pursuant to a trust indenture dated as of September 1, 1985.

''(B) A revolving credit term loan in the maximum amount of $130,000,000 made pursuant to a revolving credit and security agreement dated as of September 6, 1985, payable in various stages with final payment due on August 31, 1992.

This paragraph shall also apply to indebtedness which replaces indebtedness described in this paragraph if such indebtedness does not exceed the amount and maturity of the indebtedness it replaces.

''(4) SPECIAL RULE FOR RESIDENTIAL CONDOMINIUM PROJECT.—For purposes of applying the amendments made by this section, the term applicable installment obligation (within the meaning of section 453C(e)(1) of the Internal Revenue Code of 1986) shall not include any obligation arising in connection with sales from a residential condominium project—

''(A) for which a contract to purchase land for the project was entered into at least 5 years before the date of the enactment of this Act,

''(B) with respect to which land for the project was purchased before September 26, 1985,

''(C) with respect to which building permits for the project were obtained, and construction commenced, before September 26, 1985,

''(D) in conjunction with which not less than 80 units of low-income housing are deeded to a tax-exempt organization designated by a local government, and

''(E) with respect to which at least $1,000,000 of expenses were incurred before September 26, 1985.

''(5) SPECIAL RULE FOR QUALIFIED BUYOUT.—The amendments made by this section shall apply for taxable years ending after December 31, 1991, to a corporation if—

''(A) such corporation was incorporated on May 25, 1984, for the purpose of acquiring all of the stock of another corporation,

''(B) such acquisition took place on October 23, 1984,

''(C) in connection with such acquisition, the corporation incurred indebtedness of approximately $151,000,000, and

''(D) substantially all of the stock of the corporation is owned directly or indirectly by employees of the corporation the stock of which was acquired on October 23, 1984.

''(6) SPECIAL RULE FOR SALES OF REAL PROPERTY BY DEALERS.—In the case of installment obligations arising from the sale of real property in the ordinary course of the trade or business of the taxpayer, any gain attributable to allocable installment indebtedness allocated to any such installment obligations which arise (or are deemed to arise)—

''(A) in the 1st taxable year of the taxpayer ending after December 31, 1986, shall be taken into account ratably over the 3 taxable years beginning with such 1st taxable year, and

''(B) in the 2nd taxable year of the taxpayer ending after December 31, 1986, shall be taken into account ratably over the 2 taxable years beginning with such 2nd taxable year.

''(7) SPECIAL RULE FOR SALES OF PERSONAL PROPERTY BY DEALERS.—In the case of installment obligations arising from the sale of personal property in the ordinary course of the trade or business of the taxpayer, solely for purposes of determining the time for payment of tax and interest payable with respect to such tax—

''(A) any increase in tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the 1st taxable year of the taxpayer ending after December 31, 1986, by reason of the amendments made by this section shall be treated as imposed ratably over the 3 taxable years beginning with such 1st taxable year, and

''(B) any increase in tax imposed by such chapter 1 for the 2nd taxable year of the taxpayer ending after December 31, 1986 (determined without regard to subparagraph (A)), by reason of the amendments made by this section shall be treated as imposed ratably over the 2 taxable years beginning with such 2nd taxable year.

''(8) TREATMENT OF CERTAIN INSTALLMENT OBLIGATIONS.—Notwithstanding the amendments made by subtitle B of title III [section 311 of Pub. L. 99–514, amending sections 593, 631, 852, 1201, and 1445 of this title and enacting provisions set out as notes under sections 631 and 1201 of this title], gain with respect to installment payments received pursuant to notes issued in accord-

ance with a note agreement dated as of August 29, 1980, where—

''(A) such note agreement was executed pursuant to an agreement of purchase and sale dated April 25, 1980,

''(B) more than ½ of the installment payments of the aggregate principal of such notes have been received by August 29, 1986, and

''(C) the last installment payment of the principal of such notes is due August 29, 1989,

shall be taxed at a rate of 28 percent.

''(9) SPECIAL RULES.—For purposes of section 453C of the 1986 Code (as added by subsection (a))—

''(A) REVOLVING CREDIT PLANS, ETC.—The term 'applicable installment obligation' shall not include any obligation arising out of any disposition or sale described in paragraph (1) or (2) of section 453(k) of such Code (as added by section 812(a)).

''(B) CERTAIN DISPOSITIONS DEEMED MADE ON FIRST DAY OF TAXABLE YEAR.—In the case of a taxpayer's 1st taxable year ending after December 31, 1986, dispositions after February 28, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day.''

[Pub. L. 105–34, title X, § 1088(b), Aug. 5, 1997, 111 Stat. 959, as amended by Pub. L. 105–206, title VI, § 6010(q), July 22, 1998, 112 Stat. 817, provided that:

[''(1) IN GENERAL.—The amendment made by this section [amending section 811(c) of Pub. L. 99–514, set out above] shall apply to taxable years beginning more than 1 year after the date of the enactment of this Act [Aug. 5, 1997].

[''(2) COORDINATION WITH SECTION 481.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

[''(A) such changes shall be treated as initiated by the taxpayer,

[''(B) such changes shall be treated as made with the consent of the Secretary of the Treasury, and

[''(C) the net amount of the adjustments required to be taken into account under section 481(a) of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4 taxable year period beginning with the first taxable year beginning more than 1 year after the date of the enactment of this Act.'']

§ 454. Obligations issued at discount

(a) Non-interest-bearing obligations issued at a discount

If, in the case of a taxpayer owning any non-interest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals or owning an obligation described in paragraph (2) of subsection (c), the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing his taxable income) constitute income to him in such year, such taxpayer may, at his election made in his return for any taxable year, treat such increase as income received in such taxable year. If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by him and shall be binding for all subsequent taxable years, unless on application by the taxpayer the Secretary permits him, subject to such conditions as the Secretary deems necessary, to change to a different method. In the case of any such obligations owned by the taxpayer at the beginning of the first taxable year to which his election applies, the increase in the redemption price of such obligations occurring between the date of acquisition (or, in the case of an obligation described in paragraph (2) of subsection (c), the date of acquisition of the series E bond involved) and the first day of such taxable year shall also be treated as income received in such taxable year.

(b) Short-term obligations issued on discount basis

In the case of any obligation—

(1) of the United States; or

(2) of a State or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia,

which is issued on a discount basis and payable without interest at a fixed maturity date not exceeding 1 year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of.

(c) Matured United States savings bonds

In the case of a taxpayer who—

(1) holds a series E United States savings bond at the date of maturity, and

(2) pursuant to regulations prescribed under chapter 31 of title 31 (A) retains his investment in such series E bond in an obligation of the United States, other than a current income obligation, or (B) exchanges such series E bond for another nontransferable obligation of the United States in an exchange upon which gain or loss is not recognized because of section 1037 (or so much of section 1031 as relates to section 1037),

the increase in redemption value (to the extent not previously includible in gross income) in excess of the amount paid for such series E bond shall be includible in gross income in the taxable year in which the obligation is finally redeemed or in the taxable year of final maturity, whichever is earlier. This subsection shall not apply to a corporation, and shall not apply in the case of any taxable year for which the taxpayer's taxable income is computed under an accrual method of accounting or for which an election made by the taxpayer under subsection (a) applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 156; Pub. L. 86–346, title I, § 102, Sept. 22, 1959, 73 Stat. 621; Pub. L. 94–455, title XIX, §§ 1901(c)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1803, 1834; Pub. L. 97–452, § 2(c)(2), Jan. 12, 1983, 96 Stat. 2478.)

AMENDMENTS

1983—Subsec. (c)(2). Pub. L. 97–452 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act''.

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in two places.

Subsec. (b)(2). Pub. L. 94–455, § 1901(c)(2), struck out '', a Territory,'' after ''a State''.

1959—Subsec. (c)(2). Pub. L. 86–346 designated existing provisions as cl. (A), inserted ''of the United States'' after ''an obligation'' and struck out ''the maturity value of'' before ''such series E bond'' and ''which matures not more than 10 years from the date of maturity of such series E bond'' after ''income obligation'' in such cl. (A), and added cl. (B).

§ 455. Prepaid subscription income

(a) Year in which included

Prepaid subscription income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (d)(2) exists.

(b) Where taxpayer's liability ceases

In the case of any prepaid subscription income to which this section applies—

(1) If the liability described in subsection (d)(2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer dies or ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such death, or such cessation of existence, occurs.

(c) Prepaid subscription income to which this section applies

(1) Election of benefits

This section shall apply to prepaid subscription income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) Scope of election

An election made under this section shall apply to all prepaid subscription income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary, include in gross income for the taxable year of receipt the entire amount of any prepaid subscription income if the liability from which it arose is to end within 12 months after the date of receipt. An election made under this section shall not apply to any prepaid subscription income received before the first taxable year for which the election is made.

(3) When election may be made

(A) With consent

A taxpayer may, with the consent of the Secretary, make an election under this section at any time.

(B) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this section for his first taxable year in which he receives prepaid subscription income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) Period to which election applies

An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) Definitions

For purposes of this section—

(1) Prepaid subscription income

The term ''prepaid subscription income'' means any amount (includible in gross income) which is received in connection with, and is directly attributable to, a liability which extends beyond the close of the taxable year in which such amount is received, and which is income from a subscription to a newspaper, magazine, or other periodical.

(2) Liability

The term ''liability'' means a liability to furnish or deliver a newspaper, magazine, or other periodical.

(3) Receipt of prepaid subscription income

Prepaid subscription income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(e) Deferral of income under established accounting procedures

Notwithstanding the provisions of this section, any taxpayer who has, for taxable years prior to the first taxable year to which this section applies, reported his income under an established and consistent method or practice of accounting for prepaid subscription income (to which this section would apply if an election were made) may continue to report his income for taxable years to which this title applies in accordance with such method or practice.

(Added Pub. L. 85–866, title I, § 28(a), Sept. 2, 1958, 72 Stat. 1625; amended Pub. L. 94–455, title XIX, §§ 1901(a)(67), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (c)(3)(B). Pub. L. 94–455, § 1901(a)(67), substituted ''for his first taxable year in which he receives prepaid subscription income in the trade or business'' for ''for his first taxable year (i) which begins after December 31, 1957, and (ii) in which he receives prepaid subscription income in the trade or business''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(67) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 85–866, title I, § 28(c), Sept. 2, 1958, 72 Stat. 1626, provided that: ''The amendments made by subsections (a) and (b) [enacting this section] shall apply with respect to taxable years beginning after December 31, 1957.''

§ 456. Prepaid dues income of certain membership organizations

(a) Year in which included

Prepaid dues income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (e)(2) exists.

(b) Where taxpayer's liability ceases

In the case of any prepaid dues income to which this section applies—

(1) If the liability described in subsection (e)(2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such cessation of existence occurs.

(c) Prepaid dues income to which this section applies

(1) Election of benefits

This section shall apply to prepaid dues income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) Scope of election

An election made under this section shall apply to all prepaid dues income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary, include in gross income for the taxable year of receipt the entire amount of any prepaid dues income if the liability from which it arose is to end within 12 months after the date of receipt. Except as provided in subsection (d), and election made under this section shall not apply to any prepaid dues income received before the first taxable year for which the election is made.

(3) When election may be made

(A) With consent

A taxpayer may, with the consent of the Secretary, make an election under this section at any time.

(B) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this section for its first taxable year in which it receives prepaid dues income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) Period to which election applies

An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) Transitional rule

(1) Amount includible in gross income for election years

If a taxpayer makes an election under this section with respect to prepaid dues income, such taxpayer shall include in gross income, for each taxable year to which such election applies, not only that portion of prepaid dues income received in such year otherwise includible in gross income for such year under this section, but shall also include in gross income for such year an additional amount equal to the amount of prepaid dues income received in the 3 taxable years preceding the first taxable year to which such election applies which would have been included in gross income in the taxable year had the election been effective 3 years earlier.

(2) Deductions of amounts included in income more than once

A taxpayer who makes an election with respect to prepaid dues income, and who includes in gross income for any taxable year to which the election applies an additional amount computed under paragraph (1), shall be permitted to deduct, for such taxable year and for each of the 4 succeeding taxable years, an amount equal to one-fifth of such additional amount, but only to the extent that such additional amount was also included in the taxpayer's gross income during any of the 3 taxable years preceding the first taxable year to which such election applies.

(e) Definitions

For purposes of this section—

(1) Prepaid dues income

The term ''prepaid dues income'' means any amount (includible in gross income) which is received by a membership organization in connection with, and is directly attributable to, a liability to render services or make available membership privileges over a period of time which extends beyond the close of the taxable year in which such amount is received.

(2) Liability

The term ''liability'' means a liability to render services or make available membership privileges over a period of time which does not exceed 36 months, which liability shall be deemed to exist ratably over the period of time that such services are required to be rendered, or that such membership privileges are required to be made available.

(3) Membership organization

The term ''membership organization'' means a corporation, association, federation, or other organization—

(A) organized without capital stock of any kind, and

(B) no part of the net earnings of which is distributable to any member.

(4) Receipt of prepaid dues income

Prepaid dues income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(Added Pub. L. 87–109, §1(a), July 26, 1961, 75 Stat. 222; amended Pub. L. 94–455, title XIX, §§1901(a)(68), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (c)(3)(B). Pub. L. 94–455, §1901(a)(68), substituted ''for its first taxable year'' for ''for its first taxable year (i) which begins after December 31, 1960, and (ii)''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(68) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 87–109, §2, July 26, 1961, 75 Stat. 224, provided that: ''The amendments made by this Act [enacting this section] shall apply with respect to taxable years beginning after December 31, 1960.''

§ 457. Deferred compensation plans of State and local governments and tax-exempt organizations

(a) Year of inclusion in gross income

(1) In general

Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

(2) Special rule for rollover amounts

To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.

(3) Special rule for health and long-term care insurance

In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(*l*), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.

(b) Eligible deferred compensation plan defined

For purposes of this section, the term ''eligible deferred compensation plan'' means a plan established and maintained by an eligible employer—

(1) in which only individuals who perform service for the employer may be participants,

(2) which provides that (except as provided in paragraph (3)) the maximum amount which may be deferred under the plan for the taxable year (other than rollover amounts) shall not exceed the lesser of—

(A) the applicable dollar amount, or

(B) 100 percent of the participant's includible compensation,

(3) which may provide that, for 1 or more of the participant's last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

(A) twice the dollar amount in effect under subsection (b)(2)(A), or

(B) the sum of—

(i) the plan ceiling established for purposes of paragraph (2) for the taxable year (determined without regard to this paragraph), plus

(ii) so much of the plan ceiling established for purposes of paragraph (2) for taxable years before the taxable year as has not previously been used under paragraph (2) or this paragraph,

(4) which provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month,

(5) which meets the distribution requirements of subsection (d), and

(6) except as provided in subsection (g), which provides that—

(A) all amounts of compensation deferred under the plan,

(B) all property and rights purchased with such amounts, and

(C) all income attributable to such amounts, property, or rights,

shall remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the employer's general creditors.

A plan which is established and maintained by an employer which is described in subsection (e)(1)(A) and which is administered in a manner which is inconsistent with the requirements of any of the preceding paragraphs shall be treated as not meeting the requirements of such paragraph as of the 1st plan year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the employer corrects the inconsistency before the 1st day of such plan year.

(c) Limitation

The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).

(d) Distribution requirements

(1) In general

For purposes of subsection (b)(5), a plan meets the distribution requirements of this subsection if—

(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

(i) the calendar year in which the participant attains age 70½,

(ii) when the participant has a severance from employment with the employer, or

(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations),

(B) the plan meets the minimum distribution requirements of paragraph (2), and

(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.

(2) Minimum distribution requirements

A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of section 401(a)(9).

(3) Special rule for government plan

An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).

(e) Other definitions and special rules

For purposes of this section—

(1) Eligible employer

The term ''eligible employer'' means—

(A) a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State, and

(B) any other organization (other than a governmental unit) exempt from tax under this subtitle.

(2) Performance of service

The performance of service includes performance of service as an independent contractor and the person (or governmental unit) for whom such services are performed shall be treated as the employer.

(3) Participant

The term ''participant'' means an individual who is eligible to defer compensation under the plan.

(4) Beneficiary

The term ''beneficiary'' means a beneficiary of the participant, his estate, or any other person whose interest in the plan is derived from the participant.

(5) Includible compensation

The term ''includible compensation'' has the meaning given to the term ''participant's compensation'' by section 415(c)(3).

(6) Compensation taken into account at present value

Compensation shall be taken into account at its present value.

(7) Community property laws

The amount of includible compensation shall be determined without regard to any community property laws.

(8) Income attributable

Gains from the disposition of property shall be treated as income attributable to such property.

(9) Benefits of tax exempt organization plans not treated as made available by reason of certain elections, etc.

In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—

(A) Total amount payable is dollar limit or less

The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

(i) the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D)) does not exceed the dollar limit under section 411(a)(11)(A), and

(ii) such amount may be distributed only if—

(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

(B) Election to defer commencement of distributions

The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

(ii) the participant may make only 1 such election.

(10) Transfers between plans

A participant shall not be required to include in gross income any portion of the entire amount payable to such participant solely by reason of the transfer of such portion from 1 eligible deferred compensation plan to another eligible deferred compensation plan.

(11) Certain plans excluded

(A) In general

The following plans shall be treated as not providing for the deferral of compensation:

(i) Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan.

(ii) Any plan paying solely length of service awards to bona fide volunteers (or their beneficiaries) on account of qualified services performed by such volunteers.

(B) Special rules applicable to length of service award plans

(i) Bona fide volunteer

An individual shall be treated as a bona fide volunteer for purposes of subparagraph (A)(ii) if the only compensation received by such individual for performing qualified services is in the form of—

(I) reimbursement for (or a reasonable allowance for) reasonable expenses incurred in the performance of such services, or

(II) reasonable benefits (including length of service awards), and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers.

(ii) Limitation on accruals

A plan shall not be treated as described in subparagraph (A)(ii) if the aggregate amount of length of service awards accruing with respect to any year of service for any bona fide volunteer exceeds $6,000.

(iii) Cost of living adjustment

In the case of taxable years beginning after December 31, 2017, the Secretary shall adjust the $6,000 amount under clause (ii) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2016, and any increase under this paragraph that is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(iv) Special rule for application of limitation on accruals for certain plans

In the case of a plan described in subparagraph (A)(ii) which is a defined benefit plan (as defined in section 414(j)), the limitation under clause (ii) shall apply to the actuarial present value of the aggregate amount of length of service awards accruing with respect to any year of service. Such actuarial present value with respect to any year shall be calculated using reasonable actuarial assumptions and methods, assuming payment will be made under the most valuable form of payment under the plan with payment commencing at the later of the earliest age at which unreduced benefits are payable under the plan or the participant's age at the time of the calculation.

(C) Qualified services

For purposes of this paragraph, the term ''qualified services'' means fire fighting and prevention services, emergency medical services, and ambulance services.

(D) Certain voluntary early retirement incentive plans

(i) In general

If an applicable voluntary early retirement incentive plan—

(I) makes payments or supplements as an early retirement benefit, a retirement-type subsidy, or a benefit described in the last sentence of section 411(a)(9), and

(II) such payments or supplements are made in coordination with a defined benefit plan which is described in section 401(a) and includes a trust exempt from tax under section 501(a) and which is maintained by an eligible employer described in paragraph (1)(A) or by an education association described in clause (ii)(II),

such applicable plan shall be treated for purposes of subparagraph (A)(i) as a bona fide severance pay plan with respect to such payments or supplements to the extent such payments or supplements could otherwise have been provided under such defined benefit plan (determined as if section 411 applied to such defined benefit plan).

(ii) Applicable voluntary early retirement incentive plan

For purposes of this subparagraph, the term ''applicable voluntary early retirement incentive plan'' means a voluntary early retirement incentive plan maintained by—

(I) a local educational agency (as defined in section 8101 of the Elementary and Secondary Education Act of 1965), or

(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) and exempt from tax under section 501(a).

(12) Exception for nonelective deferred compensation of nonemployees

(A) In general

This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

(B) Nonelective deferred compensation

For purposes of subparagraph (A), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.

(13) Special rule for churches

The term ''eligible employer'' shall not include a church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(14) Treatment of qualified governmental excess benefit arrangements

Subsections (b)(2) and (c)(1) shall not apply to any qualified governmental excess benefit

arrangement (as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.

(15) Applicable dollar amount

(A) In general

The applicable dollar amount is $15,000.

(B) Cost-of-living adjustments

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(16) Rollover amounts

(A) General rule

In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(C) Reporting

Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).

(17) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(18) Coordination with catch-up contributions for individuals age 50 or older

In the case of an individual who is an eligible participant (as defined by section 414(v)) and who is a participant in an eligible deferred compensation plan of an employer described in paragraph (1)(A), subsections (b)(3) and (c) shall be applied by substituting for the amount otherwise determined under the applicable subsection the greater of—

(A) the sum of—

(i) the plan ceiling established for purposes of subsection (b)(2) (without regard to subsection (b)(3)), plus

(ii) the applicable dollar amount for the taxable year determined under section 414(v)(2)(B)(i), or

(B) the amount determined under the applicable subsection (without regard to this paragraph).

(f) Tax treatment of participants where plan or arrangement of employer is not eligible

(1) In general

In the case of a plan of an eligible employer providing for a deferral of compensation, if such plan is not an eligible deferred compensation plan, then—

(A) the compensation shall be included in the gross income of the participant or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

(B) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc.).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan or contract described in section 403,

(C) that portion of any plan which consists of a transfer of property described in section 83,

(D) that portion of any plan which consists of a trust to which section 402(b) applies,

(E) a qualified governmental excess benefit arrangement described in section 415(m), and

(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.

(3) Definitions

For purposes of this subsection—

(A) Plan includes arrangements, etc.

The term ''plan'' includes any agreement or arrangement.

(B) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(4) Employment retention plans

For purposes of paragraph (2)(F)—

(A) In general

The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that por-

tion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

(B) Other rules

(i) Limitation

Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years preceding the year in which such portion is paid or otherwise made available to the participant.

(ii) Treatment

A plan shall not be treated for purposes of this title as providing for the deferral of compensation for any year with respect to the portion of the plan described in subparagraph (A).

(C) Applicable employment retention plan

The term ''applicable employment retention plan'' means an employment retention plan maintained by—

(i) a local educational agency (as defined in section 9101[1] of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801),[2] or

(ii) an education association which principally represents employees of 1 or more agencies described in clause (i) and which is described in section 501(c)(5) or (6) and exempt from taxation under section 501(a).

(D) Employment retention plan

The term ''employment retention plan'' means a plan to pay, upon termination of employment, compensation to an employee of a local educational agency or education association described in subparagraph (C) for purposes of—

(i) retaining the services of the employee, or

(ii) rewarding such employee for the employee's service with 1 or more such agencies or associations.

(g) Governmental plans must maintain set-asides for exclusive benefit of participants

(1) In general

A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

(2) Taxability of trusts and participants

For purposes of this title—

(A) a trust described in paragraph (1) shall be treated as an organization exempt from taxation under section 501(a), and

(B) notwithstanding any other provision of this title, amounts in the trust shall be includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in this section.

(3) Custodial accounts and contracts

For purposes of this subsection, custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f).

(4) Death benefits under USERRA-qualified active military service

A plan described in paragraph (1) shall not be treated as an eligible deferred compensation plan unless such plan meets the requirements of section 401(a)(37).

(Added Pub. L. 95–600, title I, §131(a), Nov. 6, 1978, 92 Stat. 2779; amended Pub. L. 96–222, title I, §101(a)(4), Apr. 1, 1980, 94 Stat. 196; Pub. L. 98–369, div. A, title IV, §491(d)(33), July 18, 1984, 98 Stat. 851; Pub. L. 99–514, title XI, §1107(a), Oct. 22, 1986, 100 Stat. 2426; Pub. L. 100–647, title I, §1011(e)(1), (2), (9), (10), title VI, §§6064(a)–(c), 6071(c), Nov. 10, 1988, 102 Stat. 3460, 3461, 3700, 3701, 3705; Pub. L. 101–239, title VII, §§7811(g)(4), (5), 7816(j), Dec. 19, 1989, 103 Stat. 2409, 2421; Pub. L. 102–318, title V, §521(b)(26), July 3, 1992, 106 Stat. 312; Pub. L. 104–188, title I, §§1421(b)(3)(C), 1444(b)(2), (3), 1447(a), (b), 1448(a), (b), 1458(a), Aug. 20, 1996, 110 Stat. 1796, 1810, 1812, 1813, 1819; Pub. L. 105–34, title X, §1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title VI, §§611(d)(3)(B), (e), 615(a), 632(c)(1), 641(a)(1)(A)–(C), 646(a)(3), 647(b), 648(b), 649(a), (b), June 7, 2001, 115 Stat. 98, 102, 115, 118, 119, 126–128; Pub. L. 107–147, title IV, §411(*o*)(9), (p)(5), Mar. 9, 2002, 116 Stat. 49, 51; Pub. L. 109–280, title VIII, §§829(a)(4), 845(b)(3), title XI, §1104(a)(1), (b), Aug. 17, 2006, 120 Stat. 1002, 1015, 1058, 1059; Pub. L. 110–245, title I, §104(c)(3), June 17, 2008, 122 Stat. 1627; Pub. L. 113–295, div. A, title II, §221(a)(57)(H), Dec. 19, 2014, 128 Stat. 4047; Pub. L. 114–95, title IX, §9215(uu)(2), Dec. 10, 2015, 129 Stat. 2183; Pub. L. 115–97, title I, §13612(a)–(c), Dec. 22, 2017, 131 Stat. 2165.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 8101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (e)(11)(D)(ii)(I), is classified to section 7801 of Title 20, Education.

Section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), referred to in subsec. (f)(4)(C)(i), was renumbered section 8101 of that Act by Pub. L. 114–95, title VIII, §8001(a)(1), Dec. 10, 2015, 129 Stat. 2089. See note above.

AMENDMENTS

2017—Subsec. (e)(11)(B)(ii). Pub. L. 115–97, §13612(a), substituted ''$6,000'' for ''$3,000''.

Subsec. (e)(11)(B)(iii). Pub. L. 115–97, §13612(b), added cl. (iii).

Subsec. (e)(11)(B)(iv). Pub. L. 115–97, §13612(c), added cl. (iv).

2015—Subsec. (e)(11)(D)(ii)(I). Pub. L. 114–95 substituted ''section 8101 of the Elementary and Secondary Education Act of 1965'' for ''section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)''.

2014—Subsec. (e)(15)(A). Pub. L. 113–295 substituted ''is $15,000.'' for ''shall be the amount determined in accordance with the following table:'' and struck out table at end listing applicable dollar amounts for taxable years beginning in 2002.

2008—Subsec. (g)(4). Pub. L. 110–245 added par. (4).

2006—Subsec. (a)(3). Pub. L. 109–280, §845(b)(3), added par. (3).

[1] See References in Text note below.

[2] So in original. A second closing parenthesis probably should precede the comma.

Subsec. (e)(11)(D). Pub. L. 109–280, § 1104(a)(1), added subpar. (D).

Subsec. (e)(16)(B). Pub. L. 109–280, § 829(a)(4), substituted '', (9), and (11)'' for ''and (9)''.

Subsec. (f)(2)(F). Pub. L. 109–280, § 1104(b)(1), added subpar. (F).

Subsec. (f)(4). Pub. L. 109–280, § 1104(b)(2), added par. (4).

2002—Subsec. (e)(5). Pub. L. 107–147, § 411(p)(5), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'includible compensation' means compensation for service performed for the employer which (taking into account the provisions of this section and other provisions of this chapter) is currently includible in gross income.''

Subsec. (e)(18). Pub. L. 107–147, § 411(*o*)(9), added par. (18).

2001—Subsec. (a). Pub. L. 107–16, § 649(b)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''In the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.''

Subsec. (b)(2). Pub. L. 107–16, § 641(a)(1)(B), inserted ''(other than rollover amounts)'' after ''taxable year'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 107–16, § 611(e)(1)(A), substituted ''the applicable dollar amount'' for ''$7,500''.

Subsec. (b)(2)(B). Pub. L. 107–16, § 632(c)(1), substituted ''100 percent'' for ''33⅓ percent''.

Subsec. (b)(3)(A). Pub. L. 107–16, § 611(e)(1)(B), substituted ''twice the dollar amount in effect under subsection (b)(2)(A)'' for ''$15,000''.

Subsec. (c). Pub. L. 107–16, § 615(a), amended heading and text of subsec. (c) generally, substituting present provisions for provisions which stated that the maximum amount of compensation that an individual could defer under subsec. (a) during any taxable year could not exceed the applicable dollar amount, as modified by any adjustment provided under subsec. (b)(3), and provided for coordination with certain other deferrals.

Subsec. (c)(1). Pub. L. 107–16, § 611(e)(1)(A), substituted ''the applicable dollar amount'' for ''$7,500''.

Subsec. (c)(2). Pub. L. 107–16, § 611(d)(3)(B), substituted ''402(g)(7)(A)(iii)'' for ''402(g)(8)(A)(iii)'' in concluding provisions.

Subsec. (d)(1). Pub. L. 107–16, § 641(a)(1)(C), added subpar. (C) and concluding provisions.

Subsec. (d)(1)(A)(ii). Pub. L. 107–16, § 646(a)(3), substituted ''has a severance from employment'' for ''is separated from service''.

Subsec. (d)(2). Pub. L. 107–16, § 649(a), reenacted heading without change and amended text of par. (2) generally, substituting present provisions for provisions which stated that a plan would meet the minimum distribution requirements of this par. if plan met the requirements of section 401(a)(9), if plan met additional distribution requirements in the case of a deceased participant, and if any distribution payable over a period of more than 1 year would only be made in substantially nonincreasing amounts.

Subsec. (d)(3). Pub. L. 107–16, § 649(b)(2)(B), added par. (3).

Subsec. (e)(9). Pub. L. 107–16, § 649(b)(2)(A), in heading substituted ''Benefits of tax exempt organization plans not treated as made available by reason of certain elections, etc.'' for ''Benefits not treated as made available by reason of certain elections, etc.'' and inserted introductory provisions.

Subsec. (e)(9)(A)(i). Pub. L. 107–16, § 648(b), substituted ''the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))'' for ''such amount''.

Subsec. (e)(15). Pub. L. 107–16, § 611(e)(2), amended heading and text of par. (15) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1994, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.''

Subsec. (e)(16). Pub. L. 107–16, § 641(a)(1)(A), added par. (16).

Subsec. (e)(17). Pub. L. 107–16, § 647(b), added par. (17).

1997—Subsec. (e)(9)(A). Pub. L. 105–34 substituted ''dollar limit'' for ''$3,500'' in heading and ''the dollar limit under section 411(a)(11)(A)'' for ''$3,500'' in cl. (i).

1996—Subsec. (b)(6). Pub. L. 104–188, § 1448(b), inserted ''except as provided in subsection (g),'' before ''which provides that'' in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 104–188, § 1421(b)(3)(C), substituted ''section 402(h)(1)(B) or (k)'' for ''section 402(h)(1)(B)''.

Subsec. (e)(9). Pub. L. 104–188, § 1447(a), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS.—If—

''(A) the total amount payable to a participant under the plan does not exceed $3,500, and

''(B) no additional amounts may be deferred under the plan with respect to the participant,

the amount payable to the participant under the plan shall not be treated as made available merely because such participant may elect to receive a lump sum payable after separation from service and within 60 days of the election.''

Subsec. (e)(11). Pub. L. 104–188, § 1458(a), amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''CERTAIN PLANS EXCEPTED.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation.''

Subsec. (e)(14). Pub. L. 104–188, § 1444(b)(2), added par. (14).

Subsec. (e)(15). Pub. L. 104–188, § 1447(b), added par. (15).

Subsec. (f)(2)(E). Pub. L. 104–188, § 1444(b)(3), added subpar. (E).

Subsec. (g). Pub. L. 104–188, § 1448(a), added subsec. (g).

1992—Subsec. (c)(2)(B)(i). Pub. L. 102–318 substituted ''402(e)(3)'' for ''402(a)(8)''.

1989—Subsec. (d)(1)(A)(iii). Pub. L. 101–239, § 7811(g)(4), substituted '', and'' for period at end.

Subsec. (d)(2)(B)(i)(I). Pub. L. 101–239, § 7811(g)(5), inserted ''and'' at end.

Subsec. (e)(13). Pub. L. 101–239, § 7816(j), substituted ''Special rule for churches'' for ''Exception for church plans'' in heading and amended text generally. Prior to amendment, text read as follows: ''The term 'eligible deferred compensation plan' shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term 'church' has the meaning given such term by section 3121(w)(3)(A), including a qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

1988—Subsec. (c)(2). Pub. L. 100–647, § 1011(e)(1), struck out ''and paragraphs (2) and (3) of subsection (b)'' after ''of this subsection''.

Pub. L. 100–647, § 6071(c), substituted ''rural cooperative plan'' for ''rural electric cooperative plan'' in last sentence.

Subsec. (d)(1)(A). Pub. L. 100–647, § 1011(e)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the plan provides that amounts payable under the plan will be made available to participants or other beneficiaries not earlier than when the participant is separated from service with the employer or is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary by regulation), and''.

Subsec. (d)(2)(B)(i)(I). Pub. L. 100–647, § 1011(e)(10), amended subcl. (I) generally. Prior to amendment,

subcl. (I) read as follows: ''at least ⅔ of the total amount payable with respect to the participant will be paid during the life expectancy of such participant (determined as of the commencement of the distribution), and''.

Subsec. (d)(10). Pub. L. 100–647, §6064(a)(2), amended subsec. (d), as in effect on the day before the date of enactment of Pub. L. 99–514 (Oct. 22, 1986), by adding par. (10) reading as follows: ''CERTAIN PLANS EXCEPTED.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation.''

Subsec. (d)(11). Pub. L. 100–647, §6064(b)(2), amended subsec. (d), as in effect on the day before the date of enactment of Pub. L. 99–514 (Oct. 22, 1986), by adding par. (11) reading as follows: ''EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION OF NONEMPLOYEES.—

''(A) IN GENERAL.—This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

''(B) NONELECTIVE DEFERRED COMPENSATION.—For purposes of subparagraph (a), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.''

Subsec. (e)(9). Pub. L. 100–647, §1011(e)(9), inserted ''after separation from service and'' after ''lump sum payable'' in concluding provisions.

Subsec. (e)(11). Pub. L. 100–647, §6064(a)(1), added par. (11).

Subsec. (e)(12). Pub. L. 100–647, §6064(b)(1), added par. (12).

Subsec. (e)(13). Pub. L. 100–647, §6064(c), added par. (13).

1986—Pub. L. 99–514 amended section generally, substituting ''Deferred compensation plans of State and local governments and tax-exempt organizations'' for ''Deferred compensation plans with respect to service for State and local governments'' as section catchline and revising and restating as subsecs. (a) to (c), (e), and (f) provisions formerly contained in subsecs. (a) to (e) and adding provisions comprising subsec. (d).

1984—Subsec. (e)(2). Pub. L. 98–369, §491(d)(33), struck out subpar. (C) which provided that par. (1) of this subsection not apply to a qualified bond purchase plan described in section 405(a), and redesignated subpars. (D) and (E) as (C) and (D), respectively.

1980—Subsec. (d)(9)(B). Pub. L. 96–222 in cl. (i) struck out ''described in section 501(c)(12)'' after ''any organization'' and substituted ''electric service on a mutual or cooperative basis'' for ''electric service'' and in cl. (ii) substituted ''paragraph (4) or (6) of section 501(a)'' for ''section 501(c)(6)'' and ''at least 80 percent of the members'' for ''all the members''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13612(d), Dec. 22, 2017, 131 Stat. 2166, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 829(a)(4) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(3) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

Pub. L. 109–280, title XI, §1104(d), Aug. 17, 2006, 120 Stat. 1060, as amended by Pub. L. 110–458, title I, §111(a), Dec. 23, 2008, 122 Stat. 5113, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 623 and 1002 of Title 29, Labor] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].

''(2) TAX AMENDMENTS.—The amendments made by subsections (a)(1) and (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 17, 2006].

''(3) ERISA AMENDMENTS.—The amendment made by subsection (c) [amending section 1002 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006].

''(4) CONSTRUCTION.—Nothing in the amendments made by this section [amending this section and sections 623 and 1002 of Title 29, Labor] shall alter or affect the construction of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], or the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] as applied to any plan, arrangement, or conduct to which such amendments do not apply.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(3)(B), (e) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §615(b), June 7, 2001, 115 Stat. 102, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §632(c)(2), June 7, 2001, 115 Stat. 115, provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 2001.''

Amendment by section 641(a)(1)(A)–(C) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Amendment by section 646(a)(3) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Amendment by section 647(b) of Pub. L. 107–16 applicable to trustee-to-trustee transfers after Dec. 31, 2001, see section 647(c) of Pub. L. 107–16, set out as a note under section 403 of this title.

Amendment by section 648(b) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 648(c) of Pub. L. 107–16, set out as a note under section 411 of this title.

Pub. L. 107–16, title VI, §649(c), June 7, 2001, 115 Stat. 128, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to distributions after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to plan years beginning after Aug. 5, 1997, see section 1071(c) of Pub.

L. 105–34, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(3)(C) of 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.

Amendment by section 1444(b)(2), (3) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1994, see section 1444(e) of Pub. L. 104–188, set out as a note under section 415 of this title.

Pub. L. 104–188, title I, §1447(c), Aug. 20, 1996, 110 Stat. 1812, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Pub. L. 104–188, title I, §1448(c), Aug. 20, 1996, 110 Stat. 1813, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to assets and income described in section 457(b)(6) of the Internal Revenue Code of 1986 held by a plan on and after the date of the enactment of this Act [Aug. 20, 1996].

''(2) TRANSITION RULE.—In the case of a plan in existence on the date of the enactment of this Act, a trust need not be established by reason of the amendments made by this section before January 1, 1999.''

Pub. L. 104–188, title I, §1458(c)(1), Aug. 20, 1996, 110 Stat. 1820, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to accruals of length of service awards after December 31, 1996.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011(e)(9), Nov. 10, 1988, 102 Stat. 3461, provided that the amendment made by that section is effective for years beginning after Dec. 31, 1988.

Amendment by section 1011(e)(1), (2), (10) 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.

Pub. L. 100–647, title VI, §6064(d), Nov. 10, 1988, 102 Stat. 3701, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.

''(2) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED PLANS.—

''(A) IN GENERAL.—Section 457 of the 1986 Code (as in effect before and after the amendments made by section 1107 of the Reform Act [Pub. L. 99–514]) shall not apply to nonelective deferred compensation provided under a plan in existence on December 31, 1987, and maintained pursuant to a collective bargaining agreement.

''(B) NONELECTIVE PLAN.—For purposes of this paragraph, a nonelective plan is a plan which covers a broad group of employees and under which the covered employees earn nonelective deferred compensation under a definite, fixed and uniform benefit formula.

''(C) TERMINATION.—This paragraph shall cease to apply to a plan as of the effective date of the first material modification of the plan agreed to after December 31, 1987.

''(3) TREATMENT OF CERTAIN NONELECTIVE DEFERRED COMPENSATION.—Section 457 of the 1986 Code shall not apply to amounts deferred under a nonelective deferred compensation plan maintained by an eligible employer described in section 457(e)(1)(A) of the 1986 Code (as in effect after the Reform Act [Pub. L. 99–514])—

''(A) if such amounts were deferred from periods before July 14, 1988, or

''(B) if—

''(i) such amounts are deferred from periods on or after such date pursuant to an agreement which—

''(I) was in writing on such date, and

''(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula, and

''(ii) the individual with respect to whom the deferral is made was covered under such agreement on such date.

Subparagraph (B) shall not apply to any taxable year ending after the date on which any modification of the amount or formula described in subparagraph (B)(i)(II) agreed to in writing before January 1, 1989, is effective. The preceding sentence shall not apply to a modification agreed to in writing before January 1, 1989, which does not increase any benefit of a participant. Amounts described in the first sentence of this paragraph shall be taken into account for purposes of applying section 457 of the 1986 Code to other amounts deferred under any eligible deferred compensation plan.

''(4) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the tax treatment of deferred compensation paid by State and local governments and tax-exempt organizations (including deferred compensation paid to independent contractors). Not later than January 1, 1990, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this paragraph together with such recommendations as he may deem advisable.''

[The due date for the report on the study referred to in section 6064(d)(4) of Pub. L. 100–647, set out above, extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

Amendment by section 6071(c) of Pub. L. 100–647 applicable to taxable years beginning after Nov. 10, 1988, see section 6071(d) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1107(c), Oct. 22, 1986, 100 Stat. 2430, as amended by Pub. L. 100–647, title I, §1011(e)(6), (7), Nov. 10, 1988, 102 Stat. 3461, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1988.

''(2) TRANSFERS AND CASH-OUTS.—Paragraphs (9) and (10) of section 457(e) of the Internal Revenue Code of 1986 (as amended by this section) shall apply to taxable years beginning after December 31, 1986.

''(3) APPLICATION TO TAX-EXEMPT ORGANIZATIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the application of section 457 of the Internal Revenue Code of 1986 by reason of the amendments made by this section to deferred compensation plans established and maintained by organizations exempt from tax shall apply to taxable years beginning after December 31, 1986.

''(B) EXISTING DEFERRALS AND ARRANGEMENTS.—Section 457 of such Code shall not apply to amounts deferred under a plan described in subparagraph (A) which—

''(i) were deferred from taxable years beginning before January 1, 1987, or

''(ii) are deferred from taxable years beginning after December 31, 1986, pursuant to an agreement which—

''(I) was in writing on August 16, 1986,

''(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula.

Clause (ii) shall not apply to any taxable year ending after the date on which any modification to the amount or formula described in subclause (II) is effective. Amounts described in the first sentence shall be taken into account for applying section 457 to other amounts deferred under any deferred compensation plan. This subparagraph shall only apply to individuals who were covered under the plan and agreement on August 16, 1986.

''(4) DEFERRED COMPENSATION PLANS FOR STATE JUDGES.—The amendments made by this section shall not apply to any qualified State judicial plan (as defined in section 131(c)(3)(B) of the Revenue Act of 1978 [set out as a note below] as amended by section 252 of the Tax Equity and Fiscal Responsibility Act of 1982).

''(5) SPECIAL RULE FOR CERTAIN DEFERRED COMPENSATION PLANS.—The amendments made by this section shall not apply—

''(A) to employees on August 16, 1986, of a nonprofit corporation organized under the laws of the State of Alabama maintaining a deferred compensation plan with respect to which the Internal Revenue Service issued a ruling dated March 17, 1976, that the plan would not affect the tax-exempt status of the corporation, or

''(B) to to [sic] individuals eligible to participate on August 16, 1986, in a deferred compensation plan with respect to which a letter dated November 6, 1975, submitted the original plan to the Internal Revenue Service, an amendment was submitted on November 19, 1975, and the Internal Revenue Service responded with a letter dated December 24, 1975,

but only with respect to deferrals under such plan.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title I, §131(c)(1), Nov. 6, 1978, 92 Stat. 2782, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978.''

ELIGIBILITY FOR PARTICIPATION IN RETIREMENT PLANS

Pub. L. 109–280, title VIII, §825, Aug. 17, 2006, 120 Stat. 999, provided that: ''An individual shall not be precluded from participating in an eligible deferred compensation plan by reason of having received a distribution under section 457(e)(9) of the Internal Revenue Code of 1986, as in effect prior to the enactment of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, Aug. 20, 1996].''

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, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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 [§§1100–1147 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.

TRANSITIONAL RULES

Pub. L. 95–600, title I, §131(c)(2), Nov. 6, 1978, 92 Stat. 2782, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—In the case of any taxable year beginning after December 31, 1978, and before January 1, 1982—

''(i) any amount of compensation deferred under a plan of a State providing for a deferral of compensation (other than a plan described in section 457(e)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary, but

''(ii) the maximum amount of the compensation of any one individual which may be excluded from gross income by reason of clause (i) and by reason of section 457(a) of such Code during any such taxable year shall not exceed the lesser of—

''(I) $7,500, or

''(II) 33⅓ percent of the participant's includible compensation.

''(B) APPLICATION OF CATCH-UP PROVISIONS IN CERTAIN CASES.—If, in the case of any participant for any taxable year, all of the plans are eligible State deferred compensation plans, then clause (ii) of subparagraph (A) of this paragraph shall be applied with the modification provided by paragraph (3) of section 457(b) of such Code.

''(C) APPLICATIONS OF CERTAIN COORDINATION PROVISIONS.—In applying clause (ii) of subparagraph (A) of this paragraph and section 403(b)(2)(A)(ii) of such Code, rules similar to the rules of section 457(c)(2) of such Code shall apply.

''(D) MEANING OF TERMS.—Except as otherwise provided in this paragraph, terms used in this paragraph shall have the same meaning as when used in section 457 of such Code.''

DEFERRED COMPENSATION PLANS FOR STATE JUDGES

Pub. L. 95–600, title I, §131(c)(3), as added by Pub. L. 97–248, title II, §252, Sept. 3, 1982, 96 Stat. 532, and amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—The amendments made by this section [enacting this section and provisions set out as notes under this section] shall not apply to any qualified State judicial plan.

''(B) QUALIFIED STATE JUDICIAL PLAN.—For purposes of subparagraph (A), the term 'qualified State judicial plan' means any retirement plan of a State for the exclusive benefit of judges or their beneficiaries if—

''(i) such plan has been continuously in existence since December 31, 1978,

''(ii) under such plan, all judges eligible to benefit under the plan—

''(I) are required to participate, and

''(II) are required to contribute the same fixed percentage of their basic or regular rate of compensation as judge,

''(iii) under such plan, no judge has an option as to contributions or benefits the exercise of which would affect the amount of includible compensation,

''(iv) the retirement payments of a judge under the plan are a percentage of the compensation of judges of that State holding similar positions, and

''(v) the plan during any year does not pay benefits with respect to any participant which exceed the limitations of section 415(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

§ 457A. Nonqualified deferred compensation from certain tax indifferent parties

(a) In general

Any compensation which is deferred under a nonqualified deferred compensation plan of a nonqualified entity shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation.

(b) Nonqualified entity

For purposes of this section, the term ''nonqualified entity'' means—

(1) any foreign corporation unless substantially all of its income is—

(A) effectively connected with the conduct of a trade or business in the United States, or

(B) subject to a comprehensive foreign income tax, and

(2) any partnership unless substantially all of its income is allocated to persons other than—

(A) foreign persons with respect to whom such income is not subject to a comprehensive foreign income tax, and

(B) organizations which are exempt from tax under this title.

(c) Determinability of amounts of compensation

(1) In general

If the amount of any compensation is not determinable at the time that such compensation is otherwise includible in gross income under subsection (a)—

(A) such amount shall be so includible in gross income when determinable, and

(B) the tax imposed under this chapter for the taxable year in which such compensation is includible in gross income shall be increased by the sum of—

(i) the amount of interest determined under paragraph (2), and

(ii) an amount equal to 20 percent of the amount of such compensation.

(2) Interest

For purposes of paragraph (1)(B)(i), the interest determined under this paragraph for any taxable year is the amount of interest at the underpayment rate under section 6621 plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(d) Other definitions and special rules

For purposes of this section—

(1) Substantial risk of forfeiture

(A) In general

The rights of a person to compensation shall be treated as subject to a substantial risk of forfeiture only if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(B) Exception for compensation based on gain recognized on an investment asset

(i) In general

To the extent provided in regulations prescribed by the Secretary, if compensation is determined solely by reference to the amount of gain recognized on the disposition of an investment asset, such compensation shall be treated as subject to a substantial risk of forfeiture until the date of such disposition.

(ii) Investment asset

For purposes of clause (i), the term ''investment asset'' means any single asset (other than an investment fund or similar entity)—

(I) acquired directly by an investment fund or similar entity,

(II) with respect to which such entity does not (nor does any person related to such entity) participate in the active management of such asset (or if such asset is an interest in an entity, in the active management of the activities of such entity), and

(III) substantially all of any gain on the disposition of which (other than such deferred compensation) is allocated to investors in such entity.

(iii) Coordination with special rule

Paragraph (3)(B) shall not apply to any compensation to which clause (i) applies.

(2) Comprehensive foreign income tax

The term ''comprehensive foreign income tax'' means, with respect to any foreign person, the income tax of a foreign country if—

(A) such person is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or

(B) such person demonstrates to the satisfaction of the Secretary that such foreign country has a comprehensive income tax.

(3) Nonqualified deferred compensation plan

(A) In general

The term ''nonqualified deferred compensation plan'' has the meaning given such term under section 409A(d), except that such term shall include any plan that provides a right to compensation based on the appreciation in value of a specified number of equity units of the service recipient.

(B) Exception

Compensation shall not be treated as deferred for purposes of this section if the serv-

ice provider receives payment of such compensation not later than 12 months after the end of the taxable year of the service recipient during which the right to the payment of such compensation is no longer subject to a substantial risk of forfeiture.

(4) Exception for certain compensation with respect to effectively connected income

In the case[1] a foreign corporation with income which is taxable under section 882, this section shall not apply to compensation which, had such compensation had[2] been paid in cash on the date that such compensation ceased to be subject to a substantial risk of forfeiture, would have been deductible by such foreign corporation against such income.

(5) Application of rules

Rules similar to the rules of paragraphs (5) and (6) of section 409A(d) shall apply.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.

(Added Pub. L. 110–343, div. C, title VIII, § 801(a), Oct. 3, 2008, 122 Stat. 3929.)

EFFECTIVE DATE

Pub. L. 110–343, div. C, title VIII, § 801(d), Oct. 3, 2008, 122 Stat. 3931, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending section 26 of this title] shall apply to amounts deferred which are attributable to services performed after December 31, 2008.

''(2) APPLICATION TO EXISTING DEFERRALS.—In the case of any amount deferred to which the amendments made by this section do not apply solely by reason of the fact that the amount is attributable to services performed before January 1, 2009, to the extent such amount is not includible in gross income in a taxable year beginning before 2018, such amounts shall be includible in gross income in the later of—

''(A) the last taxable year beginning before 2018, or

''(B) the taxable year in which there is no substantial risk of forfeiture of the rights to such compensation (determined in the same manner as determined for purposes of section 457A of the Internal Revenue Code of 1986, as added by this section).

''(3) ACCELERATED PAYMENTS.—No later than 120 days after the date of the enactment of this Act [Oct. 3, 2008], the Secretary shall issue guidance providing a limited period of time during which a nonqualified deferred compensation arrangement attributable to services performed on or before December 31, 2008, may, without violating the requirements of section 409A(a) of the Internal Revenue Code of 1986, be amended to conform the date of distribution to the date the amounts are required to be included in income.

''(4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—If the taxpayer is also a service recipient and maintains one or more nonqualified deferred compensation arrangements for its service providers under which any amount is attributable to services performed on or before December 31, 2008, the guidance issued under paragraph (4) shall permit such arrangements to be amended to conform the dates of distribution under such arrangement to the date amounts are required to be included in the income of such taxpayer under this subsection.

''(5) ACCELERATED PAYMENT NOT TREATED AS MATERIAL MODIFICATION.—Any amendment to a nonqualified deferred compensation arrangement made pursuant to paragraph (4) or (5) shall not be treated as a material modification of the arrangement for purposes of section 409A of the Internal Revenue Code of 1986.''

[1] So in original. Probably should be followed by ''of''.

[2] So in original. The word ''had'' probably should not appear.

§ 458. Magazines, paperbacks, and records returned after the close of the taxable year

(a) Exclusion from gross income

A taxpayer who is on an accrual method of accounting may elect not to include in the gross income for the taxable year the income attributable to the qualified sale of any magazine, paperback, or record which is returned to the taxpayer before the close of the merchandise return period.

(b) Definitions and special rules

For purposes of this section—

(1) Magazine

The term ''magazine'' includes any other periodical.

(2) Paperback

The term ''paperback'' means any book which has a flexible outer cover and the pages of which are affixed directly to such outer cover. Such term does not include a magazine.

(3) Record

The term ''record'' means a disc, tape, or similar object on which musical, spoken, or other sounds are recorded.

(4) Separate application with respect to magazines, paperbacks, and records

If a taxpayer makes qualified sales of more than one category of merchandise in connection with the same trade or business, this section shall be applied as if the qualified sales of each such category were made in connection with a separate trade or business. For purposes of the preceding sentence, magazines, paperbacks, and records shall each be treated as a separate category of merchandise.

(5) Qualified sale

A sale of a magazine, paperback, or record is a qualified sale if—

(A) at the time of sale, the taxpayer has a legal obligation to adjust the sales price of such magazine, paperback, or record if it is not resold, and

(B) the sales price of such magazine, paperback, or record is adjusted by the taxpayer because of a failure to resell it.

(6) Amount excluded

The amount excluded under this section with respect to any qualified sale shall be the lesser of—

(A) the amount covered by the legal obligation described in paragraph (5)(A), or

(B) the amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(7) Merchandise return period

(A) Except as provided in subparagraph (B), the term ''merchandise return period'' means, with respect to any taxable year—

(i) in the case of magazines, the period of 2 months and 15 days first occurring after the close of taxable year, or

(ii) in the case of paperbacks and records, the period of 4 months and 15 days first occurring after the close of the taxable year.

(B) The taxpayer may select a shorter period than the applicable period set forth in subparagraph (A).

(C) Any change in the merchandise return period shall be treated as a change in the method of accounting.

(8) Certain evidence may be substituted for physical return of merchandise

Under regulations prescribed by the Secretary, the taxpayer may substitute, for the physical return of magazines, paperbacks, or records required by subsection (a), certification or other evidence that the magazine, paperback, or record has not been resold and will not be resold if such evidence—

(A) is in the possession of the taxpayer at the close of the merchandise return period, and

(B) is satisfactory to the Secretary.

(9) Repurchased[1] by the taxpayer not treated as resale

A repurchase by the taxpayer shall be treated as an adjustment of the sales price rather than as a resale.

(c) Qualified sales to which section applies

(1) Election of benefits

This section shall apply to qualified sales of magazines, paperbacks, or records, as the case may be, if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such sales are made. An election under this section may be made without the consent of the Secretary. The election shall be made in such manner as the Secretary may by regulations prescribed[2] and shall be made for any taxable year not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(2) Scope of election

An election made under this section shall apply to all qualified sales of magazines, paperbacks, or records, as the case may be, made in connection with the trade or business with respect to which the taxpayer has made the election.

(3) Period to which election applies

An election under this section shall be effective for the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(4) Treatment as method of accounting

Except to the extent inconsistent with the provisions of this section, for purposes of this subtitle, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) 5-year spread of transitional adjustments for magazines

In applying section 481(c) with respect to any election under this section which applies to magazines, the period for taking into account any decrease in taxable income resulting from the application of section 481(a)(2) shall be the taxable year for which the election is made and the 4 succeeding taxable years.

(e) Suspense account for paperbacks and records

(1) In general

In the case of any election under this section which applies to paperbacks or records, in lieu of applying section 481, the taxpayer shall establish a suspense account for the trade or business for the taxable year for which the election is made.

(2) Initial opening balance

The opening balance of the account described in paragraph (1) for the first taxable year to which the election applies shall be the largest dollar amount of returned merchandise which would have been taken into account under this section for any of the 3 immediately preceding taxable years if this section had applied to such preceding 3 taxable years. This paragraph and paragraph (3) shall be applied by taking into account only amounts attributable to the trade or business for which such account is established.

(3) Adjustments in suspense account

At the close of each taxable year the suspense account shall be—

(A) reduced the excess (if any) of—

(i) the opening balance of the suspense account for the taxable year, over

(ii) the amount excluded from gross income for the taxable year under subsection (a), or

(B) increased (but not in excess of the initial opening balance) by the excess (if any) of—

(i) the amount excluded from gross income for the taxable year under subsection (a), over

(ii) the opening balance of the account for the taxable year.

(4) Gross income adjustments

(A) Reductions excluded from gross income

In the case of any reduction under paragraph (3)(A) in the account for the taxable year, an amount equal to such reduction shall be excluded from gross income for such taxable year.

(B) Increases added to gross income

In the case of any increase under paragraph (3)(B) in the account for the taxable year, an amount equal to such increase shall be included in gross income for such taxable year.

If the initial opening balance exceeds the dollar amount of returned merchandise which would have been taken into account under subsection (a) for the taxable year preceding the first taxable year for which the election is effective if this section had applied to such

[1] So in original. Probably should be ''Repurchase''.

[2] So in original. Probably should be ''prescribe''.

preceding taxable year, then an amount equal to the amount of such excess shall be included in gross income for such first taxable year.

(5) Subchapter C transactions

The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party to the transaction by reason of subchapter C shall be determined under regulations prescribed by the Secretary.

(Added Pub. L. 95–600, title III, §372(a), Nov. 6, 1978, 92 Stat. 2860.)

EFFECTIVE DATE

Pub. L. 95–600, title III, §372(c), Nov. 6, 1978, 92 Stat. 2862, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after September 30, 1979.''

§ 460. Special rules for long-term contracts

(a) Requirement that percentage of completion method be used

In the case of any long-term contract, the taxable income from such contract shall be determined under the percentage of completion method (as modified by subsection (b)).

(b) Percentage of completion method

(1) Requirements of percentage of completion method

Except as provided in paragraph (3), in the case of any long-term contract with respect to which the percentage of completion method is used—

(A) the percentage of completion shall be determined by comparing costs allocated to the contract under subsection (c) and incurred before the close of the taxable year with the estimated total contract costs, and

(B) upon completion of the contract (or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account), the taxpayer shall pay (or shall be entitled to receive) interest computed under the look-back method of paragraph (2).

In the case of any long-term contract with respect to which the percentage of completion method is used, except for purposes of applying the look-back method of paragraph (2), any income under the contract (to the extent not previously includible in gross income) shall be included in gross income for the taxable year following the taxable year in which the contract was completed. For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under subparagraph (B) shall be treated as an increase in the tax imposed by this chapter for the taxable year in which the contract is completed (or, in the case of interest payable with respect to any amount properly taken into account after completion of the contract, for the taxable year in which the amount is so properly taken into account).

(2) Look-back method

The interest computed under the look-back method of this paragraph shall be determined by—

(A) first[1] allocating income under the contract among taxable years before the year in which the contract is completed on the basis of the actual contract price and costs instead of the estimated contract price and costs,

(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each taxable year referred to in subparagraph (A) which would result solely from the application of subparagraph (A), and

(C) then using the adjusted overpayment rate (as defined in paragraph (7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any amount properly taken into account after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was properly taken into account) such amount to its value as of the completion of the contract. The taxpayer may elect with respect to any contract to have the preceding sentence not apply to such contract.

(3) Special rules

(A) Simplified method of cost allocation

In the case of any long-term contract, the Secretary may prescribe a simplified procedure for allocation of costs to such contract in lieu of the method of allocation under subsection (c).

(B) Look-back method not to apply to certain contracts

Paragraph (1)(B) shall not apply to any contract—

(i) the gross price of which (as of the completion of the contract) does not exceed the lesser of—

(I) $1,000,000, or

(II) 1 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the contract was completed, and

(ii) which is completed within 2 years of the contract commencement date.

For purposes of this subparagraph, rules similar to the rules of subsections (e)(2) and (f)(3) shall apply.

(4) Simplified look-back method for pass-thru entities

(A) In general

In the case of a pass-thru entity—

(i) the look-back method of paragraph (2) shall be applied at the entity level,

(ii) in determining overpayments and underpayments for purposes of applying paragraph (2)(B)—

(I) any increase in the income under the contract for any taxable year by reason of the allocation under paragraph

[1] So in original. Probably should be followed by a comma.

(2)(A) shall be treated as giving rise to an underpayment determined by applying the highest rate for such year to such increase, and

(II) any decrease in such income for any taxable year by reason of such allocation shall be treated as giving rise to an overpayment determined by applying the highest rate for such year to such decrease, and

(iii) any interest required to be paid by the taxpayer under paragraph (2) shall be paid by such entity (and any interest entitled to be received by the taxpayer under paragraph (2) shall be paid to such entity).

(B) Exceptions

(i) Closely held pass-thru entities

This paragraph shall not apply to any closely held pass-thru entity.

(ii) Foreign contracts

This paragraph shall not apply to any contract unless substantially all of the income from such contract is from sources in the United States.

(C) Other definitions

For purposes of this paragraph—

(i) Highest rate

The term ''highest rate'' means—

(I) the highest rate of tax specified in section 11, or

(II) if at all times during the year involved more than 50 percent of the interests in the entity are held by individuals directly or through 1 or more other pass-thru entities, the highest rate of tax specified in section 1.

(ii) Pass-thru entity

The term ''pass-thru entity'' means any—

(I) partnership,

(II) S corporation, or

(III) trust.

(iii) Closely held pass-thru entity

The term ''closely held pass-thru entity'' means any pass-thru entity if, at any time during any taxable year for which there is income under the contract, 50 percent or more (by value) of the beneficial interests in such entity are held (directly or indirectly) by or for 5 or fewer persons. For purposes of the preceding sentence, rules similar to the constructive ownership rules of section 1563(e) shall apply.

(5) Election to use 10-percent method

(A) General rule

In the case of any long-term contract with respect to which an election under this paragraph is in effect, the 10-percent method shall apply in determining the taxable income from such contract.

(B) 10-percent method

For purposes of this paragraph—

(i) In general

The 10-percent method is the percentage of completion method, modified so that any item which would otherwise be taken into account in computing taxable income with respect to a contract for any taxable year before the 10-percent year is taken into account in the 10-percent year.

(ii) 10-percent year

The term ''10-percent year'' means the 1st taxable year as of the close of which at least 10 percent of the estimated total contract costs have been incurred.

(C) Election

An election under this paragraph shall apply to all long-term contracts of the taxpayer which are entered into during the taxable year in which the election is made or any subsequent taxable year.

(D) Coordination with other provisions

(i) Simplified method of cost allocation

This paragraph shall not apply to any taxpayer which uses a simplified procedure for allocation of costs under paragraph (3)(A).

(ii) Look-back method

The 10-percent method shall be taken into account for purposes of applying the look-back method of paragraph (2) to any taxpayer making an election under this paragraph.

(6) Election to have look-back method not apply in de minimis cases

(A) Amounts taken into account after completion of contract

Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

(B) De minimis discrepancies

Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

(ii) 10 percent of the cumulative look-back income (or loss) under the contract as of the close of such prior contract year.

(C) Definitions

For purposes of this paragraph—

(i) Contract year

The term ''contract year'' means any taxable year for which income is taken into account under the contract.

(ii) Look-back income or loss

The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the al-

location method set forth in paragraph (2)(A) were used in determining taxable income.

(iii) Discounting not applicable

The amounts taken into account after the completion of the contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

(D) Contracts to which paragraph applies

This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all long-term contracts completed during the taxable year for which election is made or during any subsequent taxable year.

(7) Adjusted overpayment rate

(A) In general

The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

(B) Interest accrual period

For purposes of subparagraph (A), the term ''interest accrual period'' means the period—

(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term ''return due date'' means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions).

(c) Allocation of costs to contract

(1) Direct and certain indirect costs

In the case of a long-term contract, all costs (including research and experimental costs) which directly benefit, or are incurred by reason of, the long-term contract activities of the taxpayer shall be allocated to such contract in the same manner as costs are allocated to extended period long-term contracts under section 451 and the regulations thereunder.

(2) Costs identified under cost-plus and certain Federal contracts

In the case of a cost-plus long-term contract or a Federal long-term contract, any cost not allocated to such contract under paragraph (1) shall be allocated to such contract if such cost is identified by the taxpayer (or a related person), pursuant to the contract or Federal, State, or local law or regulation, as being attributable to such contract.

(3) Allocation of production period interest to contract

(A) In general

Except as provided in subparagraphs (B) and (C), in the case of a long-term contract, interest costs shall be allocated to the contract in the same manner as interest costs are allocated to property produced by the taxpayer under section 263A(f).

(B) Production period

In applying section 263A(f) for purposes of subparagraph (A), the production period shall be the period—

(i) beginning on the later of—

(I) the contract commencement date, or

(II) in the case of a taxpayer who uses an accrual method with respect to long-term contracts, the date by which at least 5 percent of the total estimated costs (including design and planning costs) under the contract have been incurred, and

(ii) ending on the contract completion date.

(C) Application of de minimis rule

In applying section 263A(f) for purposes of subparagraph (A), paragraph (1)(B)(iii) of such section shall be applied on a contract-by-contract basis; except that, in the case of a taxpayer described in subparagraph (B)(i)(II) of this paragraph, paragraph (1)(B)(iii) of section 263A(f) shall be applied on a property-by-property basis.

(4) Certain costs not included

This subsection shall not apply to any—

(A) independent research and development expenses,

(B) expenses for unsuccessful bids and proposals, and

(C) marketing, selling, and advertising expenses.

(5) Independent research and development expenses

For purposes of paragraph (4), the term ''independent research and development expenses'' means any expenses incurred in the performance of research or development, except that such term shall not include—

(A) any expenses which are directly attributable to a long-term contract in existence when such expenses are incurred, or

(B) any expenses under an agreement to perform research or development.

(6) Special rule for allocation of bonus depreciation with respect to certain property

(A) In general

Solely for purposes of determining the percentage of completion under subsection (b)(1)(A), the cost of qualified property shall be taken into account as a cost allocated to the contract as if subsection (k) of section 168 had not been enacted.

(B) Qualified property

For purposes of this paragraph, the term ''qualified property'' means property described in section 168(k)(2) which—

(i) has a recovery period of 7 years or less, and

(ii) is placed in service before January 1, 2027 (January 1, 2028 in the case of property described in section 168(k)(2)(B)).

(d) Federal long-term contract

For purposes of this section—

(1) In general

The term ''Federal long-term contract'' means any long-term contract—

(A) to which the United States (or any agency or instrumentality thereof) is a party, or

(B) which is a subcontract under a contract described in subparagraph (A).

(2) Special rules for certain taxable entities

For purposes of paragraph (1), the rules of section 168(h)(2)(D) (relating to certain taxable entities not treated as instrumentalities) shall apply.

(e) Exception for certain construction contracts

(1) In general

Subsections (a), (b), and (c)(1) and (2) shall not apply to—

(A) any home construction contract, or

(B) any other construction contract entered into by a taxpayer (other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3))—

(i) who estimates (at the time such contract is entered into) that such contract will be completed within the 2-year period beginning on the contract commencement date of such contract, and

(ii) who meets the gross receipts test of section 448(c) for the taxable year in which such contract is entered into.

In the case of a home construction contract with respect to which the requirements of clauses (i) and (ii) of subparagraph (B) are not met, section 263A shall apply notwithstanding subsection (c)(4) thereof.

(2) Rules related to gross receipts test

(A) Application of gross receipts test to individuals, etc.

For purposes of paragraph (1)(B)(ii), in the case of any taxpayer which is not a corporation or a partnership, the gross receipts test of section 448(c) shall be applied in the same manner as if each trade or business of such taxpayer were a corporation or partnership.

(B) Coordination with section 481

Any change in method of accounting made pursuant to paragraph (1)(B)(ii) shall be treated as initiated by the taxpayer and made with the consent of the Secretary. Such change shall be effected on a cut-off basis for all similarly classified contracts entered into on or after the year of change.

(3) Construction contract

For purposes of this subsection, the term ''construction contract'' means any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, or improvements of, real property.

(4) Special rule for residential construction contracts which are not home construction contracts

In the case of any residential construction contract which is not a home construction contract, subsection (a) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1989) shall apply except that such subsection shall be applied—

(A) by substituting ''70 percent'' for ''90 percent'' each place it appears, and

(B) by substituting ''30 percent'' for ''10 percent''.

(5) Definitions relating to residential construction contracts

For purposes of this subsection—

(A) Home construction contract

The term ''home construction contract'' means any construction contract if 80 percent or more of the estimated total contract costs (as of the close of the taxable year in which the contract was entered into) are reasonably expected to be attributable to activities referred to in paragraph (4) with respect to—

(i) dwelling units (as defined in section 168(e)(2)(A)(ii)) contained in buildings containing 4 or fewer dwelling units (as so defined), and

(ii) improvements to real property directly related to such dwelling units and located on the site of such dwelling units.

For purposes of clause (i), each townhouse or rowhouse shall be treated as a separate building.

(B) Residential construction contract

The term ''residential construction contract'' means any contract which would be described in subparagraph (A) if clause (i) of such subparagraph reads as follows:

''(i) dwelling units (as defined in section 168(e)(2)(A)(ii)), and''.

(f) Long-term contract

For purposes of this section—

(1) In general

The term ''long-term contract'' means any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into.

(2) Special rule for manufacturing contracts

A contract for the manufacture of property shall not be treated as a long-term contract unless such contract involves the manufacture of—

(A) any unique item of a type which is not normally included in the finished goods inventory of the taxpayer, or

(B) any item which normally requires more than 12 calendar months to complete (without regard to the period of the contract).

(3) Aggregation, etc.

For purposes of this subsection, under regulations prescribed by the Secretary—

(A) 2 or more contracts which are interdependent (by reason of pricing or otherwise) may be treated as 1 contract, and

(B) a contract which is properly treated as an aggregation of separate contracts may be so treated.

(g) Contract commencement date

For purposes of this section, the term ''contract commencement date'' means, with respect

to any contract, the first date on which any costs (other than bidding expenses or expenses incurred in connection with negotiating the contract) allocable to such contract are incurred.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the use of related parties, pass-thru entities, intermediaries, options, or other similar arrangements to avoid the application of this section.

(Added Pub. L. 99–514, title VIII, §804(a), Oct. 22, 1986, 100 Stat. 2358; amended Pub. L. 100–203, title X, §10203(a), Dec. 22, 1987, 101 Stat. 1330–394; Pub. L. 100–647, title I, §1008(c)(1), (2), (4), title V, §5041(a)–(b)(3), (c), (d), Nov. 10, 1988, 102 Stat. 3438, 3439, 3673, 3674; Pub. L. 101–239, title VII, §§7621(a)–(c), 7811(e), 7815(e)(1), Dec. 19, 1989, 103 Stat. 2375, 2376, 2408, 2419; Pub. L. 101–508, title XI, §11812(b)(8), Nov. 5, 1990, 104 Stat. 1388–535; Pub. L. 104–188, title I, §§1702(h)(15), 1704(t)(28), Aug. 20, 1996, 110 Stat. 1874, 1888; Pub. L. 105–34, title XII, §1211(a), (b), Aug. 5, 1997, 111 Stat. 998, 999; Pub. L. 111–240, title II, §2023(a), Sept. 27, 2010, 124 Stat. 2559; Pub. L. 112–240, title III, §331(b), Jan. 2, 2013, 126 Stat. 2336; Pub. L. 113–295, div. A, title I, §125(b), Dec. 19, 2014, 128 Stat. 4016; Pub. L. 114–113, div. Q, title I, §143(a)(2), (b)(6)(I), Dec. 18, 2015, 129 Stat. 3056, 3064; Pub. L. 115–97, title I, §§13102(d), 13201(b)(2)(A), Dec. 22, 2017, 131 Stat. 2104, 2107.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1989, referred to in subsec. (e)(4), is the date of enactment of title VII of Pub. L. 101–239, which was approved Dec. 19, 1989.

AMENDMENTS

2017—Subsec. (c)(6)(B)(ii). Pub. L. 115–97, §13201(b)(2)(A), substituted ''January 1, 2027 (January 1, 2028'' for ''January 1, 2020 (January 1, 2021''.

Subsec. (e)(1)(B). Pub. L. 115–97, §13102(d)(1)(A), in introductory provisions, inserted ''(other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3))'' after ''taxpayer''.

Subsec. (e)(1)(B)(ii). Pub. L. 115–97, §13102(d)(1)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''whose average annual gross receipts for the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $10,000,000.''

Subsec. (e)(2). Pub. L. 115–97, §13102(d)(2), added par. (2) and struck out former par. (2) which related to determination of taxpayer's gross receipts.

Subsec. (e)(3) to (6). Pub. L. 115–97, §13102(d)(2), redesignated pars. (4) to (6) as (3) to (5), respectively, and struck out former par. (3) which related to controlled group of corporations.

2015—Subsec. (c)(6)(B)(ii). Pub. L. 114–113, §143(b)(6)(I), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''is placed in service after December 31, 2009, and before January 1, 2011 (January 1, 2012, in the case of property described in section 168(k)(2)(B)), or after December 31, 2012, and before January 1, 2016 (January 1, 2017, in the case of property described in section 168(k)(2)(B)).''

Subsec. (c)(6)(B)(ii). Pub. L. 114–113, §143(a)(2), substituted ''January 1, 2016 (January 1, 2017'' for ''January 1, 2015 (January 1, 2016''.

2014—Subsec. (c)(6)(B)(ii). Pub. L. 113–295 substituted ''January 1, 2015 (January 1, 2016'' for ''January 1, 2014 (January 1, 2015''.

2013—Subsec. (c)(6)(B)(ii). Pub. L. 112–240 inserted '', or after December 31, 2012, and before January 1, 2014 (January 1, 2015, in the case of property described in section 168(k)(2)(B))'' before period at end.

2010—Subsec. (c)(6). Pub. L. 111–240 added par. (6).

1997—Subsec. (b)(2)(C). Pub. L. 105–34, §1211(b)(1), substituted ''the adjusted overpayment rate (as defined in paragraph (7))'' for ''the overpayment rate established by section 6621''.

Subsec. (b)(6). Pub. L. 105–34, §1211(a), added par. (6).

Subsec. (b)(7). Pub. L. 105–34, §1211(b)(2), added par. (7).

1996—Subsec. (b)(1). Pub. L. 104–188, §1704(t)(28), which directed that par. (1) be amended by substituting ''the look-back method of paragraph (2)'' for ''the look-back method of paragraph (3)'', could not be executed, because that phrase does not appear in text. See 1989 Amendment note below.

Subsec. (e)(6)(B). Pub. L. 104–188, §1702(h)(15), substituted ''section 168(e)(2)(A)(ii)'' for ''section 167(k)''.

1990—Subsec. (e)(6)(A)(i). Pub. L. 101–508 substituted ''section 168(e)(2)(A)(ii)'' for ''section 167(k)''.

1989—Subsec. (a). Pub. L. 101–239, §7621(a), substituted ''Requirement that percentage of completion method be used'' for ''Percentage of completion-capitalized cost method'' in heading and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—In the case of any long-term contract—

''(A) 90 percent of the items with respect to such contract shall be taken into account under the percentage of completion method (as modified by subsection (b)), and

''(B) 10 percent of the items with respect to such contract shall be taken into account under the taxpayer's normal method of accounting.

''(2) 90 PERCENT LOOK-BACK METHOD TO APPLY.—Upon completion of any long-term contract (or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account), the taxpayer shall pay (or shall be entitled to receive) interest determined by applying the look-back method of subsection (b)(3) to 90 percent of the items with respect to the contract.''

Subsec. (a)(2). Pub. L. 101–239, §7811(e)(1), inserted ''(or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account)'' after ''any long-term contract''.

Subsec. (b)(1). Pub. L. 101–239, §7621(c)(2)(A), substituted ''paragraph (3)'' for ''paragraph (4)''.

Pub. L. 101–239, §7621(c)(2)(B), which directed the amendment of par. (1) by substituting ''paragraph (2)'' for ''paragraph (3)'', was executed by making the substitution in subpar. (B) and concluding provisions to reflect the probable intent of Congress.

Pub. L. 101–239, §7621(c)(1), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''SUBSECTION (a) NOT TO APPLY WHERE PERCENTAGE OF COMPLETION METHOD USED.—Subsection (a) shall not apply to any long-term contract with respect to which amounts includible in gross income are determined under the percentage of completion method.''

Subsec. (b)(2). Pub. L. 101–239, §7621(c)(1), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Pub. L. 101–239, §7811(e)(4), (6), inserted two sentences at end.

Subsec. (b)(2)(B). Pub. L. 101–239, §7811(e)(2), substituted ''any amount properly taken into account'' for ''any amount received or accrued'' and ''is so properly taken into account'' for ''is so received or accrued''.

Subsec. (b)(3). Pub. L. 101–239, §7621(c)(1), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Pub. L. 101–239, §7811(e)(3), in concluding provisions, substituted ''any amount properly taken into account'' for ''any amount received or accrued'' and ''such amount was properly taken into account'' for ''such amount was received or accrued''.

Subsec. (b)(3)(B). Pub. L. 101–239, §7621(c)(3), substituted ''Paragraph (1)(B)'' for ''Paragraph (2)(B) and subsection (a)(2)'' in introductory provisions.

Subsec. (b)(4). Pub. L. 101–239, §7621(c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (b)(4)(A)(i). Pub. L. 101–239, §7621(c)(4)(A), substituted ''paragraph (2)'' for ''paragraph (3)''.

Subsec. (b)(4)(A)(ii). Pub. L. 101–239, §7621(c)(4)(B), substituted ''paragraph (2)(B)'' for ''paragraph (3)(B)'' in introductory provisions.

Subsec. (b)(4)(A)(ii)(I). Pub. L. 101–239, §7621(c)(4)(C), substituted ''paragraph (2)(A)'' for ''paragraph (3)(A)''.

Subsec. (b)(4)(A)(iii). Pub. L. 101–239, §7621(c)(4)(A), substituted ''paragraph (2)'' for ''paragraph (3)'' in two places.

Subsec. (b)(5). Pub. L. 101–239, §7621(b), added par. (5).

Pub. L. 101–239, §7621(c)(1), redesignated former par. (5) as (4).

Subsec. (e)(2)(C). Pub. L. 101–239, §7811(e)(5), added subpar. (C).

Subsec. (e)(5). Pub. L. 101–239, §7621(c)(5), inserted introductory provisions and struck out former introductory provisions which read as follows: ''In the case of any residential construction contract which is not a home construction contract, subsection (a) shall be applied—''.

Subsec. (e)(6)(A). Pub. L. 101–239, §7815(e)(1)(A), substituted ''activities referred to in paragraph (4) with respect to'' for ''the building, construction, reconstruction, or rehabilitation of''.

Subsec. (e)(6)(A)(i). Pub. L. 101–239, §7815(e)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: ''dwelling units contained in buildings containing 4 or fewer dwelling units, and''.

1988—Subsec. (a)(1)(A). Pub. L. 100–647, §5041(a)(1), substituted ''90'' for ''70''.

Subsec. (a)(1)(B). Pub. L. 100–647, §5041(a)(2), substituted ''10'' for ''30''.

Subsec. (a)(2). Pub. L. 100–647, §5041(a)(1), substituted ''90'' for ''70'' in heading and in text.

Subsec. (b)(2). Pub. L. 100–647, §1008(c)(2)(B), substituted ''Except as provided in paragraph (4), in'' for ''In''.

Subsec. (b)(2)(B). Pub. L. 100–647, §1008(c)(4)(B), inserted ''(or, with respect to any amount received or accrued after completion of the contract, when such amount is so received or accrued)'' after ''contract''.

Subsec. (b)(3). Pub. L. 100–647, §1008(c)(4)(A), inserted at end ''For purposes of the preceding sentence, any amount received or accrued after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was received or accrued) such amount to its value as of the completion of the contract. The taxpayer may elect with respect to any contract to have the preceding sentence not apply to such contract.''

Pub. L. 100–647, §1008(c)(1)(A), substituted ''paragraph'' for ''subparagraph''.

Subsec. (b)(3)(B). Pub. L. 100–647, §1008(c)(1)(B), substituted ''subparagraph (A)'' for ''paragraph (1)'' in two places.

Subsec. (b)(3)(C). Pub. L. 100–647, §1008(c)(1)(C), substituted ''subparagraph (B)'' for ''paragraph (1)''.

Subsec. (b)(4). Pub. L. 100–647, §1008(c)(2)(A), added par. (4).

Subsec. (b)(5). Pub. L. 100–647, §5041(d), added par. (5).

Subsec. (e)(1). Pub. L. 100–647, §5041(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subsections (a), (b), and (c)(1) and (2) shall not apply to any construction contract entered into by a taxpayer—

''(A) who estimates (at the time such contract is entered into) that such contract will be completed within the 2-year period beginning on the contract commencement date of such contract, and

''(B) whose average annual gross receipts for the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $10,000,000.''

Subsec. (e)(5). Pub. L. 100–647, §5041(b)(2), added par. (5).

Subsec. (e)(6). Pub. L. 100–647, §5041(b)(3), added par. (6).

Subsec. (h). Pub. L. 100–647, §5041(c), added subsec. (h).

1987—Subsec. (a). Pub. L. 100–203 substituted ''70 percent'' for ''40 percent'' in par. (1)(A) and in heading and text of par. (2), and ''30 percent'' for ''60 percent'' in par. (1)(B).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13102(d) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, with provision for exemption from percentage completion for long-term contracts, see section 13102(e) of Pub. L. 115–97, set out as a note under section 263A of this title.

Amendment by section 13201 of Pub. L. 115–97 applicable to property acquired and placed in service after Sept. 27, 2017, and specified plants planted or grafted after Sept. 27, 2017, see section 13201(h) of Pub. L. 115–97, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 143(a)(2) of Pub. L. 114–113 applicable to property placed in service after Dec. 31, 2014, in taxable years ending after such date, see section 143(a)(5) of Pub. L. 114–113, set out as a note under section 168 of this title.

Amendment by section 143(b)(6)(I) of Pub. L. 114–113 applicable to property placed in service after Dec. 31, 2015, in taxable years ending after such date, see section 143(b)(7) of Pub. L. 114–113, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 applicable to property placed in service after Dec. 31, 2013, in taxable years ending after such date, see section 125(e) of Pub. L. 113–295, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to property placed in service after Dec. 31, 2012, in taxable years ending after such date, see section 331(f) of Pub. L. 112–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2023(b), Sept. 27, 2010, 124 Stat. 2559, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1211(c), Aug. 5, 1997, 111 Stat. 1000, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts completed in taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply for purposes of section 167(g) of the Internal Revenue Code of 1986 to property placed in service after September 13, 1995.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(15) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described

in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7621(d), Dec. 19, 1989, 103 Stat. 2376, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts entered into on or after July 11, 1989.

''(2) BINDING BIDS.—The amendments made by this section shall not apply to any contract resulting from the acceptance of a bid made before July 11, 1989. The preceding sentence shall apply only if the bid could not have been revoked or altered at any time on or after July 11, 1989.

''(3) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—The amendments made by this section shall not apply in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out below]).''

Amendment by sections 7811(e) and 7815(e)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(c)(1), (2), (4) 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.

Pub. L. 100–647, title V, §5041(e), Nov. 10, 1988, 102 Stat. 3675, as amended by Pub. L. 101–239, title VII, §7815(e)(3), Dec. 19, 1989, 103 Stat. 2419, provided that:

''(1) SUBSECTIONS (a), (b), AND (c).—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsections (a), (b), and (c) [amending this section and section 56 of this title] shall apply to contracts entered into on or after June 21, 1988.

''(B) BINDING BIDS.—The amendments made by subsections (a), (b), and (c) shall not apply to any contract resulting from the acceptance of a bid made before June 21, 1988. The preceding sentence shall apply only if the bid could not have been revoked or altered at any time on or after June 21, 1988.

''(C) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—The amendments made by subsections (a) and (b) [amending this section and section 56 of this title] shall not apply in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out below]).

''(2) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply as if included in the amendments made by section 804 of the Reform Act [Pub. L. 99–514]; except that such amendment shall not apply to any contract completed in a taxable year ending before the date of the enactment of this Act [Nov. 10, 1988], if the due date (determined with regard to extensions) for the return for such year is before such date of enactment.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10203(b), Dec. 22, 1987, 101 Stat. 1330–394, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts entered into after October 13, 1987.

''(2) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply in the case of a qualified ship contract.

''(B) QUALIFIED SHIP CONTRACT.—For purposes of subparagraph (A), the term 'qualified ship contract' means any contract for the construction in the United States of not more than 5 ships if—

''(i) such ships will not be constructed (directly or indirectly) for the Federal Government, and

''(ii) the taxpayer reasonably expects to complete such contract within 5 years of the contract commencement date (as defined in section 460(g) of the Internal Revenue Code of 1986).''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §804(d), Oct. 22, 1986, 100 Stat. 2361, as amended by Pub. L. 100–647, title I, §1008(c)(3), Nov. 10, 1988, 102 Stat. 3439, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to any contract entered into after February 28, 1986.

''(2) CLARIFICATION OF TREATMENT OF INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—

''(A) IN GENERAL.—For periods before, on, or after the date of enactment of this Act [Oct. 22, 1986]—

''(i) any independent research and development expenses taken into account in determining the total contract price shall not be severable from the contract, and

''(ii) any independent research and development expenses shall not be treated as amounts chargeable to capital account.

''(B) INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—For purposes of subparagraph (A), the term 'independent research and development expenses' has the meaning given to such term by section 460(c)(5) of the Internal Revenue Code of 1986, as added by this section.''

REGULATIONS

Pub. L. 99–514, title VIII, §804(b), Oct. 22, 1986, 100 Stat. 2361, provided that: ''The Secretary of the Treasury or his delegate shall modify the income tax regulations relating to accounting for long-term contracts to carry out the provisions of section 460 of the Internal Revenue Code of 1986 (as added by subsection (a)).''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDERS

Pub. L. 108–357, title VII, §708, Oct. 22, 2004, 118 Stat. 1550, as amended by Pub. L. 109–135, title IV, §403(s), Dec. 21, 2005, 119 Stat. 2628, provided that:

''(a) IN GENERAL.—In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the construction commencement date occurs shall be determined under a method identical to the method used in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note above]).

''(b) RECAPTURE OF TAX BENEFIT.—In the case of a qualified naval ship contract to which subsection (a) applies, the taxpayer's tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period described in subsection (a) shall be increased by the excess (if any) of—

''(1) the amount of tax which would have been imposed during such period if this section had not been enacted, over

''(2) the amount of tax so imposed during such period.

''(c) QUALIFIED NAVAL SHIP CONTRACT.—For purposes of this section:

''(1) IN GENERAL.—The term 'qualified naval ship contract' means any contract or portion thereof that

is for the construction in the United States of 1 ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than 9 years after the construction commencement date.

''(2) ACCEPTANCE DATE.—The term 'acceptance date' means the date 1 year after the date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarine.

''(3) CONSTRUCTION COMMENCEMENT DATE.—The term 'construction commencement date' means the date on which the physical fabrication of any section or component of the ship or submarine begins in the taxpayer's shipyard.

''(d) CERTAIN ADJUSTMENTS NOT TO APPLY.—Section 481 of the Internal Revenue Code of 1986 shall not apply with respect to any change in the method of accounting which is required by this section.

''(e) EFFECTIVE DATE.—This section shall apply to contracts for ships or submarines with respect to which the construction commencement date occurs after the date of the enactment of this Act [Oct. 22, 2004].''

AMORTIZATION OF PAST SERVICE PENSION COSTS

Allocable costs (within the meaning of subsec. (c) of this section) with respect to any property to include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs, see section 10204 of Pub. L. 100–203, set out as a note under section 263A of this title.

SUBPART C—TAXABLE YEAR FOR WHICH DEDUCTIONS TAKEN

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 848(b), Oct. 22, 2004, 118 Stat. 1606, added item 470.

1987—Pub. L. 100–203, title X, § 10201(b)(7), Dec. 22, 1987, 101 Stat. 1330–387, struck out item 463 ''Accrual of vacation pay''.

1986—Pub. L. 99–514, title IV, § 404(b)(2), title V, § 501(b), title VIII, § 823(b)(2), title XVIII, §§ 1807(a)(7)(B), 1899A(71), Oct. 22, 1986, 100 Stat. 2224, 2241, 2374, 2815, 2963, substituted ''for certain farming expenses'' for ''in case of farming syndicates'' in item 464, struck out item 466 ''Qualified discount coupons redeemed after close of taxable year'', inserted ''the'' before ''use'' in item 467, and added items 468B and 469.

1984—Pub. L. 98–369, div. A, title I, §§ 91(b)(2), (c)(2), 92(b), July 18, 1984, 98 Stat. 604, 606, 612, added items 467, 468, and 468A.

1978—Pub. L. 95–600, title II, § 201(c)(2), title III, § 373(b), Nov. 6, 1978, 92 Stat. 2816, 2865, struck out ''in case of certain activities'' after ''amount at risk'' in item 465 and added item 466.

1976—Pub. L. 94–455, title II, §§ 204(b), 207(a)(2), Oct. 4, 1976, 90 Stat. 1532, 1537, added items 464 and 465.

1975—Pub. L. 93–625, § 4(b), Jan. 3, 1975, 88 Stat. 2111, added item 463.

1955—Act June 15, 1955, ch. 143, § 2(3), 69 Stat. 135, struck out item 462 ''Reserves for estimated expenses, etc.''

§ 461. General rule for taxable year of deduction

(a) General rule

The amount of any deduction or credit allowed by this subtitle shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income.

(b) Special rule in case of death

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued as a deduction or credit only by reason of the death of the taxpayer shall not be allowed in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) Accrual of real property taxes

(1) In general

If the taxable income is computed under an accrual method of accounting, then, at the election of the taxpayer, any real property tax which is related to a definite period of time shall be accrued ratably over that period.

(2) When election may be made

(A) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this subsection for his first taxable year in which he incurs real property taxes. Such an election shall be made not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(B) With consent

A taxpayer may, with the consent of the Secretary, make an election under this subsection at any time.

(d) Limitation on acceleration of accrual of taxes

(1) General rule

In the case of a taxpayer whose taxable income is computed under an accrual method of accounting, to the extent that the time for accruing taxes is earlier than it would be but for any action of any taxing jurisdiction taken after December 31, 1960, then, under regulations prescribed by the Secretary, such taxes shall be treated as accruing at the time they would have accrued but for such action by such taxing jurisdiction.

(2) Limitation

Under regulations prescribed by the Secretary, paragraph (1) shall be inapplicable to any item of tax to the extent that its application would (but for this paragraph) prevent all persons (including successors in interest) from ever taking such item into account.

(e) Dividends or interest paid on certain deposits or withdrawable accounts

Except as provided in regulations prescribed by the Secretary, amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts (if such amounts paid

[1] So in original. Does not conform to section catchline.

or credited are withdrawable on demand subject only to customary notice to withdraw) by a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank shall not be allowed as a deduction for the taxable year to the extent such amounts are paid or credited for periods representing more than 12 months. Any such amount not allowed as a deduction as the result of the application of the preceding sentence shall be allowed as a deduction for such other taxable year as the Secretary determines to be consistent with the preceding sentence.

(f) Contested liabilities

If—

(1) the taxpayer contests an asserted liability,

(2) the taxpayer transfers money or other property to provide for the satisfaction of the asserted liability,

(3) the contest with respect to the asserted liability exists after the time of the transfer, and

(4) but for the fact that the asserted liability is contested, a deduction would be allowed for the taxable year of the transfer (or for an earlier taxable year) determined after application of subsection (h),

then the deduction shall be allowed for the taxable year of the transfer. This subsection shall not apply in respect of the deduction for income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States.

(g) Prepaid interest

(1) In general

If the taxable income of the taxpayer is computed under the cash receipts and disbursements method of accounting, interest paid by the taxpayer which, under regulations prescribed by the Secretary, is properly allocable to any period—

(A) with respect to which the interest represents a charge for the use or forbearance of money, and

(B) which is after the close of the taxable year in which paid,

shall be charged to capital account and shall be treated as paid in the period to which so allocable.

(2) Exception

This subsection shall not apply to points paid in respect of any indebtedness incurred in connection with the purchase or improvement of, and secured by, the principal residence of the taxpayer to the extent that, under regulations prescribed by the Secretary, such payment of points is an established business practice in the area in which such indebtedness is incurred, and the amount of such payment does not exceed the amount generally charged in such area.

(h) Certain liabilities not incurred before economic performance

(1) In general

For purposes of this title, in determining whether an amount has been incurred with respect to any item during any taxable year, the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs.

(2) Time when economic performance occurs

Except as provided in regulations prescribed by the Secretary, the time when economic performance occurs shall be determined under the following principles:

(A) Services and property provided to the taxpayer

If the liability of the taxpayer arises out of—

(i) the providing of services to the taxpayer by another person, economic performance occurs as such person provides such services,

(ii) the providing of property to the taxpayer by another person, economic performance occurs as the person provides such property, or

(iii) the use of property by the taxpayer, economic performance occurs as the taxpayer uses such property.

(B) Services and property provided by the taxpayer

If the liability of the taxpayer requires the taxpayer to provide property or services, economic performance occurs as the taxpayer provides such property or services.

(C) Workers compensation and tort liabilities of the taxpayer

If the liability of the taxpayer requires a payment to another person and—

(i) arises under any workers compensation act, or

(ii) arises out of any tort,

economic performance occurs as the payments to such person are made. Subparagraphs (A) and (B) shall not apply to any liability described in the preceding sentence.

(D) Other items

In the case of any other liability of the taxpayer, economic performance occurs at the time determined under regulations prescribed by the Secretary.

(3) Exception for certain recurring items

(A) In general

Notwithstanding paragraph (1) an item shall be treated as incurred during any taxable year if—

(i) the all events test with respect to such item is met during such taxable year (determined without regard to paragraph (1)),

(ii) economic performance with respect to such item occurs within the shorter of—

(I) a reasonable period after the close of such taxable year, or

(II) 8½ months after the close of such taxable year,

(iii) such item is recurring in nature and the taxpayer consistently treats items of such kind as incurred in the taxable year in which the requirements of clause (i) are met, and

(iv) either—

(I) such item is not a material item, or

(II) the accrual of such item in the taxable year in which the requirements of clause (i) are met results in a more proper match against income than accruing such item in the taxable year in which economic performance occurs.

(B) Financial statements considered under subparagraph (A)(iv)

In making a determination under subparagraph (A)(iv), the treatment of such item on financial statements shall be taken into account.

(C) Paragraph not to apply to workers compensation and tort liabilities

This paragraph shall not apply to any item described in subparagraph (C) of paragraph (2).

(4) All events test

For purposes of this subsection, the all events test is met with respect to any item if all events have occurred which determine the fact of liability and the amount of such liability can be determined with reasonable accuracy.

(5) Subsection not to apply to certain items

This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses.

(i) Special rules for tax shelters

(1) Recurring item exception not to apply

In the case of a tax shelter, economic performance shall be determined without regard to paragraph (3) of subsection (h).

(2) Special rule for spudding of oil or gas wells

(A) In general

In the case of a tax shelter, economic performance with respect to amounts paid during the taxable year for drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.

(B) Deduction limited to cash basis

(i) Tax shelter partnerships

In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term ''cash basis'' shall be substituted for the term ''adjusted basis''.

(ii) Other tax shelters

Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

(C) Cash basis defined

For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

(i) any liability of the partnership, and

(ii) any amount borrowed by the partner with respect to such partnership which—

(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 465(b)(3)(C)), or

(II) was secured by any asset of the partnership.

(3) Tax shelter defined

For purposes of this subsection, the term ''tax shelter'' means—

(A) any enterprise (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having the authority to regulate the offering of securities for sale,

(B) any syndicate (within the meaning of section 1256(e)(3)(B)), and

(C) any tax shelter (as defined in section 6662(d)(2)(C)(ii)).

(4) Special rules for farming

In the case of the trade or business of farming (as defined in section 464(e)), in determining whether an entity is a tax shelter, the definition of farming syndicate in subsection (j) shall be substituted for subparagraphs (A) and (B) of paragraph (3).

(5) Economic performance

For purposes of this subsection, the term ''economic performance'' has the meaning given such term by subsection (h).

(j)[1] Limitation on excess farm losses of certain taxpayers

(1) Limitation

If a taxpayer other than a C corporation receives any applicable subsidy for any taxable year, any excess farm loss of the taxpayer for the taxable year shall not be allowed.

(2) Disallowed loss carried to next taxable year

Any loss which is disallowed under paragraph (1) shall be treated as a deduction of the taxpayer attributable to farming businesses in the next taxable year.

(3) Applicable subsidy

For purposes of this subsection, the term ''applicable subsidy'' means—

(A) any direct or counter-cyclical payment under title I of the Food, Conservation, and Energy Act of 2008, or any payment elected to be received in lieu of any such payment, or

(B) any Commodity Credit Corporation loan.

(4) Excess farm loss

For purposes of this subsection—

(A) In general

The term ''excess farm loss'' means the excess of—

[1] So in original. Two subsecs. (j) have been enacted.

(i) the aggregate deductions of the taxpayer for the taxable year which are attributable to farming businesses of such taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1)), over

(ii) the sum of—

(I) the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such farming businesses, plus

(II) the threshold amount for the taxable year.

(B) Threshold amount

(i) In general

The term ''threshold amount'' means, with respect to any taxable year, the greater of—

(I) $300,000 ($150,000 in the case of married individuals filing separately), or

(II) the excess (if any) of the aggregate amounts described in subparagraph (A)(ii)(I) for the 5-consecutive taxable year period preceding the taxable year over the aggregate amounts described in subparagraph (A)(i) for such period.

(ii) Special rules for determining aggregate amounts

For purposes of clause (i)(II)—

(I) notwithstanding the disregard in subparagraph (A)(i) of any disallowance under paragraph (1), in the case of any loss which is carried forward under paragraph (2) from any taxable year, such loss (or any portion thereof) shall be taken into account for the first taxable year in which a deduction for such loss (or portion) is not disallowed by reason of this subsection, and

(II) the Secretary shall prescribe rules for the computation of the aggregate amounts described in such clause in cases where the filing status of the taxpayer is not the same for the taxable year and each of the taxable years in the period described in such clause.

(C) Farming business

(i) In general

The term ''farming business'' has the meaning given such term in section 263A(e)(4).

(ii) Certain trades and businesses included

If, without regard to this clause, a taxpayer is engaged in a farming business with respect to any agricultural or horticultural commodity—

(I) the term ''farming business'' shall include any trade or business of the taxpayer of the processing of such commodity (without regard to whether the processing is incidental to the growing, raising, or harvesting of such commodity), and

(II) if the taxpayer is a member of a cooperative to which subchapter T applies, any trade or business of the cooperative described in subclause (I) shall be treated as the trade or business of the taxpayer.

(D) Certain losses disregarded

For purposes of subparagraph (A)(i), there shall not be taken into account any deduction for any loss arising by reason of fire, storm, or other casualty, or by reason of disease or drought, involving any farming business.

(5) Application of subsection in case of partnerships and S corporations

In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partner or shareholder level, and

(B) each partner's or shareholder's proportionate share of the items of income, gain, or deduction of the partnership or S corporation for any taxable year from farming businesses attributable to the partnership or S corporation, and of any applicable subsidies received by the partnership or S corporation during the taxable year, shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

The Secretary may provide rules for the application of this paragraph to any other pass-thru entity to the extent necessary to carry out the provisions of this subsection.

(6) Additional reporting

The Secretary may prescribe such additional reporting requirements as the Secretary determines appropriate to carry out the purposes of this subsection.

(7) Coordination with section 469

This subsection shall be applied before the application of section 469.

(j)[1] Farming syndicate defined

(1) In general

For purposes of subsection (i)(4), the term ''farming syndicate'' means—

(A) a partnership or any other enterprise other than a corporation which is not an S corporation engaged in the trade or business of farming, if at any time interests in such partnership or enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having authority to regulate the offering of securities for sale, or

(B) a partnership or any other enterprise other than a corporation which is not an S corporation engaged in the trade or business of farming, if more than 35 percent of the losses during any period are allocable to limited partners or limited entrepreneurs.

(2) Holdings attributable to active management

For purposes of paragraph (1)(B), the following shall be treated as an interest which is not held by a limited partner or a limited entrepreneur:

(A) in the case of any individual who has actively participated (for a period of not less

than 5 years) in the management of any trade or business of farming, any interest in a partnership or other enterprise which is attributable to such active participation,

(B) in the case of any individual whose principal residence is on a farm, any partnership or other enterprise engaged in the trade or business of farming such farm,

(C) in the case of any individual who is actively participating in the management of any trade or business of farming or who is an individual who is described in subparagraph (A) or (B), any participation in the further processing of livestock which was raised in such trade or business (or in the trade or business referred to in subparagraph (A) or (B)),

(D) in the case of an individual whose principal business activity involves active participation in the management of a trade or business of farming, any interest in any other trade or business of farming, and,

(E) any interest held by a member of the family (or a spouse of any such member) of a grandparent of an individual described in subparagraph (A), (B), (C), or (D) if the interest in the partnership or the enterprise is attributable to the active participation of the individual described in subparagraph (A), (B), (C), or (D).

For purposes of subparagraph (A), where one farm is substituted for or added to another farm, both farms shall be treated as one farm. For purposes of subparagraph (E), the term ''family'' has the meaning given to such term by section 267(c)(4).

(3) Farming

For purposes of this subsection, the term ''farming'' has the meaning given to such term by section 464(e).

(4) Limited entrepreneur

For purposes of this subsection, the term ''limited entrepreneur'' means a person who—

(A) has an interest in an enterprise other than as a limited partner, and

(B) does not actively participate in the management of such enterprise.

(*l*)[2] Limitation on excess business losses of noncorporate taxpayers

(1) Limitation

In the case of taxable year of a taxpayer other than a corporation beginning after December 31, 2017, and before January 1, 2026—

(A) subsection (j) (relating to limitation on excess farm losses of certain taxpayers) shall not apply, and

(B) any excess business loss of the taxpayer for the taxable year shall not be allowed.

(2) Disallowed loss carryover

Any loss which is disallowed under paragraph (1) shall be treated as a net operating loss carryover to the following taxable year under section 172.

(3) Excess business loss

For purposes of this subsection—

(A) In general

The term ''excess business loss'' means the excess (if any) of—

(i) the aggregate deductions of the taxpayer for the taxable year which are attributable to trades or businesses of such taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1)), over

(ii) the sum of—

(I) the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such trades or businesses, plus

(II) $250,000 (200 percent of such amount in the case of a joint return).

(B) Adjustment for inflation

In the case of any taxable year beginning after December 31, 2018, the $250,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''2017'' for ''2016'' in subparagraph (A)(ii) thereof.

If any amount as increased under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(4) Application of subsection in case of partnerships and S corporations

In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partner or shareholder level, and

(B) each partner's or shareholder's allocable share of the items of income, gain, deduction, or loss of the partnership or S corporation for any taxable year from trades or businesses attributable to the partnership or S corporation shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

For purposes of this paragraph, in the case of an S corporation, an allocable share shall be the shareholder's pro rata share of an item.

(5) Additional reporting

The Secretary shall prescribe such additional reporting requirements as the Secretary determines necessary to carry out the purposes of this subsection.

(6) Coordination with section 469

This subsection shall be applied after the application of section 469.

(Aug. 16, 1954, ch. 736, 68A Stat. 157; Pub. L. 86–781, § 6(a), Sept. 14, 1960, 74 Stat. 1020; Pub. L. 87–876, § 3(a), Oct. 24, 1962, 76 Stat. 1199; Pub. L. 88–272, title II, § 223(a)(1), Feb. 26, 1964, 78 Stat. 76; Pub. L. 94–455, title II, § 208(a), title XIX, §§ 1901(a)(69), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1541, 1775, 1834; Pub. L. 98–369, div. A, title I,

[2] So in original. No subsec. (k) has been enacted.

§ 91(a), (e), July 18, 1984,98 Stat. 598, 607; Pub. L. 99–514, title VIII, §§ 801(b), 805(c)(5), 823(b)(1), title XVIII, § 1807(a)(1), (2), Oct. 22, 1986, 100 Stat. 2347, 2362, 2374, 2811; Pub. L. 100–203, title X, § 10201(b)(5), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, §§ 1008(a)(3), 1018(u)(5), Nov. 10, 1988, 102 Stat. 3436, 3590; Pub. L. 101–239, title VII, § 7721(c)(10), Dec. 19, 1989, 103 Stat. 2400; Pub. L. 101–508, title XI, § 11704(a)(5), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 104–188, title I, § 1704(t)(24), (78), Aug. 20, 1996, 110 Stat. 1888, 1891; Pub. L. 109–135, title IV, § 412(aa), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 110–234, title XV, § 15351(a), May 22, 2008, 122 Stat. 1523; Pub. L. 110–246, § 4(a), title XV, § 15351(a), June 18, 2008, 122 Stat. 1664, 2285; Pub. L. 113–295, div. A, title II, § 221(a)(58)(B), Dec. 19, 2014, 128 Stat. 4047; Pub. L. 115–97, title I, § 11012(a), Dec. 22, 2017, 131 Stat. 2071.)

REFERENCES IN TEXT

The Food, Conservation, and Energy Act of 2008, referred to in subsec. (j)(3)(A), is Pub. L. 110–246, June 18, 2008, 122 Stat. 1651. Title I of the Act is classified principally to chapter 113 (§ 8701 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8701 of Title 7 and Tables.

CODIFICATION

Subsec. (c) of section 464 of this title, which was transferred to this section and redesignated subsec. (j) by Pub. L. 113–295, § 221(a)(58)(B)(i), was based on Pub. L. 94–455, title II, § 207(a)(1), Oct. 4, 1976, 90 Stat. 1536.

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2017—Subsec. (*l*). Pub. L. 115–97 added subsec. (*l*).

2014—Subsec. (i)(4). Pub. L. 113–295, § 221(a)(58)(B)(iii), substituted ''subsection (j)'' for ''section 464(c)''.

Subsec. (j). Pub. L. 113–295, § 221(a)(58)(B)(i), transferred subsec. (c) of section 464 of this title, relating to definition of farming syndicate, to the end of this section and redesignated it as subsec. (j).

Subsec. (j)(1). Pub. L. 113–295, § 221(a)(58)(B)(ii)(I), substituted ''For purposes of subsection (i)(4)'' for ''For purposes of this section'' in introductory provisions.

Subsec. (j)(3), (4). Pub. L. 113–295, § 221(a)(58)(B)(ii)(II), added pars. (3) and (4).

2008—Subsec. (j). Pub. L. 110–246, § 15351(a), added subsec. (j) relating to limitation on excess farm losses of certain taxpayers.

2005—Subsec. (i)(3)(C). Pub. L. 109–135 substituted ''section 6662(d)(2)(C)(ii)'' for ''section 6662(d)(2)(C)(iii)''.

1996—Subsec. (i)(3)(C). Pub. L. 104–188, § 1704(t)(78), substituted ''section 6662(d)(2)(C)(iii)'' for ''section 6662(d)(2)(C)(ii)''.

Pub. L. 104–188, § 1704(t)(24), amended directory language of Pub. L. 101–239. See 1989 Amendment note below.

1990—Subsec. (i)(3)(C). Pub. L. 101–508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any tax shelter (within the meaning of section 6662(d)(2)(C)(ii)).''

1989—Subsec. (i)(3)(C). Pub. L. 101–239, as amended by Pub. L. 104–188, § 1704(t)(24), substituted ''section 6662(d)(2)(C)(ii)'' for ''section 6661(b)(2)(C)(ii)''.

1988—Subsec. (h)(5)(B), (C). Pub. L. 100–647, § 1018(u)(5), amended Pub. L. 99–514, § 823(b)(1). See 1986 Amendment note below.

Subsec. (i)(2). Pub. L. 100–647, § 1008(a)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In the case of a tax shelter, economic performance with respect to the act of drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.''

1987—Subsec. (h)(5). Pub. L. 100–203 substituted ''items'' for ''cases to which other provisions of this title specifically apply'' in heading and amended text generally. Prior to amendment, text read as follows: ''This subsection shall not apply to any item to which any of the following provisions apply:

''(A) Section 463 (relating to vacation pay).

''(B) Any other provisions of this title which specifically provides for a deduction for a reserve for estimated expenses.''

1986—Subsec. (h)(5)(A). Pub. L. 99–514, § 805(c)(5), redesignated subpar. (B) as (A) and struck out former subpar. (A) which referred to subsec. (c) or (f) of section 166.

Subsec. (h)(5)(B). Pub. L. 99–514, § 823(b)(1), as amended by Pub. L. 100–647, § 1018(u)(5), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''Section 466 (relating to discount coupons).''

Pub. L. 99–514, § 805(c)(5), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (h)(5)(C). Pub. L. 99–514, § 823(b)(1), as amended by Pub. L. 100–647, § 1018(u)(5), redesignated subpar. (C) as (B).

Pub. L. 99–514, § 805(c)(5), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (h)(5)(D). Pub. L. 99–514, § 805(c)(5), redesignated subpar. (D) as (C).

Subsec. (i). Pub. L. 99–514, § 801(b)(1), substituted ''Special rules for tax shelters'' for ''Tax shelters may not deduct items earlier than when economic performance occurs'' in heading.

Subsec. (i)(1). Pub. L. 99–514, § 801(b)(1), substituted ''Recurring item exception not to apply'' for ''In general'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In the case of a tax shelter computing taxable income under the cash receipts and disbursements method of accounting, such tax shelter shall not be allowed a deduction under this chapter with respect to any item any earlier than the time when such item would be treated as incurred under subsection (h) (determined without regard to paragraph (3) thereof).''

Subsec. (i)(2). Pub. L. 99–514, § 801(b)(1), amended par. (2) generally, substituting provisions relating to special rule for spudding of oil or gas wells for former provisions consisting of subpars. (A) to (D) which related to deduction of items when economic performance occurs on or before 90th day after close of the taxable year to the extent of cash basis.

Pub. L. 99–514, § 1807(a)(1), substituted ''on or before the 90th day'' for ''within 90 days'' in heading and substituted ''before the close of the 90th day after the close of the taxable year'' for ''within 90 days after the close of the taxable year'' in subpar. (A).

Subsec. (i)(4). Pub. L. 99–514, § 801(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''In the case of the trade or business of farming (as defined in section 464(e))—

''(A) any tax shelter described in paragraph (3)(C) shall be treated as a farming syndicate for purposes of section 464; except that this subparagraph shall not apply for purposes of determining the income of an individual meeting the requirements of section 464(c)(2),

''(B) section 464 shall be applied before this subsection, and

''(C) in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3).''

Subsec. (i)(4)(A). Pub. L. 99–514, § 1807(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''section 464 shall be applied to any tax shelter described in paragraph (3)(C),''.

1984—Subsec. (f)(4). Pub. L. 98–369, § 91(e), inserted ''determined after application of subsection (h)''.

Subsecs. (h), (i). Pub. L. 98–369, § 91(a), added subsecs. (h) and (i).

1976—Subsec. (c)(2), (3). Pub. L. 94–455, §§ 1901(a)(69)(A), (B), 1906(b)(13)(A), redesignated par. (3) as (2), substituted ''in which he'' for ''which begins after December 31, 1953, and ends after the date of the enactment of this title in which the taxpayer'', and struck out ''or his delegate'' after ''Secretary'' wherever appearing. Former par. (2), which related to special limitations on the applicability of par. (1), was struck out.

Subsecs. (d), (e). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (g). Pub. L. 94–455, § 208(a), added subsec. (g).

1964—Subsec. (f). Pub. L. 88–272 added subsec. (f).

1962—Subsec. (e). Pub. L. 87–876 added subsec. (e).

1960—Subsec. (d). Pub. L. 86–781 added subsec. (d).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, § 11012(b), Dec. 22, 2017, 131 Stat. 2072, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15351(b), May 22, 2008, 122 Stat. 1525, and Pub. L. 110–246, § 4(a), title XV, § 15351(b), June 18, 2008, 122 Stat. 1664, 2287, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, § 7721(d), Dec. 19, 1989, 103 Stat. 2400, provided that: ''The amendments made by this section [enacting sections 6662 to 6665 of this title, amending this section and sections 1274, 5684, 5761, 6013, 6222, 6601, 6621, 6653, 6672, and 7519 of this title, and repealing sections 6659, 6659A, 6660, 6661, and former section 6662 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989.''

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 OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 801(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 801(d) of Pub. L. 99–514, set out as an Effective Date note under section 448 of this title.

Amendment by section 805(c)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 823 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with changes required in the method of accounting, see section 823(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under section 466 of this title.

Amendment by section 1807(a)(1), (2) of 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 OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 91(g)–(i), July 18, 1984, 98 Stat. 608, 609, as amended by Pub. L. 99–514, § 2, title XVIII, § 1807(a)(3)(B), (4)(F), (5), (6), Oct. 22, 1986, 100 Stat. 2095, 2811, 2813, 2814, provided that:

''(g) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as provided in this subsection and subsections (h) and (i), the amendments made by this section [enacting sections 88, 468, and 468A of this title and amending this section and section 172 of this title] shall apply to amounts with respect to which a deduction would be allowable under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (determined without regard to such amendments) after—

''(A) in the case of amounts to which section 461(h) of such Code (as added by such amendments) applies, the date of the enactment of this Act [July 18, 1984], and

''(B) in the case of amounts to which section 461(i) of such Code (as so added) applies, after March 31, 1984.

''(2) TAXPAYER MAY ELECT EARLIER APPLICATION.—

''(A) IN GENERAL.—In the case of amounts described in paragraph (1)(A), a taxpayer may elect to have the amendments made by this section apply to amounts which—

''(i) are incurred on or before the date of the enactment of this Act [July 18, 1984] (determined without regard to such amendments), and

''(ii) are incurred after the date of the enactment of this Act (determined with regard to such amendments).

The Secretary of the Treasury or his delegate may by regulations provide that (in lieu of an election under the preceding sentence) a taxpayer may (subject to such conditions as such regulations may provide) elect to have subsection (h) of section 461 of such Code apply to the taxpayer's entire taxable year in which occurs July 19, 1984.

''(B) ELECTION TREATED AS CHANGE IN THE METHOD OF ACCOUNTING.—For purposes of section 481 of the Internal Revenue Code of 1986, if an election is made under subparagraph (A) with respect to any amount, the application of the amendments made by this section shall be treated as a change in method of accounting—

''(i) initiated by the taxpayer,

''(ii) made with the consent of the Secretary of the Treasury, and

''(iii) with respect to which section 481 of such Code shall be applied by substituting a 3-year adjustment period for a 10-year adjustment period.

''(3) SECTION 461(h) TO APPLY IN CERTAIN CASES.—Notwithstanding paragraph (1), section 461(h) of the Internal Revenue Code of 1986 (as added by this section) shall be treated as being in effect to the extent necessary to carry out any amendments made by this section which take effect before section 461(h).

''(4) EFFECTIVE DATE FOR TREATMENT OF MINING AND SOLID WASTE RECLAMATION AND CLOSING COSTS.—Except as otherwise provided in subsection (h), the amendments made by subsection (b) [enacting section

468 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984] with respect to taxable years ending after such date.

''(5) RULES FOR NUCLEAR DECOMMISSIONING COSTS.—The amendments made by subsections (c) and (f) [enacting sections 88 and 468A of this title] shall take effect on the date of the enactment of this Act [July 18, 1984] with respect to taxable years ending after such date.

''(6) MODIFICATION OF NET OPERATING LOSS CARRYBACK PERIOD.—The amendments made by subsection (d) [amending section 172 of this title] shall apply to losses for taxable years beginning after December 31, 1983.

''(h) EXCEPTION FOR CERTAIN EXISTING ACTIVITIES AND CONTRACTS.—If—

''(1) EXISTING ACCOUNTING PRACTICES.—If, on March 1, 1984, any taxpayer was regularly computing his deduction for mining reclamation activities under a current cost method of accounting (as determined by the Secretary of the Treasury or his delegate), the liability for reclamation activities—

''(A) for land disturbed before the date of the enactment of this Act [July 18, 1984], or

''(B) to which paragraph (2) applies,

shall be treated as having been incurred when the land was disturbed.

''(2) FIXED PRICE SUPPLY CONTRACT.—

''(A) IN GENERAL.—In the case of any fixed price supply contract entered into before March 1, 1984, the amendments made by subsection (b) [enacting section 468 of this title] shall not apply to any minerals extracted from such property which are sold pursuant to such contract.

''(B) NO EXTENSION OR RENEGOTIATION.—Subparagraph (A) shall not apply—

''(i) to any extension of any contract beyond the period such contract was in effect on March 1, 1984, or

''(ii) to any renegotiation of, or other change in, the terms and conditions of such contract in effect on March 1, 1984.

''(i) TRANSITIONAL RULE FOR ACCRUED VACATION PAY.—

''(1) IN GENERAL.—In the case of any taxpayer—

''(A) with respect to whom a deduction was allowable (other than under section 463 of the Internal Revenue Code of 1986) for vested accrued vacation pay for the last taxable year ending before the date of the enactment of this Act [July 18, 1984], and

''(B) who elects the application of section 463 of such Code for the first taxable year ending after the date of the enactment of this Act,

then, for purposes of section 463(b) of such Code, the opening balance of the taxpayer with respect to any vested accrued vacation pay shall be determined under section 463(b)(1) of such Code.

''(2) VESTED ACCRUED VACATION PAY.—For purposes of this subsection, the term 'vested accrued vacation pay' means any amount allowable under section 162(a) of such Code with respect to vacation pay of employees of the taxpayer (determined without regard to section 463 of such Code).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(69) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title II, §208(b), Oct. 4, 1976, 90 Stat. 1542, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts paid after December 31, 1975, in taxable years ending after such date.

''(2) CERTAIN AMOUNTS PAID BEFORE 1977.—The amendment made by subsection (a) [amending this section] shall not apply to amounts paid before January 1, 1977, pursuant to a binding contract or written loan commitment which existed on September 16, 1975 (and at all times thereafter), and which required prepayment of such amounts by the taxpayer.''

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §223(b), Feb. 26, 1964, 78 Stat. 76, provided that: ''Except as provided in subsections (c) and (d) [set out below]—

''(1) the amendment made by subsection (a)(1) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, and

''(2) the amendment made by subsection (a)(2) [amending section 43 of the Internal Revenue Code of 1939] shall apply to taxable years to which the Internal Revenue Code of 1939 applies.''

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–876, §3(b), Oct. 24, 1962, 76 Stat. 1199, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years ending after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–781, §6(b), Sept. 14, 1960, 74 Stat. 1021, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1960.''

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.

TRANSITIONAL RULE FOR CERTAIN AMOUNTS

Pub. L. 99–514, title XVIII, §1807(a)(8), Oct. 22, 1986, 100 Stat. 2816, provided that: ''For purposes of section 461(h) of the Internal Revenue Code of 1954 [now 1986], economic performance shall be treated as occurring on the date of a payment to an insurance company if—

''(A) such payment was made before November 23, 1985, for indemnification against a tort liability relating to personal injury or death caused by inhalation or ingestion of dust from asbestos-containing insulation products,

''(B) such insurance company is unrelated to taxpayer,

''(C) such payment is not refundable, and

''(D) the taxpayer is not engaged in the mining of asbestos nor is any member of any affiliated group which includes the taxpayer so engaged.''

TRANSITION RULE

Pub. L. 99–514, title XVIII, §1807(c), Oct. 22, 1986, 100 Stat. 2817, provided that: ''A taxpayer shall be allowed to use the cash receipts and disbursements method of accounting for taxable years ending after January 1, 1982, if such taxpayer—

''(1) is a partnership which was founded in 1936,

''(2) has over 1,000 professional employees,

''(3) used a long-term contract method of accounting for a substantial part of its income from the performance of architectural and engineering services, and

''(4) is headquartered in Chicago, Illinois.''

ELECTION AS TO TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Pub. L. 88–272, title II, §223(c), Feb. 26, 1964, 78 Stat. 76, provided that:

''(1) The amendments made by subsection (a) [amending this section and section 43 of the Internal Revenue

Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if the taxpayer elects, in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, to have this paragraph apply. Such an election—

''(A) must be made within one year after the date of the enactment of this Act [Feb. 26, 1964],

''(B) may not be revoked after the expiration of such one-year period, and

''(C) shall apply to all transfers described in the first sentence of this paragraph (other than transfers described in paragraph (2)).

In the case of any transfer to which this paragraph applies, the deduction shall be allowed only for the taxable year in which the contest with respect to such transfer is settled.

''(2) Paragraph (1) shall not apply to any transfer if the assessment of any deficiency which would result from the application of the election in respect of such transfer is, on the date of the election under paragraph (1), prevented by the operation of any law or rule of law.

''(3) If the taxpayer makes an election under paragraph (1), and if, on the date of such election, the assessment of any deficiency which results from the application of the election in respect of any transfer is not prevented by the operation of any law or rule of law, the period within which assessment of such deficiency may be made shall not expire earlier than 2 years after the date of the enactment of this Act [Feb. 26, 1964].''

CERTAIN OTHER TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Pub. L. 88–272, title II, § 223(d), Feb. 26, 1964, 78 Stat. 77, provided that: ''The amendments made by subsection (a) [amending this section and section 43 of the Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if—

''(1) no deduction has been allowed in respect of such transfer for any taxable year before the taxable year in which the contest with respect to such transfer is settled, and

''(2) refund or credit of any overpayment which would result from the application of such amendments to such transfer is prevented by the operation of any law or rule of law.

In the case of any transfer to which this subsection applies, the deduction shall be allowed for the taxable year in which the contest with respect to such transfer is settled.''

[§ 462. Repealed. June 15, 1955, ch. 143, § 1(b), 69 Stat. 134]

Section, act Aug. 16, 1954, ch. 736 68A Stat. 158, related to reserves for estimated expenses.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 3 of Act June 15, 1955, set out as an Effective Date of 1955 Amendment note under section 381 of this title.

SAVINGS PROVISION

For provisions concerning increase in tax in any taxable year ending on or before June 15, 1955 by reason of enactment of act June 15, 1955, see section 4 of act June 15, 1955, set out as a note under section 381 of this title.

[§ 463. Repealed. Pub. L. 100–203, title X, § 10201(a), Dec. 22, 1987, 101 Stat. 1330–387]

Section, added Pub. L. 93–625, § 4(a), Jan. 3, 1974, 88 Stat. 2109; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title V, § 561(a), July 18, 1984, 98 Stat. 901; Pub. L. 99–514, title XI, § 1165(a), Oct. 22, 1986, 100 Stat. 2511, related to deduction allowable for accrual basis taxpayers under section 162(a) of this title with respect to vacation pay.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 404 of this title.

CHANGE IN METHOD OF ACCOUNTING REQUIRED BY PUB. L. 100–203

Pub. L. 100–203, title X, § 10201(c)(2), Dec. 22, 1987, 101 Stat. 1330–388, provided that: ''In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer's last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section [amending sections 404, 419, and 461 of this title, repealing sections 81 and 463 of this title, and enacting provisions set out as a note under section 404 of this title]—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary, and

''(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

''(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

''(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

"In the case of the:	The percentage taken into account is:
1st year	25
2nd year	5
3rd year	35
4th year	35.

Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into account under section 481 of such Code is less than 4 years, such adjustments shall be taken into account ratably over such shorter period.''

§ 464. Limitations on deductions for certain farming

(a) General rule

In the case of any taxpayer to whom subsection (d) applies, a deduction (otherwise allowable under this chapter) for amounts paid for feed, seed, fertilizer, or other similar farm supplies shall only be allowed for the taxable year in which such feed, seed, fertilizer, or other supplies are actually used or consumed, or, if later, for the taxable year for which allowable as a deduction (determined without regard to this section).

(b) Certain poultry expenses

In the case of any taxpayer to whom subsection (d) applies—

(1) the cost of poultry (including egg-laying hens and baby chicks) purchased for use in a trade or business (or both for use in a trade or business and for sale) shall be capitalized and deducted ratably over the lesser of 12 months or their useful life in the trade or business, and

(2) the cost of poultry purchased for sale shall be deducted for the taxable year in which the poultry is sold or otherwise disposed of.

(c) Exception

Subsection (a) shall not apply to any amount paid for supplies which are on hand at the close of the taxable year on account of fire, storm, or other casualty, or on account of disease or drought.

(d) Certain persons prepaying 50 percent or more of certain farming expenses

(1) Taxpayer to whom subsection applies

This subsection applies to any taxpayer for any taxable year if such taxpayer—

(A) does not use an accrual method of accounting,

(B) has excess prepaid farm supplies for the taxable year, and

(C) is not a qualified farm-related taxpayer.

(2) Qualified farm-related taxpayer

(A) In general

For purposes of this subsection, the term ''qualified farm-related taxpayer'' means any farm-related taxpayer if—

(i)(I) the aggregate prepaid farm supplies for the 3 taxable years preceding the taxable year are less than 50 percent of,

(II) the aggregate deductible farming expenses (other than prepaid farm supplies) for such 3 taxable years, or

(ii) the taxpayer has excess prepaid farm supplies for the taxable year by reason of any change in business operation directly attributable to extraordinary circumstances.

(B) Farm-related taxpayer

For purposes of this paragraph, the term ''farm-related taxpayer'' means any taxpayer—

(i) whose principal residence (within the meaning of section 121) is on a farm,

(ii) who has a principal occupation of farming, or

(iii) who is a member of the family (within the meaning of subsection (c)(2)(E))[1] of a taxpayer described in clause (i) or (ii).

(3) Definitions

For purposes of this subsection—

(A) Excess prepaid farm supplies

The term ''excess prepaid farm supplies'' means the prepaid farm supplies for the taxable year to the extent the amount of such supplies exceeds 50 percent of the deductible farming expenses for the taxable year (other than prepaid farm supplies).

(B) Prepaid farm supplies

The term ''prepaid farm supplies'' means any amounts which are described in subsection (a) or (b) and would be allowable for a subsequent taxable year under the rules of subsections (a) and (b).

(C) Deductible farming expenses

The term ''deductible farming expenses'' means any amount allowable as a deduction under this chapter (including any amount allowable as a deduction for depreciation or amortization) which is properly allocable to the trade or business of farming.

(e) Farming

For purposes of this section, the term ''farming'' means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. For purposes of the preceding sentence, trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity.

(Added Pub. L. 94–455, title II, §207(a)(1), Oct. 4, 1976, 90 Stat. 1536; amended Pub. L. 95–600, title VII, §701(*l*)(3), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–354, §5(a)(30), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 99–514, title IV, §404(a), (b)(1), title VIII, §803(b)(8), Oct. 22, 1986, 100 Stat. 2223, 2224, 2356; Pub. L. 100–647, title I, §1008(a)(4), Nov. 10, 1988, 102 Stat. 3437; Pub. L. 105–34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839; Pub. L. 113–295, div. A, title II, §221(a)(58)(A), (B)(i), (C), (D), Dec. 19, 2014, 128 Stat. 4047.)

REFERENCES IN TEXT

Subsection (c), referred to in subsec. (d)(2)(B)(iii), which defined ''farming syndicate'', was transferred to section 461 of this title and redesignated as subsec. (j) by Pub. L. 113–295, div. A, title II, §221(a)(58)(B)(i), Dec. 19, 2014, 128 Stat. 4047.

AMENDMENTS

2014—Subsecs. (a), (b). Pub. L. 113–295, §221(a)(58)(A), substituted ''any taxpayer to whom subsection (d) applies'' for ''any farming syndicate (as defined in subsection (c))'' in subsec. (a) and in introductory provisions of subsec. (b).

Subsec. (c). Pub. L. 113–295, §221(a)(58)(C)(i), redesignated subsec. (d) as (c). Former subsec. (c) transferred to section 461 of this title.

Pub. L. 113–295, §221(a)(58)(B)(i), transferred subsec. (c) defining the term ''farming syndicate'' to section 461 of this title and redesignated it as subsec. (j) of that section.

Subsec. (d). Pub. L. 113–295, §221(a)(58)(D), struck out ''Subsections (a) and (b) to apply to'' before ''Certain persons'' in heading, redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1). Prior to amendment, text of par. (1) read as follows: ''In the case of a taxpayer to whom this subsection applies, subsections (a) and (b) shall apply to the excess prepaid farm supplies of such taxpayer in the same manner as if such taxpayer were a farming syndicate.''

Pub. L. 113–295, §221(a)(58)(C)(i), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 113–295, §221(a)(58)(C), added subsec. (e) and struck out former subsec. (e) which defined the terms ''farming'' and ''limited entrepreneur'' for purposes of this section.

Subsec. (f). Pub. L. 113–295, §221(a)(58)(C)(i), redesignated subsec. (f) as (d).

Subsec. (g). Pub. L. 113–295, §221(a)(58)(C)(i), struck out subsec. (g). Text read as follows: ''Except as provided in subsection (f), subsections (a) and (b) shall not apply to any taxable year beginning after December 31, 1986.''

1997—Subsec. (f)(3)(B)(i). Pub. L. 105–34 substituted ''section 121'' for ''section 1034''.

1988—Subsec. (g). Pub. L. 100–647 added subsec. (g).

1986—Pub. L. 99–514, §404(b)(1), substituted ''for certain farming'' for ''in case of farming syndicates'' in section catchline.

Subsec. (d). Pub. L. 99–514, §803(b)(8), substituted ''Exception'' for ''Exceptions'' as heading and amended text

[1] See References in Text note below.

generally. Prior to amendment, text read as follows: ''Subsection (a) shall not apply to—

''(1) any amount paid for supplies which are on hand at the close of the taxable year on account of fire, storm, flood, or other casualty or on account of disease or drought, or

''(2) any amount required to be charged to capital account under section 278.''

Subsec. (f). Pub. L. 99–514, § 404(a), added subsec. (f).

1982—Subsec. (c)(1)(A), (B). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1978—Subsec. (c)(2). Pub. L. 95–600 substituted in subpar. (E) ''(or a spouse of any such member)'' for ''(within the meaning of section 267(c)(4))'' and provided that for purposes of subpar. (E) the term ''family'' has the meaning given to such term by section 267(c)(4).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 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 OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(8) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Pub. L. 99–514, title IV, § 404(c), Oct. 22, 1986, 100 Stat. 2224, provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or incurred after March 1, 1986, in taxable years beginning after such date.''

Amendment by section 803(b)(8) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included in this section or section 447 of this title at the time of their enactment, Oct. 4, 1976, see section 701(*l*)(4) of Pub. L. 95–600, set out as a note under section 447 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title II, § 207(a)(3), Oct. 4, 1976, 90 Stat. 1537, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [enacting this section] shall apply to taxable years beginning after December 31, 1975.

''(B) TRANSITIONAL RULE.—In the case of a farming syndicate in existence on December 31, 1975, and for which there was no change of membership throughout its taxable year beginning in 1976, the amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.''

§ 465. Deductions limited to amount at risk

(a) Limitation to amount at risk

(1) In general

In the case of—

(A) an individual, and

(B) a C corporation with respect to which the stock ownership requirement of paragraph (2) of section 542(a) is met,

engaged in an activity to which this section applies, any loss from such activity for the taxable year shall be allowed only to the extent of the aggregate amount with respect to which the taxpayer is at risk (within the meaning of subsection (b)) for such activity at the close of the taxable year.

(2) Deduction in succeeding year

Any loss from an activity to which this section applies not allowed under this section for the taxable year shall be treated as a deduction allocable to such activity in the first succeeding taxable year.

(3) Special rules for applying paragraph (1)(B)

For purposes of paragraph (1)(B)—

(A) section 544(a)(2) shall be applied as if such section did not contain the phrase ''or by or for his partner''; and

(B) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting ''the corporation meet the stock ownership requirements of section 542(a)(2)'' for ''the corporation a personal holding company''.

(b) Amounts considered at risk

(1) In general

For purposes of this section, a taxpayer shall be considered at risk for an activity with respect to amounts including—

(A) the amount of money and the adjusted basis of other property contributed by the taxpayer to the activity, and

(B) amounts borrowed with respect to such activity (as determined under paragraph (2)).

(2) Borrowed amounts

For purposes of this section, a taxpayer shall be considered at risk with respect to amounts borrowed for use in an activity to the extent that he—

(A) is personally liable for the repayment of such amounts, or

(B) has pledged property, other than property used in such activity, as security for such borrowed amount (to the extent of the net fair market value of the taxpayer's interest in such property).

No property shall be taken into account as security if such property is directly or indirectly financed by indebtedness which is secured by property described in paragraph (1).

(3) Certain borrowed amounts excluded

(A) In general

Except to the extent provided in regulations, for purposes of paragraph (1)(B), amounts borrowed shall not be considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest in such activity or from a related person to a person (other than the taxpayer) having such an interest.

(B) Exceptions

(i) Interest as creditor

Subparagraph (A) shall not apply to an interest as a creditor in the activity.

(ii) Interest as shareholder with respect to amounts borrowed by corporation

In the case of amounts borrowed by a corporation from a shareholder, subparagraph (A) shall not apply to an interest as a shareholder.

(C) Related person

For purposes of this subsection, a person (hereinafter in this paragraph referred to as the ''related person'') is related to any person if—

(i) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(ii) the related person and such person are engaged in trades or business under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of clause (i), in applying section 267(b) or 707(b)(1), ''10 percent'' shall be substituted for ''50 percent''.

(4) Exception

Notwithstanding any other provision of this section, a taxpayer shall not be considered at risk with respect to amounts protected against loss through nonrecourse financing, guarantees, stop loss agreements, or other similar arrangements.

(5) Amounts at risk in subsequent years

If in any taxable year the taxpayer has a loss from an activity to which subsection (a) applies, the amount with respect to which a taxpayer is considered to be at risk (within the meaning of subsection (b)) in subsequent taxable years with respect to that activity shall be reduced by that portion of the loss which (after the application of subsection (a)) is allowable as a deduction.

(6) Qualified nonrecourse financing treated as amount at risk

For purposes of this section—

(A) In general

Notwithstanding any other provision of this subsection, in the case of an activity of holding real property, a taxpayer shall be considered at risk with respect to the taxpayer's share of any qualified nonrecourse financing which is secured by real property used in such activity.

(B) Qualified nonrecourse financing

For purposes of this paragraph, the term ''qualified nonrecourse financing'' means any financing—

(i) which is borrowed by the taxpayer with respect to the activity of holding real property,

(ii) which is borrowed by the taxpayer from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government,

(iii) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

(iv) which is not convertible debt.

(C) Special rule for partnerships

In the case of a partnership, a partner's share of any qualified nonrecourse financing of such partnership shall be determined on the basis of the partner's share of liabilities of such partnership incurred in connection with such financing (within the meaning of section 752).

(D) Qualified person defined

For purposes of this paragraph—

(i) In general

The term ''qualified person'' has the meaning given such term by section 49(a)(1)(D)(iv).

(ii) Certain commercially reasonable financing from related persons

For purposes of clause (i), section 49(a)(1)(D)(iv) shall be applied without regard to subclause (I) thereof (relating to financing from related persons) if the financing from the related person is commercially reasonable and on substantially the same terms as loans involving unrelated persons.

(E) Activity of holding real property

For purposes of this paragraph—

(i) Incidental personal property and services

The activity of holding real property includes the holding of personal property and the providing of services which are incidental to making real property available as living accommodations.

(ii) Mineral property

The activity of holding real property shall not include the holding of mineral property.

(c) Activities to which section applies

(1) Types of activities

This section applies to any taxpayer engaged in the activity of—

(A) holding, producing, or distributing motion picture films or video tapes,

(B) farming (as defined in section 464(e)),

(C) leasing any section 1245 property (as defined in section 1245(a)(3)),

(D) exploring for, or exploiting, oil and gas resources, or

(E) exploring for, or exploiting, geothermal deposits (as defined in section 613(e)(2))[1]

[1] So in original. Probably should be followed by a comma.

as a trade or business or for the production of income.

(2) Separate activities

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), a taxpayer's activity with respect to each—

(i) film or video tape,

(ii) section 1245 property which is leased or held for leasing,

(iii) farm,

(iv) oil and gas property (as defined under section 614), or

(v) geothermal property (as defined under section 614),

shall be treated as a separate activity.

(B) Aggregation rules

(i) Special rule for leases of section 1245 property by partnerships or S corporations

In the case of any partnership or S corporation, all activities with respect to section 1245 properties which—

(I) are leased or held for lease, and

(II) are placed in service in any taxable year of the partnership or S corporation,

shall be treated as a single activity.

(ii) Other aggregation rules

Rules similar to the rules of subparagraphs (B) and (C) of paragraph (3) shall apply for purposes of this paragraph.

(3) Extension to other activities

(A) In general

This section also applies to each activity—

(i) engaged in by the taxpayer in carrying on a trade or business or for the production of income, and

(ii) which is not described in paragraph (1).

(B) Aggregation of activities where taxpayer actively participates in management of trade or business

Except as provided in subparagraph (C), for purposes of this section, activities described in subparagraph (A) which constitute a trade or business shall be treated as one activity if—

(i) the taxpayer actively participates in the management of such trade or business, or

(ii) such trade or business is carried on by a partnership or an S corporation and 65 percent or more of the losses for the taxable year is allocable to persons who actively participate in the management of the trade or business.

(C) Aggregation or separation of activities under regulations

The Secretary shall prescribe regulations under which activities described in subparagraph (A) shall be aggregated or treated as separate activities.

(D) Application of subsection (b)(3)

In the case of an activity described in subparagraph (A), subsection (b)(3) shall apply only to the extent provided in regulations prescribed by the Secretary.

(4) Exclusion for certain equipment leasing by closely-held corporations

(A) In general

In the case of a corporation described in subsection (a)(1)(B) actively engaged in equipment leasing—

(i) the activity of equipment leasing shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such activity.

(B) 50-percent gross receipts test

For purposes of subparagraph (A), a corporation shall not be considered to be actively engaged in equipment leasing unless 50 percent or more of the gross receipts of the corporation for the taxable year is attributable, under regulations prescribed by the Secretary, to equipment leasing.

(C) Component members of controlled group treated as a single corporation

For purposes of subparagraph (A), the component members of a controlled group of corporations shall be treated as a single corporation.

(5) Waiver of controlled group rule where there is substantial leasing activity

(A) In general

In the case of the component members of a qualified leasing group, paragraph (4) shall be applied—

(i) by substituting ''80 percent'' for ''50 percent'' in subparagraph (B) thereof, and

(ii) as if paragraph (4) did not include subparagraph (C) thereof.

(B) Qualified leasing group

For purposes of this paragraph, the term ''qualified leasing group'' means a controlled group of corporations which, for the taxable year and each of the 2 immediately preceding taxable years, satisfied each of the following 3 requirements:

(i) At least 3 employees

During the entire year, the group had at least 3 full-time employees substantially all of the services of whom were services directly related to the equipment leasing activity of the qualified leasing members.

(ii) At least 5 separate leasing transactions

During the year, the qualified leasing members in the aggregate entered into at least 5 separate equipment leasing transactions.

(iii) At least $1,000,000 equipment leasing receipts

During the year, the qualified leasing members in the aggregate had at least $1,000,000 in gross receipts from equipment leasing.

The term ''qualified leasing group'' does not include any controlled group of corporations to which, without regard to this paragraph, paragraph (4) applies.

(C) Qualified leasing member

For purposes of this paragraph, a corporation shall be treated as a qualified leasing

member for the taxable year only if for each of the taxable years referred to in subparagraph (B)—

(i) it is a component member of the controlled group of corporations, and

(ii) it meets the requirements of paragraph (4)(B) (as modified by subparagraph (A)(i) of this paragraph).

(6) Definitions relating to paragraphs (4) and (5)

For purposes of paragraphs (4) and (5)—

(A) Equipment leasing

The term ''equipment leasing'' means—

(i) the leasing of equipment which is section 1245 property, and

(ii) the purchasing, servicing, and selling of such equipment.

(B) Leasing of master sound recordings, etc., excluded

The term ''equipment leasing'' does not include the leasing of master sound recordings, and other similar contractual arrangements with respect to tangible or intangible assets associated with literary, artistic, or musical properties.

(C) Controlled group of corporations; component member

The terms ''controlled group of corporations'' and ''component member'' have the same meanings as when used in section 1563. The determination of the taxable years taken into account with respect to any controlled group of corporations shall be made in a manner consistent with the manner set forth in section 1563.

(7) Exclusion of active businesses of qualified C corporations

(A) In general

In the case of a taxpayer which is a qualified C corporation—

(i) each qualifying business carried on by such taxpayer shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such business.

(B) Qualified C corporation

For purposes of subparagraph (A), the term ''qualified C corporation'' means any corporation described in subparagraph (B) of subsection (a)(1) which is not—

(i) a personal holding company (as defined in section 542(a)), or

(ii) a personal service corporation (as defined in section 269A(b) but determined by substituting ''5 percent'' for ''10 percent'' in section 269A(b)(2)).

(C) Qualifying business

For purposes of this paragraph, the term ''qualifying business'' means any active business if—

(i) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 1 full-time employee substantially all the services of whom were in the active management of such business,

(ii) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time, nonowner employees substantially all of the services of whom were services directly related to such business,

(iii) the amount of the deductions attributable to such business which are allowable to the taxpayer solely by reason of sections 162 and 404 for the taxable year exceeds 15 percent of the gross income from such business for such year, and

(iv) such business is not an excluded business.

(D) Special rules for application of subparagraph (C)

(i) Partnerships in which taxpayer is a qualified corporate partner

In the case of an active business of a partnership, if—

(I) the taxpayer is a qualified corporate partner in the partnership, and

(II) during the entire 12-month period ending on the last day of the partnership's taxable year, there was at least 1 full-time employee of the partnership (or of a qualified corporate partner) substantially all the services of whom were in the active management of such business,

then the taxpayer's proportionate share (determined on the basis of its profits interest) of the activities of the partnership in such business shall be treated as activities of the taxpayer (and clause (i) of subparagraph (C) shall not apply in determining whether such business is a qualifying business of the taxpayer).

(ii) Qualified corporate partner

For purposes of clause (i), the term ''qualified corporate partner'' means any corporation if—

(I) such corporation is a general partner in the partnership,

(II) such corporation has an interest of 10 percent or more in the profits and losses of the partnership, and

(III) such corporation has contributed property to the partnership in an amount not less than the lesser of $500,000 or 10 percent of the net worth of the corporation.

For purposes of subclause (III), any contribution of property other than money shall be taken into account at its fair market value.

(iii) Deduction for owner employee compensation not taken into account

For purposes of clause (iii) of subparagraph (C), there shall not be taken into account any deduction in respect of compensation for personal services rendered by any employee (other than a non-owner employee) of the taxpayer or any member of such employee's family (within the meaning of section 318(a)(1)).

(iv) Special rule for banks

For purposes of clause (iii) of subparagraph (C), in the case of a bank (as defined

in section 581) or a financial institution to which section 591 applies—

(I) gross income shall be determined without regard to the exclusion of interest from gross income under section 103, and

(II) in addition to the deductions described in such clause, there shall also be taken into account the amount of the deductions which are allowable for amounts paid or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts under section 163 or 591.

(v) Special rule for life insurance companies

(I) In general

Clause (iii) of subparagraph (C) shall not apply to any insurance business of a qualified life insurance company.

(II) Insurance business

For purposes of subclause (I), the term ''insurance business'' means any business which is not a noninsurance business (within the meaning of section 453B(e)(3)).

(III) Qualified life insurance company

For purposes of subclause (I), the term ''qualified life insurance company'' means any company which would be a life insurance company as defined in section 816 if unearned premiums were not taken into account under subsections (a)(2) and (c)(2) of section 816.

(E) Definitions

For purposes of this paragraph—

(i) Non-owner employee

The term ''non-owner employee'' means any employee who does not own, at any time during the taxable year, more than 5 percent in value of the outstanding stock of the taxpayer. For purposes of the preceding sentence, section 318 shall apply, except that ''5 percent'' shall be substituted for ''50 percent'' in section 318(a)(2)(C).

(ii) Excluded business

The term ''excluded business'' means—

(I) equipment leasing (as defined in paragraph (6)), and

(II) any business involving the use, exploitation, sale, lease, or other disposition of master sound recordings, motion picture films, video tapes, or tangible or intangible assets associated with literary, artistic, musical, or similar properties.

(iii) Special rules relating to communications industry, etc.

(I) Business not excluded where taxpayer not completely at risk

A business involving the use, exploitation, sale, lease, or other disposition of property described in subclause (II) of clause (ii) shall not constitute an excluded business by reason of such subclause if the taxpayer is at risk with respect to all amounts paid or incurred (or chargeable to capital account) in such business.

(II) Certain licensed businesses not excluded

For purposes of subclause (II) of clause (ii), the provision of radio, television, cable television, or similar services pursuant to a license or franchise granted by the Federal Communications Commission or any other Federal, State, or local authority shall not constitute an excluded business by reason of such subclause.

(F) Affiliated group treated as 1 taxpayer

For purposes of this paragraph—

(i) In general

Except as provided in subparagraph (G), the component members of an affiliated group of corporations shall be treated as a single taxpayer.

(ii) Affiliated group of corporations

The term ''affiliated group of corporations'' means an affiliated group (as defined in section 1504(a)) which files or is required to file consolidated income tax returns.

(iii) Component member

The term ''component member'' means an includible corporation (as defined in section 1504) which is a member of the affiliated group.

(G) Loss of 1 member of affiliated group may not offset income of personal holding company or personal service corporation

Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal holding company (as defined in section 542(a)) or a personal service corporation (as defined in section 269A(b) but determined by substituting ''5 percent'' for ''10 percent'' in section 269A(b)(2)).

(d) Definition of loss

For purposes of this section, the term ''loss'' means the excess of the deductions allowable under this chapter for the taxable year (determined without regard to the first sentence of subsection (a)) and allocable to an activity to which this section applies over the income received or accrued by the taxpayer during the taxable year from such activity (determined without regard to subsection (e)(1)(A)).

(e) Recapture of losses where amount at risk is less than zero

(1) In general

If zero exceeds the amount for which the taxpayer is at risk in any activity at the close of any taxable year—

(A) the taxpayer shall include in his gross income for such taxable year (as income from such activity) an amount equal to such excess, and

(B) an amount equal to the amount so included in gross income shall be treated as a deduction allocable to such activity for the first succeeding taxable year.

(2) Limitation

The excess referred to in paragraph (1) shall not exceed—

(A) the aggregate amount of the reductions required by subsection (b)(5) with respect to the activity by reason of losses for all prior taxable years beginning after December 31, 1978, reduced by

(B) the amounts previously included in gross income with respect to such activity under this subsection.

(Added Pub. L. 94–455, title II, §204(a), Oct. 4, 1976, 90 Stat. 1531; amended Pub. L. 95–600, title II, §§201(a), (c)(1), 202, 203, title VII, §701(k)(2), Nov. 6, 1978, 92 Stat. 2814, 2816, 2906; Pub. L. 95–618, title IV, §402(d), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 96–222, title I, §102(a)(1)(A)–(D), Apr. 1, 1980, 94 Stat. 206; Pub. L. 97–354, §5(a)(31), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title IV, §432(a)–(c), title VII, §721(x)(2), July 18, 1984, 98 Stat. 811–814, 971; Pub. L. 99–514, title II, §201(d)(7)(A), title V, §503(a), (b), title X, §1011(b)(1), Oct. 22, 1986, 100 Stat. 2141, 2243, 2389; Pub. L. 101–508, title XI, §§11813(b)(15), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388–555, 1388–558; Pub. L. 108–357, title IV, §413(c)(7), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 113–295, div. A, title II, §221(a)(59), Dec. 19, 2014, 128 Stat. 4047; Pub. L. 115–97, title I, §13512(b)(2), Dec. 22, 2017, 131 Stat. 2143.)

AMENDMENTS

2017—Subsec. (c)(7)(D)(v)(II). Pub. L. 115–97 substituted ''section 453B(e)(3)'' for ''section 806(b)(3)''.

2014—Subsec. (c)(3)(A). Pub. L. 113–295 substituted ''This'' for ''In the case of taxable years beginning after December 31, 1978, this''.

2004—Subsec. (c)(7)(B). Pub. L. 108–357 inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''a foreign personal holding company (as defined in section 552(a)), or''.

1990—Subsec. (b)(6)(D). Pub. L. 101–508, §11813(b)(15), substituted ''49(a)(1)(D)(iv)'' for ''46(c)(8)(D)(iv)'' wherever appearing.

Subsec. (c)(1)(E). Pub. L. 101–508, §11815(b)(3), substituted ''section 613(e)(2)'' for ''section 613(e)(3)''.

1986—Subsec. (b)(3)(C). Pub. L. 99–514, §201(d)(7)(A), struck out ''defined'' after ''person'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), the term 'related person' has the meaning given such term by section 168(e)(4).''

Subsec. (b)(6). Pub. L. 99–514, §503(b), added par. (6).

Subsec. (c)(3)(D), (E). Pub. L. 99–514, §503(a), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''In the case of activities described in subparagraph (A), the holding of real property (other than mineral property) shall be treated as a separate activity, and subsection (a) shall not apply to losses from such activity. For purposes of the preceding sentence, personal property and services which are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property.''

Subsec. (c)(7)(D)(v)(II). Pub. L. 99–514, §1011(b)(1), substituted ''section 806(b)(3)'' for ''section 806(c)(3)''.

1984—Subsec. (a)(1)(B). Pub. L. 98–369, §721(x)(2), substituted ''a C corporation'' for ''a corporation''.

Subsec. (b)(3). Pub. L. 98–369, §432(c), designated existing provisions as subpar. (A), in subpar. (A) as so designated struck out subpar. designations ''(A)'' and ''(B)'' and substituted provisions that, except as provided by regulation, amounts borrowed shall not be considered to be at risk if such amounts are borrowed from any person who has an interest in the activity or from a related person to a person (other than the taxpayer) having such an interest for provision that such amounts would not be considered to be at risk if borrowed from a person who had an interest (other than as a creditor) in such activity or who had a relationship to the taxpayer specified in section 267(b) of this title, and added subpars. (B) and (C).

Subsec. (c)(2). Pub. L. 98–369, §432(b), designated existing provisions as subpar. (A), in subpar. (A) as so designated, redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively, struck out provision that a partner's interest in a partnership or a shareholder's interest in an S corporation had to be treated as a single activity to the extent that the partnership or the S corporation was engaged in activities described in any subparagraph of this paragraph, and added subpar. (B).

Subsec. (c)(7). Pub. L. 98–369, §432(a), added par. (7).

1982—Subsec. (a)(1). Pub. L. 97–354, §5(a)(31)(A), redesignated subpar. (C) as (B). Former subpar. (B), relating to an electing small business corporation, was struck out.

Subsec. (a)(3). Pub. L. 97–354, §5(a)(31)(B), substituted ''paragraph (1)(B)'' for ''paragraph (1)(C)'' in heading and text.

Subsec. (c)(2). Pub. L. 97–354, §5(a)(31)(C), substituted ''an S corporation'' for ''an electing small business corporation'' the first place appearing and ''the S corporation'' for ''an electing small business corporation'' the second place appearing.

Subsec. (c)(3)(B)(ii). Pub. L. 97–354, §5(a)(31)(D), substituted ''an S corporation'' for ''electing small business corporation (as defined in section 1371(b))''.

Subsec. (c)(4)(A). Pub. L. 97–354, §5(a)(31)(E), substituted ''subsection (a)(1)(B)'' for ''subsection (a)(1)(C)''.

1980—Subsec. (a)(1)(C), (3). Pub. L. 96–222, §102(a)(1)(A), struck out in par. (1)(C) ''(determined by reference to the rules contained in section 318 rather than under section 544)'' after ''of section 542(a)'' and added par. (3).

Subsec. (b)(5). Pub. L. 96–222, §102(a)(1)(D)(iii), substituted ''to which subsection (a) applies'' for ''to which this section applies''.

Subsec. (c)(3)(D). Pub. L. 96–222, §102(a)(1)(D)(ii), struck out provisions relating to equipment leasing by closely-held corporations.

Subsec. (c)(4) to (6). Pub. L. 96–222, §102(a)(1)(D)(i), added pars. (4) to (6).

Subsec. (d). Pub. L. 96–222, §102(a)(1)(B), inserted ''(determined without regard to subsection (e)(1)(A)'' after ''from such activity''.

Subsec. (e)(2)(A). Pub. L. 96–222, §102(a)(1)(C), inserted ''by reason of losses'' after ''with respect to the activity''.

1978—Pub. L. 95–600, §201(c)(1), substituted ''Deductions limited to amount at risk'' for ''Deductions limited to amount at risk in case of certain activities'' in section catchline.

Subsec. (a). Pub. L. 95–600, §202, redesignated existing provisions as par. (1), substituted provisions relating to limitations with respect to an individual, an electing small business corporation defined under section 1371(b) of this title, and a corporation meeting the stock ownership requirements of section 542(a)(2) of this title and the rules of section 318 of this title, for provisions relating to limitations with respect to a taxpayer other than a corporation which is neither an electing small business corporation defined under section 1371(b) of this title, nor a personal holding company defined under section 542 of this title, and added par. (2).

Subsec. (c)(1)(E). Pub. L. 95–618, §402(d)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 95–618, §402(d)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 95–600, §201(a), added par. (3).

Subsec. (d). Pub. L. 95–600, § 701(k)(2), substituted ''(determined without regard to the first sentence of subsection (a))'' for ''(determined without regard to this section)''.

Subsec. (e). Pub. L. 95–600, § 203, added subsec. (e).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115–97, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(15) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(A) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(7)(A) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Pub. L. 99–514, title V, § 503(c), Oct. 22, 1986, 100 Stat. 2244, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to losses incurred after December 31, 1986, with respect to property placed in service by the taxpayer after December 31, 1986.

''(2) SPECIAL RULE FOR LOSSES OF S CORPORATION, PARTNERSHIP, OR PASS-THRU ENTITY.—In the case of an interest in an S corporation, a partnership, or other pass-thru entity acquired after December 31, 1986, the amendments made by this section shall apply to losses after December 31, 1986, which are attributable to property placed in service by the S corporation, partnership, or pass-thru entity on, before, or after January 1, 1986.

''(3) SPECIAL RULE FOR ATHLETIC STADIUM.—The amendments made by this section shall not apply to any losses incurred by a taxpayer with respect to the holding of a multi-use athletic stadium in Pittsburgh, Pennsylvania, which the taxpayer acquired in a sale for which a letter of understanding was entered into before April 16, 1986.''

Amendment by section 1011(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, § 432(d), July 18, 1984, 98 Stat. 815, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983; except that any loss from an activity described in section 465(c)(7)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) which (but for the amendments made by this section) would have been treated as a deduction for the taxpayer's first taxable year beginning after December 31, 1983, under section 465(a)(2) of such Code shall be allowed as a deduction for such first taxable year notwithstanding such amendments.''

Amendment by section 721(x)(2) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

Pub. L. 95–600, title II, § 204(a), Nov. 6, 1978, 92 Stat. 2817, provided that: ''The amendments made by this subtitle [amending this section and section 704 of this title and enacting provisions set out as notes under this section and section 704 of this title] shall apply to taxable years beginning after December 31, 1978.''

Pub. L. 95–600, title VII, § 701(k)(3), Nov. 6, 1978, 92 Stat. 2906, provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall take effect on October 4, 1976.''

EFFECTIVE DATE AND TRANSITIONAL RULES

Pub. L. 94–455, title II, § 204(c), Oct. 4, 1976, 90 Stat. 1532, as amended by Pub. L. 95–600, title VII, § 701(k)(1), Nov. 6, 1978, 92 Stat. 2906; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting this section] shall apply to losses attributable to amounts paid or incurred in taxable years beginning after December 31, 1975. For purposes of this subsection, any amount allowed or allowable for depreciation or amortization for any period shall be treated as an amount paid or incurred in such period.

''(2) SPECIAL TRANSITIONAL RULES FOR MOVIES AND VIDEO TAPES.—

''(A) IN GENERAL.—In the case of any activity described in section 465(c)(1)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section shall not apply to—

''(i) deductions for depreciation or amortization with respect to property the principal production of which began before September 11, 1975, and for the purchase of which there was on September 11, 1975, and at all times thereafter a binding contract, and

''(ii) deductions attributable to producing or distributing property the principal production of which began before September 11, 1975.

''(B) EXCEPTION FOR CERTAIN AGREEMENTS WHERE PRINCIPAL PHOTOGRAPHY BEGIN BEFORE 1976.—In the case of any activity described in section 465(c)(1)(A) of the Internal Revenue Code of 1986, the amendments made by this section shall not apply to deductions attributable to the producing of a film the principal photography of which began on or before December 31, 1975, if—

''(i) on September 10, 1975, there was an agreement with the director or a principal motion picture star, or on or before September 10, 1975, there had been expended (or committed to the production) an amount not less than the lower of $100,000 or 10 percent of the estimated costs of producing the film, and

''(ii) the production takes place in the United States.

Subparagraph (A) shall apply only to taxpayers who held their interests on September 10, 1975. Subparagraph (B) shall apply only to taxpayers who held their interests on December 31, 1975.

''(3) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

''(A) RULE FOR LEASES OTHER THAN OPERATING LEASES.—In the case of any activity described in section 465(c)(1)(C) of the Internal Revenue Code of 1986, the amendments made by this section shall not apply with respect to—

''(i) leases entered into before January 1, 1976, and

''(ii) leases where the property was ordered by the lessor or lessee before January 1, 1976.

''(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only to taxpayers who held their interests in the property on December 31, 1975.

''(C) SPECIAL RULE FOR OPERATING LEASES.—In the case of a lease described in section 46(e)(3)(B) of the Internal Revenue Code of 1986—

''(i) subparagraph (A) shall be applied by substituting 'May 1, 1976' for 'January 1, 1976' each place it appears therein, and

''(ii) subparagraph (B) shall be applied by substituting 'April 30, 1976' for 'December 31, 1975'.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSITIONAL RULES FOR RECAPTURE PROVISIONS AND LEASING ACTIVITIES

Pub. L. 95–600, title II, §204(b), Nov. 6, 1978, 92 Stat. 2817, as amended by Pub. L. 96–222, title I, §102(a)(1)(E), Apr. 1, 1980, 94 Stat. 208; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) RECAPTURE PROVISIONS.—If the amount for which the taxpayer is at risk in any activity as of the close of the taxpayer's last taxable year beginning before January 1, 1979, is less than zero, section 465(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 203 of this Act) shall be applied with respect to such activity of the taxpayer by substituting such negative amount for zero.

''(2) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

''(A) RULE FOR LEASES.—In the case of any activity described in section 465(c)(1)(C) of such Code in which a corporation described in section 465(a)(1)(C) of such Code is engaged, the amendments made by this subtitle [amending sections 465 and 704 of this title and enacting provisions set out as notes under sections 465 and 704 of this title] shall not apply with respect to—

''(i) leases entered into before November 1, 1978, and

''(ii) leases where the property was ordered by the lessor or lessee before November 1, 1978.

''(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only to taxpayers who held their interests in the property on October 31, 1978.''

[§ 466. Repealed. Pub. L. 99–514, title VIII, § 823(a), Oct. 22, 1986, 100 Stat. 2373]

Section, added Pub. L. 95–600, title III, §373(a), Nov. 6, 1978, 92 Stat. 2863; amended Pub. L. 96–222, title I, §103(a)(16), Apr. 1, 1980, 94 Stat. 214, related to qualified discount coupons redeemed after close of taxable year.

EFFECTIVE DATE OF REPEAL

Pub. L. 99–514, title VIII, §823(c), Oct. 22, 1986, 100 Stat. 2374, provided:

''(1) IN GENERAL.—The amendments made by this section [amending section 461 of this title and repealing this section] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 466 of the Internal Revenue Code of 1954 [now 1986] apply for such taxpayer's last taxable year beginning before January 1, 1987, and is required to change its method of accounting by reason of the amendments made by this section for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary, and

''(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

''(i) be reduced by the balance in the suspense account under section 466(e) of such Code as of the close of such last taxable year, and

''(ii) be taken into account over a period not longer than 4 years.''

§ 467. Certain payments for the use of property or services

(a) Accrual method on present value basis

In the case of the lessor or lessee under any section 467 rental agreement, there shall be taken into account for purposes of this title for any taxable year the sum of—

(1) the amount of the rent which accrues during such taxable year as determined under subsection (b), and

(2) interest for the year on the amounts which were taken into account under this subsection for prior taxable years and which are unpaid.

(b) Accrual of rental payments

(1) Allocation follows agreement

Except as provided in paragraph (2), the determination of the amount of the rent under any section 467 rental agreement which accrues during any taxable year shall be made—

(A) by allocating rents in accordance with the agreement, and

(B) by taking into account any rent to be paid after the close of the period in an amount determined under regulations which shall be based on present value concepts.

(2) Constant rental accrual in case of certain tax avoidance transactions, etc.

In the case of any section 467 rental agreement to which this paragraph applies, the por-

tion of the rent which accrues during any taxable year shall be that portion of the constant rental amount with respect to such agreement which is allocable to such taxable year.

(3) Agreements to which paragraph (2) applies

Paragraph (2) applies to any rental payment agreement if—

(A) such agreement is a disqualified leaseback or long-term agreement, or

(B) such agreement does not provide for the allocation referred to in paragraph (1)(A).

(4) Disqualified leaseback or long-term agreement

For purposes of this subsection, the term ''disqualified leaseback or long-term agreement'' means any section 467 rental agreement if—

(A) such agreement is part of a leaseback transaction or such agreement is for a term in excess of 75 percent of the statutory recovery period for the property, and

(B) a principal purpose for providing increasing rents under the agreement is the avoidance of tax imposed by this subtitle.

(5) Exceptions to disqualification in certain cases

The Secretary shall prescribe regulations setting forth circumstances under which agreements will not be treated as disqualified leaseback or long-term agreements, including circumstances relating to—

(A) changes in amounts paid determined by reference to price indices,

(B) rents based on a fixed percentage of lessee receipts or similar amounts,

(C) reasonable rent holidays, or

(D) changes in amounts paid to unrelated 3rd parties.

(c) Recapture of prior understated inclusions under leaseback or long-term agreements

(1) In general

If—

(A) the lessor under any section 467 rental agreement disposes of any property subject to such agreement during the term of such agreement, and

(B) such agreement is a leaseback or long-term agreement to which paragraph (2) of subsection (b) did not apply,

the recapture amount shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recapture amount

For purposes of paragraph (1), the term ''recapture amount'' means the lesser of—

(A) the prior understated inclusions, or

(B) the excess of the amount realized (or in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of the property) over the adjusted basis of such property.

The amount determined under subparagraph (B) shall be reduced by the amount of any gain treated as ordinary income on the disposition under any other provision of this subtitle.

(3) Prior understated inclusions

For purposes of this subsection, the term ''prior understated inclusion'' means the excess (if any) of—

(A) the amount which would have been taken into account by the lessor under subsection (a) for periods before the disposition if subsection (b)(2) had applied to the agreement, over

(B) the amount taken into account under subsection (a) by the lessor for periods before the disposition.

(4) Leaseback or long-term agreement

For purposes of this subsection, the term ''leaseback or long-term agreement'' means any agreement described in subsection (b)(4)(A).

(5) Special rules

Under regulations prescribed by the Secretary—

(A) exceptions similar to the exceptions applicable under section 1245 or 1250 (whichever is appropriate) shall apply for purposes of this subsection,

(B) any transferee in a disposition excepted by reason of subparagraph (A) who has a transferred basis in the property shall be treated in the same manner as the transferor, and

(C) for purposes of sections 170(e) and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245 or 1250.

(d) Section 467 rental agreements

(1) In general

Except as otherwise provided in this subsection, the term ''section 467 rental agreements'' means any rental agreement for the use of tangible property under which—

(A) there is at least one amount allocable to the use of property during a calendar year which is to be paid after the close of the calendar year following the calendar year in which such use occurs, or

(B) there are increases in the amount to be paid as rent under the agreement.

(2) Section not to apply to agreements involving payments of $250,000 or less

This section shall not apply to any amount to be paid for the use of property if the sum of the following amounts does not exceed $250,000—

(A) the aggregate amount of payments received as consideration for such use of property, and

(B) the aggregate value of any other consideration to be received for such use of property.

For purposes of the preceding sentence, rules similar to the rules of clauses (ii) and (iii) of section 1274(c)(4)(C) shall apply.

(e) Definitions

For purposes of this section—

(1) Constant rental amount

The term ''constant rental amount'' means, with respect to any section 467 rental agree-

ment, the amount which, if paid as of the close of each lease period under the agreement, would result in an aggregate present value equal to the present value of the aggregate payments required under the agreement.

(2) Leaseback transaction

A transaction is a leaseback transaction if it involves a leaseback to any person who had an interest in such property at any time within 2 years before such leaseback (or to a related person).

(3) Statutory recovery period

(A) In general

In the case of:	The statutory recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year and 20-year property	15 years
Residential rental property and nonresidential real property	19 years
Any railroad grading or tunnel bore	50 years.

(B) Special rule for property not depreciable under section 168

In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property.

(4) Discount and interest rate

For purposes of computing present value and interest under subsection (a)(2), the rate used shall be equal to 110 percent of the applicable Federal rate determined under section 1274(d) (compounded semiannually) which is in effect at the time the agreement is entered into with respect to debt instruments having a maturity equal to the term of the agreement.

(5) Related person

The term ''related person'' has the meaning given to such term by section 465(b)(3)(C).

(6) Certain options of lessee to renew not taken into account

Except as provided in regulations prescribed by the Secretary, there shall not be taken into account in computing the term of any agreement for purposes of this section any extension which is solely at the option of the lessee.

(f) Comparable rules where agreement for decreasing payments

Under regulations prescribed by the Secretary, rules comparable to the rules of this section shall also apply in the case of any agreement where the amount paid under the agreement for the use of property decreases during the term of the agreement.

(g) Comparable rules for services

Under regulations prescribed by the Secretary, rules comparable to the rules of subsection (a)(2) shall also apply in the case of payments for services which meet requirements comparable to the requirements of subsection (d). The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies.

(h) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of contingent payments.

(Added Pub. L. 98–369, div. A, title I, §92(a), July 18, 1984, 98 Stat. 609; amended Pub. L. 99–514, title II, §201(d)(8), title V, §511(d)(2)(A), title VI, §631(e)(10), title XVIII, §§1807(b), 1879(f)(1), Oct. 22, 1986, 100 Stat. 2141, 2248, 2274, 2816, 2906; Pub. L. 100–647, title I, §§1002(i)(2)(H), 1005(c)(10), Nov. 10, 1988, 102 Stat. 3371, 3392; Pub. L. 108–27, title III, §302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (c)(5)(C). Pub. L. 108–27 struck out '', 341(e)(12),'' after ''170(e)''.

1988—Subsec. (c)(5)(C). Pub. L. 100–647, §1005(c)(10), made technical correction to directory language of Pub. L. 99–514, §511(d)(2)(A). See 1986 Amendment note below.

Subsec. (e)(3)(A). Pub. L. 100–647, §1002(i)(2)(H), at end of table inserted item relating to any railroad grading or tunnel bore.

1986—Subsec. (b)(4)(A). Pub. L. 99–514, §1807(b)(2)(A), substituted ''statutory recovery period'' for ''statutory recover period''.

Subsec. (c)(4). Pub. L. 99–514, §1807(b)(2)(B), substituted ''subsection (b)(4)(A)'' for ''subsection (b)(3)(A)''.

Subsec. (c)(5)(C). Pub. L. 99–514, §631(e)(10), struck out ''453B(d)(2),'' after ''341(e)(12),''.

Pub. L. 99–514, §511(d)(2)(A), as amended by Pub. L. 100–647, §1005(c)(10), struck out ''163(d),'' after ''sections''.

Subsec. (d)(2). Pub. L. 99–514, §1807(b)(2)(C), substituted ''section 1274(c)(4)(C)'' for ''section 1274(c)(2)(C)''.

Subsec. (e)(3)(A). Pub. L. 99–514, §201(d)(8)(A), in amending subpar. (A) generally, included in table 7-year property, 15-year and 20-year property, and residential rental property and nonresidential real property having recovery periods of 7, 15, and 19 years, respectively, and struck out from table low-income housing, 15-year public utility property, and 19-year real property having recovery periods of 15, 15, and 19 years, respectively.

Pub. L. 99–514, §1879(f)(1), substituted ''19-year real property'' and ''19 years'' for ''18-year real property'' and ''18 years'', respectively.

Subsec. (e)(3)(B). Pub. L. 99–514, §201(d)(8)(A), in amending subpar. (B) generally, substituted in heading ''not depreciable under section 168'' for ''which is not recovery property'' and in text ''In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property.'' for ''In the case of any property, which is not recovery property, subparagraph (A) shall be applied as if such property were recovery property.''

Subsec. (e)(5). Pub. L. 99–514, §201(d)(8)(B), substituted ''section 465(b)(3)(C)'' for ''section 168(e)(4)(D)''.

Pub. L. 99–514, §1807(b)(2)(D), substituted ''section 168(e)(4)(D)'' for ''section 168(d)(4)(D)''.

Subsec. (g). Pub. L. 99–514, §1807(b)(1), inserted at end ''The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 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 OF 1986 AMENDMENT

Amendment by section 201(d)(8) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(8) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 511(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 631(e)(10) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1807(b) of 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.

Pub. L. 99–514, title XVIII, § 1879(f)(2), Oct. 22, 1986, 100 Stat. 2906, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 103 of Public Law 99–121.''

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, § 92(c), July 18, 1984, 98 Stat. 612, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall apply with respect to agreements entered into after June 8, 1984.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply—

''(A) to any agreement entered into pursuant to a written agreement which was binding on June 8, 1984, and at all times thereafter,

''(B) subject to the provisions of paragraph (3), to any agreement to lease property if—

''(i) there was in effect a firm plan, evidenced by a board of directors' resolution, memorandum of agreement, or letter of intent on March 15, 1984, to enter into such an agreement, and

''(ii) construction of the property was commenced (but such property was not placed in service) on or before March 15, 1984, and

''(C) to any agreement to lease property if—

''(i) the lessee of such property adopted a firm plan to lease the property, evidenced by a resolution of the Finance Committee of the Board of Directors of such lessee, on February 10, 1984,

''(ii) the sum of the present values of the rents payable by the lessee under the lease at the inception thereof equals at least $91,223,034, assuming for purposes of this clause—

''(I) the annual discount rate is 12.6 percent,

''(II) the initial payment of rent occurs 12 months after the commencement of the lease, and

''(III) subsequent payments of rents occur on the anniversary date of the initial payment, and

''(iii) during—

''(I) the first 5 years of the lease, at least 9 percent of the rents payable by the lessee under the agreement are paid, and

''(II) the second 5 years of the lease, at least 16.25 percent of the rents payable by the lessee under the agreement are paid.

Paragraph (3)(B)(ii)(II) shall apply for purposes of clauses (ii) and (iii) of subparagraph (C), as if, as of the beginning of the last stage, the separate agreements were treated as 1 single agreement relating to all property covered by the agreements, including any property placed in service before the property to which the agreement for the last stage relates. If the lessor under the agreement described in subparagraph (C) leases the property from another person, this exception shall also apply to any agreement between the lessor and such person which is integrally related to, and entered into at the same time as, such agreement, and which calls for comparable payments of rent over the primary term of the agreement.

''(3) SCHEDULE OF DEEMED RENTAL PAYMENTS.—

''(A) IN GENERAL.—In any case to which paragraph (2)(B) applies, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the lessor shall be treated as having received or accrued (and the lessee shall be treated as having paid or incurred) rents equal to the greater of—

''(i) the amount of rents actually paid under the agreement during the taxable year, or

''(ii) the amount of rents determined in accordance with the schedule under subparagraph (B) for such taxable year.

''(B) SCHEDULE.—

''(i) IN GENERAL.—The schedule under this subparagraph is as follows:

"Portion of lease term:	Cumulative percentage of total rent deemed paid:
1st ⅕	10
2nd ⅕	25
3rd ⅕	45
4th ⅕	70
Last ⅕	100.

''(ii) OPERATING RULES.—For purposes of this schedule—

''(I) the rent allocable to each taxable year within any portion of a lease term described in such schedule shall be a level pro rata amount properly allocable to such taxable year, and

''(II) any agreement relating to property which is to be placed in service in 2 or more stages shall be treated as 2 or more separate agreements.

''(C) PARAGRAPH NOT TO APPLY.—This paragraph shall not apply to any agreement if the sum of the present values of all payments under the agreement is greater than the sum of the present value of all the payments deemed to be paid or received under the schedule under subparagraph (B). For purposes of computing any present value under this subparagraph, the annual discount rate shall be equal to 12 percent, compounded semiannually.''

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.

§ 468. Special rules for mining and solid waste reclamation and closing costs

(a) Establishment of reserves for reclamation and closing costs

(1) Allowance of deduction

If a taxpayer elects the application of this section with respect to any mining or solid waste disposal property, the amount of any deduction for qualified reclamation or closing costs for any taxable year to which such election applies shall be equal to the current reclamation or closing costs allocable to—

(A) in the case of qualified reclamation costs, the portion of the reserve property which was disturbed during such taxable year, and

(B) in the case of qualified closing costs, the production from the reserve property during such taxable year.

(2) Opening balance and adjustments to reserve

(A) Opening balance

The opening balance of any reserve for its first taxable year shall be zero.

(B) Increase for interest

A reserve shall be increased each taxable year by an amount equal to the amount of interest which would have been earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

(i) at the Federal short-term rate or rates (determined under section 1274) in effect, and

(ii) by compounding semiannually.

(C) Reserve to be charged for amounts paid

Any amount paid by the taxpayer during any taxable year for qualified reclamation or closing costs allocable to portions of the reserve property for which the election under paragraph (1) was in effect shall be charged to the appropriate reserve as of the close of the taxable year.

(D) Reserve increased by amount deducted

A reserve shall be increased each taxable year by the amount allowable as a deduction under paragraph (1) for such taxable year which is allocable to such reserve.

(3) Allowance of deduction for excess amounts paid

There shall be allowed as a deduction for any taxable year the excess of—

(A) the amounts described in paragraph (2)(C) paid during such taxable year, over

(B) the closing balance of the reserve for such taxable year (determined without regard to paragraph (2)(C)).

(4) Limitation on balance as of the close of any taxable year

(A) Reclamation reserves

In the case of any reserve for qualified reclamation costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current reclamation costs of the taxpayer for all portions of the reserve property disturbed during any taxable year to which the election under paragraph (1) applies.

(B) Closing costs reserves

In the case of any reserve for qualified closing costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current closing cost of the taxpayer with respect to the reserve property, determined as if all production with respect to the reserve property for any taxable year to which the election under paragraph (1) applies had occurred in such taxable year.

(C) Order of application

This paragraph shall be applied after all adjustments to the reserve have been made for the taxable year.

(5) Income inclusions on completion or disposition

Proper inclusion in income shall be made upon—

(A) the revocation of an election under paragraph (1), or

(B) completion of the closing, or disposition of any portion, of a reserve property.

(b) Allocation for property where election not in effect for all taxable years

If the election under subsection (a)(1) is not in effect for 1 or more taxable years in which the reserved property is disturbed (or production occurs), items with respect to the reserve property shall be allocated to the reserve in such manner as the Secretary may prescribe by regulations.

(c) Revocation of election; separate reserves

(1) Revocation of election

(A) In general

The taxpayer may revoke an election under subsection (a)(1) with respect to any property. Such revocation, once made, shall be irrevocable.

(B) Time and manner of revocation

Any revocation under subparagraph (A) shall be made at such time and in such manner as the Secretary may prescribe.

(2) Separate reserves required

If a taxpayer makes an election under subsection (a)(1), the taxpayer shall establish with respect to the property for which the election was made—

(A) a separate reserve for qualified reclamation costs, and

(B) a separate reserve for qualified closing costs.

(d) Definitions and special rules relating to reclamation and closing costs

For purposes of this section—

(1) Current reclamation and closing costs

(A) Current reclamation costs

The term ''current reclamation costs'' means the amount which the taxpayer would

be required to pay for qualified reclamation costs if the reclamation activities were performed currently.

(B) Current closing costs

(i) In general

The term ''current closing costs'' means the amount which the taxpayer would be required to pay for qualified closing costs if the closing activities were performed currently.

(ii) Costs computed on unit-of-production or capacity method

Estimated closing costs shall—

(I) in the case of the closing of any mine site, be computed on the unit-of-production method of accounting, and

(II) in the case of the closing of any solid waste disposal site, be computed on the unit-of-capacity method.

(2) Qualified reclamation or closing costs

The term ''qualified reclamation or closing costs'' means any of the following expenses:

(A) Mining reclamation and closing costs

Any expenses incurred for any land reclamation or closing activity which is conducted in accordance with a reclamation plan (including an amendment or modification thereof)—

(i) which—

(I) is submitted pursuant to the provisions of section 511 or 528 of the Surface Mining Control and Reclamation Act of 1977 (as in effect on January 1, 1984), and

(II) is part of a surface mining and reclamation permit granted under the provisions of title V of such Act (as so in effect), or

(ii) which is submitted pursuant to any other Federal or State law which imposes surface mining reclamation and permit requirements substantially similar to the requirements imposed by title V of such Act (as so in effect).

(B) Solid waste disposal and closing costs

(i) In general

Any expenses incurred for any land reclamation or closing activity in connection with any solid waste disposal site which is conducted in accordance with any permit issued pursuant to—

(I) any provision of the Solid Waste Disposal Act (as in effect on January 1, 1984) requiring such activity, or

(II) any other Federal, State, or local law which imposes requirements substantially similar to the requirements imposed by the Solid Waste Disposal Act (as so in effect).

(ii) Exception for certain hazardous waste sites

Clause (i) shall not apply to that portion of any property which is disturbed after the property is listed in the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(3) Property

The term ''property'' has the meaning given such term by section 614.

(4) Reserve property

The term ''reserve property'' means any property with respect to which a reserve is established under subsection (a)(1).

(Added Pub. L. 98–369, div. A, title I, § 91(b)(1), July 18, 1984, 98 Stat. 601; amended Pub. L. 99–514, title XVIII, §§ 1807(a)(3)(A), (C), 1899A(14), Oct. 22, 1986, 100 Stat. 2811, 2959; Pub. L. 101–508, title XI, § 11802(c), Nov. 5, 1990, 104 Stat. 1388–529.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (d)(2)(A), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended. Title V of that Act is classified generally to subchapter V (§ 1251 et seq.) of chapter 25 of Title 30, Mineral Lands and Mining. Sections 511 and 528 of that Act are classified to sections 1261 and 1278, respectively, of Title 30. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (d)(2)(B)(i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (d)(2)(B)(ii), is classified to section 9605 of Title 42.

AMENDMENTS

1990—Subsec. (a)(2)(B). Pub. L. 101–508 amended subpar. (B) generally, substituting present provisions for provisions providing for increase for interest and a phase-in of interest rates for taxable years ending before 1987.

1986—Subsec. (a)(1). Pub. L. 99–514, § 1807(a)(3)(C), substituted ''this section'' for ''this subsection''.

Subsec. (a)(2)(D). Pub. L. 99–514, § 1807(a)(3)(A), added subpar. (D).

Subsec. (d)(2)(B)(ii). Pub. L. 99–514, § 1899A(14), substituted ''Comprehensive Environmental Response, Compensation, and Liability Act of 1980'' for ''Comprehensive Environmental, Compensation, and Liability Act of 1980''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1807(a)(3)(A), (C) of 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 July 18, 1984, with respect to taxable years ending after such date, except as otherwise provided, see section 91(g)(4) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see sec-

tion 11821(b) of Pub. L. 101–508, set out as a note under section 45K 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.

§ 468A. Special rules for nuclear decommissioning costs

(a) In general

If the taxpayer elects the application of this section, there shall be allowed as a deduction for any taxable year the amount of payments made by the taxpayer to a Nuclear Decommissioning Reserve Fund (hereinafter referred to as the ''Fund'') during such taxable year.

(b) Limitation on amounts paid into Fund

The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.

(c) Income and deductions of the taxpayer

(1) Inclusion of amounts distributed

There shall be includible in the gross income of the taxpayer for any taxable year—

(A) any amount distributed from the Fund during such taxable year, other than any amount distributed to pay costs described in subsection (e)(4)(B), and

(B) except to the extent provided in regulations, amounts properly includible in gross income in the case of any deemed distribution under subsection (e)(6), any termination under subsection (e)(7), or the disposition of any interest in the nuclear powerplant.

(2) Deduction when economic performance occurs

In addition to any deduction under subsection (a), there shall be allowable as a deduction for any taxable year the amount of the nuclear decommissioning costs with respect to which economic performance (within the meaning of section 461(h)(2)) occurs during such taxable year.

(d) Ruling amount

For purposes of this section—

(1) Request required

No deduction shall be allowed for any payment to the Fund unless the taxpayer requests, and receives, from the Secretary a schedule of ruling amounts. For purposes of the preceding sentence, the taxpayer shall request a schedule of ruling amounts upon each renewal of the operating license of the nuclear powerplant.

(2) Ruling amount

The term ''ruling amount'' means, with respect to any taxable year, the amount which the Secretary determines under paragraph (1) to be necessary to—

(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and

(B) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

(3) Review of amount

The Secretary shall at least once during the useful life of the nuclear powerplant (or, more frequently, upon the request of the taxpayer) review, and revise if necessary, the schedule of ruling amounts determined under paragraph (1).

(e) Nuclear Decommissioning Reserve Fund

(1) In general

Each taxpayer who elects the application of this section shall establish a Nuclear Decommissioning Reserve Fund with respect to each nuclear powerplant to which such election applies.

(2) Taxation of Fund

(A) In general

There is hereby imposed on the gross income of the Fund for any taxable year a tax at the rate of 20 percent, except that—

(i) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

(ii) there shall be allowed as a deduction to the Fund any amount paid by the Fund which is described in paragraph (4)(B) (other than an amount paid to the taxpayer) and which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

(B) Tax in lieu of other taxation

The tax imposed by subparagraph (A) shall be in lieu of any other taxation under this subtitle of the income from assets in the Fund.

(C) Fund treated as corporation

For purposes of subtitle F—

(i) the Fund shall be treated as if it were a corporation, and

(ii) any tax imposed by this paragraph shall be treated as a tax imposed by section 11.

(3) Contributions to Fund

Except as provided in subsection (f), the Fund shall not accept any payments (or other amounts) other than payments with respect to which a deduction is allowable under subsection (a).

(4) Use of Fund

The Fund shall be used exclusively for—

(A) satisfying, in whole or in part, any liability of any person contributing to the Fund for the decommissioning of a nuclear powerplant (or unit thereof),

(B) to pay administrative costs (including taxes) and other incidental expenses of the