

TITLE 26 - INTERNAL REVENUE CODE**Subtitle D - Miscellaneous Excise Taxes****CHAPTER 43 - QUALIFIED PENSION, ETC., PLANS****§ 4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives****(a) Tax on dispositions of securities to which section 1042 applies before close of minimum holding period**

If, during the 3-year period after the date on which the employee stock ownership plan or eligible worker-owned cooperative acquired any qualified securities in a sale to which section 1042 applied or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664 (g) applied, such plan or cooperative disposes of any qualified securities and—

- (1) the total number of shares held by such plan or cooperative after such disposition is less than the total number of employer securities held immediately after such sale, or
- (2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition is less than 30 percent of the total value of all employer securities as of such disposition (60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664 (g) applied),

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

(b) Amount of tax**(1) In general**

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

(2) Limitation

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

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

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

(3) Distributions to employees

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

(c) Liability for payment of taxes

The tax imposed by this subsection shall be paid by—

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

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

(d) Section not to apply to certain dispositions**(1) Certain distributions to employees**

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

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

- (A) the death of the employee,
- (B) the retirement of the employee after the employee has attained 59½ years of age,
- (C) the disability of the employee (within the meaning of section 72 (m)(7)), or
- (D) the separation of the employee from service for any period which results in a 1-year break in service (within the meaning of section 411 (a)(6)(A)).

(2) Certain reorganizations

In the case of any exchange of qualified securities in any reorganization described in section 368 (a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for purposes of this section.

(3) Liquidation of corporation into cooperative

In the case of any exchange of qualified securities pursuant to the liquidation of the corporation issuing qualified securities into the eligible worker-owned cooperative in a transaction which meets the requirements of section 332 (determined by substituting “100 percent” for “80 percent” each place it appears in section 332 (b)(1)), such exchange shall not be treated as a disposition for purposes of this section.

(4) Dispositions to meet diversification requirements

This section shall not apply to any disposition of qualified securities which is required under section 401 (a)(28).

(e) Definitions and special rules

For purposes of this section—

(1) Employee stock ownership plan

The term “employee stock ownership plan” has the meaning given to such term by section 4975 (e)(7).

(2) Qualified securities

The term “qualified securities” has the meaning given to such term by section 1042 (c)(1); except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664 (g)(1)).

(3) Eligible worker-owned cooperative

The term “eligible worker-owned cooperative” has the meaning given to such term by section 1042 (c)(2).

(4) Disposition

The term “disposition” includes any distribution.

(5) Employer securities

The term “employer securities” has the meaning given to such term by section 409 (l).

(Added Pub. L. 98–369, div. A, title V, § 545(a), July 18, 1984, 98 Stat. 894; amended Pub. L. 99–514, title XVIII, § 1854(e), Oct. 22, 1986, 100 Stat. 2880; Pub. L. 100–203, title X, § 10413(b)(1), Dec. 22, 1987, 101 Stat. 1330–438; Pub. L. 100–647, title I, § 1011B(j)(4), Nov. 10, 1988, 102 Stat. 3492; Pub. L. 101–239, title VII, § 7304(a)(2)(C)(ii), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, § 1602(b)(4), Aug. 20, 1996, 110 Stat. 1834; Pub. L. 105–34, title XV, § 1530(c)(11)–(14), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 108–311, title IV, § 408(a)(23), Oct. 4, 2004, 118 Stat. 1192.)

Amendments

2004—Subsec. (a)(2). Pub. L. 108–311 substituted “(60 percent” for “60 percent”.

1997—Subsec. (a). Pub. L. 105–34, § 1530(c)(11)(A), inserted “or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664 (g) applied” after “section 1042 applied” in introductory provisions.

Subsec. (a)(2). Pub. L. 105–34, § 1530(c)(11)(B), inserted before comma at end “60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664 (g) applied”.

Subsec. (b)(2). Pub. L. 105–34, § 1530(c)(12)(A), inserted “or acquired in the qualified gratuitous transfer to which section 664 (g) applied” after “section 1042 applied” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 105–34, § 1530(c)(12)(B), inserted “or to which section 664 (g) applied” after “section 1042 applied”.

Subsec. (c). Pub. L. 105–34, § 1530(c)(13), substituted “written statement described in section 664 (g)(1)(E) or in section 1042 (b)(3) (as the case may be)” for “written statement described in section 1042 (b)(3)”.

Subsec. (e)(2). Pub. L. 105–34, § 1530(c)(14), inserted before period at end “; except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664 (g)(1))”.

1996—Subsec. (b)(2). Pub. L. 104–188 added subpars. (A) and (B) and closing provisions and struck out former subpars. (A) to (D) and closing provisions which read as follows:

“(A) first, from section 133 securities (as defined in section 4978B (e)(2)) acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

“(B) second, from section 133 securities (as so defined) acquired before such 3-year period unless such securities (or proceeds from the disposition) have been allocated to accounts of participants or beneficiaries.

“(C) third, from qualified securities to which section 1042 applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

“(D) then from any other employer securities.

If subsection (d) or section 4978B (d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.”

1989—Subsec. (b)(2). Pub. L. 101–239 substituted “determined as if such securities were disposed of—”, subpars. (A) to (D), and concluding provision for “(determined as if such securities were disposed of in the order described in section 4978A (e))”.

1988—Subsec. (d)(4). Pub. L. 100–647 added par. (4).

1987—Subsec. (b)(2). Pub. L. 100–203 substituted “(determined as if such securities were disposed of in the order described in section 4978A (e))” for “(determined as if such securities were disposed of before any other securities)”.

1986—Subsec. (a)(1). Pub. L. 99–514, § 1854(e)(1), substituted “than” for “then”.

Subsec. (b)(1). Pub. L. 99–514, § 1854(e)(2), substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 99–514, § 1854(e)(3), substituted “section 1042 (b)(3)” for “section 1042 (a)(2)(B)”.

Subsec. (d)(1)(C). Pub. L. 99–514, § 1854(e)(4), substituted “section 72 (m)(7)” for “section 72 (m)(5)”.

Subsec. (d)(3). Pub. L. 99–514, § 1854(e)(7), added par. (3).

Subsec. (e)(2). Pub. L. 99–514, § 1854(e)(5), substituted “section 1042 (c)(1)” for “section 1042 (b)(1)”.

Subsec. (e)(3). Pub. L. 99–514, § 1854(e)(6), substituted “section 1042 (c)(2)” for “section 1042 (b)(1)”.

Effective Date of 1997 Amendment

Amendment by 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 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as a note under section 409 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

Section 10413(c) of Pub. L. 100–203 provided that: “The amendments made by this section [enacting section 4978A of this title and amending this section] shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.”

Effective Date of 1986 Amendment

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Effective Date

Section 545(c) of Pub. L. 98–369 provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984].”

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.