

A-3: (a) Under section 4978, the term “disposition” includes any sale, exchange, or distribution. However, in the case of any exchange of qualified securities for stock of another corporation in any reorganization described in section 368(a)(1), such exchange shall not be treated as a disposition for purposes of section 4978.

(b) Section 4978 shall not apply to any disposition of qualified securities which is made by reason of:

- (1) The death of the employee;
- (2) The retirement of the employee after the employee has attained 59½ years of age;
- (3) The disability of the employee (within the meaning of section 72(m)(5)); or
- (4) 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)).

Any disposition of employer securities within this paragraph and any disposition of employer securities with respect to which the condition contained in provision (c) of Q&A-1 of this section is not met shall be treated, first, as a disposition of securities that are not restricted qualified securities and, thereafter, as a disposition of restricted qualified securities (on a first-in, first-out basis).

(c) If restricted qualified securities held by an employee stock ownership plan or eligible worker-owned cooperative no longer meet the definition of qualified securities (“old restricted qualified securities”) as a result of a transaction changing (1) the status of a corporation as an employer, or as a member of a controlled group of corporations including the employer, or (2) the existence of employer securities of the type described in section 409(l)(1), the disposition of such securities shall not be treated as a disposition of restricted qualified securities to which the tax under section 4978 is imposed if, within 90 days after such disposition, securities meeting the requirements of section 409(l) (“new restricted qualified securities”) that are of equal value to the old restricted qualified securities (at the time of the disposition of the old restricted qualified securities) are substituted for such old restricted qualified securities. How-

ever, for purposes of determining the tax imposed under section 4978, old restricted qualified securities shall not be treated as if they retained their status as restricted qualified securities and new restricted qualified securities derived from the disposition of old restricted qualified securities pursuant to the preceding sentence shall be treated as restricted qualified securities for the remaining portion of the period during which the disposition of the old restricted qualified securities would have been subject to tax under section 4978.

Q-4: To whom does the tax under section 4978 apply?

A-4: The tax under section 4978 is imposed on the domestic corporation (or corporations) or the eligible worker-owned cooperative that made the written statement of consent as described in section 1042(a)(2)(B) and Q&A-2 of §1.1042-1T with respect to the disposition of the restricted qualified securities.

Q-5: When does section 4978, as enacted by the Tax Reform Act of 1984, become effective?

A-5: Section 4978 applies to the disposition of qualified securities acquired in a sale to which section 1042 applies. See Q&A-6 of §1.1042-1T for the effective date of section 1042.

[T.D. 8073, 51 FR 4336, Feb. 4, 1986]

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[T.D. 8357, 56 FR 40550, Aug. 15, 1991; 57 FR 10290, Mar. 25, 1992, as amended by T.D. 8581, 59 FR 66181, Dec. 23, 1994]

**§ 54.4979-1 Excise tax on certain excess contributions and excess aggregate contributions.**

(a) *In general*—(1) *General rule*. In the case of any plan (as defined in paragraph (b)(3) of this section), there is imposed a tax for the employer's taxable year equal to 10 percent of the sum of:

- (i) Any excess contributions under a plan for the plan year ending in the taxable year; and
- (ii) Any excess aggregate contributions under the plan for the plan year ending in the taxable year.

(2) *Liability for tax*. The tax imposed by paragraph (a)(1) of this section is to be paid by the employer. In the case of a collectively bargained plan to which section 413(b) applies, all employers who are parties to the collective bargaining agreement and whose employees are participants in the plan are jointly and severally liable for the tax.

(3) *Due date and form for payment of tax*—(i) The tax described in paragraph (a)(1) of this section is due on the last day of the 15th month after the close of the plan year to which the excess contributions or excess aggregate contributions relate.

(ii) An employer that owes the tax described in paragraph (a)(1) of this section must file the form prescribed by the Commissioner for the payment of the tax.

(4) *Special rule for simplified employee pensions*—(i) An employer that maintains a simplified employee pension (SEP) as defined in section 408(k) that accepts elective contributions is exempted from the tax of section 4979 and paragraph (a)(1) of this section if it notifies its employees of the fact and tax consequences of excess contributions within 2½ months following the plan year for which excess contributions are made. The notification must meet the

standards of paragraph (a)(4)(ii) of this section.

(ii) The employer's notification to each affected employee of the excess SEP contributions must specifically state, in a manner calculated to be understood by the average plan participant: the amount of the excess contributions attributable to that employee's elective deferrals; the calendar year for which the excess contributions were made; that the excess contributions are includible in the affected employee's gross income for the specified calendar year; and that failure to withdraw the excess contributions and income attributable thereto by the due date (plus extensions) for filing the affected employee's tax return for the preceding calendar year may result in significant penalties.

(iii) If an employer does not notify its employees by the last day of the 12-month period following the year of excess SEP contributions, the SEP will no longer be considered to meet the requirements of section 408(k)(6).

(b) *Definitions*. The following is a list of terms and definitions to be used for purposes of section 4979 and this section:

(1) *Excess aggregate contributions*. The term "excess aggregate contribution" has the meaning set forth in § 1.401(m)-1(f)(8) of this chapter. For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), the contract is treated as a plan described in section 401(a).

(2) *Excess contributions*. The term "excess contributions" has the meaning set forth in sections 401(k)(8)(B), 408(k)(6)(C)(ii), and 501(c)(18). See, e.g., § 1.401(k)-1(g)(7) of this chapter.

(3) *Plan*. The term "plan" means:

- (i) A plan described in section 401(a) that includes a trust exempt from tax under section 501(a);
- (ii) Any annuity plan described in section 403(a);
- (iii) Any annuity contract described in section 403(b);
- (iv) A simplified employee pension of an employer that satisfies the requirements of section 408(k); and
- (v) A plan described in section 501(c)(18).