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title on a date (including extensions) after Oct. 22, 1986, see section 1172(c) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE

Section 1854(a)(9)(D) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [enacting this section and amending section 1042 of this title] shall apply to sales of securities 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.

§ 4980. Tax on reversion of qualified plan assets to employer

(a) Imposition of tax

There is hereby imposed a tax of 20 percent of the amount of any employer reversion from a qualified plan.

(b) Liability for tax

The tax imposed by subsection (a) shall be paid by the employer maintaining the plan.

(c) Definitions and special rules

For purposes of this section—

(1) Qualified plan

The term ''qualified plan'' means any plan meeting the requirements of section 401(a) or 403(a), other than—

(A) a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A, or

(B) a governmental plan (within the meaning of section 414(d)).

Such term shall include any plan which, at any time, has been determined by the Secretary to be a qualified plan.

(2) Employer reversion

(A) In general

The term ''employer reversion'' means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

(B) Exceptions

The term ''employer reversion'' shall not include—

(i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating any provision of section 401, or

(ii) any distribution to the employer which is allowable under section 401(a)(2)—

(I) in the case of a multiemployer plan, by reason of mistakes of law or fact or the return of any withdrawal liability payment,

(II) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or

(III) in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of contributions to be deductible.

(3) Exception for employee stock ownership plans

(A) In general

If, upon an employer reversion from a qualified plan, any applicable amount is transferred from such plan to an employee stock ownership plan described in section 4975(e)(7) or a tax credit employee stock ownership plan (as described in section 409), such amount shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of the employer) if the requirements of subparagraphs (B), (C), and (D) are met.

(B) Investment in employer securities

The requirements of this subparagraph are met if, within 90 days after the transfer (or such longer period as the Secretary may prescribe), the amount transferred is invested in employer securities (as defined in section 409(*l*)) or used to repay loans used to purchase such securities.

(C) Allocation requirements

The requirements of this subparagraph are met if the portion of the amount transferred which is not allocated under the plan to accounts of participants in the plan year in which the transfer occurs—

(i) is credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over a period not to exceed 7 years, and

(ii) when allocated to accounts of participants under the plan, is treated as an employer contribution for purposes of section 415(c), except that—

(I) the annual addition (as determined under section 415(c)) attributable to each such allocation shall not exceed the value of such securities as of the time such securities were credited to such suspense account, and

(II) no additional employer contributions shall be permitted to an employee stock ownership plan described in subparagraph (A) of the employer before the allocation of such amount.

The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or ⅛ of the amount attributable to the securities acquired. In the case of dividends on securities held in the suspense account, the requirements of this subparagraph are met only if the dividends are allocated to accounts of participants or paid to participants in proportion to their accounts, or used to repay loans used to purchase employer securities.

(D) Participants

The requirements of this subparagraph are met if at least half of the participants in the qualified plan are participants in the employee stock ownership plan (as of the close of the 1st plan year for which an allocation of the securities is required).

(E) Applicable amount

For purposes of this paragraph, the term ''applicable amount'' means any amount which—

(i) is transferred after March 31, 1985, and before January 1, 1989, or

(ii) is transferred after December 31, 1988, pursuant to a termination which occurs after March 31, 1985, and before January 1, 1989.

(F) No credit or deduction allowed

No credit or deduction shall be allowed under chapter 1 for any amount transferred to an employee stock ownership plan in a transfer to which this paragraph applies.

(G) Amount transferred to include income thereon, etc.

The amount transferred shall not be treated as meeting the requirements of subparagraphs (B) and (C) unless amounts attributable to such amount also meet such requirements.

(4) Time for payment of tax

For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs.

(d) Increase in tax for failure to establish replacement plan or increase benefits

(1) In general

Subsection (a) shall be applied by substituting ''50 percent'' for ''20 percent'' with respect to any employer reversion from a qualified plan unless—

(A) the employer establishes or maintains a qualified replacement plan, or

(B) the plan provides benefit increases meeting the requirements of paragraph (3).

(2) Qualified replacement plan

For purposes of this subsection, the term ''qualified replacement plan'' means a qualified plan established or maintained by the employer in connection with a qualified plan termination (hereinafter referred to as the ''replacement plan'') with respect to which the following requirements are met:

(A) Participation requirement

At least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

(B) Asset transfer requirement

(i) 25 percent cushion

A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the transfer is in an amount equal to the excess (if any) of—

(I) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, over

(II) the amount determined under clause (ii).

(ii) Reduction for increase in benefits

The amount determined under this clause is an amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment which—

(I) is adopted during the 60-day period ending on the date of termination of the qualified plan, and

(II) takes effect immediately on the termination date.

(iii) Treatment of amount transferred

In the case of the transfer of any amount under clause (i)—

(I) such amount shall not be includible in the gross income of the employer,

(II) no deduction shall be allowable with respect to such transfer, and

(III) such transfer shall not be treated as an employer reversion for purposes of this section.

(C) Allocation requirements

(i) In general

In the case of any defined contribution plan, the portion of the amount transferred to the replacement plan under subparagraph (B)(i) is—

(I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or

(II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

(ii) Coordination with section 415 limitation

If, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the 7-year period under such clause—

(I) such amount shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants by reason of any such limitation, shall be allocated to the participant as provided in section 415.

(iii) Treatment of income

Any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

(iv) Unallocated amounts at termination

If any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan—

(I) such amount shall be allocated to the accounts of participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

(3) Pro rata benefit increases

(A) In general

The requirements of this paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which—

(i) have an aggregate present value not less than 20 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, and

(ii) take effect immediately on the termination date.

(B) Pro rata increase

For purposes of subparagraph (A), a pro rata increase is an increase in the present value of the accrued benefit of each qualified participant in an amount which bears the same ratio to the aggregate amount determined under subparagraph (A)(i) as—

(i) the present value of such participant's accrued benefit (determined without regard to this subsection), bears to

(ii) the aggregate present value of accrued benefits of the terminated plan (as so determined).

Notwithstanding the preceding sentence, the aggregate increases in the present value of the accrued benefits of qualified participants who are not active participants shall not exceed 40 percent of the aggregate amount determined under subparagraph (A)(i) by substituting ''equal to'' for ''not less than''.

(4) Coordination with other provisions

(A) Limitations

A benefit may not be increased under paragraph (2)(B)(ii) or (3)(A), and an amount may not be allocated to a participant under paragraph (2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or 415.

(B) Treatment as employer contributions

Any increase in benefits under paragraph (2)(B)(ii) or (3)(A), or any allocation of any amount (or income allocable thereto) to any account under paragraph (2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

(C) 10-year participation requirement

Except as provided by the Secretary, section 415(b)(5)(D) shall not apply to any increase in benefits by reason of this subsection to the extent that the application of this subparagraph does not discriminate in favor of highly compensated employees (as defined in section 414(q)).

(5) Definitions and special rules

For purposes of this subsection—

(A) Qualified participant

The term ''qualified participant'' means an individual who—

(i) is an active participant,

(ii) is a participant or beneficiary in pay status as of the termination date,

(iii) is a participant not described in clause (i) or (ii)—

(I) who has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date, and

(II) whose service, which was creditable under the terminated plan, terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs, or

(iv) is a beneficiary of a participant described in clause (iii)(II) and has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date.

(B) Present value

Present value shall be determined as of the termination date and on the same basis as liabilities of the plan are determined on termination.

(C) Reallocation of increase

Except as provided in paragraph (2)(C), if any benefit increase is reduced by reason of the last sentence of paragraph (3)(A)(ii) or paragraph (4), the amount of such reduction shall be allocated to the remaining participants on the same basis as other increases (and shall be treated as meeting any allocation requirement of this subsection).

(D) Plans taken into account

For purposes of determining whether there is a qualified replacement plan under paragraph (2), the Secretary may provide that—

(i) 2 or more plans may be treated as 1 plan, or

(ii) a plan of a successor employer may be taken into account.

(E) Special rule for participation requirement

For purposes of paragraph (2)(A), all employers treated as 1 employer under section 414(b), (c), (m), or (*o*) shall be treated as 1 employer.

(6) Subsection not to apply to employer in bankruptcy

This subsection shall not apply to an employer who, as of the termination date of the qualified plan, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in similar proceedings under State law.

(Added Pub. L. 99–514, title XI, §1132(a), Oct. 22, 1986, 100 Stat. 2478; amended Pub. L. 100–647, title I, §1011A(f)(1)–(3), (6), (7), title V, §5072(a), title

VI, §6069(a), Nov. 10, 1988, 102 Stat. 3478, 3479, 3681, 3704; Pub. L. 101–508, title XII, §§12001, 12002(a), Nov. 5, 1990, 104 Stat. 1388–562; Pub. L. 104–188, title I, §1704(a), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 109–280, title IX, §901(a)(2)(C), Aug. 17, 2006, 120 Stat. 1029.)

AMENDMENTS

2006—Subsec. (c)(3)(A). Pub. L. 109–280 substituted "if the requirements of subparagraphs (B), (C), and (D) are met" for "if—

"(i) the requirements of subparagraphs (B), (C), and (D) are met, and

"(ii) under the plan, employer securities to which subparagraph (B) applies must, except to the extent necessary to meet the requirements of section 401(a)(28), remain in the plan until distribution to participants in accordance with the provisions of such plan".

1996—Subsecs. (a), (d). Pub. L. 104–188 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. Sections 12001 and 12002(a) 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.

1990—Subsec. (a). Pub. L. 101–508, §12001, which directed the substitution of "20 percent" for "15 percent" in "section 4980(a)" without specifying the Internal Revenue Code of 1986, was executed to subsec. (a) of this section. See 1996 Amendment note above.

Subsec. (d). Pub. L. 101–508, §12002(a), which directed the addition of subsec. (d) to "section 4980" without specifying the Internal Revenue Code of 1986, was executed to this section. See 1996 Amendment note above.

1988—Subsec. (a). Pub. L. 100–647, §6069(a), substituted "15" for "10".

Subsec. (c)(1)(A). Pub. L. 100–647, §1011A(f)(1), substituted "subtitle A" for "this subtitle".

Subsec. (c)(3)(A). Pub. L. 100–647, §1011A(f)(2), inserted "or a tax credit employee stock ownership plan (as described in section 409)" after "section 4975(e)(7)" in introductory text, and ", except to the extent necessary to meet the requirements of section 401(a)(28)," after "must" in cl. (ii).

Subsec. (c)(3)(C). Pub. L. 100–647, §1011A(f)(3), struck out "(by reason of the limitations of section 415)" after "not allocated" in introductory text, and inserted sentence at end relating to minimum amount allocated in year of transfer.

Pub. L. 100–647, §1011A(f)(7), inserted sentence at end relating to dividends on securities held in suspense account.

Subsec. (c)(3)(F), (G). Pub. L. 100–647, §1011A(f)(6), added subpars. (F) and (G).

Subsec. (c)(4). Pub. L. 100–647, §5072(a), added par. (4).

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 1990 AMENDMENT

Section 12003 of Pub. L. 101–508 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle A (§§12001–12003) of title XII of Pub. L. 101–508, amending this section and sections 1002, 1104, and 1344 of Title 29, Labor] shall apply to reversions occurring after September 30, 1990.

"(b) EXCEPTION.—The amendments made by this subtitle shall not apply to any reversion after September 30, 1990, if—

"(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990,

"(2) in the case of plans subject to title I [29 U.S.C. 1001 et seq.] (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 1, 1990,

"(3) in the case of plans not subject to title I or IV of such Act, a request for a determination letter with respect to the termination was filed with the Secretary of the Treasury or the Secretary's delegate before October 1, 1990, or

"(4) in the case of plans not subject to title I or IV of such Act and having only 1 participant, a resolution terminating the plan was adopted by the employer before October 1, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(f)(1)–(3), (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.

Section 5072(b) of Pub. L. 100–647 provided that: "The amendment made by subsection (a) [amending this section] shall apply to reversions after December 31, 1988."

Section 6069(b) of Pub. L. 100–647 provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to reversions occurring on or after October 21, 1988.

"(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any reversion on or after October 21, 1988, pursuant to a plan termination if—

"(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 21, 1988,

"(B) with respect to plans subject to title I of such Act [29 U.S.C. 1001 et seq.], a notice of intent to reduce future accruals required under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 21, 1988,

"(C) with respect to plans not subject to title I or IV of such Act, the Board of Directors of the employer approved the termination or the employer took other binding action before October 21, 1988, or

"(D) such plan termination was directed by a final order of a court of competent jurisdiction entered before October 21, 1988, and notice of such order was provided to participants before such date."

EFFECTIVE DATE

Section 1132(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(f)(4), (5), Nov. 10, 1988, 102 Stat. 3479, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to reversions occurring after December 31, 1985.

"(2) EXCEPTION WHERE TERMINATION DATE OCCURRED BEFORE JANUARY 1, 1986.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall not apply to any reversion after December 31, 1985, which occurs pursuant to a plan termination where the termination date is before January 1, 1986.

"(B) ELECTION TO HAVE AMENDMENTS APPLY.—A corporation may elect to have the amendments made by this section apply to any reversion after 1985 pursuant to a plan termination occurring before 1986 if such corporation was incorporated in the State of

Delaware in March, 1978, and became a parent corporation of the consolidated group on September 19, 1978, pursuant to a merger agreement recorded in the State of Nevada on September 19, 1978.

''(3) TERMINATION DATE.—For purposes of paragraph (2), the term 'termination date' is the date of the termination (within the meaning of section 411(d)(3) of the Internal Revenue Code of 1986) of the plan.

''(4) TRANSITION RULE FOR CERTAIN TERMINATIONS.—

''(A) IN GENERAL.—In the case of a taxpayer to which this paragraph applies, the amendments made by this section shall not apply to any termination occurring before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986].

''(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to—

''(i) a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma,

''(ii) a corporation incorporated on January 17, 1917, which is located in Coatesville, Pennsylvania,

''(iii) a corporation incorporated on January 23, 1928, which has its principal place of business in New York, New York,

''(iv) a corporation incorporated on April 23, 1956, which has its principal place of business in Dallas, Texas, and

''(v) a corporation incorporated in the State of Nevada, the principal place of business of which is in Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986.

''(5) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—Section 4980(c)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to reversions occurring after March 31, 1985.''

TRANSFER OF EXCESS ASSETS FROM QUALIFIED PENSION PLAN TO WELFARE BENEFIT PLAN

Pub. L. 101–239, title VII, § 7861(b), Dec. 19, 1989, 103 Stat. 2430, provided that:

''(1) Notwithstanding any other provision of law, in the case of any qualified pension plan and welfare benefit plan described in paragraph (2), the assets of such pension plan in excess of its liabilities may be transferred to such welfare benefit plan upon the termination of such pension plan if such assets are to be used to provide retiree health benefits.

''(2) For purposes of paragraph (1), a qualified pension plan and welfare benefit plan are described in this paragraph if—

''(A) both such plans are jointly administered pursuant to a collective bargaining agreement between the employer maintaining such plans and one or more employee representatives,

''(B) the welfare benefit plan provides retiree health benefits, and

''(C) the qualified pension plan has assets in excess of liabilities (determined on a termination basis) and the welfare benefit plan has assets which are less than the present value of the benefits to be provided under the plan (determined as of the time of termination of the pension plan).

''(3) For purposes of the Internal Revenue Code of 1986, any transfer of assets to which paragraph (1) applies shall be treated as a reversion of such assets to the employer maintaining the plan which is includible in the gross income of such employer and subject to the tax imposed by section 4980 of such Code.''

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.

[§ 4980A. Repealed. Pub. L. 105–34, title X, § 1073(a), Aug. 5, 1997, 111 Stat. 948]

Section, added Pub. L. 99–514, title XI, § 1133(a), Oct. 22, 1986, 100 Stat. 2481, § 4981A; renumbered § 4980A and amended Pub. L. 100–647, title I, § 1011A(g)(1)(A), (2)–(6), (9), Nov. 10, 1988, 102 Stat. 3479–3482; Pub. L. 102–318, title V, § 521(b)(42), July 3, 1992, 106 Stat. 313; Pub. L. 104–188, title I, §§ 1401(b)(12), 1452(b), Aug. 20, 1996, 110 Stat. 1789, 1816, related to tax on excess distributions from qualified retirement plans.

EFFECTIVE DATE OF REPEAL

Section 1073(c) of Pub. L. 105–34 provided that:

''(1) EXCESS DISTRIBUTION TAX REPEAL.—Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall apply to excess distributions received after December 31, 1996.

''(2) EXCESS RETIREMENT ACCUMULATION TAX REPEAL.—The repeal made by subsection (a) with respect to section 4980A(d) of the Internal Revenue Code of 1986 and the amendments made by subsection (b) [amending sections 691, 2013, 2053, and 6018 of this title] shall apply to estates of decedents dying after December 31, 1996.''

§ 4980B. Failure to satisfy continuation coverage requirements of group health plans

(a) General rule

There is hereby imposed a tax on the failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to a qualified beneficiary shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term ''noncompliance period'' means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the earlier of—

(i) the date such failure is corrected, or

(ii) the date which is 6 months after the last day in the period applicable to the qualified beneficiary under subsection (f)(2)(B) (determined without regard to clause (iii) thereof).

If a person is liable for tax under subsection (e)(1)(B) by reason of subsection (e)(2)(B) with respect to any failure, the noncompliance period for such person with respect to such failure shall not begin before the 45th day after the written request described in subsection (e)(2)(B) is provided to such person.

(3) Minimum tax for noncompliance period where failure discovered after notice of examination

Notwithstanding paragraphs (1) and (2) of subsection (c)—

(A) In general

In the case of 1 or more failures with respect to a qualified beneficiary—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and