

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 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

Section 731(d) of Pub. L. 103-465 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

Section 12011(c) of Pub. L. 101-508 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 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 (§§101-107) 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

- Sec. 421. General rules.
- 422. Incentive stock options.
- [422A. Renumbered.]
- 423. Employee stock purchase plans.
- 424. Definitions and special rules.
- [425. Renumbered.]

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 received 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

Section 221(e) of Pub. L. 88-272, 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 AMENDMENTS

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.

Section 26(b) of Pub. L. 85-866 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after September 30, 1958.”

Section 3 of Pub. L. 85-320 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.

(c) Special rules

(1) Good faith efforts to value of 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.)

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

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 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

Section 321(c) of Pub. L. 99–514 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

Section 555(c)(1) of Pub. L. 98–369, 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

Section 251(c) of Pub. L. 97-34, 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 and 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 an 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

Section 1003(d)(1)(B) of Pub. L. 100-647 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 after December 31, 1963, 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, and the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan;

(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 (when 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.

(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.)

AMENDMENTS

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 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

Section 1402(b)(1) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94-455 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 request 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 section¹ 422(a)(2) and 423(a)(2), there shall be substituted for the term “employer corporation” wherever it appears in subsection (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 em-

ployee 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 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 ag-

¹ So in original. Probably should be “sections”.

gregate 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

Section 555(c)(3) of Pub. L. 98-369, 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

Section 102(j)(6) of Pub. L. 97-448 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.
- 431. Minimum funding standards for multiemployer plans.¹
- 432. Additional funding rules for multiemployer plans in endangered status or critical status.

AMENDMENT OF ANALYSIS

For termination of amendment by section 221(c) of Pub. L. 109-280, see Effective and Termination Dates of 2006 Amendment note set out under section 412 of this title.

AMENDMENTS

2006—Pub. L. 109-280, title II, §§212(d), 221(c), Aug. 17, 2006, 120 Stat. 917, 919, temporarily added item 432. See Effective and Termination Dates of 2006 Amendment note set out under section 412 of this title.

§ 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),

¹ Editorially supplied. Section 431 added by Pub. L. 109-280 without corresponding amendment of subpart analysis.