

EFFECTIVE DATE

For effective date of section with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as a note under section 4961 of this title.

Subchapter F—Tax Shelter Transactions

Sec.

4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions.

§ 4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions**(a) Being a party to and approval of prohibited transactions****(1) Tax-exempt entity****(A) In general**

If a transaction is a prohibited tax shelter transaction at the time any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) becomes a party to the transaction, such entity shall pay a tax for the taxable year in which the entity becomes such a party and any subsequent taxable year in the amount determined under subsection (b)(1).

(B) Post-transaction determination

If any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) is a party to a subsequently listed transaction at any time during a taxable year, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1).

(2) Entity manager

If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

(b) Amount of tax**(1) Entity**

In the case of a tax-exempt entity—

(A) In general

Except as provided in subparagraph (B), the amount of the tax imposed under subsection (a)(1) with respect to any transaction for a taxable year shall be an amount equal to the product of the highest rate of tax under section 11, and the greater of—

(i) the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to such transaction) for such taxable year which—

(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), is attributable to such transaction, or

(II) in the case of a subsequently listed transaction, is attributable to such transaction and which is properly allocat-

ble to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which—

(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), are attributable to such transaction, or

(II) in the case of a subsequently listed transaction, are attributable to such transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

(B) Increase in tax for certain knowing transactions

In the case of a tax-exempt entity which knew, or had reason to know, a transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—

(i) 100 percent of the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which are attributable to the prohibited tax shelter transaction.

This subparagraph shall not apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of the enactment of this section.

(2) Entity manager

In the case of each entity manager, the amount of the tax imposed under subsection (a)(2) shall be \$20,000 for each approval (or other act causing participation) described in subsection (a)(2).

(c) Tax-exempt entity

For purposes of this section, the term "tax-exempt entity" means an entity which is—

(1) described in section 501(c) or 501(d),

(2) described in section 170(c) (other than the United States),

(3) an Indian tribal government (within the meaning of section 7701(a)(40)),

(4) described in paragraph (1), (2), or (3) of section 4979(e),

(5) a program described in section 529,

(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 457(e)(1)(A), or

(7) an arrangement described in section 4973(a).