Subsec. (d)(2)(D). Pub. L. 111–152, §1003(a), amended subpar. (D) generally. Prior to amendment, text read as follows: ''In the case of any employer the substantial annual gross receipts of which are attributable to the construction industry—

''(i) subparagraph (A) shall be applied by substituting 'who employed an average of at least 5 full-time employees on business days during the preceding calendar year and whose annual payroll expenses exceed $250,000 for such preceding calendar year' for 'who employed an average of at least 50 full-time employees on business days during the preceding calendar year', and

''(ii) subparagraph (B) shall be applied by substituting '5' for '50'.''

Pub. L. 111–148, §10106(f)(2), added subpar. (D).

Subsec. (d)(2)(E). Pub. L. 111–152, §1003(c), added subpar. (E).

Subsec. (d)(4)(A). Pub. L. 111–148, §10106(f)(1), inserted '', with respect to any month,'' after ''means''.

Subsec. (d)(5)(A). Pub. L. 111–152, §1003(b)(3), substituted ''subsection (b) and paragraph (1)'' for ''subsection (b)(2) and (d)(1)'' in introductory provisions.

Subsec. (e). Pub. L. 111–152, §1003(d), redesignated subsec. (e) as (d).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–10 effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111–148 to which it relates, see section 1858(d) of Pub. L. 112–10, set out as a note under section 36B of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10106(f)(3), Mar. 23, 2010, 124 Stat. 911, provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to months beginning after December 31, 2013.''

Pub. L. 111–148, title X, §10108(i)(1)(B), Mar. 23, 2010, 124 Stat. 914, provided that: ''The amendment made by this paragraph [amending this section] shall apply to months beginning after December 31, 2013.''

EFFECTIVE DATE

Pub. L. 111–148, title I, §1513(d), Mar. 23, 2010, 124 Stat. 256, provided that: ''The amendments made by this section [enacting this section] shall apply to months beginning after December 31, 2013.''

§ 4980I. Excise tax on high cost employer-sponsored health coverage

(a) Imposition of tax

If—

(1) an employee is covered under any applicable employer-sponsored coverage of an employer at any time during a taxable period, and

(2) there is any excess benefit with respect to the coverage,

there is hereby imposed a tax equal to 40 percent of the excess benefit.

(b) Excess benefit

For purposes of this section—

(1) In general

The term ''excess benefit'' means, with respect to any applicable employer-sponsored coverage made available by an employer to an employee during any taxable period, the sum of the excess amounts determined under paragraph (2) for months during the taxable period.

(2) Monthly excess amount

The excess amount determined under this paragraph for any month is the excess (if any) of—

(A) the aggregate cost of the applicable employer-sponsored coverage of the employee for the month, over

(B) an amount equal to 1/12 of the annual limitation under paragraph (3) for the calendar year in which the month occurs.

(3) Annual limitation

For purposes of this subsection—

(A) In general

The annual limitation under this paragraph for any calendar year is the dollar limit determined under subparagraph (C) for the calendar year.

(B) Applicable annual limitation

(i) In general

Except as provided in clause (ii), the annual limitation which applies for any month shall be determined on the basis of the type of coverage (as determined under subsection (f)(1)) provided to the employee by the employer as of the beginning of the month.

(ii) Multiemployer plan coverage

Any coverage provided under a multiemployer plan (as defined in section 414(f)) shall be treated as coverage other than self-only coverage.

(C) Applicable dollar limit

(i) 2018

In the case of 2018, the dollar limit under this subparagraph is—

(I) in the case of an employee with self-only coverage, $10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage), and

(II) in the case of an employee with coverage other than self-only coverage, $27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage).

(ii) Health cost adjustment percentage

For purposes of clause (i), the health cost adjustment percentage is equal to 100 percent plus the excess (if any) of—

(I) the percentage by which the per employee cost for providing coverage under the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for plan year 2018 (determined by using the benefit package for such coverage in 2010) exceeds such cost for plan year 2010, over

(II) 55 percent.

(iii) Age and gender adjustment

(I) In general

The amount determined under subclause (I) or (II) of clause (i), whichever is applicable, for any taxable period shall be increased by the amount determined under subclause (II).

(II) Amount determined

The amount determined under this subclause is an amount equal to the excess (if any) of—

(aa) the premium cost of the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for the type of coverage provided such individual in such taxable period if priced for the age and gender characteristics of all employees of the individual's employer, over

(bb) that premium cost for the provision of such coverage under such option in such taxable period if priced for the age and gender characteristics of the national workforce.

(iv) Exception for certain individuals

In the case of an individual who is a qualified retiree or who participates in a plan sponsored by an employer the majority of whose employees covered by the plan are engaged in a high-risk profession or employed to repair or install electrical or telecommunications lines—

(I) the dollar amount in clause (i)(I) shall be increased by $1,650, and

(II) the dollar amount in clause (i)(II) shall be increased by $3,450,[1]

(v) Subsequent years

In the case of any calendar year after 2018, each of the dollar amounts under clauses (i) (after the application of clause (ii)) and (iv) shall be increased to the amount equal to such amount as in effect for the calendar year preceding such year, increased by an amount equal to the product of—

(I) such amount as so in effect, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such year (determined by substituting the calendar year that is 2 years before such year for ''1992'' in subparagraph (B) thereof), increased by 1 percentage point in the case of determinations for calendar years beginning before 2020.

If any amount determined under this clause is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

(c) Liability to pay tax

(1) In general

Each coverage provider shall pay the tax imposed by subsection (a) on its applicable share of the excess benefit with respect to an employee for any taxable period.

(2) Coverage provider

For purposes of this subsection, the term ''coverage provider'' means each of the following:

(A) Health insurance coverage

If the applicable employer-sponsored coverage consists of coverage under a group health plan which provides health insurance coverage, the health insurance issuer.

(B) HSA and MSA contributions

If the applicable employer-sponsored coverage consists of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the employer.

(C) Other coverage

In the case of any other applicable employer-sponsored coverage, the person that administers the plan benefits.

(3) Applicable share

For purposes of this subsection, a coverage provider's applicable share of an excess benefit for any taxable period is the amount which bears the same ratio to the amount of such excess benefit as—

(A) the cost of the applicable employer-sponsored coverage provided by the provider to the employee during such period, bears to

(B) the aggregate cost of all applicable employer-sponsored coverage provided to the employee by all coverage providers during such period.

(4) Responsibility to calculate tax and applicable shares

(A) In general

Each employer shall—

(i) calculate for each taxable period the amount of the excess benefit subject to the tax imposed by subsection (a) and the applicable share of such excess benefit for each coverage provider, and

(ii) notify, at such time and in such manner as the Secretary may prescribe, the Secretary and each coverage provider of the amount so determined for the provider.

(B) Special rule for multiemployer plans

In the case of applicable employer-sponsored coverage made available to employees through a multiemployer plan (as defined in section 414(f)), the plan sponsor shall make the calculations, and provide the notice, required under subparagraph (A).

(d) Applicable employer-sponsored coverage; cost

For purposes of this section—

(1) Applicable employer-sponsored coverage

(A) In general

The term ''applicable employer-sponsored coverage'' means, with respect to any employee, coverage under any group health plan made available to the employee by an employer which is excludable from the employee's gross income under section 106, or would be so excludable if it were employer-provided coverage (within the meaning of such section 106).

(B) Exceptions

The term ''applicable employer-sponsored coverage'' shall not include—

(i) any coverage (whether through insurance or otherwise) described in section 9832(c)(1) (other than subparagraph (G) thereof) or for long-term care, or

[1] So in original. The comma probably should be a period.

(ii) any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth (including any organ or structure within the mouth) or for treatment of the eye, or

(iii) any coverage described in section 9832(c)(3) the payment for which is not excludable from gross income and for which a deduction under section 162(*l*) is not allowable.

(C) Coverage includes employee paid portion

Coverage shall be treated as applicable employer-sponsored coverage without regard to whether the employer or employee pays for the coverage.

(D) Self-employed individual

In the case of an individual who is an employee within the meaning of section 401(c)(1), coverage under any group health plan providing health insurance coverage shall be treated as applicable employer-sponsored coverage if a deduction is allowable under section 162(*l*) with respect to all or any portion of the cost of the coverage.

(E) Governmental plans included

Applicable employer-sponsored coverage shall include coverage under any group health plan established and maintained primarily for its civilian employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any such government.

(2) Determination of cost

(A) In general

The cost of applicable employer-sponsored coverage shall be determined under rules similar to the rules of section 4980B(f)(4), except that in determining such cost, any portion of the cost of such coverage which is attributable to the tax imposed under this section shall not be taken into account and the amount of such cost shall be calculated separately for self-only coverage and other coverage. In the case of applicable employer-sponsored coverage which provides coverage to retired employees, the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries.

(B) Health FSAs

In the case of applicable employer-sponsored coverage consisting of coverage under a flexible spending arrangement (as defined in section 106(c)(2)), the cost of the coverage shall be equal to the sum of—

(i) the amount of employer contributions under any salary reduction election under the arrangement, plus

(ii) the amount determined under subparagraph (A) with respect to any reimbursement under the arrangement in excess of the contributions described in clause (i).

(C) Archer MSAs and HSAs

In the case of applicable employer-sponsored coverage consisting of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the cost of the coverage shall be equal to the amount of employer contributions under the arrangement.

(D) Allocation on a monthly basis

If cost is determined on other than a monthly basis, the cost shall be allocated to months in a taxable period on such basis as the Secretary may prescribe.

(3) Employee

The term ''employee'' includes any former employee, surviving spouse, or other primary insured individual.

(e) Penalty for failure to properly calculate excess benefit

(1) In general

If, for any taxable period, the tax imposed by subsection (a) exceeds the tax determined under such subsection with respect to the total excess benefit calculated by the employer or plan sponsor under subsection (c)(4)—

(A) each coverage provider shall pay the tax on its applicable share (determined in the same manner as under subsection (c)(4)) of the excess, but no penalty shall be imposed on the provider with respect to such amount, and

(B) the employer or plan sponsor shall, in addition to any tax imposed by subsection (a), pay a penalty in an amount equal to such excess, plus interest at the underpayment rate determined under section 6621 for the period beginning on the due date for the payment of tax imposed by subsection (a) to which the excess relates and ending on the date of payment of the penalty.

(2) Limitations on penalty

(A) Penalty not to apply where failure not discovered exercising reasonable diligence

No penalty shall be imposed by paragraph (1)(B) on any failure to properly calculate the excess benefit during any period for which it is established to the satisfaction of the Secretary that the employer or plan sponsor neither knew, nor exercising reasonable diligence would have known, that such failure existed.

(B) Penalty not to apply to failures corrected within 30 days

No penalty shall be imposed by paragraph (1)(B) on any such failure if—

(i) such failure was due to reasonable cause and not to willful neglect, and

(ii) such failure is corrected during the 30-day period beginning on the 1st date that the employer knew, or exercising reasonable diligence would have known, that such failure existed.

(C) Waiver by Secretary

In the case of any such failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by paragraph (1), to the

extent that the payment of such penalty would be excessive or otherwise inequitable relative to the failure involved.

(f) Other definitions and special rules

For purposes of this section—

(1) Coverage determinations

(A) In general

Except as provided in subparagraph (B), an employee shall be treated as having self-only coverage with respect to any applicable employer-sponsored coverage of an employer.

(B) Minimum essential coverage

An employee shall be treated as having coverage other than self-only coverage only if the employee is enrolled in coverage other than self-only coverage in a group health plan which provides minimum essential coverage (as defined in section 5000A(f)) to the employee and at least one other beneficiary, and the benefits provided under such minimum essential coverage do not vary based on whether any individual covered under such coverage is the employee or another beneficiary.

(2) Qualified retiree

The term ''qualified retiree'' means any individual who—

(A) is receiving coverage by reason of being a retiree,

(B) has attained age 55, and

(C) is not entitled to benefits or eligible for enrollment under the Medicare program under title XVIII of the Social Security Act.

(3) Employees engaged in high-risk profession

The term ''employees engaged in a high-risk profession'' means law enforcement officers (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968), employees in fire protection activities (as such term is defined in section 3(y) of the Fair Labor Standards Act of 1938), individuals who provide out-of-hospital emergency medical care (including emergency medical technicians, paramedics, and first-responders), individuals whose primary work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof), and individuals engaged in the construction, mining, agriculture (not including food processing), forestry, and fishing industries. Such term includes an employee who is retired from a high-risk profession described in the preceding sentence, if such employee satisfied the requirements of such sentence for a period of not less than 20 years during the employee's employment.

(4) Group health plan

The term ''group health plan'' has the meaning given such term by section 5000(b)(1).

(5) Health insurance coverage; health insurance issuer

(A) Health insurance coverage

The term ''health insurance coverage'' has the meaning given such term by section 9832(b)(1) (applied without regard to subparagraph (B) thereof, except as provided by the Secretary in regulations).

(B) Health insurance issuer

The term ''health insurance issuer'' has the meaning given such term by section 9832(b)(2).

(6) Person that administers the plan benefits

The term ''person that administers the plan benefits'' shall include the plan sponsor if the plan sponsor administers benefits under the plan.

(7) Plan sponsor

The term ''plan sponsor'' has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

(8) Taxable period

The term ''taxable period'' means the calendar year or such shorter period as the Secretary may prescribe. The Secretary may have different taxable periods for employers of varying sizes.

(9) Aggregation rules

All employers treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer.

(10) Denial of deduction

For denial of a deduction for the tax imposed by this section, see section 275(a)(6).

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this section.

(Added and amended Pub. L. 111–148, title IX, §9001(a), title X, §10901(a), (b), Mar. 23, 2010, 124 Stat. 847, 1015, 1016; Pub. L. 111–152, title I, §1401(a), Mar. 30, 2010, 124 Stat. 1059.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(2)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (f)(3), is classified to section 3796b of Title 42, The Public Health and Welfare.

Section 3(y) of the Fair Labor Standards Act of 1938, referred to in subsec. (f)(3), is classified to section 203(y) of Title 29, Labor.

Section 3(16)(B) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(7), is classified to section 1002(16)(B) of Title 29, Labor.

AMENDMENTS

2010—Subsec. (b)(3)(B). Pub. L. 111–152, §1401(a)(1), designated existing provisions as cl. (i), inserted heading, substituted ''Except as provided in clause (ii), the annual'' for ''The annual'', and added cl. (ii).

Subsec. (b)(3)(C). Pub. L. 111–152, §1401(a)(2)(A), struck out introductory provisions which read: ''Except as provided in subparagraph (D)—''.

Subsec. (b)(3)(C)(i). Pub. L. 111–152, §1401(a)(2)(B)(i), substituted ''2018'' for ''2013'' in heading and introductory provisions.

Subsec. (b)(3)(C)(i)(I). Pub. L. 111–152, §1401(a)(2)(B)(ii), substituted ''$10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage)'' for ''$8,500''.

Subsec. (b)(3)(C)(i)(II). Pub. L. 111–152, §1401(a)(2)(B)(iii), substituted ''$27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage)'' for ''$23,000''.

Subsec. (b)(3)(C)(ii), (iii). Pub. L. 111–152, §1401(a)(2)(C), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (v), respectively.

Subsec. (b)(3)(C)(iv). Pub. L. 111–152, §1401(a)(2)(D), inserted ''covered by the plan'' after ''whose employees'' in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

''(I) the dollar amount in clause (i)(I) (determined after the application of subparagraph (D)) shall be increased by $1,350, and

''(II) the dollar amount in clause (i)(II) (determined after the application of subparagraph (D)) shall be increased by $3,000.''

Pub. L. 111–152, §1401(a)(2)(C), redesignated cl. (ii) as (iv).

Subsec. (b)(3)(C)(v). Pub. L. 111–152, §1401(a)(2)(E)(i), (ii), substituted ''2018'' for ''2013'' and ''clauses (i) (after the application of clause (ii)) and (iv)'' for ''clauses (i) and (ii)'' in introductory provisions.

Pub. L. 111–152, §1401(a)(2)(C), redesignated cl. (iii) as (v).

Subsec. (b)(3)(C)(v)(II). Pub. L. 111–152, §1401(a)(2)(E)(iii), inserted ''in the case of determinations for calendar years beginning before 2020'' after ''1 percentage point''.

Subsec. (b)(3)(D). Pub. L. 111–152, §1401(a)(3), struck out subpar. (D) which provided transition rule for States with highest coverage costs.

Subsec. (d)(1)(B)(i). Pub. L. 111–148, §10901(b), substituted ''section 9832(c)(1) (other than subparagraph (G) thereof)'' for ''section 9832(c)(1)(A)''.

Subsec. (d)(1)(B)(ii), (iii). Pub. L. 111–152, §1401(a)(4), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (d)(3). Pub. L. 111–152, §1401(a)(5), added par. (3).

Subsec. (f)(3). Pub. L. 111–148, §10901(a), inserted ''individuals whose primary work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof),'' before ''and individuals engaged in the construction, mining''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10901(c), Mar. 23, 2010, 124 Stat. 1016, as amended by Pub. L. 111–152, title I, §1401(b)(2), Mar. 30, 2010, 124 Stat. 1060, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE

Pub. L. 111–148, title IX, §9001(c), Mar. 23, 2010, 124 Stat. 853, as amended by Pub. L. 111–152, title I, §1401(b)(1), Mar. 30, 2010, 124 Stat. 1060, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2017.''

CHAPTER 44—QUALIFIED INVESTMENT ENTITIES

AMENDMENTS

1986—Pub. L. 99–514, title VI, §651(c), Oct. 22, 1986, 100 Stat. 2297, substituted: ''QUALIFIED INVESTMENT ENTITIES'' for ''REAL ESTATE INVESTMENT TRUSTS'' as chapter heading, substituted ''Excise tax on undistributed income of real estate investment trusts'' for ''Excise tax based on certain real estate investment trust taxable income not distributed during the taxable year'' in item 4981, and added item 4982.

1976—Pub. L. 94–455, title XVI, §1605(a), Oct. 4, 1976, 90 Stat. 1754, added chapter heading and section analysis.

§ 4981. Excise tax on undistributed income of real estate investment trusts

(a) Imposition of tax

There is hereby imposed a tax on every real estate investment trust for each calendar year equal to 4 percent of the excess (if any) of—

(1) the required distribution for such calendar year, over

(2) the distributed amount for such calendar year.

(b) Required distribution

For purposes of this section—

(1) In general

The term ''required distribution'' means, with respect to any calendar year, the sum of—

(A) 85 percent of the real estate investment trust's ordinary income for such calendar year, plus

(B) 95 percent of the real estate investment trust's capital gain net income for such calendar year.

(2) Increase by prior year shortfall

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

(A) the grossed up required distribution for the preceding calendar year, over

(B) the distributed amount for such preceding calendar year.

(3) Grossed up required distribution

The grossed up required distribution for any calendar year is the required distribution for such year determined—

(A) with the application of paragraph (2) to such taxable year, and

(B) by substituting ''100 percent'' for each percentage set forth in paragraph (1).

(c) Distributed amount

For purposes of this section—

(1) In general

The term ''distributed amount'' means, with respect to any calendar year, the sum of—

(A) the deduction for dividends paid (as defined in section 561) during such calendar year (but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D)), and

(B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 857 for any taxable year ending in such calendar year.

(2) Increase by prior year overdistribution

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

(A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over