

## EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, §1231(c), Aug. 17, 2006, 120 Stat. 1098, provided that: “The amendments made by this section [enacting subchapter G of this chapter and amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].”

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as a note under section 4955 of this title.

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

## 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 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, 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),
- (7) an arrangement described in section 4973(a), or
- (8) a program described in section 529A.

**(d) Entity manager**

For purposes of this section, the term “entity manager” means—

- (1) in the case of an entity described in paragraph (1), (2), or (3) of subsection (c)—
  - (A) the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and
  - (B) with respect to any act, the person having authority or responsibility with respect to such act, and
- (2) in the case of an entity described in paragraph (4), (5), (6), or (7) of subsection (c), the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

**(e) Prohibited tax shelter transaction; subsequently listed transaction**

For purposes of this section—

**(1) Prohibited tax shelter transaction**

**(A) In general**

The term “prohibited tax shelter transaction” means—

- (i) any listed transaction, and
- (ii) any prohibited reportable transaction.

**(B) Listed transaction**

The term “listed transaction” has the meaning given such term by section 6707A(c)(2).

**(C) Prohibited reportable transaction**

The term “prohibited reportable transaction” means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).

**(2) Subsequently listed transaction**

The term “subsequently listed transaction” means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has become a party to the transaction. Such term shall not include a

transaction which is a prohibited reportable transaction at the time the entity became a party to the transaction.

**(f) Regulatory authority**

The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income or proceeds of a tax-exempt entity attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.

**(g) Coordination with other taxes and penalties**

The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.

(Added Pub. L. 109-222, title V, §516(a)(1), May 17, 2006, 120 Stat. 368; amended Pub. L. 110-172, §11(a)(30), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 113-295, div. B, title I, §102(e)(3), Dec. 19, 2014, 128 Stat. 4062.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(1)(B) and (f), is the date of enactment of Pub. L. 109-222, which was approved May 17, 2006.

AMENDMENTS

- 2014—Subsec. (c)(8). Pub. L. 113-295 added par. (8).
- 2007—Subsec. (c)(6). Pub. L. 110-172 substituted “section 457(e)(1)(A)” for “section 4457(e)(1)(A)”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1) of Pub. L. 113-295, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 109-222, title V, §516(d), May 17, 2006, 120 Stat. 372, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 6011, 6033, and 6652 of this title] shall apply to taxable years ending after the date of the enactment of this Act [May 17, 2006], with respect to transactions before, on, or after such date, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.

“(2) DISCLOSURE.—The amendments made by subsections (b) and (c) [amending sections 6011, 6033, and 6652 of this title] shall apply to disclosures the due date for which are after the date of the enactment of this Act.”

**Subchapter G—Donor Advised Funds**

|       |                                 |
|-------|---------------------------------|
| Sec.  |                                 |
| 4966. | Taxes on taxable distributions. |
| 4967. | Taxes on prohibited benefits.   |

CODIFICATION

Pub. L. 109-280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1094, which directed the addition of subchapter G at the end of chapter 42, without specifying the act to be amended, was executed by adding subchapter G at the end of chapter 42 of this title, which consists of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.