§ 3512. Treatment of certain persons as employers with respect to motion picture projects

(a) In general

For purposes of sections 3121(a)(1) and 3306(b)(1), remuneration paid to a motion picture project worker by a motion picture project employer during a calendar year shall be treated as remuneration paid with respect to employment of such worker by such employer during the calendar year. The identity of such employer for such purposes shall be determined as set forth in this section and without regard to the usual common law rules applicable in determining the employer-employee relationship.

(b) Definitions

For purposes of this section—

(1) Motion picture project employer

The term ''motion picture project employer'' means any person if—

(A) such person (directly or through affiliates)—

(i) is a party to a written contract covering the services of motion picture project workers with respect to motion picture projects in the course of a client's trade or business,

(ii) is contractually obligated to pay remuneration to the motion picture project workers without regard to payment or reimbursement by any other person,

(iii) controls the payment (within the meaning of section 3401(d)(1)) of remuneration to the motion picture project workers and pays such remuneration from its own account or accounts,

(iv) is a signatory to one or more collective bargaining agreements with a labor organization (as defined in 29 U.S.C. 152(5)) that represents motion picture project workers, and

(v) has treated substantially all motion picture project workers that such person pays as employees and not as independent contractors during such calendar year for purposes of determining employment taxes under this subtitle, and

(B) at least 80 percent of all remuneration (to which section 3121 applies) paid by such person in such calendar year is paid to motion picture project workers.

(2) Motion picture project worker

The term ''motion picture project worker'' means any individual who provides services on motion picture projects for clients who are not affiliated with the motion picture project employer.

(3) Motion picture project

The term ''motion picture project'' means the production of any property described in section 168(f)(3). Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

(4) Affiliate; affiliated

A person shall be treated as an affiliate of, or affiliated with, another person if such persons are treated as a single employer under subsection (b) or (c) of section 414.

(Added Pub. L. 114–113, div. Q, title III, § 346(a), Dec. 18, 2015, 129 Stat. 3115.)

REFERENCES IN TEXT

29 U.S.C. 152, referred to in subsec. (b)(1)(A)(iv), is section 2 of the National Labor Relations Act, act July 5, 1935, ch. 372, 49 Stat. 450, which is classified to section 152 of Title 29, Labor.

EFFECTIVE DATE

Pub. L. 114–113, div. Q, title III, § 346(c), Dec. 18, 2015, 129 Stat. 3116, provided that: ''The amendments made by this section [enacting this section and provisions set out as a note under this section] shall apply to remuneration paid after December 31, 2015.''

CONSTRUCTION

Pub. L. 114–113, div. Q, title III, § 346(d), Dec. 18, 2015, 129 Stat. 3116, provided that: ''Nothing in the amendments made by this section [enacting this section] shall be construed to create any inference on the law before the date of the enactment of this Act [Dec. 18, 2015].''

Subtitle D—Miscellaneous Excise Taxes

AMENDMENTS

2011—Pub. L. 111–347, title III, § 301(a)(2), Jan. 2, 2011, 124 Stat. 3666, added item for chapter 50.

2010—Pub. L. 111–148, title X, § 10907(c), Mar. 23, 2010, 124 Stat. 1020, added item for chapter 49.

Pub. L. 111–148, title IX, § 9017(b), Mar. 23, 2010, 124 Stat. 872, which directed amendment of analysis by adding item for chapter 49, was not executed in view of Pub. L. 111–148, title X, § 10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the amendments made by section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

Pub. L. 111–148, title I, § 1501(c), title VI, § 6301(e)(2)(B)(ii), Mar. 23, 2010, 124 Stat. 249, 747, added items for chapters 34 and 48 and struck out former item for chapter 34 ''Documentary stamp taxes''.

2004—Pub. L. 108–357, title VIII, § 802(c)(2), Oct. 22, 2004, 118 Stat. 1568, added item for chapter 45.

1990—Pub. L. 101–508, title XI, § 11801(b)(17), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for chapter 37 ''Sugar, coconut and palm oil''.

[1] Section numbers editorially supplied.

1989—Pub. L. 101–239, title VI, § 6202(b)(4)(B), title VII, § 7841(d)(4), Dec. 19, 1989, 103 Stat. 2233, 2428, substituted semicolon for comma in item for chapter 42 and struck out ''large'' after ''Certain'' in item for chapter 47.

1988—Pub. L. 100–418, title I, § 1941(b)(3)(A), Aug. 23, 1988, 102 Stat. 1324, struck out item for chapter 45 ''Windfall profit tax on domestic crude oil''.

1987—Pub. L. 100–203, title X, § 10712(c)(8), Dec. 22, 1987, 101 Stat. 1330–467, substituted ''and certain other tax-exempt organizations'' for ''black lung benefit trusts'' in item for chapter 42.

1986—Pub. L. 99–509, title IX, § 9319(d)(2), Oct. 21, 1986, 100 Stat. 2012, added item for chapter 47.

1984—Pub. L. 98–369, div. A, title I, § 67(d)(2), July 18, 1984, 98 Stat. 587, added item for chapter 46.

1983—Pub. L. 97–424, title V, § 512(b)(2)(B), Jan. 6, 1983, 96 Stat. 2177, substituted ''Retail excise taxes'' for ''Special fuels'' in item for chapter 31.

1982—Pub. L. 97–248, title III, § 310(b)(4)(B), Sept. 3, 1982, 96 Stat. 598, added item for chapter 39.

1980—Pub. L. 96–510, title II, § 211(b), Dec. 11, 1980, 94 Stat. 2801, added item for chapter 38.

Pub. L. 96–223, § 101(a)(2), Apr. 2, 1980, 94 Stat. 250, added item for chapter 45.

1978—Pub. L. 95–227, § 4(c)(2)(C), Feb. 10, 1978, 92 Stat. 22, inserted '', black lung benefit trusts'' after ''foundations'' in item for chapter 42.

1976—Pub. L. 94–455, title XIII, § 1307(d)(3)(A), title XVI, § 1605(c), title XIX, §§ 1904(b)(7)(E), (10)(G), 1952(n)(6), Oct. 4, 1976, 90 Stat. 1728, 1755, 1815, 1818, 1846, substituted ''41. Public charities'' for ''41. Interest equalization tax'' added item for chapter 44 and struck out items for chapters ''38. Import taxes'' and ''39. Regulatory taxes''.

1974—Pub. L. 93–406, title II, § 1016(b)(2), Sept. 2, 1974, 88 Stat. 932, added item for chapter 43.

1969—Pub. L. 91–172, title I, § 101(j)(59), Dec. 30, 1969, 83 Stat. 532, added item for chapter 42.

1964—Pub. L. 88–563, § 2(b), Sept. 2, 1964, 78 Stat. 841, added item for chapter 41.

IMPOSITION OF ANNUAL FEE ON BRANDED PRESCRIPTION PHARMACEUTICAL MANUFACTURERS AND IMPORTERS

Pub. L. 111–148, title IX, § 9008, Mar. 23, 2010, 124 Stat. 859, as amended by Pub. L. 111–152, title I, § 1404(a), Mar. 30, 2010, 124 Stat. 1064, provided that:

''(a) IMPOSITION OF FEE.—

''(1) IN GENERAL.—Each covered entity engaged in the business of manufacturing or importing branded prescription drugs shall pay to the Secretary of the Treasury not later than the annual payment date of each calendar year beginning after 2010 a fee in an amount determined under subsection (b).

''(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term 'annual payment date' means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

''(b) DETERMINATION OF FEE AMOUNT.—

''(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

''(A) the covered entity's branded prescription drug sales taken into account during the preceding calendar year, bear to

''(B) the aggregate branded prescription drug sales of all covered entities taken into account during such preceding calendar year.

''(2) SALES TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the branded prescription drug sales taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

''With respect to a covered entity's aggregate branded prescription drug sales during the calendar year that are:	The percentage of such sales taken into account is:
Not more than $5,000,000	0 percent
More than $5,000,000 but not more than $125,000,000.	10 percent
More than $125,000,000 but not more than $225,000,000.	40 percent
More than $225,000,000 but not more than $400,000,000.	75 percent
More than $400,000,000	100 percent.

''(3) SECRETARIAL DETERMINATION.—The Secretary of the Treasury shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary of the Treasury shall determine such covered entity's branded prescription drug sales on the basis of reports submitted under subsection (g) and through the use of any other source of information available to the Secretary of the Treasury.

''(4) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined in accordance with the following table:

''Calendar year	**Applicable amount**
2011	$2,500,000,000
2012	$2,800,000,000
2013	$2,800,000,000
2014	$3,000,000,000
2015	$3,000,000,000
2016	$3,000,000,000
2017	$4,000,000,000
2018	$4,100,000,000
2019 and thereafter	$2,800,000,000.

''(c) TRANSFER OF FEES TO MEDICARE PART B TRUST FUND.—There is hereby appropriated to the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act [42 U.S.C. 1395t] an amount equal to the fees received by the Secretary of the Treasury under subsection (a).

''(d) COVERED ENTITY.—

''(1) IN GENERAL.—For purposes of this section, the term 'covered entity' means any manufacturer or importer with gross receipts from branded prescription drug sales.

''(2) CONTROLLED GROUPS.—

''(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (*o*) of section 414 of such Code shall be treated as a single covered entity.

''(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

''(3) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (2), all such persons shall be jointly and severally liable for payment of such fee.

''(e) BRANDED PRESCRIPTION DRUG SALES.—For purposes of this section—

''(1) IN GENERAL.—The term 'branded prescription drug sales' means sales of branded prescription drugs to any specified government program or pursuant to coverage under any such program.

''(2) BRANDED PRESCRIPTION DRUGS.—

''(A) IN GENERAL.—The term 'branded prescription drug' means—

''(i) any prescription drug the application for which was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)), or

''(ii) any biological product the license for which was submitted under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

''(B) PRESCRIPTION DRUG.—For purposes of subparagraph (A)(i), the term 'prescription drug' means any drug which is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

''(3) EXCLUSION OF ORPHAN DRUG SALES.—The term 'branded prescription drug sales' shall not include sales of any drug or biological product with respect to which a credit was allowed for any taxable year under section 45C of the Internal Revenue Code of 1986. The preceding sentence shall not apply with respect to any such drug or biological product after the date on which such drug or biological product is approved by the Food and Drug Administration for marketing for any indication other than the treatment of the rare disease or condition with respect to which such credit was allowed.

''(4) SPECIFIED GOVERNMENT PROGRAM.—The term 'specified government program' means—

''(A) the Medicare Part D program under part D of title XVIII of the Social Security Act [42 U.S.C. 1395w–101 et seq.],

''(B) the Medicare Part B program under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.],

''(C) the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.],

''(D) any program under which branded prescription drugs are procured by the Department of Veterans Affairs,

''(E) any program under which branded prescription drugs are procured by the Department of Defense, or

''(F) the TRICARE retail pharmacy program under section 1074g of title 10, United States Code.

''(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

''(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

''(2) for purposes of section 275 of such Code, shall be considered to be a tax described in section 275(a)(6).

''(g) REPORTING REQUIREMENT.—Not later than the date determined by the Secretary of the Treasury following the end of any calendar year, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and the Secretary of Defense shall report to the Secretary of the Treasury, in such manner as the Secretary of the Treasury prescribes, the total branded prescription drug sales for each covered entity with respect to each specified government program under such Secretary's jurisdiction using the following methodology:

''(1) MEDICARE PART D PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part D program, the product of—

''(A) the per-unit ingredient cost, as reported to the Secretary of Health and Human Services by prescription drug plans and Medicare Advantage prescription drug plans, minus any per-unit rebate, discount, or other price concession provided by the covered entity, as reported to the Secretary of Health and Human Services by the prescription drug plans and Medicare Advantage prescription drug plans, and

''(B) the number of units of the branded prescription drug paid for under the Medicare Part D program.

''(2) MEDICARE PART B PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part B program under section 1862(a) of the Social Security Act [42 U.S.C. 1395y(a)], the product of—

''(A) the per-unit average sales price (as defined in section 1847A(c) of the Social Security Act [42 U.S.C. 1395w–3a(c)]) or the per-unit Part B payment rate for a separately paid branded prescription drug without a reported average sales price, and

''(B) the number of units of the branded prescription drug paid for under the Medicare Part B program.

The Centers for Medicare and Medicaid Services shall establish a process for determining the units and the allocated price for purposes of this section for those branded prescription drugs that are not separately payable or for which National Drug Codes are not reported.

''(3) MEDICAID PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered under the Medicaid program, the product of—

''(A) the per-unit ingredient cost paid to pharmacies by States for the branded prescription drug dispensed to Medicaid beneficiaries, minus any per-unit rebate paid by the covered entity under section 1927 of the Social Security Act [42 U.S.C. 1396r–8] and any State supplemental rebate, and

''(B) the number of units of the branded prescription drug paid for under the Medicaid program.

''(4) DEPARTMENT OF VETERANS AFFAIRS PROGRAMS.—The Secretary of Veterans Affairs shall report, for each covered entity and for each branded prescription drug of the covered entity the total amount paid for each such branded prescription drug procured by the Department of Veterans Affairs for its beneficiaries.

''(5) DEPARTMENT OF DEFENSE PROGRAMS AND TRICARE.—The Secretary of Defense shall report, for each covered entity and for each branded prescription drug of the covered entity, the sum of—

''(A) the total amount paid for each such branded prescription drug procured by the Department of Defense for its beneficiaries, and

''(B) for each such branded prescription drug dispensed under the TRICARE retail pharmacy program, the product of—

''(i) the per-unit ingredient cost, minus any per-unit rebate paid by the covered entity, and

''(ii) the number of units of the branded prescription drug dispensed under such program.

''(h) SECRETARY.—For purposes of this section, the term 'Secretary' includes the Secretary's delegate.

''(i) GUIDANCE.—The Secretary of the Treasury shall publish guidance necessary to carry out the purposes of this section.

''(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2010.

''(k) CONFORMING AMENDMENT.—[Amended section 1395t of Title 42, The Public Health and Welfare.]''

[Pub. L. 111–152, title I, §1404(b), Mar. 30, 2010, 124 Stat. 1064, provided that: ''The amendments made by this section [amending section 9008 of Pub. L. 111–148, set out above] shall take effect as if included in section 9008 of the Patient Protection and Affordable Care Act [Pub. L. 111–148].'']

IMPOSITION OF ANNUAL FEE ON MEDICAL DEVICE MANUFACTURERS AND IMPORTERS

Pub. L. 111–148, title IX, §9009, Mar. 23, 2010, 124 Stat. 862, as amended by Pub. L. 111–148, title X, §10904(a), Mar. 23, 2010, 124 Stat. 1016, provided for the imposition of an annual fee on medical device manufacturers and importers in calendar years beginning after 2010, prior to repeal by Pub. L. 111–152, title I, §1405(d), Mar. 30, 2010, 124 Stat. 1065.

[Pub. L. 111–152, title I, §1405(d), Mar. 30, 2010, 124 Stat. 1065, provided that the repeal of section 9009 of Pub. L. 111–148, formerly set out above, is effective as of Mar. 23, 2010.]

IMPOSITION OF ANNUAL FEE ON HEALTH INSURANCE PROVIDERS

Pub. L. 111–148, title IX, §9010, title X, §10905(a)–(f), Mar. 23, 2010, 124 Stat. 865, 1017–1019, as amended by

Pub. L. 111–152, title I, §1406(a), Mar. 30, 2010, 124 Stat. 1065; Pub. L. 114–113, div. P, title II, §201, Dec. 18, 2015, 129 Stat. 3037, provided that:

''(a) IMPOSITION OF FEE.—

''(1) IN GENERAL.—Each covered entity engaged in the business of providing health insurance shall pay to the Secretary not later than the annual payment date of each calendar year beginning after 2013 a fee in an amount determined under subsection (b).

''(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term 'annual payment date' means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

''(b) DETERMINATION OF FEE AMOUNT.—

''(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

''(A) the covered entity's net premiums written with respect to health insurance for any United States health risk that are taken into account during the preceding calendar year, bears to

''(B) the aggregate net premiums written with respect to such health insurance of all covered entities that are taken into account during such preceding calendar year.

''(2) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The net premiums written with respect to health insurance for any United States health risk that are taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

''With respect to a covered entity's net premiums written during the calendar year that are:	The percentage of net premiums written that are taken into account is:
Not more than $25,000,000	0 percent
More than $25,000,000 but not more than $50,000,000.	50 percent
More than $50,000,000	100 percent.

''(B) PARTIAL EXCLUSION FOR CERTAIN EXEMPT ACTIVITIES.—After the application of subparagraph (A), only 50 percent of the remaining net premiums written with respect to health insurance for any United States health risk that are attributable to the activities (other than activities of an unrelated trade or business as defined in section 513 of the Internal Revenue Code of 1986) of any covered entity qualifying under paragraph (3), (4), (26), or (29) of section 501(c) of such Code and exempt from tax under section 501(a) of such Code shall be taken into account.

''(3) Secretarial determination.—The Secretary shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary shall determine such covered entity's net premiums written with respect to any United States health risk on the basis of reports submitted by the covered entity under subsection (g) and through the use of any other source of information available to the Secretary.

''(c) COVERED ENTITY.—

''(1) IN GENERAL.—For purposes of this section, the term 'covered entity' means any entity which provides health insurance for any United States health risk during the calendar year in which the fee under this section is due.

''(2) EXCLUSION.—Such term does not include—

''(A) any employer to the extent that such employer self-insures its employees' health risks,

''(B) any governmental entity,

''(C) any entity—

''(i) which is incorporated as a nonprofit corporation under a State law,

''(ii) no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

''(iii) more than 80 percent of the gross revenues of which is received from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], and

''(D) any entity which is described in section 501(c)(9) of such Code and which is established by an entity (other than by an employer or employers) for purposes of providing health care benefits.

''(3) CONTROLLED GROUPS.—

''(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (*o*) of section 414 of such Code shall be treated as a single covered entity (or employer for purposes of paragraph (2)).

''(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

If any entity described in subparagraph (C) or (D) of paragraph (2) is treated as a covered entity by reason of the application of the preceding sentence, the net premiums written with respect to health insurance for any United States health risk of such entity shall not be taken into account for purposes of this section.

''(4) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (3), all such persons shall be jointly and severally liable for payment of such fee.

''(d) UNITED STATES HEALTH RISK.—For purposes of this section, the term 'United States health risk' means the health risk of any individual who is—

''(1) a United States citizen,

''(2) a resident of the United States (within the meaning of section 7701(b)(1)(A) of the Internal Revenue Code of 1986), or

''(3) located in the United States, with respect to the period such individual is so located.

''(e) APPLICABLE AMOUNT.—For purposes of subsection (b)(1)—

''(1) YEARS BEFORE 2019.—In the case of calendar years beginning before 2019, the applicable amount shall be determined in accordance with the following table:

"Calendar year	**Applicable amount**
2014	$8,000,000,000
2015	$11,300,000,000
2016	$11,300,000,000
2017	$13,900,000,000
2018	$14,300,000,000.

''(2) YEARS AFTER 2018.—In the case of any calendar year beginning after 2018, the applicable amount shall be the applicable amount for the preceding calendar year increased by the rate of premium growth (within the meaning of section 36B(b)(3)(A)(ii) of the Internal Revenue Code of 1986) for such preceding calendar year.

''(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

''(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with

respect to which only civil actions for refund under procedures of such subtitle shall apply, and

''(2) for purposes of section 275 of such Code shall be considered to be a tax described in section 275(a)(6).

''(g) REPORTING REQUIREMENT.—

''(1) IN GENERAL.—Not later than the date determined by the Secretary following the end of any calendar year, each covered entity shall report to the Secretary, in such manner as the Secretary prescribes, the covered entity's net premiums written with respect to health insurance for any United States health risk for such calendar year.

''(2) PENALTY FOR FAILURE TO REPORT.—

''(A) IN GENERAL.—In the case of any failure to make a report containing the information required by paragraph (1) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid by the covered entity failing to file such report, an amount equal to—

''(i) $10,000, plus

''(ii) the lesser of—

''(I) an amount equal to $1,000, multiplied by the number of days during which such failure continues, or

''(II) the amount of the fee imposed by this section for which such report was required.

''(B) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A)—

''(i) shall be treated as a penalty for purposes of subtitle F of the Internal Revenue Code of 1986,

''(ii) shall be paid on notice and demand by the Secretary and in the same manner as tax under such Code, and

''(iii) with respect to which only civil actions for refund under procedures of such subtitle F shall apply.

''(3) ACCURACY-RELATED PENALTY.—

''(A) IN GENERAL.—In the case of any understatement of a covered entity's net premiums written with respect to health insurance for any United States health risk for any calendar year, there shall be paid by the covered entity making such understatement, an amount equal to the excess of—

''(i) the amount of the covered entity's fee under this section for the calendar year the Secretary determines should have been paid in the absence of any such understatement, over

''(ii) the amount of such fee the Secretary determined based on such understatement.

''(B) UNDERSTATEMENT.—For purposes of this paragraph, an understatement of a covered entity's net premiums written with respect to health insurance for any United States health risk for any calendar year is the difference between the amount of such net premiums written as reported on the return filed by the covered entity under paragraph (1) and the amount of such net premiums written that should have been reported on such return.

''(C) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A) shall be subject to the provisions of subtitle F of the Internal Revenue Code of 1986 that apply to assessable penalties imposed under chapter 68 of such Code.

''(4) TREATMENT OF INFORMATION.—Section 6103 of the Internal Revenue Code of 1986 shall not apply to any information reported under this subsection.

''(h) ADDITIONAL DEFINITIONS.—For purposes of this section—

''(1) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

''(2) UNITED STATES.—The term 'United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

''(3) HEALTH INSURANCE.—The term 'health insurance' shall not include—

''(A) any insurance coverage described in paragraph (1)(A) or (3) of section 9832(c) of the Internal Revenue Code of 1986,

''(B) any insurance for long-term care, or

''(C) any medicare supplemental health insurance (as defined in section 1882(g)(1) of the Social Security Act [42 U.S.C. 1395ss(g)(1)]).

''(i) GUIDANCE.—The Secretary shall publish guidance necessary to carry out the purposes of this section and shall prescribe such regulations as are necessary or appropriate to prevent avoidance of the purposes of this section, including inappropriate actions taken to qualify as an exempt entity under subsection (c)(2).

''(j) EFFECTIVE DATE.—This section shall apply to calendar years—

''(1) beginning after December 31, 2013, and ending before January 1, 2017, and

''(2) beginning after December 31, 2017.''

[Pub. L. 111–152, title I, §1406(a)(3)(C), Mar. 30, 2010, 124 Stat. 1065, which directed amendment of section 9010(c) of Pub. L. 111–148, set out above, by substituting ''subparagraph (C) or (D)'' for ''subparagraph (C)(i)(I), (D)(i)(I), or (E)(i)'' in par. (3)(A), was executed by making the substitution in concluding provisions of par. (3), to reflect the probable intent of Congress.]

[Pub. L. 111–152, title I, §1406(b), Mar. 30, 2010, 124 Stat. 1067, provided that: ''The amendments made by this section [amending section 9010 of Pub. L. 111–148, set out above] shall take effect as if included in section 9010 of the Patient Protection and Affordable Care Act [Pub. L. 111–148].'']

[Pub. L. 111–148, title X, §10905(g), Mar. 23, 2010, 124 Stat. 1019, provided that: ''The amendments made by this section [amending section 9010 of Pub. L. 111–148, set out above] shall take effect as if included in the enactment of section 9010.'']

CHAPTER 31—RETAIL EXCISE TAXES

PRIOR PROVISIONS

The provisions of a prior chapter 31, Miscellaneous Excise Taxes, were set out as:

Subchapter (A), Jewelry and related items, comprising sections 4001 to 4003;

Subchapter (B), Furs, comprising sections 4011 to 4013;

Subchapter (C), Toilet preparations, comprising sections 4021 and 4022;

Subchapter (D), Luggage, handbags, etc., comprising section 4031;

Subchapter (E), Special fuels, comprising sections 4041 and 4042; and

Subchapter (F), Special provisions applicable to retailers tax, comprising sections 4051 to 4058.

The headings for subchs. (A) to (D) were struck out by section 101(b)(1) and the listed sections were repealed by section 101(a) of Pub. L. 89–44, title I, June 21, 1965, 79 Stat. 136, the Excise Tax Reduction Act of 1965, applicable with respect to articles sold on or after June 22, 1965, as provided in section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

The headings for subchs. (E) and (F) were stricken by section 1904(a)(1)(A) of Pub. L. 94–455, title XIX, Oct. 4, 1976, 90 Stat. 1810, the Tax Reform Act of 1976. Sections 4051 to 4053 were repealed by section 101(b)(2) of Pub. L. 89–44, title I, June 21, 1965, 79 Stat. 136, applicable with respect to articles sold on or after June 22, 1965, as provided in section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4061 of this title; and sections 4042 and 4054 to 4058 were repealed by section 1904(a)(1)(D) of Pub. L. 94–455, title XIX, Oct. 4, 1976, 90 Stat. 1811, effective Feb. 1, 1977, as provided in section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[1] Section numbers editorially supplied.