

(A) In general

A person is described in this paragraph if such person—

- (i) is an investment advisor,
- (ii) is a member of the family of an individual described in clause (i), or
- (iii) is a 35-percent controlled entity (as defined in paragraph (3) by substituting “persons described in clause (i) or (ii) of paragraph (8)(A)” for “persons described in subparagraph (A) or (B) of paragraph (1)” in subparagraph (A)(i) thereof).

(B) Investment advisor defined

For purposes of subparagraph (A), the term “investment advisor” means, with respect to any sponsoring organization (as defined in section 4966(d)(1)), any person (other than an employee of such organization) compensated by such organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds (as defined in section 4966(d)(2)) owned by such organization.

(Added Pub. L. 104-168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475; amended Pub. L. 109-280, title XII, §§1212(a)(3), 1232(a), (b), 1242(a), (b), Aug. 17, 2006, 120 Stat. 1074, 1098, 1099, 1104; Pub. L. 110-172, §3(i), Dec. 29, 2007, 121 Stat. 2475; Pub. L. 111-148, title I, §1322(h)(3), Mar. 23, 2010, 124 Stat. 192.)

CODIFICATION

Sections 1212(a)(3), 1232(a), (b), and 1242(a), (b) of Pub. L. 109-280, which directed the amendment of section 4958 without specifying the act to be amended, were executed to this section, which is section 4958 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2010—Subsec. (e)(1). Pub. L. 111-148 substituted “paragraph (3), (4), or (29)” for “paragraph (3) or (4)”.

2007—Subsec. (c)(3)(A)(i)(II). Pub. L. 110-172, §3(i)(1), substituted “subparagraph (C)(ii)” for “paragraph (1), (2), or (4) of section 509(a)”.

Subsec. (c)(3)(C)(ii). Pub. L. 110-172, §3(i)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Such term shall not include any organization described in paragraph (1), (2), or (4) of section 509(a).”

2006—Subsec. (c)(2). Pub. L. 109-280, §1232(b)(1), added par. (2). Former par. (2) redesignated (3). See Codification note above.

Subsec. (c)(3). Pub. L. 109-280, §1242(b), added par. (3). Former par. (3) redesignated (4). See Codification note above.

Pub. L. 109-280, §1232(b)(1), redesignated par. (2) as (3). See Codification note above.

Subsec. (c)(4). Pub. L. 109-280, §1242(b), redesignated par. (3) as (4). See Codification note above.

Subsec. (d)(2). Pub. L. 109-280, §1212(a)(3), substituted “\$20,000” for “\$10,000”. See Codification note above.

Subsec. (f)(1)(D). Pub. L. 109-280, §1242(a), added subpar. (D). Former subpar. (D) redesignated (E). See Codification note above.

Pub. L. 109-280, §1232(a)(1), added subpar. (D). See Codification note above.

Subsec. (f)(1)(E). Pub. L. 109-280, §1242(a), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F). See Codification note above.

Pub. L. 109-280, §1232(a)(1), added subpar. (E). See Codification note above.

Subsec. (f)(1)(F). Pub. L. 109-280, §1242(a), redesignated subpar. (E) as (F). See Codification note above.

Subsec. (f)(6). Pub. L. 109-280, §1232(b)(2), inserted “, except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in any donor advised fund” after “standards”. See Codification note above.

Subsec. (f)(7), (8). Pub. L. 109-280, §1232(a)(2), added pars. (7) and (8). See Codification note above.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(a)(3) of Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109-280, set out as a note under section 4941 of this title.

Pub. L. 109-280, title XII, §1232(c), Aug. 17, 2006, 120 Stat. 1099, provided that: “The amendments made by this section [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006].”

Pub. L. 109-280, title XII, §1242(c), Aug. 17, 2006, 120 Stat. 1105, provided that:

“(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006].

“(2) SUBSECTION (b).—The amendments made by subsection (a) [probably should be “subsection (b)”], amending this section] shall apply to transactions occurring after July 25, 2006.”

EFFECTIVE DATE

Section 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 an Effective Date of 1996 Amendment note under section 4955 of this title.

§ 4959. Taxes on failures by hospital organizations

If a hospital organization to which section 501(r) applies fails to meet the requirement of section 501(r)(3) for any taxable year, there is imposed on the organization a tax equal to \$50,000.

(Added Pub. L. 111-148, title IX, §9007(b)(1), Mar. 23, 2010, 124 Stat. 857.)

EFFECTIVE DATE

Section applicable to failures occurring after Mar. 23, 2010, see section 9007(f)(3) of Pub. L. 111-148, set out as an Effective Date of 2010 Amendment note under section 501 of this title.

Subchapter E—Abatement of First and Second Tier Taxes in Certain Cases

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| Sec. 4961. | Abatement of second tier taxes where there is correction. |
| 4962. | Abatement of first tier taxes in certain cases. |
| 4963. | Definitions. |

AMENDMENTS

1996—Pub. L. 104-168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475, redesignated former subchapter D as E.
1987—Pub. L. 100-203, title X, §10712(a), (b)(5), Dec. 22, 1987, 101 Stat. 1330-465, 1330-467, redesignated former

subchapter C as D, and struck out “private foundation” before “first tier taxes” in item 4962.

1984—Pub. L. 98-369, div. A, title III, §305(b)(1), (2), July 18, 1984, 98 Stat. 783, substituted “Abatement of First and Second Tier Taxes in Certain Cases” for “Abatement of Second Tier Taxes Where There Is Correction During Correction Period” in the subchapter heading, added item 4962, and renumbered former item 4962 as 4963.

§ 4961. Abatement of second tier taxes where there is correction

(a) General rule

If any taxable event is corrected during the correction period for such event, then any second tier tax imposed with respect to such event (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) Supplemental proceeding

If the determination by a court that the taxpayer is liable for a second tier tax has become final, such court shall have jurisdiction to conduct any necessary supplemental proceeding to determine whether the taxable event was corrected during the correction period. Such a supplemental proceeding may be begun only during the period which ends on the 90th day after the last day of the correction period. Where such a supplemental proceeding has begun, the reference in the second sentence of section 6213(a) to a final decision of the Tax Court shall be treated as including a final decision in such supplemental proceeding.

(c) Suspension of period of collection for second tier tax

(1) Proceeding in District Court or United States Court of Federal Claims

If, not later than 90 days after the day on which the second tier tax is assessed, the first tier tax is paid in full and a claim for refund of the amount so paid is filed, no levy or proceeding in court for the collection of the second tier tax shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2) (and of any supplemental proceeding with respect thereto under subsection (b)). Notwithstanding section 7421(a), the collection by levy or proceeding may be enjoined during the time such prohibition is in force by a proceeding in the proper court.

(2) Suit must be brought to determine liability

If, within 90 days after the day on which his claim for refund is denied, the person against whom the second tier tax was assessed fails to begin a proceeding described in section 7422 for the determination of his liability for such tax, paragraph (1) shall cease to apply with respect to such tax, effective on the day following the close of the 90-day period referred to in this paragraph.

(3) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy

or by a proceeding in court with respect to any second tier tax described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(4) Jeopardy collection

If the Secretary makes a finding that the collection of the second tier tax is in jeopardy, nothing in this subsection shall prevent the immediate collection of such tax.

(Added Pub. L. 96-596, §2(c)(1), Dec. 24, 1980, 94 Stat. 3472; amended Pub. L. 99-514, title XVIII, §1899A(50), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” in heading.

1986—Subsec. (c)(1). Pub. L. 99-514 substituted “United States Claims Court” for “Court of Claims” in heading.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Pub. L. 96-596, §2(d), Dec. 24, 1980, 94 Stat. 3474, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) FIRST TIER TAXES.—The amendments made by this section [enacting this section and section 4962 of this title and amending sections 4941 to 4945, 4951, 4952, 4971, 4975, 6213, 6214, 6503, and 7422 of this title] with respect to any first tier tax shall take effect as if included in the Internal Revenue Code of 1986 [formerly I.R.C. 1954] when such tax was first imposed.

“(2) SECOND TIER TAXES.—The amendments made by this section with respect to any second tier tax shall apply only with respect to taxes assessed after the date of the enactment of this Act [Dec. 24, 1980]. Nothing in the preceding sentence shall be construed to permit the assessment of a tax in a case to which, on the date of the enactment of this Act, the doctrine of res judicata applies.

“(3) FIRST AND SECOND TIER TAX.—For purposes of this subsection, the terms ‘first tier tax’ and ‘second tier tax’ have the respective meanings given to such terms by section 4962 of the Internal Revenue Code of 1986.”

§ 4962. Abatement of first tier taxes in certain cases

(a) General rule

If it is established to the satisfaction of the Secretary that—

(1) a taxable event was due to reasonable cause and not to willful neglect, and

(2) such event was corrected within the correction period for such event,

then any qualified first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment.

(b) Qualified first tier tax

For purposes of this section, the term “qualified first tier tax” means any first tier tax imposed by subchapter A, C, D, or G of this chap-