

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-168 substituted “sections 4945 and 4958” for “section 4945” in heading and inserted “or an excess benefit for purposes of section 4958” before period at end of text.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-168, title XIII, §1311(d)(1), (2), July 30, 1996, 110 Stat. 1478, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 4958 of this title and amending this section and sections 4963, 6213, 7422, and 7454 of this title] (other than subsection (b)) [amending section 501 of this title] shall apply to excess benefit transactions occurring on or after September 14, 1995.

“(2) BINDING CONTRACTS.—The amendments referred to in paragraph (1) shall not apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.”

EFFECTIVE DATE

Pub. L. 100-203, title X, §10712(d), Dec. 22, 1987, 101 Stat. 1330-468, provided that: “The amendments made by this section [enacting this section and amending sections 4962, 4963, 6213, 6501, 6503, 6684, 7422, and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987].”

Subchapter D—Failure by Certain Charitable Organizations To Meet Certain Qualification Requirements

Sec.	
4958.	Taxes on excess benefit transactions.
4959.	Taxes on failures by hospital organizations.
4960.	Tax on excess tax-exempt organization executive compensation.

PRIOR PROVISIONS

A prior subchapter D, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

AMENDMENTS

2017—Pub. L. 115-97, title I, §13602(b), Dec. 22, 2017, 131 Stat. 2159, added item 4960.

2010—Pub. L. 111-148, title IX, §9007(b)(2), Mar. 23, 2010, 124 Stat. 857, added item 4959.

§ 4958. Taxes on excess benefit transactions

(a) Initial taxes

(1) On the disqualified person

There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

(b) Additional tax on the disqualified person

In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such

transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(c) Excess benefit transaction; excess benefit

For purposes of this section—

(1) Excess benefit transaction

(A) In general

The term “excess benefit transaction” means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

(B) Excess benefit

The term “excess benefit” means the excess referred to in subparagraph (A).

(2) Special rules for donor advised funds

In the case of any donor advised fund (as defined in section 4966(d)(2))—

(A) the term “excess benefit transaction” includes any grant, loan, compensation, or other similar payment from such fund to a person described in subsection (f)(7) with respect to such fund, and

(B) the term “excess benefit” includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other similar payment.

(3) Special rules for supporting organizations

(A) In general

In the case of any organization described in section 509(a)(3)—

(i) the term “excess benefit transaction” includes—

(I) any grant, loan, compensation, or other similar payment provided by such organization to a person described in subparagraph (B), and

(II) any loan provided by such organization to a disqualified person (other than an organization described in subparagraph (C)(ii)), and

(ii) the term “excess benefit” includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other similar payment.

(B) Person described

A person is described in this subparagraph if such person is—

(i) a substantial contributor to such organization,

(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or