

(A) is described in section 4966(d)(2)(A)(iii), (B) is a member of the family of an individual described in subparagraph (A), or

(C) is a 35-percent controlled entity (as defined in paragraph (3) by substituting “persons described in subparagraph (A) or (B) of paragraph (7)” for “persons described in subparagraph (A) or (B) of paragraph (1)” in subparagraph (A)(i) thereof).

(8) Investment advisors

For purposes of paragraph (1)(F)—

(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; Pub. L. 115-141, div. U, title IV, §401(a)(224), Mar. 23, 2018, 132 Stat. 1194.)

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

2018—Subsec. (f)(1)(D). Pub. L. 115-141 substituted comma for period at end.

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.

§ 4960. Tax on excess tax-exempt organization executive compensation

(a) Tax imposed

There is hereby imposed a tax equal to the product of the rate of tax under section 11 and the sum of—

- (1) so much of the remuneration paid (other than any excess parachute payment) by an applicable tax-exempt organization for the taxable year with respect to employment of any covered employee in excess of \$1,000,000, plus
- (2) any excess parachute payment paid by such an organization to any covered employee.

For purposes of the preceding sentence, remuneration shall be treated as paid when there is no substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)) of the rights to such remuneration.

(b) Liability for tax

The employer shall be liable for the tax imposed under subsection (a).

(c) Definitions and special rules

For purposes of this section—

(1) Applicable tax-exempt organization

The term “applicable tax-exempt organization” means any organization which for the taxable year—

- (A) is exempt from taxation under section 501(a),
- (B) is a farmers’ cooperative organization described in section 521(b)(1),
- (C) has income excluded from taxation under section 115(1), or
- (D) is a political organization described in section 527(e)(1).

(2) Covered employee

For purposes of this section, the term “covered employee” means any employee (including any former employee) of an applicable tax-exempt organization if the employee—

- (A) is one of the 5 highest compensated employees of the organization for the taxable year, or
- (B) was a covered employee of the organization (or any predecessor) for any preceding taxable year beginning after December 31, 2016.

(3) Remuneration

For purposes of this section:

(A) In general

The term “remuneration” means wages (as defined in section 3401(a)), except that such term shall not include any designated Roth contribution (as defined in section 402A(c)) and shall include amounts required to be included in gross income under section 457(f).

(B) Exception for remuneration for medical services

The term “remuneration” shall not include the portion of any remuneration paid to a licensed medical professional (including a veterinarian) which is for the performance of medical or veterinary services by such professional.

(4) Remuneration from related organizations

(A) In general

Remuneration of a covered employee by an applicable tax-exempt organization shall include any remuneration paid with respect to employment of such employee by any related person or governmental entity.

(B) Related organizations

A person or governmental entity shall be treated as related to an applicable tax-exempt organization if such person or governmental entity—

- (i) controls, or is controlled by, the organization,
- (ii) is controlled by one or more persons which control the organization,
- (iii) is a supported organization (as defined in section 509(f)(3)) during the taxable year with respect to the organization,
- (iv) is a supporting organization described in section 509(a)(3) during the taxable year with respect to the organization,

or

- (v) in the case of an organization which is a voluntary employees’ beneficiary association described in section 501(c)(9), establishes, maintains, or makes contributions to such voluntary employees’ beneficiary association.

(C) Liability for tax

In any case in which remuneration from more than one employer is taken into account under this paragraph in determining the tax imposed by subsection (a), each such employer shall be liable for such tax in an amount which bears the same ratio to the total tax determined under subsection (a) with respect to such remuneration as—

- (i) the amount of remuneration paid by such employer with respect to such employee, bears to
- (ii) the amount of remuneration paid by all such employers to such employee.

(5) Excess parachute payment

For purposes of determining the tax imposed by subsection (a)(2)—

(A) In general

The term “excess parachute payment” means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

(B) Parachute payment

The term “parachute payment” means any payment in the nature of compensation to (or for the benefit of) a covered employee if—

- (i) such payment is contingent on such employee’s separation from employment with the employer, and
- (ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such separation equals or exceeds an amount equal to 3 times the base amount.

(C) Exception

Such term does not include any payment—