

§ 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—

(i) described in section 280G(b)(6) (relating to exemption for payments under qualified plans),

(ii) made under or to an annuity contract described in section 403(b) or a plan described in section 457(b),

(iii) to a licensed medical professional (including a veterinarian) to the extent that such payment is for the performance of medical or veterinary services by such professional, or

(iv) to an individual who is not a highly compensated employee as defined in section 414(q).

(D) Base amount

Rules similar to the rules of 280G(b)(3) shall apply for purposes of determining the base amount.

(E) Property transfers; present value

Rules similar to the rules of paragraphs (3) and (4) of section 280G(d) shall apply.

(6) Coordination with deduction limitation

Remuneration the deduction for which is not allowed by reason of section 162(m) shall not be taken into account for purposes of this section.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance of the tax under this section, including regulations to prevent avoidance of such tax through the performance of services other than as an employee or by providing compensation through a pass-through or other entity to avoid such tax.

(Added Pub. L. 115-97, title I, §13602(a), Dec. 22, 2017, 131 Stat. 2157.)

EFFECTIVE DATE

Pub. L. 115-97, title I, §13602(c), Dec. 22, 2017, 131 Stat. 2159, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2017."

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

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 sec-

ond 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. 115-141, div. U, title IV, §401(a)(325)(C), Mar. 23, 2018, 132 Stat. 1200.)