

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 1997 AMENDMENT

Pub. L. 105-34, title XVI, §1603(c), Aug. 5, 1997, 111 Stat. 1097, provided that: "The amendments made by this section [amending this section and section 6033 of this title] shall take effect as if included in the provisions of the Taxpayer Bill of Rights 2 [Pub. L. 104-168] to which such amendments relate."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

Pub. L. 98-369, div. A, title III, §305(c), July 18, 1984, 98 Stat. 784, provided that: "The amendments made by this section [enacting this section, redesignating former section 4962 as 4963, and amending sections 4942, 6213, and 6503 of this title] shall apply to taxable events occurring after December 31, 1984."

§ 4963. Definitions

(a) First tier tax

For purposes of this subchapter, the term "first tier tax" means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4966, 4967, 4971, or 4975.

(b) Second tier tax

For purposes of this subchapter, the term "second tier tax" means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

(c) Taxable event

For purposes of this subchapter, the term "taxable event" means any act (or failure to act) giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4966, 4967, 4971, or 4975.

(d) Correct

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), the term "correct" has the same meaning as when used in the section which imposes the second tier tax.

(2) Special rules

The term "correct" means—

(A) in the case of the second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

(B) in the case of the second tier tax imposed by section 4943(b), reducing the amount of the excess business holdings to zero, and

(C) in the case of the second tier tax imposed by section 4944, removing the investment from jeopardy.

(e) Correction period

For purposes of this subchapter—

(1) In general

The term "correction period" means, with respect to any taxable event, the period beginning on the date on which such event occurs

and ending 90 days after the date of mailing under section 6212 of a notice of deficiency with respect to the second tier tax imposed on such taxable event, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a) (determined without regard to the last sentence of section 4961(b)), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable event.

(2) Special rules for when taxable event occurs

For purposes of paragraph (1), the taxable event shall be treated as occurring—

(A) in the case of section 4942, on the first day of the taxable year for which there was a failure to distribute income,

(B) in the case of section 4943, on the first day on which there are excess business holdings,

(C) in the case of section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

(D) in any other case, the date on which such event occurred.

(Added Pub. L. 96-596, §2(c)(1), Dec. 24, 1980, 94 Stat. 3473, §4962; renumbered §4963, Pub. L. 98-369, div. A, title III, §305(a), July 18, 1984, 98 Stat. 783; amended Pub. L. 100-203, title X, §10712(b)(3), Dec. 22, 1987, 101 Stat. 1330-467; Pub. L. 104-168, title XIII, §1311(c)(2), July 30, 1996, 110 Stat. 1478; Pub. L. 109-280, title XII, §1231(b)(1), Aug. 17, 2006, 120 Stat. 1098.)

AMENDMENTS

2006—Subsecs. (a), (c). Pub. L. 109-280, which directed the insertion of "4966, 4967," after "4958," in subsecs. (a) and (c) of section 4963, without specifying the act to be amended, was executed by making the insertion in subsecs. (a) and (c) of this section, which is section 4963 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsecs. (a) to (c). Pub. L. 104-168 inserted "4958," after "4955."

1987—Subsecs. (a) to (c). Pub. L. 100-203 inserted reference to section 4955 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, §1231(c), Aug. 17, 2006, 120 Stat. 1098, provided that: "The amendments made by this section [enacting subchapter G of this chapter and amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-168 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 a note under section 4955 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

For effective date of section with respect to any first tier tax and to any second tier tax, see section 2(d) of

Pub. L. 96-596, set out as a note under section 4961 of this title.

Subchapter F—Tax Shelter Transactions

Sec.

4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions.

§ 4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions

(a) Being a party to and approval of prohibited transactions

(1) Tax-exempt entity

(A) In general

If a transaction is a prohibited tax shelter transaction at the time any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) becomes a party to the transaction, such entity shall pay a tax for the taxable year in which the entity becomes such a party and any subsequent taxable year in the amount determined under subsection (b)(1).

(B) Post-transaction determination

If any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) is a party to a subsequently listed transaction at any time during a taxable year, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1).

(2) Entity manager

If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

(b) Amount of tax

(1) Entity

In the case of a tax-exempt entity—

(A) In general

Except as provided in subparagraph (B), the amount of the tax imposed under subsection (a)(1) with respect to any transaction for a taxable year shall be an amount equal to the product of the highest rate of tax under section 11, and the greater of—

(i) the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to such transaction) for such taxable year which—

(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), is attributable to such transaction, or

(II) in the case of a subsequently listed transaction, is attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed trans-

action by the Secretary or the first day of the taxable year, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which—

(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), are attributable to such transaction, or

(II) in the case of a subsequently listed transaction, are attributable to such transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

(B) Increase in tax for certain knowing transactions

In the case of a tax-exempt entity which knew, or had reason to know, a transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—

(i) 100 percent of the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which are attributable to the prohibited tax shelter transaction.

This subparagraph shall not apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of the enactment of this section.

(2) Entity manager

In the case of each entity manager, the amount of the tax imposed under subsection (a)(2) shall be \$20,000 for each approval (or other act causing participation) described in subsection (a)(2).

(c) Tax-exempt entity

For purposes of this section, the term "tax-exempt entity" means an entity which is—

(1) described in section 501(c) or 501(d),

(2) described in section 170(c) (other than the United States),

(3) an Indian tribal government (within the meaning of section 7701(a)(40)),

(4) described in paragraph (1), (2), or (3) of section 4979(e),

(5) a program described in section 529,

(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 457(e)(1)(A),

(7) an arrangement described in section 4973(a), or

(8) a program described in section 529A.

(d) Entity manager

For purposes of this section, the term "entity manager" means—