(A) any defined benefit plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or

(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

**(3) Early retirement**

A plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of reducing the rate of future benefit accrual.

**(g) New technologies**

The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.

(Added Pub. L. 107–16, title VI, § 659(a)(1), June 7, 2001, 115 Stat. 137; amended Pub. L. 107–147, title IV, § 411(u)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title V, § 502(c)(2), Aug. 17, 2006, 120 Stat. 941.)

AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109–280 inserted ''and to each employer who has an obligation to contribute to the plan'' before period at end.

2002—Subsec. (e)(1). Pub. L. 107–147, § 411(u)(1)(A), substituted ''the notice described in paragraph (2)'' for ''written notice''.

Subsec. (f)(2)(A). Pub. L. 107–147, § 411(u)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''any defined benefit plan, or''.

Subsec. (f)(3). Pub. L. 107–147, § 411(u)(1)(C), struck out ''significantly'' before ''reduces'' and before ''reducing''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title V, § 502(d), Aug. 17, 2006, 120 Stat. 941, provided that: ''The amendments made by this section [amending this section and sections 1021, 1054, and 1132 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Pub. L. 107–16, title VI, § 659(c), June 7, 2001, 115 Stat. 141, as amended by Pub. L. 107–147, title IV, § 411(u)(3), Mar. 9, 2002, 116 Stat. 52, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1054 of Title 29, Labor] shall apply to plan amendments taking effect on or after the date of the enactment of this Act [June 7, 2001].

''(2) TRANSITION.—Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (3) of the Internal Revenue Code of 1986, and section 204(h) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(h)], as added by the amendments made by this section, a plan shall be treated as meeting the requirements of such sections if it makes a good faith effort to comply with such requirements.

''(3) SPECIAL NOTICE RULE.—

''(A) IN GENERAL.—The period for providing any notice required by the amendments made by this section shall not end before the date which is 3 months after the date of the enactment of this Act.

''(B) REASONABLE NOTICE.—The amendments made by this section shall not apply to any plan amendment taking effect on or after the date of the enactment of this Act if, before April 25, 2001, notice was provided to participants and beneficiaries adversely affected by the plan amendment (and their representatives) which was reasonably expected to notify them of the nature and effective date of the plan amendment.''

## § 4980G. Failure of employer to make comparable health savings account contributions

**(a) General rule**

In the case of an employer who makes a contribution to the health savings account of any employee during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (b) for such calendar year.

**(b) Rules and requirements**

Rules and requirements similar to the rules and requirements of section 4980E shall apply for purposes of this section.

**(c) Regulations**

The Secretary shall issue regulations to carry out the purposes of this section, including regulations providing special rules for employers who make contributions to Archer MSAs and health savings accounts during the calendar year.

**(d) Exception**

For purposes of applying section 4980E to a contribution to a health savings account of an employee who is not a highly compensated employee (as defined in section 414(q)), highly compensated employees shall not be treated as comparable participating employees.

(Added Pub. L. 108–173, title XII, § 1201(d)(4)(A), Dec. 8, 2003, 117 Stat. 2478; amended Pub. L. 109–432, div. A, title III, § 306(a), Dec. 20, 2006, 120 Stat. 2951.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–432 added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, § 306(b), Dec. 20, 2006, 120 Stat. 2951, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 62 of this title.

## § 4980H. Shared responsibility for employers regarding health coverage

**(a) Large employers not offering health coverage**

If—

(1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible em-

ployer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

**(b) Large employers offering coverage with employees who qualify for premium tax credits or cost-sharing reductions**

**(1) In general**

If—

(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(B) 1 or more full-time employees of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and an amount equal to 1/12 of $3,000.

**(2) Overall limitation**

The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

**(c) Definitions and special rules**

For purposes of this section—

**(1) Applicable payment amount**

The term ''applicable payment amount'' means, with respect to any month, 1/12 of $2,000.

**(2) Applicable large employer**

**(A) In general**

The term ''applicable large employer'' means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

**(B) Exemption for certain employers**

**(i) In general**

An employer shall not be considered to employ more than 50 full-time employees if—

(I) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

(II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

**(ii) Definition of seasonal workers**

The term ''seasonal worker'' means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

**(C) Rules for determining employer size**

For purposes of this paragraph—

**(i) Application of aggregation rule for employers**

All persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

**(ii) Employers not in existence in preceding year**

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

**(iii) Predecessors**

Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

**(D) Application of employer size to assessable penalties**

**(i) In general**

The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating—

(I) the assessable payment under subsection (a), or

(II) the overall limitation under subsection (b)(2).

**(ii) Aggregation**

In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II)[1] shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

**(E) Full-time equivalents treated as full-time employees**

Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer

[1] So in original. Probably means subclause (I) or (II) of clause (i).

shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

**(F) Exemption for health coverage under TRICARE or the Department of Veterans Affairs**

Solely for purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an individual shall not be taken into account as an employee for such month if such individual has medical coverage for such month under—

(i) chapter 55 of title 10, United States Code, including coverage under the TRICARE program, or

(ii) under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.

**(3) Applicable premium tax credit and cost-sharing reduction**

The term ''applicable premium tax credit and cost-sharing reduction'' means—

(A) any premium tax credit allowed under section 36B,

(B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, and

(C) any advance payment of such credit or reduction under section 1412 of such Act.

**(4) Full-time employee**

**(A) In general**

The term ''full-time employee'' means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

**(B) Hours of service**

The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

**(5) Inflation adjustment**

**(A) In general**

In the case of any calendar year after 2014, each of the dollar amounts in subsection (b) and paragraph (1) shall be increased by an amount equal to the product of—

(i) such dollar amount, and

(ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

**(B) Rounding**

If the amount of any increase under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.

**(6) Other definitions**

Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

**(7) Tax nondeductible**

**For denial of deduction for the tax imposed by this section, see section 275(a)(6).**

**(d) Administration and procedure**

**(1) In general**

Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

**(2) Time for payment**

The Secretary may provide for the payment of any assessable payment provided by this section on an annual, monthly, or other periodic basis as the Secretary may prescribe.

**(3) Coordination with credits, etc.**

The Secretary shall prescribe rules, regulations, or guidance for the repayment of any assessable payment (including interest) if such payment is based on the allowance or payment of an applicable premium tax credit or cost-sharing reduction with respect to an employee, such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made but for such allowance or payment.

(Added and amended Pub. L. 111–148, title I, § 1513(a), title X, §§ 10106(e)–(f)(2), 10108(i)(1)(A), Mar. 23, 2010, 124 Stat. 253, 910, 914; Pub. L. 111–152, title I, § 1003, Mar. 30, 2010, 124 Stat. 1033; Pub. L. 112–10, div. B, title VIII, § 1858(b)(4), Apr. 15, 2011, 125 Stat. 169; Pub. L. 114–41, title IV, § 4007(a)(1), July 31, 2015, 129 Stat. 465; Pub. L. 115–141, div. U, title IV, § 401(a)(2)(B), Mar. 23, 2018, 132 Stat. 1184.)

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsecs. (a)(2), (b)(1)(B), and (c)(3)(B), (C), (5)(A)(ii), (6), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Sections 1302(c)(4), 1402, 1411, and 1412 of the Act are classified to sections 18022(c)(4), 18071, 18081, and 18082, respectively, of Title 42, The Public Health and Welfare. Section 10108 of the Act enacted former section 139D of this title and section 18101 of Title 42, amended sections 36B, 162, 4980H, 6056, and 6724 of this title and section 218b of Title 29, Labor, and enacted provisions set out as notes under sections 36B, 162, 4980H, and 6056 of this title and former section 139D of this title. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

AMENDMENTS

2018—Subsec. (c)(2)(F). Pub. L. 115–141 substituted ''Department of Veterans Affairs'' for ''Veterans Administration'' in heading.

2015—Subsec. (c)(2)(F). Pub. L. 114–41 added subpar. (F).

2011—Subsec. (b)(3). Pub. L. 112–10 struck out par. (3). Text read as follows: ''No assessable payment shall be imposed under paragraph (1) for any month with respect to any employee to whom the employer provides a free choice voucher under section 10108 of the Patient Protection and Affordable Care Act for such month.''

2010—Subsec. (b). Pub. L. 111–152, §1003(d), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to large employers with enrollment waiting periods exceeding 60 days.

Pub. L. 111–148, §10106(e), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to large employers with enrollment waiting periods exceeding 30 days.

Subsec. (c). Pub. L. 111–152, §1003(d), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 111–152, §1003(b)(1), substituted ''an amount equal to 1/12 of $3,000'' for ''400 percent of the applicable payment amount'' in concluding provisions.

Subsec. (c)(3). Pub. L. 111–148, §10108(i)(1)(A), added par. (3).

Subsec. (d). Pub. L. 111–152, §1003(d), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 111–152, §1003(b)(2), substituted ''$2,000'' for ''$750''.

Subsec. (d)(2)(D). Pub. L. 111–152, §1003(a), amended subpar. (D) generally. Prior to amendment, text read as follows: ''In the case of any employer the substantial annual gross receipts of which are attributable to the construction industry—

''(i) subparagraph (A) shall be applied by substituting 'who employed an average of at least 5 full-time employees on business days during the preceding calendar year and whose annual payroll expenses exceed $250,000 for such preceding calendar year' for 'who employed an average of at least 50 full-time employees on business days during the preceding calendar year', and

''(ii) subparagraph (B) shall be applied by substituting '5' for '50'.''

Pub. L. 111–148, §10106(f)(2), added subpar. (D).

Subsec. (d)(2)(E). Pub. L. 111–152, §1003(c), added subpar. (E).

Subsec. (d)(4)(A). Pub. L. 111–148, §10106(f)(1), inserted '', with respect to any month,'' after ''means''.

Subsec. (d)(5)(A). Pub. L. 111–152, §1003(b)(3), substituted ''subsection (b) and paragraph (1)'' for ''subsection (b)(2) and (d)(1)'' in introductory provisions.

Subsec. (e). Pub. L. 111–152, §1003(d), redesignated subsec. (e) as (d).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–41, title IV, §4007(a)(2), July 31, 2015, 129 Stat. 466, provided that: ''The amendment made by this subsection [amending this section] shall apply to months beginning after December 31, 2013.''

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–10 effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111–148 to which it relates, see section 1858(d) of Pub. L. 112–10, set out as a note under section 36B of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10106(f)(3), Mar. 23, 2010, 124 Stat. 911, provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to months beginning after December 31, 2013.''

Pub. L. 111–148, title X, §10108(i)(1)(B), Mar. 23, 2010, 124 Stat. 914, provided that: ''The amendment made by this paragraph [amending this section] shall apply to months beginning after December 31, 2013.''

EFFECTIVE DATE

Pub. L. 111–148, title I, §1513(d), Mar. 23, 2010, 124 Stat. 256, provided that: ''The amendments made by this section [enacting this section] shall apply to months beginning after December 31, 2013.''

### [§ 4980I. Repealed. Pub. L. 116–94, div. N, title I, § 503(a), Dec. 20, 2019, 133 Stat. 3119]

Section, added and amended Pub. L. 111–148, title IX, §9001(a), title X, §10901(a), (b), Mar. 23, 2010, 124 Stat. 847, 1015, 1016; Pub. L. 111–152, title I, §1401(a), Mar. 30, 2010, 124 Stat. 1059; Pub. L. 114–113, div. P, title I, §§101(b), 102, Dec. 18, 2015, 129 Stat. 3037; Pub. L. 114–255, div. C, title XVIII, §18001(a)(4), Dec. 13, 2016, 130 Stat. 1342; Pub. L. 115–97, title I, §11002(d)(12), Dec. 22, 2017, 131 Stat. 2062; Pub. L. 115–141, div. U, title IV, §401(a)(237), (238), Mar. 23, 2018, 132 Stat. 1195, related to excise tax on high cost employer-sponsored health coverage.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2019, see section 503(c) of Pub. L. 116–94, set out as an Effective Date of 2019 Amendment note under section 6051 of this title.

## CHAPTER 44—QUALIFIED INVESTMENT ENTITIES



AMENDMENTS

1986—Pub. L. 99–514, title VI, §651(c), Oct. 22, 1986, 100 Stat. 2297, substituted: ''QUALIFIED INVESTMENT ENTITIES'' for ''REAL ESTATE INVESTMENT TRUSTS'' as chapter heading, substituted ''Excise tax on undistributed income of real estate investment trusts'' for ''Excise tax based on certain real estate investment trust taxable income not distributed during the taxable year'' in item 4981, and added item 4982.

1976—Pub. L. 94–455, title XVI, §1605(a), Oct. 4, 1976, 90 Stat. 1754, added chapter heading and section analysis.

### § 4981. Excise tax on undistributed income of real estate investment trusts

#### (a) Imposition of tax

There is hereby imposed a tax on every real estate investment trust for each calendar year equal to 4 percent of the excess (if any) of—

(1) the required distribution for such calendar year, over

(2) the distributed amount for such calendar year.

#### (b) Required distribution

For purposes of this section—

##### (1) In general

The term ''required distribution'' means, with respect to any calendar year, the sum of—

(A) 85 percent of the real estate investment trust's ordinary income for such calendar year, plus

(B) 95 percent of the real estate investment trust's capital gain net income for such calendar year.

##### (2) Increase by prior year shortfall

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

(A) the grossed up required distribution for the preceding calendar year, over

(B) the distributed amount for such preceding calendar year.

##### (3) Grossed up required distribution

The grossed up required distribution for any calendar year is the required distribution for such year determined—