

count 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 per-

formance 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.)

Statutory Notes and Related Subsidiaries

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. 4963.	Abatement of first tier taxes in certain cases. Definitions.

Editorial Notes

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 second 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