the purposes of this section. Such regulations may treat domestic service employment taxes as taxes imposed by chapter 1 for purposes of coordinating the assessment and collection of such employment taxes with the assessment and collection of domestic employers' income taxes.

(f) Authority to enter into agreements to collect State unemployment taxes

(1) In general

The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State's unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

(2) Transfers to State account

Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

(3) Subtitle F made applicable

For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

(4) State

For purposes of this subsection, the term ''State'' has the meaning given such term by section 3306(j)(1).

(Added Pub. L. 103–387, § 2(b)(1), Oct. 22, 1994, 108 Stat. 4073.)

PRIOR PROVISIONS

A prior section 3510, added Pub. L. 98–21, title I, § 123(b)(1), Apr. 20, 1983, 97 Stat. 88, provided a credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(42), Nov. 5, 1990, 104 Stat. 1388–521.

EFFECTIVE DATE

Section 2(b)(3) of Pub. L. 103–387 provided that: ''The amendments made by this subsection [enacting this section] shall apply to remuneration paid in calendar years beginning after December 31, 1994.''

EXPANDED INFORMATION TO EMPLOYERS

Section 2(b)(4) of Pub. L. 103–387 provided that: ''The Secretary of the Treasury or the Secretary's delegate shall prepare and make available information on the Federal tax obligations of employers with respect to employees performing domestic service in a private home of the employer. Such information shall also include a statement that such employers may have obligations with respect to such employees under State laws relating to unemployment insurance and workers compensation.''

Subtitle D—Miscellaneous Excise Taxes

Chapter		Sec.[1]
31.	Retail excise taxes	4001
32.	Manufacturers excise taxes	4061
33.	Facilities and services	4231
34.	Taxes on certain insurance policies	4371
35.	Taxes on wagering	4401
36.	Certain other excise taxes	4451
[37.	Repealed.]	
38.	Environmental taxes	4611
39.	Registration-required obligations	4701
40.	General provisions relating to occupational taxes	4901
41.	Public charities	4911
42.	Private foundations; and certain other tax-exempt organizations	4940
43.	Qualified pension, etc., plans	4971
44.	Real estate investment trusts	4981
45.	Provisions relating to expatriated entities	4985
46.	Golden parachute payments	4999
47.	Certain group health plans	5000
48.	Maintenance of minimum essential coverage	5000A
49.	Cosmetic services	5000B
50.	Foreign procurement	5000C

[1] Section numbers editorially supplied.

AMENDMENTS

2011—Pub. L. 111–347, title III, § 301(a)(2), Jan. 2, 2011, 124 Stat. 3666, added item for chapter 50.

2010—Pub. L. 111–148, title X, § 10907(c), Mar. 23, 2010, 124 Stat. 1020, added item for chapter 49.

Pub. L. 111–148, title IX, § 9017(b), Mar. 23, 2010, 124 Stat. 872, which directed amendment of analysis by adding item for chapter 49, was not executed in view of Pub. L. 111–148, title X, § 10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the amendments made by section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

Pub. L. 111–148, title I, § 1501(c), title VI, § 6301(e)(2)(B)(ii), Mar. 23, 2010, 124 Stat. 249, 747, added items for chapters 34 and 48 and struck out former item for chapter 34 ''Documentary stamp taxes''.

2004—Pub. L. 108–357, title VIII, § 802(c)(2), Oct. 22, 2004, 118 Stat. 1568, added item for chapter 45.

1990—Pub. L. 101–508, title XI, § 11801(b)(17), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for chapter 37 ''Sugar, coconut and palm oil''.

1989—Pub. L. 101–239, title VI, § 6202(b)(4)(B), title VII, § 7841(d)(4), Dec. 19, 1989, 103 Stat. 2233, 2428, substituted semicolon for comma in item for chapter 42 and struck out ''large'' after ''Certain'' in item for chapter 47.

1988—Pub. L. 100–418, title I, § 1941(b)(3)(A), Aug. 23, 1988, 102 Stat. 1324, struck out item for chapter 45 ''Windfall profit tax on domestic crude oil''.

1987—Pub. L. 100–203, title X, § 10712(c)(8), Dec. 22, 1987, 101 Stat. 1330–467, substituted ''and certain other tax-exempt organizations'' for ''black lung benefit trusts'' in item for chapter 42.

1986—Pub. L. 99–509, title IX, § 9319(d)(2), Oct. 21, 1986, 100 Stat. 2012, added item for chapter 47.

1984—Pub. L. 98–369, div. A, title I, § 67(d)(2), July 18, 1984, 98 Stat. 587, added item for chapter 46.

1983—Pub. L. 97–424, title V, § 512(b)(2)(B), Jan. 6, 1983, 96 Stat. 2177, substituted ''Retail excise taxes'' for ''Special fuels'' in item for chapter 31.

1982—Pub. L. 97–248, title III, § 310(b)(4)(B), Sept. 3, 1982, 96 Stat. 598, added item for chapter 39.

1980—Pub. L. 96–510, title II, § 211(b), Dec. 11, 1980, 94 Stat. 2801, added item for chapter 38.

Pub. L. 96–223, § 101(a)(2), Apr. 2, 1980, 94 Stat. 250, added item for chapter 45.

1978—Pub. L. 95–227, § 4(c)(2)(C), Feb. 10, 1978, 92 Stat. 22, inserted '', black lung benefit trusts'' after ''foundations'' in item for chapter 42.

1976—Pub. L. 94–455, title XIII, § 1307(d)(3)(A), title XVI, § 1605(c), title XIX, §§ 1904(b)(7)(E), (10)(G), 1952(n)(6), Oct. 4, 1976, 90 Stat. 1728, 1755, 1815, 1818, 1846, substituted ''41. Public charities'' for ''41. Interest equalization tax'' added item for chapter 44 and struck out items for chapters ''38. Import taxes'' and ''39. Regulatory taxes''.

1974—Pub. L. 93–406, title II, § 1016(b)(2), Sept. 2, 1974, 88 Stat. 932, added item for chapter 43.

1969—Pub. L. 91–172, title I, § 101(j)(59), Dec. 30, 1969, 83 Stat. 532, added item for chapter 42.

1964—Pub. L. 88–563, §2(b), Sept. 2, 1964, 78 Stat. 841, added item for chapter 41.

IMPOSITION OF ANNUAL FEE ON BRANDED PRESCRIPTION PHARMACEUTICAL MANUFACTURERS AND IMPORTERS

Pub. L. 111–148, title IX, §9008, Mar. 23, 2010, 124 Stat. 859, as amended by Pub. L. 111–152, title I, §1404(a), Mar. 30, 2010, 124 Stat. 1064, provided that:

''(a) IMPOSITION OF FEE.—

''(1) IN GENERAL.—Each covered entity engaged in the business of manufacturing or importing branded prescription drugs shall pay to the Secretary of the Treasury not later than the annual payment date of each calendar year beginning after 2010 a fee in an amount determined under subsection (b).

''(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term 'annual payment date' means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

''(b) DETERMINATION OF FEE AMOUNT.—

''(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

''(A) the covered entity's branded prescription drug sales taken into account during the preceding calendar year, bear to

''(B) the aggregate branded prescription drug sales of all covered entities taken into account during such preceding calendar year.

''(2) SALES TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the branded prescription drug sales taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

''With respect to a covered entity's aggregate branded prescription drug sales during the calendar year that are:	The percentage of such sales taken into account is:
Not more than $5,000,000	0 percent
More than $5,000,000 but not more than $125,000,000.	10 percent
More than $125,000,000 but not more than $225,000,000.	40 percent
More than $225,000,000 but not more than $400,000,000.	75 percent
More than $400,000,000	100 percent.

''(3) SECRETARIAL DETERMINATION.—The Secretary of the Treasury shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary of the Treasury shall determine such covered entity's branded prescription drug sales on the basis of reports submitted under subsection (g) and through the use of any other source of information available to the Secretary of the Treasury.

''(4) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined in accordance with the following table:

"Calendar year	**Applicable amount**
2011	$2,500,000,000
2012	$2,800,000,000
2013	$2,800,000,000
2014	$3,000,000,000
2015	$3,000,000,000
2016	$3,000,000,000
2017	$4,000,000,000
2018	$4,100,000,000
2019 and thereafter	$2,800,000,000.

''(c) TRANSFER OF FEES TO MEDICARE PART B TRUST FUND.—There is hereby appropriated to the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act [42 U.S.C. 1395t] an amount equal to the fees received by the Secretary of the Treasury under subsection (a).

''(d) COVERED ENTITY.—

''(1) IN GENERAL.—For purposes of this section, the term 'covered entity' means any manufacturer or importer with gross receipts from branded prescription drug sales.

''(2) CONTROLLED GROUPS.—

''(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (*o*) of section 414 of such Code shall be treated as a single covered entity.

''(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

''(3) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (2), all such persons shall be jointly and severally liable for payment of such fee.

''(e) BRANDED PRESCRIPTION DRUG SALES.—For purposes of this section—

''(1) IN GENERAL.—The term 'branded prescription drug sales' means sales of branded prescription drugs to any specified government program or pursuant to coverage under any such program.

''(2) BRANDED PRESCRIPTION DRUGS.—

''(A) IN GENERAL.—The term 'branded prescription drug' means—

''(i) any prescription drug the application for which was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)), or

''(ii) any biological product the license for which was submitted under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

''(B) PRESCRIPTION DRUG.—For purposes of subparagraph (A)(i), the term 'prescription drug' means any drug which is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

''(3) EXCLUSION OF ORPHAN DRUG SALES.—The term 'branded prescription drug sales' shall not include sales of any drug or biological product with respect to which a credit was allowed for any taxable year under section 45C of the Internal Revenue Code of 1986. The preceding sentence shall not apply with respect to any such drug or biological product after the date on which such drug or biological product is approved by the Food and Drug Administration for marketing for any indication other than the treatment of the rare disease or condition with respect to which such credit was allowed.

''(4) SPECIFIED GOVERNMENT PROGRAM.—The term 'specified government program' means—

''(A) the Medicare Part D program under part D of title XVIII of the Social Security Act [42 U.S.C. 1395w–101 et seq.],

''(B) the Medicare Part B program under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.],

''(C) the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.],

''(D) any program under which branded prescription drugs are procured by the Department of Veterans Affairs,

''(E) any program under which branded prescription drugs are procured by the Department of Defense, or

''(F) the TRICARE retail pharmacy program under section 1074g of title 10, United States Code.

''(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

''(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

''(2) for purposes of section 275 of such Code, shall be considered to be a tax described in section 275(a)(6).

''(g) REPORTING REQUIREMENT.—Not later than the date determined by the Secretary of the Treasury following the end of any calendar year, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and the Secretary of Defense shall report to the Secretary of the Treasury, in such manner as the Secretary of the Treasury prescribes, the total branded prescription drug sales for each covered entity with respect to each specified government program under such Secretary's jurisdiction using the following methodology:

''(1) MEDICARE PART D PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part D program, the product of—

''(A) the per-unit ingredient cost, as reported to the Secretary of Health and Human Services by prescription drug plans and Medicare Advantage prescription drug plans, minus any per-unit rebate, discount, or other price concession provided by the covered entity, as reported to the Secretary of Health and Human Services by the prescription drug plans and Medicare Advantage prescription drug plans, and

''(B) the number of units of the branded prescription drug paid for under the Medicare Part D program.

''(2) MEDICARE PART B PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part B program under section 1862(a) of the Social Security Act [42 U.S.C. 1395y(a)], the product of—

''(A) the per-unit average sales price (as defined in section 1847A(c) of the Social Security Act [42 U.S.C. 1395w–3a(c)]) or the per-unit Part B payment rate for a separately paid branded prescription drug without a reported average sales price, and

''(B) the number of units of the branded prescription drug paid for under the Medicare Part B program.

The Centers for Medicare and Medicaid Services shall establish a process for determining the units and the allocated price for purposes of this section for those branded prescription drugs that are not separately payable or for which National Drug Codes are not reported.

''(3) MEDICAID PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered under the Medicaid program, the product of—

''(A) the per-unit ingredient cost paid to pharmacies by States for the branded prescription drug dispensed to Medicaid beneficiaries, minus any per-unit rebate paid by the covered entity under section 1927 of the Social Security Act [42 U.S.C. 1396r–8] and any State supplemental rebate, and

''(B) the number of units of the branded prescription drug paid for under the Medicaid program.

''(4) DEPARTMENT OF VETERANS AFFAIRS PROGRAMS.—The Secretary of Veterans Affairs shall report, for each covered entity and for each branded prescription drug of the covered entity the total amount paid for each such branded prescription drug procured by the Department of Veterans Affairs for its beneficiaries.

''(5) DEPARTMENT OF DEFENSE PROGRAMS AND TRICARE.—The Secretary of Defense shall report, for each covered entity and for each branded prescription drug of the covered entity, the sum of—

''(A) the total amount paid for each such branded prescription drug procured by the Department of Defense for its beneficiaries, and

''(B) for each such branded prescription drug dispensed under the TRICARE retail pharmacy program, the product of—

''(i) the per-unit ingredient cost, minus any per-unit rebate paid by the covered entity, and

''(ii) the number of units of the branded prescription drug dispensed under such program.

''(h) SECRETARY.—For purposes of this section, the term 'Secretary' includes the Secretary's delegate.

''(i) GUIDANCE.—The Secretary of the Treasury shall publish guidance necessary to carry out the purposes of this section.

''(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2010.

''(k) CONFORMING AMENDMENT.—[Amended section 1395t of Title 42, The Public Health and Welfare.]''

[Pub. L. 111–152, title I, §1404(b), Mar. 30, 2010, 124 Stat. 1064, provided that: ''The amendments made by this section [amending section 9008 of Pub. L. 111–148, set out above] shall take effect as if included in section 9008 of the Patient Protection and Affordable Care Act [Pub. L. 111–148].'']

IMPOSITION OF ANNUAL FEE ON MEDICAL DEVICE MANUFACTURERS AND IMPORTERS

Pub. L. 111–148, title IX, §9009, Mar. 23, 2010, 124 Stat. 862, as amended by Pub. L. 111–148, title X, §10904(a), Mar. 23, 2010, 124 Stat. 1016, provided for the imposition of an annual fee on medical device manufacturers and importers in calendar years beginning after 2010, prior to repeal by Pub. L. 111–152, title I, §1405(d), Mar. 30, 2010, 124 Stat. 1065.

[Pub. L. 111–152, title I, §1405(d), Mar. 30, 2010, 124 Stat. 1065, provided that the repeal of section 9009 of Pub. L. 111–148, formerly set out above, is effective as of Mar. 23, 2010.]

IMPOSITION OF ANNUAL FEE ON HEALTH INSURANCE PROVIDERS

Pub. L. 111–148, title IX, §9010, title X, §10905(a)–(f), Mar. 23, 2010, 124 Stat. 865, 1017–1019, as amended by Pub. L. 111–152, title I, §1406(a), Mar. 30, 2010, 124 Stat. 1065, provided that:

''(a) IMPOSITION OF FEE.—

''(1) IN GENERAL.—Each covered entity engaged in the business of providing health insurance shall pay to the Secretary not later than the annual payment date of each calendar year beginning after 2013 a fee in an amount determined under subsection (b).

''(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term 'annual payment date' means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

''(b) DETERMINATION OF FEE AMOUNT.—

''(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

''(A) the covered entity's net premiums written with respect to health insurance for any United States health risk that are taken into account during the preceding calendar year, bears to

''(B) the aggregate net premiums written with respect to such health insurance of all covered entities that are taken into account during such preceding calendar year.

''(2) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The net premiums written with respect to health insurance for any United States health risk that are taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

''With respect to a covered entity's net premiums written during the calendar year that are:	The percentage of net premiums written that are taken into account is:
Not more than $25,000,000	0 percent

''With respect to a covered entity's net premiums written during the calendar year that are:	The percentage of net premiums written that are taken into account is:
More than $25,000,000 but not more than $50,000,000.	50 percent
More than $50,000,000	100 percent.

''(B) PARTIAL EXCLUSION FOR CERTAIN EXEMPT ACTIVITIES.—After the application of subparagraph (A), only 50 percent of the remaining net premiums written with respect to health insurance for any United States health risk that are attributable to the activities (other than activities of an unrelated trade or business as defined in section 513 of the Internal Revenue Code of 1986) of any covered entity qualifying under paragraph (3), (4), (26), or (29) of section 501(c) of such Code and exempt from tax under section 501(a) of such Code shall be taken into account.

''(3) Secretarial determination.—The Secretary shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary shall determine such covered entity's net premiums written with respect to any United States health risk on the basis of reports submitted by the covered entity under subsection (g) and through the use of any other source of information available to the Secretary.

''(c) COVERED ENTITY.—

''(1) IN GENERAL.—For purposes of this section, the term 'covered entity' means any entity which provides health insurance for any United States health risk during the calendar year in which the fee under this section is due.

''(2) EXCLUSION.—Such term does not include—

''(A) any employer to the extent that such employer self-insures its employees' health risks,

''(B) any governmental entity,

''(C) any entity—

''(i) which is incorporated as a nonprofit corporation under a State law,

''(ii) no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

''(iii) more than 80 percent of the gross revenues of which is received from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], and

''(D) any entity which is described in section 501(c)(9) of such Code and which is established by an entity (other than by an employer or employers) for purposes of providing health care benefits.

''(3) CONTROLLED GROUPS.—

''(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (*o*) of section 414 of such Code shall be treated as a single covered entity (or employer for purposes of paragraph (2)).

''(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

If any entity described in subparagraph (C) or (D) of paragraph (2) is treated as a covered entity by reason of the application of the preceding sentence, the net premiums written with respect to health insurance for any United States health risk of such entity shall not be taken into account for purposes of this section.

''(4) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (3), all such persons shall be jointly and severally liable for payment of such fee.

''(d) UNITED STATES HEALTH RISK.—For purposes of this section, the term 'United States health risk' means the health risk of any individual who is—

''(1) a United States citizen,

''(2) a resident of the United States (within the meaning of section 7701(b)(1)(A) of the Internal Revenue Code of 1986), or

''(3) located in the United States, with respect to the period such individual is so located.

''(e) APPLICABLE AMOUNT.—For purposes of subsection (b)(1)—

''(1) YEARS BEFORE 2019.—In the case of calendar years beginning before 2019, the applicable amount shall be determined in accordance with the following table:

"Calendar year	**Applicable amount**
2014	$8,000,000,000
2015	$11,300,000,000
2016	$11,300,000,000
2017	$13,900,000,000
2018	$14,300,000,000.

''(2) YEARS AFTER 2018.—In the case of any calendar year beginning after 2018, the applicable amount shall be the applicable amount for the preceding calendar year increased by the rate of premium growth (within the meaning of section 36B(b)(3)(A)(ii) of the Internal Revenue Code of 1986) for such preceding calendar year.

''(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

''(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

''(2) for purposes of section 275 of such Code shall be considered to be a tax described in section 275(a)(6).

''(g) REPORTING REQUIREMENT.—

''(1) IN GENERAL.—Not later than the date determined by the Secretary following the end of any calendar year, each covered entity shall report to the Secretary, in such manner as the Secretary prescribes, the covered entity's net premiums written with respect to health insurance for any United States health risk for such calendar year.

''(2) PENALTY FOR FAILURE TO REPORT.—

''(A) IN GENERAL.—In the case of any failure to make a report containing the information required by paragraph (1) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid by the covered entity failing to file such report, an amount equal to—

''(i) $10,000, plus

''(ii) the lesser of—

''(I) an amount equal to $1,000, multiplied by the number of days during which such failure continues, or

''(II) the amount of the fee imposed by this section for which such report was required.

''(B) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A)—

''(i) shall be treated as a penalty for purposes of subtitle F of the Internal Revenue Code of 1986,

''(ii) shall be paid on notice and demand by the Secretary and in the same manner as tax under such Code, and

''(iii) with respect to which only civil actions for refund under procedures of such subtitle F shall apply.

''(3) ACCURACY-RELATED PENALTY.—

''(A) IN GENERAL.—In the case of any understatement of a covered entity's net premiums written with respect to health insurance for any United States health risk for any calendar year, there shall be paid by the covered entity making such understatement, an amount equal to the excess of—

''(i) the amount of the covered entity's fee under this section for the calendar year the Secretary determines should have been paid in the absence of any such understatement, over

''(ii) the amount of such fee the Secretary determined based on such understatement.

''(B) UNDERSTATEMENT.—For purposes of this paragraph, an understatement of a covered entity's net premiums written with respect to health insurance for any United States health risk for any calendar year is the difference between the amount of such net premiums written as reported on the return filed by the covered entity under paragraph (1) and the amount of such net premiums written that should have been reported on such return.

''(C) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A) shall be subject to the provisions of subtitle F of the Internal Revenue Code of 1986 that apply to assessable penalties imposed under chapter 68 of such Code.

''(4) TREATMENT OF INFORMATION.—Section 6103 of the Internal Revenue Code of 1986 shall not apply to any information reported under this subsection.

''(h) ADDITIONAL DEFINITIONS.—For purposes of this section—

''(1) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

''(2) UNITED STATES.—The term 'United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

''(3) HEALTH INSURANCE.—The term 'health insurance' shall not include—

''(A) any insurance coverage described in paragraph (1)(A) or (3) of section 9832(c) of the Internal Revenue Code of 1986,

''(B) any insurance for long-term care, or

''(C) any medicare supplemental health insurance (as defined in section 1882(g)(1) of the Social Security Act [42 U.S.C. 1395ss(g)(1)]).

''(i) GUIDANCE.—The Secretary shall publish guidance necessary to carry out the purposes of this section and shall prescribe such regulations as are necessary or appropriate to prevent avoidance of the purposes of this section, including inappropriate actions taken to qualify as an exempt entity under subsection (c)(2).

''(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2013.''

[Pub. L. 111–152, title I, §1406(a)(3)(C), Mar. 30, 2010, 124 Stat. 1065, which directed amendment of section 9010(c) of Pub. L. 111–148, set out above, by substituting ''subparagraph (C) or (D)'' for ''subparagraph (C)(i)(I), (D)(i)(I), or (E)(i)'' in par. (3)(A), was executed by making the substitution in concluding provisions of par. (3), to reflect the probable intent of Congress.]

[Pub. L. 111–152, title I, §1406(b), Mar. 30, 2010, 124 Stat. 1067, provided that: ''The amendments made by this section [amending section 9010 of Pub. L. 111–148, set out above] shall take effect as if included in section 9010 of the Patient Protection and Affordable Care Act [Pub. L. 111–148].'']

[Pub. L. 111–148, title X, §10905(g), Mar. 23, 2010, 124 Stat. 1019, provided that: ''The amendments made by this section [amending section 9010 of Pub. L. 111–148, set out above] shall take effect as if included in the enactment of section 9010.'']

CHAPTER 31—RETAIL EXCISE TAXES

Subchapter		Sec.[1]
A.	Luxury passenger vehicles[2]	4001
B.	Special fuels	4041
C.	Heavy trucks and trailers	4051

PRIOR PROVISIONS

The provisions of a prior chapter 31, Miscellaneous Excise Taxes, were set out as:

Subchapter (A), Jewelry and related items, comprising sections 4001 to 4003;

Subchapter (B), Furs, comprising sections 4011 to 4013;

Subchapter (C), Toilet preparations, comprising sections 4021 and 4022;

Subchapter (D), Luggage, handbags, etc., comprising section 4031;

Subchapter (E), Special fuels, comprising sections 4041 and 4042; and

Subchapter (F), Special provisions applicable to retailers tax, comprising sections 4051 to 4058.

The headings for subchs. (A) to (D) were struck out by section 101(b)(1) and the listed sections were repealed by section 101(a) of Pub. L. 89–44, title I, June 21, 1965, 79 Stat. 136, the Excise Tax Reduction Act of 1965, applicable with respect to articles sold on or after June 22, 1965, as provided in section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

The headings for subchs. (E) and (F) were stricken by section 1904(a)(1)(A) of Pub. L. 94–455, title XIX, Oct. 4, 1976, 90 Stat. 1810, the Tax Reform Act of 1976. Sections 4051 to 4053 were repealed by section 101(b)(2) of Pub. L. 89–44, title I, June 21, 1965, 79 Stat. 136, applicable with respect to articles sold on or after June 22, 1965, as provided in section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4061 of this title; and sections 4042 and 4054 to 4058 were repealed by section 1904(a)(1)(D) of Pub. L. 94–455, title XIX, Oct. 4, 1976, 90 Stat. 1811, effective Feb. 1, 1977, as provided in section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

The subject matter of the prior sections was as follows:

A prior section 4001, acts Aug. 16, 1954, ch. 736, 68A Stat. 473; Sept. 2, 1958, Pub. L. 85–859, title I, §101, 72 Stat. 1275; Sept. 21, 1959, Pub. L. 86–344, §1(a), 73 Stat. 617, imposed an excise tax equivalent to 10 percent of selling price upon jewelry, stones, watches, clocks, case and movements for watches and clocks, flatware and hollow ware, opera glasses, lorgnettes, marine glasses, field glasses, and binoculars.

A prior section 4002, act Aug. 16, 1954, ch. 736, 68A Stat. 473, defined ''articles sold at retail'' to include articles sold at auction.

A prior section 4003, acts Aug. 16, 1954, ch. 736, 68A Stat. 474; Sept. 2, 1958, Pub. L. 85–859, title I, §102, 72 Stat. 1276, specified exemptions to tax imposed by section 4001.

A prior section 4011, act Aug. 16, 1954, ch. 736, 68A Stat. 475, imposed an excise tax equivalent to 10 percent of selling price upon fur articles.

A prior section 4012, act Aug. 16, 1954, ch. 736, 68A Stat. 475, defined ''article sold at retail'' to include articles manufactured from material supplied by customer and articles sold at auction.

A prior section 4013, act Aug. 16, 1954, ch. 736, 68A Stat. 475, specified exemptions to tax imposed by section 4011.

A prior section 4021, acts Aug. 16, 1954, ch. 736, 68A Stat. 476; Apr. 8, 1960, Pub. L. 86–413, §1, 74 Stat. 31, imposed an excise tax equivalent to 10 percent of selling price upon toilet preparations.

A prior section 4022, act Aug. 16, 1954, ch. 736, 68A Stat. 476, specified certain exemptions from tax imposed by section 4021, including items for babies, items used in barber shops and beauty parlors, and miniature samples.

[1] Section numbers editorially supplied.

[2] So in original. Does not conform to subchapter heading.

A prior section 4031, acts Aug. 16, 1954, ch. 736, 68A Stat. 477; Sept. 2, 1958, Pub. L. 85–859, title I, § 103, 72 Stat. 1276, imposed an excise tax equivalent to 10 percent of selling price upon luggage and handbags, including billfolds and wallets, traveler's garment bags, and briefcases.

A prior section 4042, act Aug. 16, 1954, ch. 736, 68A Stat. 478, provided a cross reference to section 4222 for exemption from tax where special motor fuels are sold for use for certain vessels.

A prior section 4051, act Aug. 16, 1954, ch. 736, 68A Stat. 479, defined price for which articles were sold for purposes of determining retailers excise taxes.

A prior section 4052, act Aug. 16, 1954, ch. 736, 68A Stat. 479, provided that lease of an article would be considered sale of article for excise tax purposes.

A prior section 4053, acts Aug. 16, 1954, ch. 736, 68A Stat. 479; Sept. 2, 1958, Pub. L. 85–859, title I, § 104, 72 Stat. 1276, made provision for imposition of retailers tax on installment sales.

A prior section 4054, act Aug. 16, 1954, ch. 736, 68A Stat. 479, related to application of taxes to retail sales by United States or by any agency or instrumentality of United States unless specifically exempted from such tax.

A prior section 4055, act Aug. 16, 1954, ch. 736, 68A Stat. 480; June 21, 1965, Pub. L. 89–44, title I, § 101(b)(3), 79 Stat. 136, exempted from taxes articles sold for exclusive use of any State, Territory of United States, or any political subdivision thereof, or District of Columbia, including use by such entities of any liquid as a fuel.

A prior section 4056, act Aug. 16, 1954, ch. 736, 68A Stat. 480, provided that no tax shall be imposed upon sale of any article for export, or for shipment to a possession of United States and in due course so shipped and exported.

A prior section 4057, added Pub. L. 85–859, title I, § 105(a), Sept. 2, 1958, 72 Stat. 1277; amended Pub. L. 86–344, § 2(a), Sept. 21, 1959, 73 Stat. 617; Pub. L. 89–44, title I, § 101(b)(4), June 21, 1965, 79 Stat. 136; Pub. L. 91–172, title I, § 101(j)(25), Dec. 30, 1969, 83 Stat. 528, provided an exception with respect to sale of any article to a non-profit educational organization for its exclusive use including use of any liquid as a fuel and defined ''non-profit educational organization''.

A prior section 4058, act Aug. 16, 1954, ch. 736, 68A Stat. 480, § 4058, formerly 4057; renumbered Sept. 2, 1958, Pub. L. 85–859, title I, § 105(a), 72 Stat. 1277, related to cross references for exemption of sales to United States in certain cases and administrative provisions of general application.

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13161(b)(3), Aug. 10, 1993, 107 Stat. 453, substituted ''Luxury passenger vehicles'' for ''Certain luxury items'' in item for subchapter A.

1990—Pub. L. 101–508, title XI, § 11221(e), Nov. 5, 1990, 104 Stat. 1388–444, added item for subchapter A and redesignated former items for subchapters A and B as B and C, respectively.

1983—Pub. L. 97–424, title V, § 512(b)(2)(A), Jan. 6, 1983, 96 Stat. 2177, substituted ''Retail Excise Taxes'' for ''Special Fuels'' in chapter heading, and added an analysis for subchapters A and B.

1976—Pub. L. 94–455, title XIX, § 1904(a)(1)(A), Oct. 4, 1976, 90 Stat. 1810, substituted ''Special Fuels'' for ''Retailers Excise Taxes'' in chapter heading.

Subchapter A—Luxury Passenger Automobiles

Sec.
4001. Imposition of tax.
4002. 1st retail sale; uses, etc. treated as sales; determination of price.
4003. Special rules.

PRIOR PROVISIONS

This subchapter consisted of part I with subparts A (§§ 4001–4004) and B (§§ 4006, 4007) and part II (§§ 4011, 4012), prior to being amended generally by Pub. L. 103–66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 449.

Another prior subchapter A of chapter 31 was redesignated subchapter B by Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–438.

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 449, amended subchapter heading and analysis generally, substituting ''Luxury Passenger Automobiles'' for ''Certain Luxury Items'' in subchapter heading, striking out part analysis consisting of parts I ''Imposition of taxes'' and II ''Rules of general applicability'', part I heading ''IMPOSITION OF TAXES'', subpart analysis consisting of subparts A ''Passenger vehicles, boats, and aircraft'' and B ''Jewelry and furs'', and subpart A heading ''Passenger Vehicles, Boats, and Aircraft'', substituting ''Imposition of tax'' for ''Passenger vehicles'' in item 4001, ''1st retail sale; uses, etc. treated as sales; determination of price'' for ''Boats'' in item 4002, and ''Special rules'' for ''Aircraft'' in item 4003, and striking out item 4004 ''Rules applicable to subpart A''.

§ 4001. Imposition of tax

(a) Imposition of tax

(1) In general

There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds the applicable amount.

(2) Applicable amount

(A) In general

Except as provided in subparagraphs (B) and (C), the applicable amount is $30,000.

(B) Qualified clean-fuel vehicle property

In the case of a passenger vehicle which is propelled by a fuel which is not a clean-burning fuel and to which is installed qualified clean-fuel vehicle property (as defined in section 179A(c)(1)(A)) for purposes of permitting such vehicle to be propelled by a clean-burning fuel, the applicable amount is equal to the sum of—

(i) the dollar amount in effect under subparagraph (A), plus

(ii) the increase in the price for which the passenger vehicle was sold (within the meaning of section 4002) due to the installation of such property.

(C) Purpose built passenger vehicle

(i) In general

In the case of a purpose built passenger vehicle, the applicable amount is equal to 150 percent of the dollar amount in effect under subparagraph (A).

(ii) Purpose built passenger vehicle

For purposes of clause (i), the term ''purpose built passenger vehicle'' means a passenger vehicle produced by an original equipment manufacturer and designed so that the vehicle may be propelled primarily by electricity.

(b) Passenger vehicle

(1) In general

For purposes of this subchapter, the term ''passenger vehicle'' means any 4-wheeled vehicle—

(A) which is manufactured primarily for use on public streets, roads, and highways, and

(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

(2) Special rules

(A) Trucks and vans

In the case of a truck or van, paragraph (1)(B) shall be applied by substituting ''gross vehicle weight'' for ''unloaded gross vehicle weight''.

(B) Limousines

In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

(c) Exceptions for taxicabs, etc.

The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

(d) Exemption for law enforcement uses, etc.

No tax shall be imposed by this section on the sale of any passenger vehicle—

(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

(2) to any person for use exclusively in providing emergency medical services.

(e) Inflation adjustment

(1) In general

The $30,000 amount in subsection (a) shall be increased by an amount equal to—

(A) $30,000, multiplied by

(B) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the vehicle is sold, determined by substituting ''calendar year 1990'' for ''calendar year 1992'' in subparagraph (B) thereof.

(2) Rounding

If any amount as adjusted under paragraph (1) is not a multiple of $2,000, such amount shall be rounded to the next lowest multiple of $2,000.

(f) Phasedown

For sales occurring in calendar years after 1995 and before 2003, subsection (a)(1) and section 4003(a) shall be applied by substituting for ''10 percent'', each place it appears, the percentage determined in accordance with the following table:

If the calendar year is:	The percentage is:
1996	9 percent
1997	8 percent
1998	7 percent
1999	6 percent
2000	5 percent
2001	4 percent
2002	3 percent

(g) Termination

The taxes imposed by this section and section 4003 shall not apply to any sale, use, or installation after December 31, 2002.

(Added Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–439; amended Pub. L. 103–66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 449; Pub. L. 104–188, title I, §§ 1607(a), (b), 1703(c)(1), Aug. 20, 1996, 110 Stat. 1839, 1875; Pub. L. 105–34, title IX, § 906(a)–(b)(2), title XVI, § 1601(f)(3)(A), (B), Aug. 5, 1997, 111 Stat. 874, 875, 1090.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–34, § 906(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000.''

Subsec. (e)(1). Pub. L. 105–34, § 906(b)(1), struck out ''and section 4003(a)'' after ''in subsection (a)'' in introductory provisions.

Subsec. (f). Pub. L. 105–34, § 1601(f)(3)(A)(i), inserted ''and section 4003(a)'' after ''subsection (a)''.

Pub. L. 105–34, § 1601(f)(3)(A)(ii), inserted '', each place it appears,'' before ''the percentage''.

Pub. L. 105–34, § 906(b)(2), substituted ''subsection (a)(1)'' for ''subsection (a)''.

Subsec. (g). Pub. L. 105–34, § 1601(f)(3)(B), substituted ''taxes imposed by this section and section 4003'' for ''tax imposed by this section'' and '', use, or installation'' for ''or use''.

1996—Subsec. (e). Pub. L. 104–188, § 1703(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—If, for any calendar year, the excess (if any) of—

''(A) $30,000, increased by the cost-of-living adjustment for the calendar year, over

''(B) the dollar amount in effect under subsection (a) for the calendar year,

is equal to or greater than $2,000, then the $30,000 amount in subsection (a) and section 4003(a) (as previously adjusted under this subsection) for any subsequent calendar year shall be increased by the amount of such excess rounded to the next lowest multiple of $2,000.

''(2) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (1), the cost-of-living adjustment for any calendar year shall be the cost-of-living adjustment under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 1990' for 'calendar year 1992' in subparagraph (B) thereof.''

Subsec. (f). Pub. L. 104–188, § 1607(b), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 104–188, § 1607(a), substituted ''December 31, 2002'' for ''December 31, 1999''.

Subsec. (g). Pub. L. 104–188, § 1607(b), redesignated subsec. (f) as (g).

1993—Pub. L. 103–66 amended section generally, substituting ''Imposition of tax'' for ''Passenger vehicles'' in section catchline and ''this subchapter'' for ''subsection (a)'' in subsec. (b)(1) and adding subsecs. (d) to (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 906(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 4003 of this title] shall apply to sales and installations occurring after the date of the enactment of this Act [Aug. 5, 1997].''

Section 1601(f)(3)(C) of Pub. L. 105–34 provided that: ''The amendments made by this paragraph [amending this section] shall apply to sales after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1601(f)(3)(A), (B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1607(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this sec-

tion] shall apply with respect to sales occurring after the date which is 7 days after the date of the enactment of this Act [Aug. 20, 1996].''

Section 1703(c)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13161(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 4002, 4003, 4221, and 4222 of this title and omitting sections 4004, 4006, 4007, 4011, and 4012 of this title] shall take effect on January 1, 1993, except that the provisions of section 4001(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall take effect on the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE

Section 11221(f) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this subchapter, redesignating former subchapters A and B of this chapter as subchapters B and C, respectively, and amending sections 4221, 4222, and 4293 of this title] shall take effect on January 1, 1991.

''(2) EXCEPTION FOR BINDING CONTRACTS.—In determining whether any tax imposed by subchapter A of chapter 31 of the Internal Revenue Code of 1986, as added by this section, applies to any sale after December 31, 1990, there shall not be taken into account the amount paid for any article (or any part or accessory therefor) if the purchaser held on September 30, 1990, a contract (which was binding on such date and at all times thereafter before the purchase) for the purchase of such article (or such part or accessory).''

§ 4002. 1st retail sale; uses, etc. treated as sales; determination of price

(a) 1st retail sale

For purposes of this subchapter, the term ''1st retail sale'' means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

(b) Use treated as sale

(1) In general

If any person uses a passenger vehicle (including any use after importation) before the 1st retail sale of such vehicle, then such person shall be liable for tax under this subchapter in the same manner as if such vehicle were sold at retail by him.

(2) Exemption for further manufacture

Paragraph (1) shall not apply to use of a vehicle as material in the manufacture or production of, or as a component part of, another vehicle taxable under this subchapter to be manufactured or produced by him.

(3) Exemption for demonstration use

Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator.

(4) Exception for use after importation of certain vehicles

Paragraph (1) shall not apply to the use of a vehicle after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the vehicle occurred before January 1, 1991, outside the United States.

(5) Computation of tax

In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar vehicles are sold at retail in the ordinary course of trade, as determined by the Secretary.

(c) Leases considered as sales

For purposes of this subchapter—

(1) In general

Except as otherwise provided in this subsection, the lease of a vehicle (including any renewal or any extension of a lease or any subsequent lease of such vehicle) by any person shall be considered a sale of such vehicle at retail.

(2) Special rules for long-term leases

(A) Tax not imposed on sale for leasing in a qualified lease

The sale of a passenger vehicle to a person engaged in a passenger vehicle leasing or rental trade or business for leasing by such person in a long-term lease shall not be treated as the 1st retail sale of such vehicle.

(B) Long-term lease

For purposes of subparagraph (A), the term ''long-term lease'' means any long-term lease (as defined in section 4052).

(C) Special rules

In the case of a long-term lease of a vehicle which is treated as the 1st retail sale of such vehicle—

(i) Determination of price

The tax under this subchapter shall be computed on the lowest price for which the vehicle is sold by retailers in the ordinary course of trade.

(ii) Payment of tax

Rules similar to the rules of section 4217(e)(2) shall apply.

(iii) No tax where exempt use by lessee

No tax shall be imposed on any lease payment under a long-term lease if the lessee's use of the vehicle under such lease is an exempt use (as defined in section 4003(b)) of such vehicle.

(d) Determination of price

(1) In general

In determining price for purposes of this subchapter—

(A) there shall be included any charge incident to placing the passenger vehicle in condition ready for use,

(B) there shall be excluded—

(i) the amount of the tax imposed by this subchapter,

(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(iii) the value of any component of such passenger vehicle if—

(I) such component is furnished by the 1st user of such passenger vehicle, and

(II) such component has been used before such furnishing, and

(C) the price shall be determined without regard to any trade-in.

(2) Other rules

Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

(Added Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–439; amended Pub. L. 103–66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 450.)

AMENDMENTS

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to imposition of luxury tax upon first retail sale or use of luxury automobile for provisions relating to imposition of similar tax upon boats.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103–66, set out as a note under section 4001 of this title.

§ 4003. Special rules

(a) Separate purchase of vehicle and parts and accessories therefor

Under regulations prescribed by the Secretary—

(1) In general

Except as provided in paragraph (2), if—

(A) the owner, lessee, or operator of any passenger vehicle installs (or causes to be installed) any part or accessory (other than property described in section 4001(a)(2)(B)) on such vehicle, and

(B) such installation is not later than the date 6 months after the date the vehicle was 1st placed in service,

then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

(2) Limitation

The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

(A) the sum of—

(i) the price of such part or accessory and its installation,

(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

(iii) the price for which the passenger vehicle was sold, over

(B) the appropriate applicable amount as determined under section 4001(a)(2).

(3) Exceptions

Paragraph (1) shall not apply if—

(A) the part or accessory installed is a replacement part or accessory,

(B) the part or accessory is installed to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or

(C) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the vehicle does not exceed $1,000 (or such other amount or amounts as the Secretary may by regulation prescribe).

The price of any part or accessory (and its installation) to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2)(A).

(4) Installers secondarily liable for tax

The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

(b) Imposition of tax on sales, etc., within 2 years of vehicles purchased tax-free

(1) In general

If—

(A) no tax was imposed under this subchapter on the 1st retail sale of any passenger vehicle by reason of its exempt use, and

(B) within 2 years after the date of such 1st retail sale, such vehicle is resold by the purchaser or such purchaser makes a substantial nonexempt use of such vehicle,

then such sale or use of such vehicle by such purchaser shall be treated as the 1st retail sale of such vehicle for a price equal to its fair market value at the time of such sale or use.

(2) Exempt use

For purposes of this subsection, the term ''exempt use'' means any use of a vehicle if the 1st retail sale of such vehicle is not taxable under this subchapter by reason of such use.

(c) Parts and accessories sold with taxable passenger vehicle

Parts and accessories sold on, in connection with, or with the sale of any passenger vehicle shall be treated as part of the vehicle.

(d) Partial payments, etc.

In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter.

(Added Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–439; amended Pub. L. 103–66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 451; Pub. L. 105–34, title IX, § 906(b)(3), (4), title XIV, § 1401(a), Aug. 5, 1997, 111 Stat. 875, 1045.)

PRIOR PROVISIONS

Prior sections 4004, 4006, 4007, 4011, and 4012 of this title were omitted in the general revision of this subchapter by Pub. L. 103–66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 449.

Section 4004, added Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–440; amended Pub. L. 103–66, title XIII, § 13162(a), Aug. 10, 1993, 107 Stat. 453, related to certain rules applicable to former subpart A of part I of this subchapter.

Section 4006, added Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–441, related to imposition of tax on 1st retail sale of jewelry.

Section 4007, added Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–442, related to imposition of tax on 1st retail sale of furs.

Section 4011, added Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–442, provided definitions and special rules for purposes of this subchapter.

Section 4012, added Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–444, provided that taxes imposed by this subchapter did not apply to any sale or use after Dec. 31, 1999.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–34, § 906(b)(3), inserted ''(other than property described in section 4001(a)(2)(B))'' after ''part or accessory''.

Subsec. (a)(2)(B). Pub. L. 105–34, § 906(b)(4), amended subpar. (B) generally, substituting ''the appropriate applicable amount as determined under section 4001(a)(2)'' for ''$30,000''.

Subsec. (a)(3)(C). Pub. L. 105–34, § 1401(a), substituted ''$1,000'' for ''$200''.

1993—Pub. L. 103–66 amended section generally, substituting provisions prescribing special rules applicable to imposition of luxury passenger automobile tax for provisions relating to imposition of similar tax on aircraft.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 906(b)(3), (4) of Pub. L. 105–34 applicable to sales and installations occurring after Aug. 5, 1997, see section 906(c) of Pub. L. 105–34, set out as a note under section 4001 of this title.

Section 1401(b) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section and section 4051 of this title] shall apply to installations on vehicles sold after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103–66, set out as a note under section 4001 of this title.

Subchapter B—Special Fuels

Sec.
4041. Imposition of tax.
4042. Tax on fuel used in commercial transportation on inland waterways.

PRIOR PROVISIONS

A prior subchapter B of chapter 31 was redesignated subchapter C by Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–438.

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–438, redesignated this subchapter, formerly subchapter A, as subchapter B. Former subchapter B redesignated C.

1978—Pub. L. 95–502, title II, § 202(c), Oct. 21, 1978, 92 Stat. 1697, added item 4042.

1976—Pub. L. 94–455, title XIX, § 1904(a)(1)(A), Oct. 4, 1976, 90 Stat. 1810, added item 4041.

§ 4041. Imposition of tax

(a) Diesel fuel and special motor fuels

(1) Tax on diesel fuel and kerosene in certain cases

(A) In general

There is hereby imposed a tax on any liquid other than gasoline (as defined in section 4083)—

(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or a diesel-powered train for use as a fuel in such vehicle or train, or

(ii) used by any person as a fuel in a diesel-powered highway vehicle or a diesel-powered train unless there was a taxable sale of such fuel under clause (i).

(B) Exemption for previously taxed fuel

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate) and the tax thereon was not credited or refunded.

(C) Rate of tax

(i) In general

Except as otherwise provided in this subparagraph, the rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on diesel fuel which is in effect at the time of such sale or use.

(ii) Rate of tax on trains

In the case of any sale for use, or use, of diesel fuel in a train, the rate of tax imposed by this paragraph shall be—

(I) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

(II) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

(III) 0 after December 31, 2006.

(iii) Rate of tax on certain buses

(I) In general

Except as provided in subclause (II), in the case of fuel sold for use or used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the rate of tax imposed by this paragraph shall be 7.3 cents per gallon (4.3 cents per gallon after September 30, 2011).

(II) School bus and intracity transportation

No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2).

(2) Alternative fuels

(A) In general

There is hereby imposed a tax on any liquid (other than gas oil, fuel oil, or any product taxable under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate))—

(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under clause (i).

(B) Rate of tax

The rate of the tax imposed by this paragraph shall be—

(i) except as otherwise provided in this subparagraph, the rate of tax specified in section 4081(a)(2)(A)(i) which is in effect at the time of such sale or use, and

(ii) in the case of liquefied natural gas, any liquid fuel (other than ethanol and methanol) derived from coal (including peat), and liquid hydrocarbons derived

from biomass (as defined in section 45K(c)(3)), 24.3 cents per gallon.

(3) Compressed natural gas

(A) In general

There is hereby imposed a tax on compressed natural gas—

(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such gas under clause (i).

The rate of the tax imposed by this paragraph shall be 18.3 cents per energy equivalent of a gallon of gasoline.

(B) Bus uses

No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2) (relating to school bus and intracity transportation).

(C) Administrative provisions

For purposes of applying this title with respect to the taxes imposed by this subsection, references to any liquid subject to tax under this subsection shall be treated as including references to compressed natural gas subject to tax under this paragraph, and references to gallons shall be treated as including references to energy equivalent of a gallon of gasoline with respect to such gas.

(b) Exemption for off-highway business use; reduction in tax for qualified methanol and ethanol fuel

(1) Exemption for off-highway business use

(A) In general

No tax shall be imposed by subsection (a) on liquids sold for use or used in an off-highway business use.

(B) Tax where other use

If a liquid on which no tax was imposed by reason of subparagraph (A) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

(C) Off-highway business use defined

For purposes of this subsection, the term ''off-highway business use'' has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train.

(2) Qualified methanol and ethanol fuel

(A) In general

In the case of any qualified methanol or ethanol fuel—

(i) the rate applicable under subsection (a)(2) shall be the applicable blender rate per gallon less than the otherwise applicable rate (6 cents per gallon in the case of a mixture none of the alcohol in which consists of ethanol), and

(ii) subsection (d)(1) shall be applied by substituting ''0.05 cent'' for ''0.1 cent'' with respect to the sales and uses to which clause (i) applies.

(B) Qualified methanol and ethanol fuel produced from coal

The term ''qualified methanol or ethanol fuel'' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from coal (including peat).

(C) Applicable blender rate

For purposes of subparagraph (A)(i), the applicable blender rate is—

(i) except as provided in clause (ii), 5.4 cents, and

(ii) for sales or uses during calendar years 2001 through 2008, 1/10 of the blender amount applicable under section 40(h)(2) for the calendar year in which the sale or use occurs.

(D) Termination

On and after January 1, 2009, subparagraph (A) shall not apply.

(c) Certain liquids used as a fuel in aviation

(1) In general

There is hereby imposed a tax upon any liquid for use as a fuel other than aviation gasoline—

(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

(2) Exemption for previously taxed fuel

No tax shall be imposed by this subsection on the sale or use of any liquid for use as a fuel other than aviation gasoline if tax was imposed on such liquid under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate) and the tax thereon was not credited or refunded.

(3) Rate of tax

The rate of tax imposed by this subsection shall be 21.8 cents per gallon (4.3 cents per gallon with respect to any sale or use for commercial aviation).

(d) Additional taxes to fund Leaking Underground Storage Tank Trust Fund

(1) Tax on sales and uses subject to tax under subsection (a)

In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cent a gallon on the sale or use of any liquid (other than liquefied petroleum gas and other than liquefied natural gas) if tax is imposed by subsection (a)(1) or (2) on such sale or use. No tax shall be imposed under the preceding sentence on the sale or use of any liquid if tax was imposed with respect to such liquid under section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

(2) Liquids used in aviation

In addition to the taxes imposed by subsection (c), there is hereby imposed a tax of 0.1

cent a gallon on any liquid (other than gasoline (as defined in section 4083))—

(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4081.

(3) Diesel fuel used in trains

In the case of any sale for use or use after December 31, 2006, there is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.

(4) Termination

The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

(5) Nonapplication of exemptions other than for exports

For purposes of this section, the tax imposed under this subsection shall be determined without regard to subsections (b)(1)(A), (f), (g), (h), and (*l*). The preceding sentence shall not apply with respect to subsection (g)(3) and so much of subsection (g)(1) as relates to vessels (within the meaning of section 4221(d)(3)) employed in foreign trade or trade between the United States and any of its possessions.

[(e) Repealed. Pub. L. 108–357, title VIII, § 853(d)(2)(C), Oct. 22, 2004, 118 Stat. 1613]

(f) Exemption for farm use

(1) Exemption

Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes.

(2) Use on a farm for farming purposes

For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

(g) Other exemptions

Under regulations prescribed by the Secretary, no tax shall be imposed under this section—

(1) on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3));

(2) with respect to the sale of any liquid for the exclusive use of any State, any political subdivision of a State, or the District of Columbia, or with respect to the use by any of the foregoing of any liquid as a fuel;

(3) upon the sale of any liquid for export, or for shipment to a possession of the United States, and in due course so exported or shipped;

(4) with respect to the sale of any liquid to a nonprofit educational organization for its exclusive use, or with respect to the use by a nonprofit educational organization of any liquid as a fuel; and

(5) with respect to the sale of any liquid to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood.

For purposes of paragraph (4), the term ''nonprofit educational organization'' means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(h) Exemption for use by certain aircraft museums

(1) Exemption

Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used by an aircraft museum in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2)(C).

(2) Definition of aircraft museum

For purposes of this subsection, the term ''aircraft museum'' means an organization—

(A) described in section 501(c)(3) which is exempt from income tax under section 501(a),

(B) operated as a museum under charter by a State or the District of Columbia, and

(C) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

[(i) Repealed. Pub. L. 108–357, title VIII, § 853(d)(2)(D), Oct. 22, 2004, 118 Stat. 1613]

(j) Sales by United States, etc.

The taxes imposed by this section shall apply with respect to liquids sold at retail by the United States, or by any agency or instrumentality of the United States, unless sales by such agency or instrumentality are by statute specifically exempted from such taxes.

[(k) Repealed. Pub. L. 108–357, title III, § 301(c)(6), Oct. 22, 2004, 118 Stat. 1461]

(*l*) Exemption for certain uses

No tax shall be imposed under this section on any liquid sold for use in, or used in, a helicopter or a fixed-wing aircraft for purposes of providing transportation with respect to which the requirements of subsection (f) or (g) of section 4261 are met.

(m) Certain alcohol fuels

(1) In general

In the case of the sale or use of any partially exempt methanol or ethanol fuel the rate of the tax imposed by subsection (a)(2) shall be—

(A) after September 30, 1997, and before October 1, 2011—

(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

(ii) in any other case, 11.3 cents per gallon, and

(B) after September 30, 2011—

(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

(ii) in any other case, 4.3 cents per gallon.

(2) Partially exempt methanol or ethanol fuel

The term ''partially exempt methanol or ethanol fuel'' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

(Aug. 16, 1954, ch. 736, 68A Stat. 478; Mar. 30, 1955, ch. 18, § 3(a)(1), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(1), 70 Stat. 66; Apr. 2, 1956, ch. 160, § 2(a)(1), 70 Stat. 89; June 29, 1956, ch. 462, title II, § 202, 70 Stat. 387; Pub. L. 85–859, title I, § 119(b)(1), Sept. 2, 1958, 72 Stat. 1286; Pub. L. 86–342, title II, § 201(b), Sept. 21, 1959, 73 Stat. 613; Pub. L. 87–61, title II, § 201(a), (c), (d), June 29, 1961, 75 Stat. 123, 124; Pub. L. 89–44, title VIII, § 802(a)(2), June 21, 1965, 79 Stat. 159; Pub. L. 91–258, title II, § 202, May 21, 1970, 84 Stat. 237; Pub. L. 91–605, title III, § 303(a)(1), (2), Dec. 31, 1970, 84 Stat. 1743; Pub. L. 94–280, title III, § 303(a)(1), (2), May 5, 1976, 90 Stat. 456; Pub. L. 94–455, title XIX, §§ 1904(a)(1)(B), (C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1810, 1811, 1834; Pub. L. 94–530, § 1(a), Oct. 17, 1976, 90 Stat. 2487; Pub. L. 95–599, title V, § 502(a)(1), (b), Nov. 6, 1978, 92 Stat. 2756, 2757; Pub. L. 95–600, title VII, § 703(*l*)(1), (2), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 95–618, title II, §§ 221(b)(1), 222(a)(2), 233(a)(3)(B), Nov. 9, 1978, 92 Stat. 3185, 3187, 3191; Pub. L. 96–223, title II, § 232(a)(2), Apr. 2, 1980, 94 Stat. 273; Pub. L. 96–298, § 1(a), July 1, 1980, 94 Stat. 829; Pub. L. 97–248, title II, § 279(a), (b)(1), Sept. 3, 1982, 96 Stat. 563; Pub. L. 97–424, title V, §§ 511(a)(2), (b)(1), (c)(2), (d)(2), (g)(1), 516(a)(1), (b)(1), Jan. 6, 1983, 96 Stat. 2169–2171, 2173, 2182, 2183; Pub. L. 98–369, div. A, title IX, §§ 911(a), 912(a), 913(a), title X, § 1018(a), July 18, 1984, 98 Stat. 1005, 1007, 1008, 1021; Pub. L. 99–499, title V, § 521(a)(2), (d)(1)–(3), Oct. 17, 1986, 100 Stat. 1776, 1779; Pub. L. 99–514, title IV, § 422(a)(1), (2), title XVII, § 1702(a), title XVIII, § 1878(c)(1), Oct. 22, 1986, 100 Stat. 2229, 2773, 2903; Pub. L. 100–17, title V, § 502(a)(1), (b)(1)–(3), (c)(1), Apr. 2, 1987, 101 Stat. 256, 257; Pub. L. 100–203, title X, § 10502(b), Dec. 22, 1987, 101 Stat. 1330–441; Pub. L. 100–223, title IV, §§ 402(b), 404(b), 405(b)(3), Dec. 30, 1987, 101 Stat. 1532, 1533, 1535; Pub. L. 100–647, title I, § 1017(c)(3), (4), title II, § 2001(d)(2), (3)(A)–(D), Nov. 10, 1988, 102 Stat. 3576, 3595; Pub. L. 101–508, title XI, §§ 11211(a)(4), (b)(3), (6)(C)–(E)(i), (F), (d)(1), (2), (e)(1), (2), 11213(b)(2)(A), (B), (d)(2)(B), (e)(3), Nov. 5, 1990, 104 Stat. 1388–423, 1388–425 to 1388–427, 1388–433, 1388–436; Pub. L. 102–240, title VIII, § 8002(b)(1), (2), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §§ 13163(a)(2), 13241(b)(2)(A), (B)(iii), (c), (e), (f)(1), (2), 13242(d)(3)–(13), Aug. 10, 1993, 107 Stat. 453, 510, 511, 522–524; Pub. L. 104–188, title I, §§ 1208, 1609(a)(3), (g)(3), (4)(A), Aug. 20, 1996, 110 Stat. 1776, 1841–1843; Pub. L. 105–2, § 2(a)(3), Feb. 28, 1997, 111 Stat. 4; Pub. L. 105–34, title IX, §§ 902(b)(1), (2), 907(a), (b), title X, §§ 1031(a)(3), 1032(e)(1), (2), title XIV, § 1435(b), title XVI, § 1601(f)(4)(A), (B), Aug. 5, 1997, 111 Stat. 873, 875, 929, 935, 1053, 1090; Pub. L. 105–178, title IX, §§ 9002(a)(1)(A)–(C), 9003(a)(1)(A), (B), (b)(2)(A), 9006(a), June 9, 1998, 112 Stat. 499, 501, 502, 506; Pub. L. 105–206, title VI, § 6010(g)(1), July 22, 1998, 112 Stat. 814; Pub. L. 108–357, title II, § 241(a)(1), (2)(A), title III, § 301(c)(5), (6), title VIII, § 853(a)(6), (d)(2)(A)–(E), Oct. 22, 2004, 118 Stat. 1437, 1461, 1611–1613; Pub. L. 109–58, title XIII, § 1362(b)(2), Aug. 8, 2005, 119 Stat. 1059; Pub. L. 109–59, title XI, §§ 11101(a)(1)(A)–(C), 11113(a), 11151(e)(2), 11161(b)(1), (3)(A), Aug. 10, 2005, 119 Stat. 1943, 1946, 1969–1971; Pub. L. 109–280, title XII, § 1207(a), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 109–432, div. A, title II, § 208, Dec. 20, 2006, 120 Stat. 2946; Pub. L. 110–172, § 6(d)(1)(A), (2)(A), (3), Dec. 29, 2007, 121 Stat. 2480, 2481.)

AMENDMENTS

2007—Subsec. (d)(1). Pub. L. 110–172, § 6(d)(1)(A), inserted last sentence.

Subsec. (d)(5). Pub. L. 110–172, § 6(d)(2)(A), (3), inserted ''(b)(1)(A),'' after ''without regard to subsections'', struck out ''(other than with respect to any sale for export under paragraph (3) thereof)'' after ''(f), (g)'', and inserted last sentence.

2006—Subsec. (b)(2)(B). Pub. L. 109–432, § 208(c), substituted ''and ethanol fuel produced from coal'' for ''or ethanol fuel'' in heading.

Subsec. (b)(2)(C)(ii). Pub. L. 109–432, § 208(b), substituted ''2008'' for ''2007''.

Subsec. (b)(2)(D). Pub. L. 109–432, § 208(a), substituted ''January 1, 2009'' for ''October 1, 2007''.

Subsec. (g)(5). Pub. L. 109–280, which directed the addition of par. (5) to section 4041(g), without specifying the act to be amended, was executed to subsec. (g) of this section, which is section 4041 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (a)(1)(B). Pub. L. 109–59, § 11161(b)(3)(A), struck out last sentence which read as follows: ''This subparagraph shall not apply to aviation-grade kerosene.''

Pub. L. 109–58, § 1362(b)(2)(A), inserted ''(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)'' after ''section 4081''.

Subsec. (a)(1)(C)(iii)(I). Pub. L. 109–59, § 11101(a)(1)(A), substituted ''2011'' for ''2005''.

Subsec. (a)(2). Pub. L. 109–59, § 11113(a)(3), substituted ''Alternative fuels'' for ''Special motor fuels'' in heading.

Subsec. (a)(2)(A). Pub. L. 109–58, § 1362(b)(2)(A), inserted ''(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)'' after ''section 4081'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109–59, § 11113(a)(1)(C), struck out concluding provisions which read as follows: ''In the case of any sale or use after September 30, 2011, clause (ii) shall be applied by substituting '3.2 cents' for '13.6 cents', and clause (iii) shall be applied by substituting '2.8 cents' for '11.9 cents'.''

Pub. L. 109–59, § 11101(a)(1)(B), substituted ''2011'' for ''2005'' in concluding provisions.

Subsec. (a)(2)(B)(i). Pub. L. 109–59, § 11113(a)(1)(A), inserted ''and'' at end.

Subsec. (a)(2)(B)(ii). Pub. L. 109–59, § 11151(e)(2), substituted ''section 45K(c)(3)'' for ''section 29(c)(3)''.

Pub. L. 109–59, § 11113(a)(1)(B), (D), added cl. (ii) and struck out former cl. (ii) which read as follows: ''13.6 cents per gallon in the case of liquefied petroleum gas, and''.

Subsec. (a)(2)(B)(iii). Pub. L. 109–59, § 11113(a)(1)(B), struck out cl. (iii) which read as follows: ''11.9 cents per gallon in the case of liquefied natural gas.''

Subsec. (a)(3)(A). Pub. L. 109–59, § 11113(a)(2)(A), substituted ''18.3 cents per energy equivalent of a gallon of gasoline'' for ''48.54 cents per MCF (determined at standard temperature and pressure)'' in concluding provisions.

Subsec. (a)(3)(C). Pub. L. 109–59, § 11113(a)(2)(B), substituted ''energy equivalent of a gallon of gasoline'' for ''MCF''.

Subsec. (b)(1)(A). Pub. L. 109–58, § 1362(b)(2)(B), which directed amendment of subpar. (A) by striking out ''or (d)(1))'', was executed by striking out ''or (d)(1)'' after ''subsection (a)'' to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 109–59, § 11161(b)(1)(D), substituted ''Certain liquids used as a fuel in aviation'' for ''Aviation-grade kerosene'' in heading.

Subsec. (c)(1). Pub. L. 109–59, § 11161(b)(1)(A), substituted ''any liquid for use as a fuel other than aviation gasoline'' for ''aviation-grade kerosene'' in introductory provisions.

Subsec. (c)(2). Pub. L. 109–59, § 11161(b)(1)(B), substituted ''liquid for use as a fuel other than aviation gasoline'' for ''aviation-grade kerosene''.

Pub. L. 109–58, § 1362(b)(2)(A), inserted ''(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)'' after ''section 4081''.

Subsec. (c)(3). Pub. L. 109–59, § 11161(b)(1)(C), added par. (3) and struck out former par. (3) which read as follows: ''The rate of tax imposed by this subsection shall be the rate of tax applicable under section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.''

Subsec. (d)(5). Pub. L. 109–58, § 1362(b)(2)(C), added par. (5).

Subsec. (m)(1)(A), (B). Pub. L. 109–59, § 11101(a)(1)(C), substituted ''2011'' for ''2005'' in introductory provisions.

2004—Subsec. (a)(1). Pub. L. 108–357, § 853(a)(6)(B), inserted ''and kerosene'' after ''diesel fuel'' in heading.

Subsec. (a)(1)(B). Pub. L. 108–357, § 853(a)(6)(A), inserted at end ''This subparagraph shall not apply to aviation-grade kerosene.''

Subsec. (a)(1)(C)(ii)(I) to (III). Pub. L. 108–357, § 241(a)(1), added subcls. (I) to (III) and struck out former subcls. (I) to (III) which read as follows:

''(I) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

''(II) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

''(III) 4.3 cents per gallon after October 31, 1998.''

Subsec. (b)(2)(B). Pub. L. 108–357, § 301(c)(5), substituted ''coal (including peat)'' for ''a substance other than petroleum or natural gas''.

Subsec. (c). Pub. L. 108–357, § 853(d)(2)(A), amended heading and text of subsec. (c) generally, substituting provisions relating to imposition of tax upon aviation-grade kerosene and providing exemption for fuel previously taxed under section 4081, for provisions relating to imposition of tax on nongasoline fuels where no tax had been imposed under section 4091.

Subsec. (d)(2). Pub. L. 108–357, § 853(d)(2)(B), substituted ''section 4081'' for ''section 4091'' in concluding provisions.

Subsec. (d)(3), (4). Pub. L. 108–357, § 241(a)(2)(A), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 108–357, § 853(d)(2)(C), struck out heading and text of subsec. (e). Text read as follows: ''If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c)(1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate.''

Subsec. (i). Pub. L. 108–357, § 853(d)(2)(D), struck out heading and text of subsec. (i). Text read as follows: ''If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnished such information in respect of the use of the liquid) as the Secretary shall by regulations provide.''

Subsec. (k). Pub. L. 108–357, § 301(c)(6), struck out subsec. (k) which related to rates of tax in the case of the sale or use of any fuels containing alcohol.

Subsec. (m)(1). Pub. L. 108–357, § 853(d)(2)(E), reenacted heading without change and amended text of par. (1) generally, substituting provisions relating to rates of tax after Sept. 30, 1997, and before Oct. 1, 2005, and rates of tax after Sept. 30, 2005, for provisions relating to rates of tax after Sept. 30, 1997, and before Oct. 1, 2005, rates of tax after Sept. 30, 2005, and rate of tax imposed by subsec. (c)(1).

1998—Subsec. (a)(1)(C)(ii)(II). Pub. L. 105–178, § 9006(a)(1), substituted ''November 1, 1998'' for ''October 1, 1999''.

Subsec. (a)(1)(C)(ii)(III). Pub. L. 105–178, § 9006(a)(2), substituted ''October 31, 1998'' for ''September 30, 1999''.

Subsec. (a)(1)(C)(iii)(I). Pub. L. 105–178, § 9002(a)(1)(A), substituted ''2005'' for ''1999''.

Subsec. (a)(2)(B). Pub. L. 105–178, § 9002(a)(1)(B), substituted ''2005'' for ''1999'' in concluding provisions.

Subsec. (b)(2)(A)(i). Pub. L. 105–178, § 9003(b)(2)(A)(i), substituted ''the applicable blender rate'' for ''5.4 cents''.

Subsec. (b)(2)(C). Pub. L. 105–178, § 9003(b)(2)(A)(ii), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 105–178, § 9003(a)(1)(A), substituted ''2007'' for ''2000''.

Subsec. (b)(2)(D). Pub. L. 105–178, § 9003(b)(2)(A)(ii), redesignated subpar. (C) as (D).

Subsec. (k)(3). Pub. L. 105–178, § 9003(a)(1)(B), substituted ''2007'' for ''2000''.

Subsec. (*l*). Pub. L. 105–206 substituted ''subsection (f) or (g)'' for ''subsection (e) or (f)''.

Subsec. (m)(1)(A). Pub. L. 105–178, § 9002(a)(1)(C), substituted ''2005'' for ''1999'' in two places.

1997—Subsec. (a)(1)(A). Pub. L. 105–34, § 902(b)(1), substituted ''or a diesel-powered train'' for '', a diesel-powered train, or a diesel-powered boat'' in cls. (i) and (ii) and ''vehicle or train'' for ''vehicle, train, or boat'' in cl. (i).

Subsec. (a)(1)(D). Pub. L. 105–34, § 902(b)(2), struck out heading and text of subpar. (D). Text read as follows: ''In the case of any sale for use, or use, of fuel in a diesel-powered motorboat—

''(i) no tax shall be imposed by subsection (a) or (d)(1) during the period beginning on the date which is 7 days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1997,

''(ii) effective during the period after September 30, 1999, and before January 1, 2000, the rate of tax imposed by this paragraph is 24.3 cents per gallon, and

''(iii) the termination of the tax under subsection (d) shall not occur before January 1, 2000.''

Subsec. (a)(2). Pub. L. 105–34, § 907(a)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''There is hereby imposed a tax on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081)—

''(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

''(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A)(i) on gasoline which is in effect at the time of such sale or use.''

Pub. L. 105–34, § 1601(f)(4)(B), substituted ''section 4081(a)(2)(A)(i)'' for ''section 4081(a)(2)(A)'' in concluding provisions.

Subsec. (a)(2)(A). Pub. L. 105–34, §1032(e)(1), struck out ''kerosene,'' after ''(other than'' in introductory provisions.

Subsec. (c)(1). Pub. L. 105–34, §1032(e)(2), substituted ''kerosene and any other liquid'' for ''any liquid'' in introductory provisions.

Subsec. (c)(2). Pub. L. 105–34, §1435(b), inserted ''or by reason of section 4261(h)'' before period at end.

Subsec. (c)(3). Pub. L. 105–2 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The taxes imposed by paragraph (1) shall apply during the period beginning on September 1, 1982, and ending on December 31, 1995, and during the period beginning on the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1996. The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon.''

Subsec. (c)(3)(B). Pub. L. 105–34, §1031(a)(3), substituted ''September 30, 2007'' for ''September 30, 1997''.

Subsec. (d)(1). Pub. L. 105–34, §907(a)(2), inserted ''and other than liquefied natural gas'' after ''liquefied petroleum gas''.

Subsec. (*l*). Pub. L. 105–34, §1601(f)(4)(A), struck out ''helicopter'' after ''certain'' in heading and inserted ''or a fixed-wing aircraft'' after ''helicopter'' in text.

Subsec. (m)(1)(A). Pub. L. 105–34, §907(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the rate of the tax imposed by subsection (a)(2) shall be—

''(i) 11.3 cents per gallon after September 30, 1993, and before October 1, 1999, and

''(ii) 4.3 cents per gallon after September 30, 1999, and''.

1996—Subsec. (a)(1)(D). Pub. L. 104–188, §1208, added cl. (i) and redesignated former cls. (i) and (ii) as (ii) and (iii), respectively.

Subsec. (c)(2). Pub. L. 104–188, §1609(g)(3)(A), redesignated par. (4) as (2) and struck out former par. (2) which read as follows:

''(2) GASOLINE.—There is hereby imposed a tax (at the rate specified in paragraph (3)) upon gasoline (as defined in section 4083)—

''(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

''(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081.''

Subsec. (c)(3). Pub. L. 104–188, §1609(g)(3), redesignated par. (5) as (3) and substituted ''paragraph (1)'' for ''paragraphs (1) and (2)'', and struck out former par. (3) which read as follows:

''(3) RATE OF TAX.—The rate of tax imposed by paragraph (2) on any gasoline is 1 cent per gallon.''

Subsec. (c)(4). Pub. L. 104–188, §1609(g)(3)(A), redesignated par. (4) as (2).

Subsec. (c)(5). Pub. L. 104–188, §1609(g)(3)(A), redesignated par. (5) as (3).

Pub. L. 104–188, §1609(a)(3), inserted '', and during the period beginning on the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1996'' after ''December 31, 1995''.

Subsec. (k)(1)(A) to (C). Pub. L. 104–188, §1609(g)(4)(A), inserted ''and'' at end of subpar. (A), substituted period for '', and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''no tax shall be imposed by subsection (c)(2).''

1993—Subsec. (a)(1). Pub. L. 103–66, §13242(d)(3), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''There is hereby imposed a tax on any liquid (other than any product taxable under section 4081)—

''(A) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or diesel-powered boat for use as a fuel in such vehicle or boat, or

''(B) used by any person as a fuel in a diesel-powered highway vehicle or diesel-powered boat unless there was a taxable sale of such liquid under subparagraph (A).

The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use. No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.''

Pub. L. 103–66, §13163(a)(2), substituted ''diesel-powered highway vehicle or diesel-powered boat'' for ''diesel-powered highway vehicle'' in subpars. (A) and (B) and ''such vehicle or boat'' for ''such vehicle'' in subpar. (A).

Subsec. (a)(2). Pub. L. 103–66, §13242(d)(4), in introductory provisions, struck out ''or paragraph (1) of this subsection'' after ''section 4081'' and, in closing provisions, substituted ''The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on gasoline which is in effect at the time of such sale or use.'' for ''The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use.''

Subsec. (a)(3). Pub. L. 103–66, §13241(e)(1), added par. (3).

Subsec. (b)(1)(B). Pub. L. 103–66, §13242(d)(5)(A), substituted ''paragraph (1)(B), (2)(B), or (3)(A)(ii)'' for ''paragraph (1)(B) or (2)(B)'' and inserted before period at end ''(if any)''.

Subsec. (b)(1)(C). Pub. L. 103–66, §13242(d)(5)(B), inserted before period at end ''; except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train''.

Subsec. (b)(2)(A)(i). Pub. L. 103–66, §13242(d)(5)(C), struck out ''Highway Trust Fund financing'' before ''rate applicable''.

Subsec. (c)(1). Pub. L. 103–66, §13242(d)(6), substituted ''The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4091(b)(1) which is in effect at the time of such sale or use.'' for ''The rate of the tax imposed by this paragraph shall be the sum of the Airport and Airway Trust Fund financing rate and the aviation fuel deficit reduction rate in effect under section 4091 at the time of such sale or use.'' in concluding provisions.

Pub. L. 103–66, §13241(b)(2)(B)(iii), struck out ''of 17.5 cents per gallon'' before ''upon any liquid'' in introductory provisions and inserted ''The rate of the tax imposed by this paragraph shall be the sum of the Airport and Airway Trust Fund financing rate and the aviation fuel deficit reduction rate in effect under section 4091 at the time of such sale or use.'' before last sentence in concluding provisions.

Subsec. (c)(2). Pub. L. 103–66, §13242(d)(7), substituted ''gasoline (as defined in section 4083)'' for ''any product taxable under section 4081''.

Subsec. (c)(3). Pub. L. 103–66, §13241(b)(2)(A), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The rate of tax imposed by paragraph (2) on any gasoline is the excess of 15 cents a gallon over the sum of the Highway Trust Fund financing rate plus the deficit reduction rate at which tax was imposed on such gasoline under section 4081.''

Subsec. (c)(5). Pub. L. 103–66, §13242(d)(8), inserted at end ''The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon.''

Subsec. (d)(1). Pub. L. 103–66, §13241(e)(2), substituted ''subsection (a)(1) or (2)'' for ''subsection (a)'' before ''on such sale or use''.

Subsec. (d)(2). Pub. L. 103–66, §13242(d)(9), (10), redesignated par. (3) as (2), substituted ''(other than gasoline (as defined in section 4083))'' for ''(other than any product taxable under section 4081)'', and struck out heading and text of former par. (2). Text read as follows: ''There is hereby imposed a tax of 0.1 cent a gallon on

any liquid (other than a product taxable under section 4081)—

''(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

''(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.''

Subsec. (d)(3), (4). Pub. L. 103–66, §13242(d)(9), redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (f)(3). Pub. L. 103–66, §13241(f)(1), struck out heading and text of par. (3). Text read as follows: ''Except with respect to the taxes imposed by subsection (d), paragraph (1) shall not apply on and after October 1, 1999.''

Subsec. (g). Pub. L. 103–66, §13241(f)(2), struck out at end ''Except with respect to the taxes imposed by subsection (d), paragraphs (2) and (4) shall not apply on and after October 1, 1999.''

Subsec. (k)(1)(A). Pub. L. 103–66, §13242(d)(11), struck out ''Highway Trust Fund financing'' before ''rates under paragraphs'' and substituted ''section 4081(c)'' for ''sections 4081(c) and 4091(c), as the case may be''.

Subsec. (k)(1)(B). Pub. L. 103–66, §13242(d)(12), substituted ''4091(c)'' for ''4091(d)''.

Subsec. (m)(1)(A). Pub. L. 103–66, §13242(d)(13), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''under subsection (a)(2)—

''(i) the Highway Trust Fund financing rate shall be 5.75 cents per gallon, and

''(ii) the deficit reduction rate shall be 5.55 cents per gallon.''

Pub. L. 103–66, §13241(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''under subsection (a)(2) the Highway Trust Fund financing rate shall be 5.75 cents per gallon and the deficit reduction rate shall be 1.25 cents per gallon, and''.

Subsec. (m)(1)(B). Pub. L. 103–66, §13242(d)(13), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d)(1).''

1991—Subsecs. (f)(3), (g). Pub. L. 102–240 substituted ''1999'' for ''1995''.

1990—Subsec. (a)(1). Pub. L. 101–508, §11211(b)(6)(C)(i), struck out ''of 15 cents a gallon'' after ''imposed a tax'' in introductory provisions and inserted before last sentence ''The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use.''

Subsec. (a)(2). Pub. L. 101–508, §11211(b)(3), substituted ''imposed a tax'' for ''imposed a tax of 9 cents a gallon'' in introductory provisions and inserted at end ''The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use.''

Subsec. (a)(3). Pub. L. 101–508, §11211(b)(6)(C)(ii), struck out par. (3) which provided that on and after Oct. 1, 1993, the taxes imposed by subsec. (a) shall not apply.

Subsec. (b)(2)(A)(i). Pub. L. 101–508, §11211(b)(6)(D), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents', and''.

Subsec. (b)(2)(C). Pub. L. 101–508, §11211(e)(1), substituted ''2000'' for ''1993''.

Subsec. (c)(1). Pub. L. 101–508, §11213(b)(2)(A), substituted ''17.5 cents'' for ''14 cents''.

Subsec. (c)(3). Pub. L. 101–508, §11211(a)(4), substituted ''15 cents'' for ''12 cents'' and ''the sum of the Highway Trust Fund financing rate plus the deficit reduction rate'' for ''the Highway Trust Fund financing rate''.

Subsec. (c)(5). Pub. L. 101–508, §11213(d)(2)(B), substituted ''1995'' for ''1990''.

Subsec. (c)(6). Pub. L. 101–508, §11213(e)(3), struck out par. (6) which provided cross reference to section 4283 for reduction of rates of taxes imposed by subsec. (c)(1) and (2) in certain circumstances.

Subsecs. (f)(3), (g). Pub. L. 101–508, §11211(d)(1), (2), substituted ''1995'' for ''1993''.

Subsec. (k)(1)(A). Pub. L. 101–508, §11211(b)(6)(E)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''subsection (a)(1) shall be applied by substituting '9 cents' for '15 cents', and''.

Subsec. (k)(1)(B). Pub. L. 101–508, §11213(b)(2)(B)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''no tax shall be imposed by subsection (c)(1), and''.

Pub. L. 101–508, §11211(b)(6)(E)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents', and''.

Subsec. (k)(1)(C). Pub. L. 101–508, §11211(b)(6)(E)(i), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''no tax shall be imposed by subsection (c).''

Subsec. (k)(3). Pub. L. 101–508, §11211(e)(2), substituted ''2000'' for ''1993''.

Subsec. (m)(1)(A). Pub. L. 101–508, §11211(b)(6)(F), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''subsection (a)(2) shall be applied by substituting '4½ cents' for '9 cents', and''.

Subsec. (m)(1)(B). Pub. L. 101–508, §11213(b)(2)(B)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''no tax shall be imposed by subsection (c).''

1988—Subsec. (b)(1)(A). Pub. L. 100–647, §2001(d)(3)(A), inserted reference to subsection (d)(1).

Subsec. (b)(1)(B). Pub. L. 100–647, §2001(d)(3)(B), inserted ''and by the corresponding provision of subsection (d)(1)'' before the period.

Subsec. (b)(1)(C). Pub. L. 100–647, §1017(c)(3), substituted ''section 6421(e)(2)'' for ''section 6421(d)(2)''.

Subsec. (b)(2)(A). Pub. L. 100–647, §2001(d)(3)(D), amended subpar. (A) generally, inserting ''(i)'' before ''subsection (a)(2)'' and adding cl. (ii).

Subsec. (b)(3). Pub. L. 100–647, §2001(d)(3)(C), struck out par. (3) which coordinated subsec. (b) with taxes imposed by subsec. (d).

Subsec. (c)(3). Pub. L. 100–647, §2001(d)(2), substituted ''the Highway Trust Fund financing rate at which'' for ''the rate at which''.

Subsec. (f)(3). Pub. L. 100–647, §1017(c)(4), amended par. (3) generally, substituting ''paragraph (1) shall not apply on and after October 1, 1993'' for ''on and after October 1, 1993, paragraph (1) shall not apply''.

1987—Subsec. (a)(1). Pub. L. 100–203, §10502(b)(1), in heading substituted ''Tax on diesel fuel where no tax imposed on fuel under section 4091'' for ''Diesel fuel'' and in text inserted sentence at end that no tax be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

Subsec. (a)(3). Pub. L. 100–17, §502(a)(1), substituted ''1993'' for ''1988''.

Subsec. (b)(2)(C). Pub. L. 100–17, §502(b)(1), substituted ''1993'' for ''1988''.

Subsec. (c)(1). Pub. L. 100–203, §10502(b)(2), in heading substituted ''Tax on nongasoline fuels where no tax imposed on fuel under section 4091'' for ''In general'' and in text inserted sentence at end that no tax be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

Subsec. (c)(5). Pub. L. 100–223, §402(b), substituted ''1990'' for ''1987''.

Subsec. (c)(6). Pub. L. 100–223, §405(b)(3), added par. (6).

Subsec. (d)(1). Pub. L. 100–203, §10502(b)(3), added par. (1), substituting new heading for ''Liquids other than gasoline, etc., used in motor vehicles, motorboats, or trains'', and struck out text of former par. (1) which read as follows: ''In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cents a gallon on benzol, benzene, naphtha, casing head and natural gasoline, or any other liquid (other than

kerosene, gas oil, liquefied petroleum gas, or fuel oil, or any product taxable under section 4081)—

''(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

''(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).''

Subsec. (d)(2). Pub. L. 100–203, §10502(b)(3), added par. (2), substituting new heading for ''Liquids used in aviation'', and struck out text of former par. (2) which read as follows: ''In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.1 cents a gallon on any liquid—

''(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

''(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.''

Subsec. (d)(3), (4). Pub. L. 100–203, §10502(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (f)(3), (g). Pub. L. 100–17, §502(b)(2), (3), substituted ''1993'' for ''1988''.

Subsec. (k)(3). Pub. L. 100–17, §502(c)(1), substituted ''September 30, 1993'' for ''December 31, 1992''.

Subsec. (*l*). Pub. L. 100–223, §404(b), amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) read as follows: ''No tax shall be imposed under this section on any liquid sold for use in, or used in, a helicopter for the purpose of—

''(1) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

''(2) the planting, cultivation, cutting or transportation of, or caring for, trees (including logging operation),

but only if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to the Airport and Airway Improvement Act of 1982 during such use.''

Subsec. (n). Pub. L. 100–203, §10502(b)(4), struck out subsec. (n) which related to tax on diesel fuel for highway vehicle use being imposed on sale to retailer.

1986—Subsec. (b). Pub. L. 99–514, §422(a)(2), substituted ''reduction in tax'' for ''exemption'' in heading.

Subsec. (b)(2)(A). Pub. L. 99–514, §422(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''No tax shall be imposed by subsection (a) on any qualified methanol or ethanol fuel.''

Subsec. (b)(3). Pub. L. 99–499, §521(d)(1), added par. (3).

Subsecs. (d), (e). Pub. L. 99–499, §521(a)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (f)(3). Pub. L. 99–499, §521(d)(2), substituted ''Except with respect to the taxes imposed by subsection (d), on and after'' for ''On and after''.

Subsec. (g). Pub. L. 99–499, §521(d)(3), substituted ''Except with respect to the taxes imposed by subsection (d), paragraphs'' for ''Paragraphs'' in last sentence.

Subsec. (*l*)(1). Pub. L. 99–514, §1879(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''transporting individuals, equipment, or supplies in—

''(A) the exploration for, or the development or removal of, hard minerals, or

''(B) the exploration for oil or gas, or''.

Subsec. (n). Pub. L. 99–514, §1702(a), added subsec. (n).

1984—Subsec. (a)(1). Pub. L. 98–369, §911(a), substituted ''15 cents'' for ''9 cents''.

Subsec. (k)(1). Pub. L. 98–369, §912(a), in amending par. (1) generally, substituted ''liquid'' for ''liquid fuel'' in provisions preceding subpar. (A), in subpar. (A), substituted ''subsection (a)(1) shall be applied by substituting '9 cents' for '15 cents', and'' for ''subsection (a) shall be applied by substituting '4 cents' for '9 cents' each place it appears, and'', added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*l*)(1). Pub. L. 98–369, §1018(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (m). Pub. L. 98–369, §913(a), added subsec. (m).

1983—Subsec. (a). Pub. L. 97–424, §§511(a)(2), 516(a)(1)(A), added subsec. (a), and struck out former subsec. (a) which provided for a tax of 4 cents a gallon on diesel fuel.

Subsec. (b). Pub. L. 97–424, §511(b)(1), (c)(2), added subsec. (b), and struck out former subsec. (b) which provided for a tax of 4 cents a gallon on special motor fuels.

Subsec. (c)(3). Pub. L. 97–424, §511(g)(1), substituted provision that the rate of tax imposed by par. (2) on any gasoline is the excess of 12 cents a gallon over the rate at which tax was imposed on such gasoline under section 4081 for provision that the rate of tax imposed by par. (2) was 8 cents a gallon (10½ cents a gallon in the case of any gasoline with respect to which a tax was imposed under section 4081 at the rate set forth in subsec. (b) thereof).

Subsec. (e). Pub. L. 97–424, §516(a)(1)(B), struck out subsec. (e) which provided that the taxes imposed by subsecs. (a) and (b) would be 1½ cents a gallon and that second and third sentences of subsecs. (a) and (b) would not apply on and after Oct. 1, 1984.

Subsec. (f)(3). Pub. L. 97–424, §516(b)(1)(A), added par. (3).

Subsec. (g). Pub. L. 97–424, §516(b)(1)(B), inserted provision that pars. (2) and (4) shall not apply on and after Oct. 1, 1988.

Subsec. (k). Pub. L. 97–424, §511(d)(2), in par. (1) substituted provisions for a 4-cent tax on the sale or use of any liquid fuel at least 10 percent of which consists of alcohol for provisions that no tax be imposed by this section on the sale or use of such fuel, and in par. (2) substituted ''to which paragraph (1) applied'' for ''on which tax was not imposed by reason of this subsection'' after ''alcohol'' and inserted provision that any tax imposed on such sale shall be reduced by the amount (if any) of the tax imposed on the sale of such mixture.

1982—Subsec. (c). Pub. L. 97–248, §279(a), in par. (1) substituted ''14 cents'' for ''7 cents'', in par. (3) substituted ''8 cents a gallon (10½ cents a gallon in the case of any gasoline with respect to which a tax is imposed under section 4081 at the rate set forth in subsection (b) thereof)'' for ''3 cents a gallon'', and in par. (5) substituted provisions that the taxes imposed by pars. (1) and (2) shall apply during the period beginning on Sept. 1, 1982, and ending on Dec. 31, 1987, for provisions that on and after Oct. 1, 1980, the taxes imposed by pars. (1) and (2) would not apply.

Subsec. (*l*). Pub. L. 97–248, §279(b)(1), added subsec. (*l*).

1980—Subsec. (c)(5). Pub. L. 96–298 extended termination date to ''October 1, 1980'' from ''July 1, 1980''.

Subsec. (k)(3). Pub. L. 96–223 added par. (3).

1978—Subsec. (b). Pub. L. 95–618, §§222(a)(2), 233(a)(3)(B), substituted '', in a qualified business use'' for ''otherwise than as a fuel in a highway vehicle (A) which (at the time of such sale or use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway'' and ''is used otherwise than in a qualified business use'' for ''is used as a fuel in a highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway'' and inserted provision that for purposes of this subsection ''qualified business use'' has the meaning given to such term by section 6421(d)(2).

Subsec. (c)(3). Pub. L. 95–599, §502(b), struck out termination date of Sept. 30, 1979 for 3 cents per gallon rate of tax and struck out provision for a 5½ cents per gallon rate of tax after such date.

Subsec. (e). Pub. L. 95–599, §502(a)(1), substituted ''1984'' for ''1979''.

Subsec. (h)(2). Pub. L. 95–600, §703(*l*)(1), substituted ''term 'aircraft museum' means'' for ''term 'aircraft' means''.

Subsecs. (i), (j). Pub. L. 95–600, §703(*l*)(2), redesignated subsec. (i), relating to sales by United States, or by any agency or instrumentality of United States, as (j).

Subsec. (k). Pub. L. 95–618, §221(b)(1), added subsec. (k).

1976—Subsec. (c)(3). Pub. L. 94–280, §303(a)(1), substituted ''1979'' for ''1977'' in two places.

Subsec. (e). Pub. L. 94–280, §303(a)(2), substituted ''1979'' for ''1977''.

Subsec. (f)(1). Pub. L. 94–455, §1906(b)(13(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (g). Pub. L. 94–455, §§1904(a)(1)(B), 1906(b)(13)(A), designated existing provisions as par. (1), substituted ''Other exemptions'' for ''Exemptions for use as supplies for vessels'' after ''(g)'', struck out ''or his delegate'' after ''Secretary'', and added pars. (2) to (4) and definition of ''nonprofit educational organization''.

Subsec. (h). Pub. L. 94–530 added subsec. (h). Former subsec. (h) redesignated ''(i) Registration''.

Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (i). Pub. L. 94–455, §1904(a)(1)(C), added subsec. (i) relating to sales by United States.

Pub. L. 94–530 redesignated former subsec. (h) as ''(i) Registration''.

1970—Subsec. (b). Pub. L. 91–258, §202(b)(1) and (2), substituted ''motor vehicle or motorboat'' for ''motor vehicle, motorboat, or airplane'', twice in par. (1) and once in par. (2), and ''in'' for ''for the propulsion of'' in par. (1) preceding ''such motor vehicle'', in par. (2) preceding ''a motor vehicle'' and in text following par. (2) before ''a highway vehicle (A)'' in two places, respectively.

Subsec. (c). Pub. L. 91–258, §202(a), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (c)(3). Pub. L. 91–605, §303(a)(1), substituted ''1977'' for ''1972'' in two places.

Subsec. (d). Pub. L. 91–258, §202(a), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 91–605, §303(a)(2), substituted ''1977'' for ''1972''.

Pub. L. 91–258, §202(a), redesignated former subsec. (c) as (e), substituting in par. (1) ''subsections (a) and (b)'' and '','' for ''this section'' and '';''. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91–258, §202(a), redesignated former subsec. (d) as (f), substituting in par. (1) prohibition against imposition of tax ''under this section on any liquid sold for use or used on a farm for farming purposes'' for prior provisions that ''(A) no tax shall be imposed under subsection (a)(1) or (b)(1) on the sale of any liquid sold for use on a farm for farming purposes, and (B) no tax shall be imposed under subsection (a)(2) or (b)(2) on the use of any liquid used on a farm for farming purposes''.

Subsec. (g). Pub. L. 91–258, §202(a), redesignated former subsec. (e) as (g), substituting ''this section on any liquid sold'' for ''subsection (b) in the case of any fuel sold''.

Subsec. (h). Pub. L. 91–258, §202(a), added subsec. (h).

1965—Subsec. (b). Pub. L. 89–44 inserted ''casinghead and natural gasoline,'' after ''liquefied petroleum gas,'' in text preceding par. (1).

1961—Subsec. (a). Pub. L. 87–61, §201(a), increased tax on diesel fuel from 3 to 4 cents a gallon, and substituted ''a tax of 2 cents a gallon shall be imposed under paragraph (2)'' for ''a tax of 1 cent a gallon shall be imposed under paragraph (2)''.

Subsec. (b). Pub. L. 87–61, §201(a), increased tax on special motor fuels from 3 to 4 cents a gallon, and substituted ''a tax of 2 cents a gallon shall be imposed under paragraph (2)'' for ''a tax of 1 cent a gallon shall be imposed under paragraph (2)''.

Subsec. (c). Pub. L. 87–61, §201(c), substituted ''October 1, 1972'' for ''July 1, 1972''.

Subsec. (f). Pub. L. 87–61, §201(d), repealed subsec. (f) which authorized a temporary increase in taxes under subsecs. (a) and (b).

1959—Subsecs. (a), (b). Pub. L. 86–342, §201(b)(2), struck out ''in lieu of 3 cents a gallon'' after ''shall be 2 cents a gallon''.

Subsec. (f). Pub. L. 86–342, §201(b)(1), added subsec. (f).

1958—Subsec. (e). Pub. L. 85–859 added subsec. (e).

1956—Subsec. (a). Act June 29, 1956, §202(a), increased tax on diesel fuel from 2 cents a gallon to 3 cents a gallon, and inserted provisions which retained tax at 2 cents a gallon for diesel fuel used in vehicles not registered, and not required to be registered, for highway use, or vehicles owned by the United States and not used on the highway.

Subsec. (b). Act June 29, 1956, §202(b), increased tax on special motor fuels from 2 cents a gallon to 3 cents a gallon, and inserted provisions which retained tax at 2 cents a gallon for special motor fuels sold for use or used otherwise than as a fuel for the propulsion of a highway vehicle which is registered, or is required to be registered, for highway use, or vehicles owned by the United States used on the highway.

Subsec. (c). Act June 29, 1956, §202(c), substituted ''July 1, 1972'' for ''April 1, 1956'' and provided for nonapplication of second and third sentences of subsec. (a) and (b).

Act Mar. 29, 1956, substituted ''April 1, 1957'' for ''April 1, 1956''.

Subsec. (d). Act Apr. 2, 1956, added subsec. (d).

1955—Subsec. (c). Act Mar. 30, 1955, substituted ''April 1, 1956'' for ''April 1, 1955''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendments by Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendments relate, and amendment by section 6(d)(3) of Pub. L. 110–172 applicable to fuel sold for use or used after Dec. 29, 2007, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1207(g), Aug. 17, 2006, 120 Stat. 1072, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4221, 4253, 4483, 6416, 6421, and 7701 of this title] shall take effect on January 1, 2007.

''(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 4483 of this title] shall apply to taxable periods beginning on or after July 1, 2007.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–59, title XI, §11101(e), Aug. 10, 2005, 119 Stat. 1945, provided that: ''The amendments made by this section [amending this section, sections 4051, 4071, 4081, 4221, 4481 to 4483, 6412, 9503, and 9504 of this title, and section 460*l*–11 of Title 16, Conservation] shall take effect on the date of the enactment of this Act [Aug. 10, 2005].''

Pub. L. 109–59, title XI, §11113(d), Aug. 10, 2005, 119 Stat. 1949, provided that: ''The amendments made by this section [amending this section and sections 4101, 6426, and 6427 of this title] shall apply to any sale or use for any period after September 30, 2006.''

Amendment by section 11151(e)(2) of Pub. L. 109–59 effective as if included in the provision of the Energy Tax Incentives Act of 2005, Pub. L. 109–58, title XIII, to which such amendment relates, see section 11151(f)(3) of Pub. L. 109–59, set out as a note under section 38 of this title.

Pub. L. 109–59, title XI, §11161(e), Aug. 10, 2005, 119 Stat. 1973, provided that: ''The amendments made by this section [amending this section and sections 4081, 4082, 6427, 9502, and 9503 of this title] shall apply to fuels or liquids removed, entered, or sold after September 30, 2005.''

Pub. L. 109–58, title XIII, § 1362(d), Aug. 8, 2005, 119 Stat. 1060, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6430 of this title and amending this section and sections 4081, 4082, and 9508 of this title] shall take effect on October 1, 2005.

''(2) NO EXEMPTION.—The amendments made by subsection (b) [enacting section 6430 of this title and amending this section and section 4082 of this title] shall apply to fuel entered, removed, or sold after September 30, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 241(c), Oct. 22, 2004, 118 Stat. 1438, provided that: ''The amendments made by this section [amending this section and sections 4042, 4082, 6421, and 6427 of this title] shall take effect on January 1, 2005.''

Amendment by section 301(c)(5), (6) of Pub. L. 108–357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108–357, set out as a note under section 40 of this title.

Pub. L. 108–357, title VIII, § 853(e), Oct. 22, 2004, 118 Stat. 1614, provided that: ''The amendments made by this section [amending this section and sections 4081 to 4083, 4101, 4103, 4221, 6206, 6416, 6427, 6724, 9502, and 9508 of this title, redesignating subpart C of part III of subchapter A of chapter 32 of this title as subpart B of part III of subchapter A of chapter 32 of this title, and repealing former subpart B of part III of subchapter A of chapter 32 of this title] shall apply to aviation-grade kerosene removed, entered, or sold after December 31, 2004.''

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 9003(b)(2)(A) of Pub. L. 105–178 effective Jan. 1, 2001, see section 9003(b)(3) of Pub. L. 105–178, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 902(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 4083 and 6421 of this title] shall take effect on January 1, 1998.''

Section 907(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1997.''

Section 1031(e)(1) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section and sections 4081 and 4091 of this title] shall apply take effect [sic] on October 1, 1997.''

Pub. L. 105–34, title X, § 1032(f), Aug. 5, 1997, 111 Stat. 935, as amended by Pub. L. 105–178, title IX, § 9008, June 9, 1998, 112 Stat. 506; Pub. L. 106–170, title V, § 524, Dec. 17, 1999, 113 Stat. 1928, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 4081 to 4083, 4093, 4101, 6416, 6427, 6715, 7232, 9503, and 9508 of this title] shall take effect on July 1, 1998.

''(2) The amendment made by subsection (d) [amending section 4101 of this title] shall take effect on January 1, 2002.''

Section 1435(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1997.''

Amendment by section 1601(f)(4)(A), (B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

Section 2(e)(1) of Pub. L. 105–2 provided that: ''The amendments made by subsection (a) [amending this section and sections 4081 and 4091 of this title] shall apply to periods beginning on or after the 7th day after the date of the enactment of this Act [Feb. 28, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1609(i) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 4081, 4091, 4261, 4271, 4282, 6421, and 9502 of this title] shall take effect on the 7th calendar day after the date of the enactment of this Act [Aug. 20, 1996], except that the amendments made by subsection (b) [amending sections 4261 and 4271 of this title] shall not apply to any amount paid before such date.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13163(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 4092, 6421, and 9508 of this title] shall take effect on January 1, 1994.''

Section 13241(g) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 4042, 4081, 4091, 4093, 6420, 6421, and 6427 of this title] shall take effect on October 1, 1993.''

Section 13242(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting sections 4084 and 6714 of this title and amending this section and sections 4081 to 4083, 4091 to 4093, 4101 to 4103, 6206, 6302, 6412, 6416, 6420, 6421, 6427, 9502, 9503, and 9508 of this title] shall take effect on January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11211(a)(6) of Pub. L. 101–508 provided that: ''Except as otherwise provided in this subsection, the amendments made by this subsection [amending this section and sections 4081 and 9503 of this title] shall apply to gasoline removed (as defined in [former] section 4082 of the Internal Revenue Code of 1986) after November 30, 1990.''

Section 11211(b)(7) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and sections 4091, 4093, 6427, 9502, and 9503 of this title] shall take effect on December 1, 1990.''

Section 11213(b)(4) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and sections 4091 and 6427 of this title] shall take effect on December 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(c)(3), (4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2001(d)(2), (3)(A)–(D) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 2001(d)(1)(A) of Pub. L. 100–647 provided that: ''The amendments made by subsections (b)(3) and (d)(17) of section 10502 of the Revenue Act of 1987 [Pub. L. 100–203, amending this section and section 9508 of this title] shall be treated as if included in the amendments made by section 521 of the Superfund Revenue Act of 1986 [Pub. L. 99–499] except that the last sentence of [former] paragraphs (2) and (3) of section 4041(d) of the Internal Revenue Code of 1986 (as amended by such subsection (b)(3)) and the reference to section 4091 of such Code in section 9508(c)(2)(A) of such Code (as amended by such subsection (d)(1) [(d)(17)]) shall not apply to sales before April 1, 1988.''

Section 404(d)(2) of Pub. L. 100–223 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1988.''

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 422(a)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall take effect on January 1, 1987.''

Section 1702(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 6652 of this title] shall apply to sales after the first calendar quarter beginning more than 60 days after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1878(c)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 521(e) of Pub. L. 99–499 provided that: ''The amendments made by this section [amending this section and sections 4042, 4081, 4221, 6416, 6420, 6421, 6427, 9502, 9503, and 9506 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(a) of Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

Amendment by section 912(a) of Pub. L. 98–369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98–369, set out as a note under section 40 of this title.

Section 913(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 40 of this title] shall take effect on August 1, 1984.''

Section 1018(c)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on April 1, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 511(h) of Pub. L. 97–424 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 44E, 4081, 6416, 6420, 6421, and 6427 of this title] shall take effect on April 1, 1983.

''(2) TARIFF ON IMPORTED ALCOHOL.—The amendment made by subsection (d)(5) [amending item 901.50 of the Tariff Schedules, which are not set out in the Code] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after March 31, 1983.

''(3) FOR SUBSECTION (e)(2).—The amendment made by subsection (e)(2) [amending section 6427 of this title] shall take effect on January 1, 1983.

''(4) SHARED TRANSPORTATION REQUIREMENT.—The amendment made by subsection (e)(3) [amending section 6427 of this title] shall apply with respect to fuel purchased after December 31, 1982, and before January 1, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 279(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and section 6427 of this title] shall take effect on September 1, 1982.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 221(b)(2) of Pub. L. 95–618, as amended by Pub. L. 96–223, title II, § 232(a)(3), Apr. 2, 1980, 94 Stat. 273, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales or use after December 31, 1978.''

Section 222(b) of Pub. L. 95–618 provided that: ''The amendments made by subsection (a) [amending this section and sections 6421 and 6424 of this title] shall apply with respect to uses after December 31, 1978.''

Amendment by section 233(a)(3)(B) of Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1(d) of Pub. L. 94–530 provided that: ''The amendments made by this section [amending this section and sections 39, 6427, 7210, 7603, 7604, and 7605 of this title] shall take effect on October 1, 1976.''

Section 1904(d) of Pub. L. 94–455 provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 263, 861, 1232, 4042, 4216, 4217, 4227, 4253, 4261, 4271, 4371 to 4374, 4482, 4493, 4901, 4905, 4973, 6011, 6416, 6611, 6651, 6808, 7012, 7234, 7240, 7265, 7270, 7272, 7303, 7611, and 7655 of this title and repealing sections 4042, 4054 to 4058, 4226, 4292, 4294, 4295, 4591 to 4597, 4801 to 4806, 4811 to 4826, 4881 to 4886, 4911 to 4931, 6076, 6680, 6681, 6689, 7235, 7239, 7241, 7264, 7267, 7274, and 7328 of this title] shall take effect on the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 211 of title II of Pub. L. 91–258 provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this title [see Short Title of 1970 Amendment note below] shall take effect on July 1, 1970.

''(b) EXCEPTIONS.—The amendments made by sections 203 [enacting section 7275 and amending sections 4261 and 4262 of this title] and 204 [enacting sections 4271 and 4272 of this title] shall apply to transportation beginning after June 30, 1970. The amendments made by subsections (a), (b), and (c) of section 207 [enacting section 6427 and amending sections 39, 6420, 6421, and 6424] shall apply with respect to taxable years ending after June 30, 1970.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 802(d)(2) of Pub. L. 89–44 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply with respect to casinghead and natural gasoline sold or used on or after July 1, 1965, except that such amendment shall not apply to a sale or use of casinghead or natural gasoline which was sold by a producer or importer before such date if tax under section 4081 of the Code (as in effect prior to the amendment made by subsection (a)(1) [amending section 4082 of this title]) was imposed with respect to such sale.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 208 of title II of Pub. L. 87–61 provided that:

''(a) Except as provided in subsection (b), the amendments made by this title [enacting section 6156 of this title, amending this section and sections 4061, 4071, 4081, 4218, 4221, 4226, 4481, 4482, 6412, 6416, 6421, and 6601 of this title, and amending section 209 of The Highway Revenue Act of 1956, set out as a note under section 120 of Title 23, Highways] shall take effect on the date of the enactment of this Act [June 29, 1961].

''(b)(1) The amendments made by sections 201, 202, and 203 [enacting section 6156 of this title and amending this section and sections 4071, 4081, 4481, 4482, 6421, and 6601 of this title] shall take effect on July 1, 1961.

''(2) The amendments made by section 205(a), (c), and (d) [amending sections 4221 and 6416 of this title] shall apply only in the case of gasoline sold on or after October 1, 1961.

''(3) The amendment made by section 205(b) [amending section 4218 of this title] shall apply only in the case of gasoline used on or after October 1, 1961.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 211 of title II of act June 29, 1956, provided that: ''This title [enacting sections 173 and 174 of Title 23, Highways, and sections 4426, 4481 to 4484 of this title, amending this section and sections 4061, 4071, 4072, 4073, 4081, 4084, 6206, 6412, 6416, 6504, 6511, 6612, 6675, 7210, 7603, 7604, and 7605 of this title, and renumbering sections 4227 and 6422 of this title] shall take effect on the date of its enactment [June 29, 1956], except that the amendments made by sections 202, 203, 204, and 205 [amending this section and sections 4061, 4071, 4072, 4073, and 4081 of this title] shall take effect on July 1, 1956.''

Section 2(a)(2) of act Apr. 2, 1956, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the day after the date of the enactment of this Act [Apr. 2, 1956].''

SHORT TITLE OF 1970 AMENDMENT

Section 201(a) of title II of Pub. L. 91–258 provided that: ''This title [enacting sections 4271, 4272, 4281, 4282, 4491 to 4494, 6426, 6427, and 7275 of this title and section 1742 of former Title 49, Transportation, amending this section and sections 39, 874, 4082, 4261, 4262, 4291 to 4294, 6156, 6201, 6206, 6401, 6415, 6416, 6420, 6421, 6424, 6675, 7210, and 7603 to 7605 of this title, repealing former section 4263 of this title, enacting provisions set out as notes under section 104 of Title 4, Flag and Seal, Seat of Government, and the States, and section 1742 of former Title 49, and amending provision set out as a note under section 120 of Title 23, Highways] may be cited as the 'Airport and Airway Revenue Act of 1970'.''

SHORT TITLE OF 1956 AMENDMENTS

Section 201(a) of title II of act June 29, 1956, provided that: ''This title [enacting sections 173 and 174 of Title 23, Highways, and sections 4426, 4481 to 4484 of this title, amending this section and sections 4061, 4071, 4072, 4073, 4081, 4084, 6206, 6412, 6416, 6504, 6511, 6612, 6675, 7210, 7603, 7604, and 7605 of this title, and renumbering sections 4227 and 6422 of this title] may be cited as the 'Highway Revenue Act of 1956'.''

Section 1 of act Mar. 29, 1956, provided: ''That this Act [amending this section and sections 11, 821, 4061, 4081, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5701 note, 5707, and 6412 of this title] may be cited as the 'Tax Rate Extension Act of 1956'.''

SHORT TITLE OF 1955 AMENDMENT

Section 1 of act Mar. 30, 1955, provided: ''That this Act [amending this section and sections 11, 821, 4061, 4081, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5701 note, 5707, and 6412 of this title] may be cited as the 'Tax Rate Extension Act of 1955'.''

DELAYED DEPOSITS OF HIGHWAY MOTOR FUEL TAX REVENUES

Due date for deposit of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 901(e) of Pub. L. 105–34, set out as a note under section 6302 of this title.

FLOOR STOCKS TAXES

Section 11213(b)(5) of Pub. L. 101–508 imposed a floor stocks tax on aviation fuel on which tax was imposed under section 4041(c)(1) or 4091 of this title before Dec. 1, 1990, and which was held on such date by any person.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

STUDY BY SECRETARY OF THE TREASURY; REPORT TO CONGRESS

Pub. L. 96–451, title II, § 204, Oct. 14, 1980, 94 Stat. 1988, directed Secretary of the Treasury, after consultation with Secretary of department in which Coast Guard was operating, to conduct a study to determine portion of taxes imposed by sections 4041(b) and 4081 of the Internal Revenue Code of 1954 which were attributable to fuel used in recreational motorboats, and to report to Congress on his findings under such study, not later than 2 years after Oct. 14, 1980.

STUDY OF IMPORTED ALCOHOL BY SECRETARY OF THE TREASURY

Section 232(f) of Pub. L. 96–223 required, within 180 days after Apr. 2, 1980, Secretary of the Treasury to furnish specific Congressional committees recommendations for limiting import of alcohol into United States for fuel purposes.

REPORTS ON USE OF ALCOHOL IN FUEL

Section 221(c) of Pub. L. 95–618, as amended by Pub. L. 96–223, § 232(g), Apr. 2, 1980, 94 Stat. 280; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''On April 1 of each year, beginning with April 1, 1981, and ending with April 1, 1992, the Secretary of Energy, in consultation with the Secretary of the Treasury and the Secretary of Transportation, shall submit to the Congress a report on the use of alcohol in fuel. The report shall include—

''(1) a description of the firms engaged in the alcohol fuel industry,

''(2) the amount of alcohol fuel sold in each State, and the amount of gasoline saved in each State by reason of the use of alcohol fuels,

''(3) the revenue loss resulting from the exemptions from tax for alcohol fuels under sections 4041(k) and 4081(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and the credit allowable under section 44E [now 40] of such Code and the impact of such revenue loss on the Highway Trust Fund, and

''(4) the cost of production and the retail cost of alcohol fuels as compared to gasoline and special fuels not mixed with alcohol.''

§ 4042. Tax on fuel used in commercial transportation on inland waterways

(a) In general

There is hereby imposed a tax on any liquid used during any calendar quarter by any person as a fuel in a vessel in commercial waterway transportation.

(b) Amount of tax

(1) In general

The rate of the tax imposed by subsection (a) is the sum of—

(A) the Inland Waterways Trust Fund financing rate,

(B) the Leaking Underground Storage Tank Trust Fund financing rate, and

(C) the deficit reduction rate.

(2) Rates

For purposes of paragraph (1)—

(A) The Inland Waterways Trust Fund financing rate is the rate determined in accordance with the following table:

If the use occurs:	The tax per gallon is:
Before 1990	10 cents
During 1990	11 cents
During 1991	13 cents
During 1992	15 cents

If the use occurs:	The tax per gallon is:
During 1993	17 cents
During 1994	19 cents
After 1994	20 cents.

(B) The Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

(C) The deficit reduction rate is—

(i) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

(ii) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

(iii) 0 after December 31, 2006.

(3) Exception for fuel on which Leaking Underground Storage Tank Trust Fund financing rate separately imposed

The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax was imposed with respect to such fuel under section 4041(d) or 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

(4) Termination of Leaking Underground Storage Tank Trust Fund financing rate

The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

(c) Exemptions

(1) Deep-draft ocean-going vessels

The tax imposed by subsection (a) shall not apply with respect to any vessel designed primarily for use on the high seas which has a draft of more than 12 feet.

(2) Passenger vessels

The tax imposed by subsection (a) shall not apply with respect to any vessel used primarily for the transportation of persons.

(3) Use by State or local government in transporting property in a state or local business

Subparagraph (B) of subsection (d)(1) shall not apply with respect to use by a State or political subdivision thereof.

(4) Use in moving lash and seabee ocean-going barges

The tax imposed by subsection (a) shall not apply with respect to use for movement by tug of exclusively LASH (Lighter-aboard-ship) and SEABEE ocean-going barges released by their ocean-going carriers solely to pick up or deliver international cargoes.

(d) Definitions

For purposes of this section—

(1) Commercial waterway transportation

The term ''commercial waterway transportation'' means any use of a vessel on any inland or intracoastal waterway of the United States—

(A) in the business of transporting property for compensation or hire, or

(B) in transporting property in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

(2) Inland or intracoastal waterway of the United States

The term ''inland or intracoastal waterway of the United States'' means any inland or intracoastal waterway of the United States which is described in section 206 of the Inland Waterways Revenue Act of 1978.

(3) Person

The term ''person'' includes the United States, a State, a political subdivision of a State, or any agency or instrumentality of any of the foregoing.

(e) Date for filing return

The date for filing the return of the tax imposed by this section for any calendar quarter shall be the last day of the first month following such quarter.

(Added Pub. L. 95–502, title II, § 202(a), Oct. 21, 1978, 92 Stat. 1696; amended Pub. L. 99–499, title V, § 521(a)(3), Oct. 17, 1986, 100 Stat. 1777; Pub. L. 99–662, title XIV, § 1404(a), Nov. 17, 1986, 100 Stat. 4270; Pub. L. 100–647, title II, § 2002(a)(2), Nov. 10, 1988, 102 Stat. 3597; Pub. L. 103–66, title XIII, § 13241(d), Aug. 10, 1993, 107 Stat. 510; Pub. L. 108–357, title II, § 241(b), Oct. 22, 2004, 118 Stat. 1438; Pub. L. 110–172, § 6(d)(1)(B), Dec. 29, 2007, 121 Stat. 2480.)

REFERENCES IN TEXT

Section 206 of the Inland Waterways Revenue Act of 1978, referred to in subsec. (d)(2), is section 206 of Pub. L. 95–502, title II, Oct. 21, 1978, 92 Stat. 1700, which is classified to section 1804 of Title 33, Navigation and Navigable Waters.

PRIOR PROVISIONS

A prior section 4042, act Aug. 16, 1954, ch. 736, 68A Stat. 478, provided a cross reference to section 4222 of this title for exemption from tax where special motor fuels are sold for use for certain vessels, prior to repeal by Pub. L. 94–455, title XIX, § 1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

AMENDMENTS

2007—Subsec. (b)(3). Pub. L. 110–172 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.''

2004—Subsec. (b)(2)(C). Pub. L. 108–357 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The deficit reduction rate is 4.3 cents per gallon.''

1993—Subsec. (b)(1)(C). Pub. L. 103–66, § 13241(d)(1), added subpar. (C).

Subsec. (b)(2)(C). Pub. L. 103–66, § 13241(d)(2), added subpar. (C).

1988—Subsec. (b)(2). Pub. L. 100–647 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of paragraph (1)—

''(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

''(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.''

1986—Subsec. (b). Pub. L. 99–499 and Pub. L. 99–662 both amended subsec. (b) generally, effective Jan. 1,

1987. Pub. L. 100–647, § 2002(a)(1) (see Construction of 1986 Amendments note below), provided that for purposes of this section, the amendment made by Pub. L. 99–499 be treated as enacted after the amendment made by Pub. L. 99–662. Prior to amendment by Pub. L. 99–499 and Pub. L. 99–662, subsec. (b) read as follows:

"If the use occurs—	The tax is—
After September 30, 1980 and before October 1, 1981	4 cents a gallon
After September 30, 1981 and before October 1, 1983	6 cents a gallon
After September 30, 1983 and before October 1, 1985	8 cents a gallon
After September 30, 1985	10 cents a gallon''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, see section 241(c) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2002(d) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7812(b), Dec. 19, 1989, 103 Stat. 2412, provided that: ''The amendments made by subsections (b) and (c) [amending section 4462 of this title and provisions set out as a note under section 4461 of this title] shall take effect as if included in the provision of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99–662, title XIV] to which it relates, and the amendment made by subsection (a)(2) [amending this section] shall take effect as if included in the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 [Pub. L. 99–499, title V].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1404(c) of Pub. L. 99–662 provided that: ''The amendments made by this section [amending this section and section 1804 of Title 33, Navigation and Navigable Waters] shall take effect on January 1, 1987.''

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section 202(d) of Pub. L. 95–502 provided that: ''The amendments made by this section [enacting this section and amending section 4293 of this title] shall take effect on October 1, 1980.''

CONSTRUCTION OF 1986 AMENDMENTS

Section 2002(a)(1) of Pub. L. 100–647 provided that: ''For purposes of section 4042 of the 1986 Code, the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 [Pub. L. 99–499, amending this section] shall be treated as enacted after the amendment made by section 1404(a) of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99–662, amending this section].''

Subchapter C—Heavy Trucks and Trailers

Sec.
4051. Imposition of tax on heavy trucks and trailers sold at retail.
4052. Definitions and special rules.
4053. Exemptions.

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388–438, redesignated this subchapter, formerly subchapter B, as subchapter C.

§ 4051. Imposition of tax on heavy trucks and trailers sold at retail

(a) Imposition of tax

(1) In general

There is hereby imposed on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof) a tax of 12 percent of the amount for which the article is so sold:

(A) Automobile truck chassis.

(B) Automobile truck bodies.

(C) Truck trailer and semitrailer chassis.

(D) Truck trailer and semitrailer bodies.

(E) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

(2) Exclusion for trucks weighing 33,000 pounds or less

The tax imposed by paragraph (1) shall not apply to automobile truck chassis and automobile truck bodies, suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less (as determined under regulations prescribed by the Secretary).

(3) Exclusion for trailers weighing 26,000 pounds or less

The tax imposed by paragraph (1) shall not apply to truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less (as determined under regulations prescribed by the Secretary.[1]

(4) Exclusion for tractors weighing 19,500 pounds or less

The tax imposed by paragraph (1) shall not apply to tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer if—

(A) such tractor has a gross vehicle weight of 19,500 pounds or less (as determined by the Secretary), and

(B) such tractor, in combination with a trailer or semitrailer, has a gross combined weight of 33,000 pounds or less (as determined by the Secretary).

(5) Sale of trucks, etc., treated as sale of chassis and body

For purposes of this subsection, a sale of an automobile truck or truck trailer or semitrailer shall be considered to be a sale of a chassis and of a body described in paragraph (1).

(b) Separate purchase of truck or trailer and parts and accessories therefor

Under regulations prescribed by the Secretary—

[1] So in original. Probably should be preceded by a closing parenthesis.

(1) In general

If—

(A) the owner, lessee, or operator of any vehicle which contains an article taxable under subsection (a) installs (or causes to be installed) any part or accessory on such vehicle, and

(B) such installation is not later than the date 6 months after the date such vehicle (as it contains such article) was first placed in service,

then there is hereby imposed on such installation a tax equal to 12 percent of the price of such part or accessory and its installation.

(2) Exceptions

Paragraph (1) shall not apply if—

(A) the part or accessory installed is a replacement part or accessory, or

(B) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to any vehicle does not exceed $1,000 (or such other amount or amounts as the Secretary may by regulations prescribe).

(3) Installers secondarily liable for tax

The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1).

(c) Termination

On and after October 1, 2011, the taxes imposed by this section shall not apply.

(d) Credit against tax for tire tax

If—

(1) tires are sold on or in connection with the sale of any article, and

(2) tax is imposed by this subchapter on the sale of such tires,

there shall be allowed as a credit against the tax imposed by this subchapter an amount equal to the tax (if any) imposed by section 4071 on such tires.

(Added Pub. L. 97–424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2174; amended Pub. L. 98–369, div. A, title VII, §734(g), title IX, §921, July 18, 1984, 98 Stat. 980, 1009; Pub. L. 99–514, title XVIII, §§1877(c), 1899A(47), Oct. 22, 1986, 100 Stat. 2902, 2961; Pub. L. 100–17, title V, §502(a)(2), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101–508, title XI, §11211(c)(1), Nov. 5, 1990, 104 Stat. 1388–426; Pub. L. 102–240, title VIII, §8002(a)(1), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–34, title XIV, §§1401(a), 1402(a), 1432(a), Aug. 5, 1997, 111 Stat. 1045, 1046, 1050; Pub. L. 105–178, title IX, §9002(a)(1)(D), June 9, 1998, 112 Stat. 499; Pub. L. 109–59, title XI, §§11101(a)(1)(D), 11112(a), Aug. 10, 2005, 119 Stat. 1943, 1946.)

PRIOR PROVISIONS

A prior section 4051, act Aug. 16, 1954, ch. 736, 68A Stat. 479, defined the price for which articles were sold for purposes of determining retailers excise taxes, prior to repeal by Pub. L. 94–455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

AMENDMENTS

2005—Subsec. (a)(4), (5). Pub. L. 109–59, §11112(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 109–59, §11101(a)(1)(D), substituted ''2011'' for ''2005''.

1998—Subsec. (c). Pub. L. 105–178 substituted ''2005'' for ''1999''.

1997—Subsec. (b)(2)(B). Pub. L. 105–34, §1401(a), substituted ''$1,000'' for ''$200''.

Subsec. (d). Pub. L. 105–34, §1432(a), redesignated subsec. (e) as (d) and struck out former subsec. (d) which provided for a temporary reduction in tax on certain piggyback trailers.

Subsec. (e). Pub. L. 105–34, §1432(a), redesignated subsec. (e) as (d).

Pub. L. 105–34, §1401(a), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''In the case of any article taxable under subsection (a) on which tax was imposed under section 4061(a), subsection (a) shall be applied by substituting '2 percent' for '12 percent'.''

1991—Subsec. (c). Pub. L. 102–240 substituted ''1999'' for ''1995''.

1990—Subsec. (c). Pub. L. 101–508 substituted ''1995'' for ''1993''.

1987—Subsec. (c). Pub. L. 100–17 substituted ''1993'' for ''1988''.

1986—Subsec. (d)(1). Pub. L. 99–514, §1899A(47), substituted ''July 18, 1984'' for ''the date of the enactment of the Tax Reform Act of 1984''.

Subsec. (d)(3). Pub. L. 99–514, §1877(c), inserted at end ''No tax shall be imposed by reason of this paragraph on any use or resale which occurs more than 6 years after the date of the first retail sale.''

1984—Subsec. (b)(3). Pub. L. 98–369, §734(g), substituted ''The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1)'' for ''In addition to the owner, lessee, or operator of the vehicle, the owner of the trade or business installing the part or accessory shall be liable for the tax imposed by paragraph (1)''.

Subsecs. (d), (e). Pub. L. 98–369, §921, added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11112(b), Aug. 10, 2005, 119 Stat. 1946, provided that: ''The amendments made by this section [amending this section] shall apply to sales after September 30, 2005.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1401(a) of Pub. L. 105–34 applicable to installations on vehicles sold after Aug. 5, 1997, see section 1401(b) of Pub. L. 105–34, set out as a note under section 4003 of this title.

Section 1402(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 4052 of this title] shall take effect on January 1, 1998.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1877(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 736 of subtitle C (§§731–736) of title VII of div. A of Pub. L. 98–369 provided that: ''Except as otherwise provided in this subtitle, any amendment made by this subtitle [amending this section and sections 48, 1366, 4052, 4053, 4071 to 4073, 4081, 4082, 4216, 4218, 4221 to 4223, 4227, 4481, 6401, 6412, 6416, 6427, 6511, and 9502 of this title, repealing sections 4061 to 4063 of this title, and amending provisions set out as notes under sections 4061 and 4081 of this title] shall take effect as if included in the provisions of the Highway Revenue Act of 1982 [Pub. L. 97–424] to which such amendment relates.''

EFFECTIVE DATE

Section 512(b)(3) of Pub. L. 97–424 provided that: ''The amendments made by this subsection [enacting this

subchapter and amending section 6416 of this title] shall take effect on April 1, 1983.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4052. Definitions and special rules

(a) First retail sale

For purposes of this subchapter—

(1) In general

The term ''first retail sale'' means the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

(2) Leases considered as sales

Rules similar to the rules of section 4217 shall apply.

(3) Use treated as sale

(A) In general

If any person uses an article taxable under section 4051 before the first retail sale of such article, then such person shall be liable for tax under section 4051 in the same manner as if such article were sold at retail by him.

(B) Exemption for use in further manufacture

Subparagraph (A) shall not apply to use of an article as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him.

(C) Computation of tax

In the case of any person made liable for tax by subparagraph (A), the tax shall be computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

(b) Determination of price

(1) In general

In determining price for purposes of this subchapter—

(A) there shall be included any charge incident to placing the article in condition ready for use,

(B) there shall be excluded—

(i) the amount of the tax imposed by this subchapter,

(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(iii) the value of any component of such article if—

(I) such component is furnished by the first user of such article, and

(II) such component has been used before such furnishing, and

(C) the price shall be determined without regard to any trade-in.

(2) Sales not at arm's length

In the case of any article sold (otherwise than through an arm's-length transaction) at less than the fair market price, the tax under this subchapter shall be computed on the price for which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

(3) Long-term lease

(A) In general

In the case of any long-term lease of an article which is treated as the first retail sale of such article, the tax under this subchapter shall be computed on a price equal to—

(i) the sum of—

(I) the price (determined under this subchapter but without regard to paragraph (4)) at which such article was sold to the lessor, and

(II) the cost of any parts and accessories installed by the lessor on such article before the first use by the lessee or leased in connection with such long-term lease, plus

(ii) an amount equal to the presumed markup percentage of the sum described in clause (i).

(B) Presumed markup percentage

For purposes of subparagraph (A), the term ''presumed markup percentage'' means the average markup percentage of retailers of articles of the type involved, as determined by the Secretary.

(C) Exceptions under regulations

To the extent provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to specified types of leases where its application is not necessary to carry out the purposes of this subsection.

(4) Special rule where tax paid by manufacturer, producer, or importer

(A) In general

In any case where the manufacturer, producer, or importer of any article (or a related person) is liable for tax imposed by this subchapter with respect to such article, the tax under this subchapter shall be computed on a price equal to the sum of—

(i) the price which would (but for this paragraph) be determined under this subchapter, plus

(ii) the product of the price referred to in clause (i) and the presumed markup percentage determined under paragraph (3)(B).

(B) Related person

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term ''related person'' means any person who is a member of the same controlled group (within the meaning of section

5061(e)(3)) as the manufacturer, producer, or importer.

(ii) Exception for retail establishment

To the extent provided in regulations prescribed by the Secretary, a person shall not be treated as a related person with respect to the sale of any article if such article is sold through a permanent retail establishment in the normal course of the trade or business of being a retailer.

(c) Certain combinations not treated as manufacture

(1) In general

For purposes of this subchapter (other than subsection (a)(3)(B)), a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any item listed in paragraph (2).

(2) Items

The items listed in this paragraph are any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power liftgate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor.

(d) Certain other rules made applicable

Under regulations prescribed by the Secretary, rules similar to the rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply for purposes of this subchapter.

(e) Long-term lease

For purposes of this section, the term ''long-term lease'' means any lease with a term of 1 year or more. In determining a lease term for purposes of the preceding sentence, the rules of section 168(i)(3)(A) shall apply.

(f) Certain repairs and modifications not treated as manufacture

(1) In general

An article described in section 4051(a)(1) shall not be treated as manufactured or produced solely by reason of repairs or modifications to the article (including any modification which changes the transportation function of the article or restores a wrecked article to a functional condition) if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article.

(2) Exception

Paragraph (1) shall not apply if the article (as repaired or modified) would, if new, be taxable under section 4051 and the article when new was not taxable under such section or the corresponding provision of prior law.

(g) Regulations

The Secretary shall prescribe regulations which permit, in lieu of any other certification, persons who are purchasing articles taxable under this subchapter for resale or leasing in a long-term lease to execute a statement (made under penalties of perjury) on the sale invoice that such sale is for resale. The Secretary shall not impose any registration requirement as a condition of using such procedure.

(Added Pub. L. 97–424, title V, § 512(b)(1), Jan. 6, 1983, 96 Stat. 2175; amended Pub. L. 98–369, div. A, title VII, §§ 731, 735(b)(2), July 18, 1984, 98 Stat. 976, 981; Pub. L. 100–17, title V, §§ 505(a)–(c), 506(a), Apr. 2, 1987, 101 Stat. 258, 259; Pub. L. 100–647, title VI, § 6111(a), Nov. 10, 1988, 102 Stat. 3713; Pub. L. 105–34, title XIV, §§ 1402(b), 1434(a), (b), Aug. 5, 1997, 111 Stat. 1046, 1052; Pub. L. 105–206, title VI, § 6014(c), July 22, 1998, 112 Stat. 820.)

PRIOR PROVISIONS

A prior section 4052, act Aug. 16, 1954, ch. 736, 68A Stat. 479, provided that lease of an article would be considered the sale of article for excise tax purposes, prior to repeal by Pub. L. 94–455, title XIX, § 1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

AMENDMENTS

1998—Subsec. (f)(2). Pub. L. 105–206 substituted ''such section'' for ''this section''.

1997—Subsec. (b)(1)(B)(ii) to (iv). Pub. L. 105–34, § 1402(b), inserted ''and'' at end of cl. (ii), redesignated cl. (iv) as (iii), and struck out former cl. (iii) which read as follows: ''the fair market value (including any tax imposed by section 4071) at retail of any tires (not including any metal rim or rim base), and''.

Subsec. (d). Pub. L. 105–34, § 1434(b)(1), substituted ''rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply'' for ''rules of—

''(1) subsections (c) and (d) of section 4216 (relating to partial payments), and

''(2) section 4222 (relating to registration),

shall apply''.

Subsec. (e). Pub. L. 105–34, § 1434(a), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 105–34, § 1434(a), added subsec. (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 105–34, § 1434(b)(2), added subsec. (g).

1988—Subsec. (a)(1). Pub. L. 100–647 substituted ''production, manufacture'' for ''manufacture, production''.

1987—Subsec. (a)(1). Pub. L. 100–17, § 505(a), inserted ''or leasing in a long-term lease'' after ''resale''.

Subsec. (b)(3). Pub. L. 100–17, § 505(b), added par. (3).

Subsec. (b)(4). Pub. L. 100–17, § 506(a), added par. (4).

Subsec. (f). Pub. L. 100–17, § 505(c), added subsec. (f).

1984—Subsec. (b)(1)(B)(iv). Pub. L. 98–369, § 731, added cl. (iv).

Subsec. (c). Pub. L. 98–369, § 735(b)(2), in amending subsec. (c) generally, designated existing provisions as par. (1), in par. (1) as so designated substituted ''by reason of merely combining such article with any article listed in paragraph (2)'' for ''with any equipment or other item listed in section 4063(d)'', and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1402(b) of Pub. L. 105–34 effective Jan. 1, 1998, see section 1402(c) of Pub. L. 105–34, set out as a note under section 4051 of this title.

Section 1434(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1998.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6111(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 505(d) of Pub. L. 100–17 provided that: ''The amendments made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act [Apr. 2, 1987].''

Section 506(b) of Pub. L. 100–17 provided that: ''The amendment made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after the 1st day of the 1st calendar quarter which begins more than 90 days after the date of the enactment of this Act [Apr. 2, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

§ 4053. Exemptions

No tax shall be imposed by section 4051 on any of the following articles:

(1) Camper coaches bodies for self-propelled mobile homes

Any article designed—

(A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and

(B) to be used primarily as living quarters or camping accommodations.

(2) Feed, seed, and fertilizer equipment

Any body primarily designed—

(A) to process or prepare seed, feed, or fertilizer for use on farms,

(B) to haul feed, seed, or fertilizer to and on farms,

(C) to spread feed, seed, or fertilizer on farms,

(D) to load or unload feed, seed, or fertilizer on farms, or

(E) for any combination of the foregoing.

(3) House trailers

Any house trailer.

(4) Ambulances, hearses, etc.

Any ambulance, hearse, or combination ambulance-hearse.

(5) Concrete mixers

Any article designed—

(A) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis, and

(B) to be used to process or prepare concrete.

(6) Trash containers, etc.

Any box, container, receptacle, bin or other similar article—

(A) which is designed to be used as a trash container and is not designed for the transportation of freight other than trash, and

(B) which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body.

(7) Rail trailers and rail vans

Any chassis or body of a trailer or semitrailer which is designed for use both as a highway vehicle and a railroad car. For purposes of the preceding sentence, piggy-back trailer or semitrailer shall not be treated as designed for use as a railroad car.

(8) Mobile machinery

Any vehicle which consists of a chassis—

(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

(9) Idling reduction device

Any device or system of devices which—

(A) is designed to provide to a vehicle those services (such as heat, air conditioning, or electricity) that would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary using one or more devices affixed to a tractor, and

(B) is determined by the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation, to reduce idling of such vehicle at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary.

(10) Advanced insulation

Any insulation that has an R value of not less than R35 per inch.

(Added Pub. L. 97–424, title V, § 512(b)(1), Jan. 6, 1983, 96 Stat. 2176; amended Pub. L. 98–369, div. A, title VII, § 735(b)(1), July 18, 1984, 98 Stat. 981; Pub. L. 108–357, title VIII, § 851(a)(1), Oct. 22, 2004, 118 Stat. 1607; Pub. L. 110–343, div. B, title II, § 206(a), Oct. 3, 2008, 122 Stat. 3839.)

PRIOR PROVISIONS

A prior section 4053, acts Aug. 16, 1954, ch. 736, 68A Stat. 479; Sept. 2, 1958, Pub. L. 85–859, title I, § 104, 72 Stat. 1276, made provision for the imposition of the retailers tax on installment sales, prior to repeal by Pub. L. 94–455, title XIX, § 1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

For provisions of prior sections 4054 to 4058 of this title, see Prior Provisions note set out preceding section 4041 of this title.

AMENDMENTS

2008—Pars. (9), (10). Pub. L. 110–343 added pars. (9) and (10).

2004—Par. (8). Pub. L. 108–357 added par. (8).

1984—Pub. L. 98–369 amended section generally, substituting provisions listing articles on which no tax under section 4051 shall be imposed for former provisions which stated that no tax be imposed under section 4051 on any article specified in subsection (a) of section 4063 and that the exemptions provided by section 4221(a) extended to the tax imposed by section 4051.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 206(b), Oct. 3, 2008, 122 Stat. 3839, provided that: ''The amendment made by this section [amending this section] shall apply to sales or installations after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 851(a)(2), Oct. 22, 2004, 118 Stat. 1607, provided that: ''The amendment made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

CHAPTER 32—MANUFACTURERS EXCISE TAXES

Subchapter		Sec.[1]
A.	Automotive and related items	4061
B.	Coal	4121
C.	Certain vaccines	4131
D.	Recreational equipment	4161
E.	Medical devices	4191
F.	Special provisions applicable to manufacturers tax	4216
G.	Exemptions, registration, etc	4221

AMENDMENTS

2010—Pub. L. 111–152, title I, § 1405(a)(2), Mar. 30, 2010, 124 Stat. 1065, added item for subchapter E.

1987—Pub. L. 100–203, title IX, § 9201(c), Dec. 22, 1987, 101 Stat. 1330–330, added item for subchapter C.

1978—Pub. L. 95–227, § 2(c), Feb. 10, 1978, 92 Stat. 12, added item for subchapter B.

1965—Pub. L. 89–44, title II, §§ 203, 204, 206, June 21, 1965, 79 Stat. 139, 140, struck out items for subchapters B, C and E.

Subchapter A—Automotive and Related Items

Part	
I.	Gas guzzlers.
II.	Tires.
III.	Petroleum products.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title VII, § 735(a)(3), (c)(5)(B), July 18, 1984, 98 Stat. 980, 982, substituted ''Gas guzzlers'' for ''Motor vehicles'' in item for part I, and struck out ''and tubes'' in item for part II.

PART I—GAS GUZZLERS

Sec.
[4061 to 4063. Repealed.]
4064. Gas guzzler tax.

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, § 1875(f), Oct. 22, 1986, 100 Stat. 2897, substituted ''guzzler'' for ''guzzlers'' in item 4064.

1984—Pub. L. 98–369, div. A, title VII, § 735(a)(2), July 18, 1984, 98 Stat. 980, substituted ''GAS GUZZLERS'' for ''MOTOR VEHICLES'' in part I heading, struck out items 4061 ''Imposition of tax'', 4062 ''Articles classified as parts'', and 4063 ''Exemptions'', and substituted ''guzzlers'' for ''guzzler'' in item 4064.

1978—Pub. L. 95–618, title II, § 201(f), Nov. 9, 1978, 92 Stat. 3184, added item 4064.

1971—Pub. L. 92–178, title IV, § 401(g)(2)(D), Dec. 10, 1971, 85 Stat. 533, substituted ''Articles classified as parts'' for ''Definitions'' in item 4062.

[§§ 4061 to 4063. Repealed. Pub. L. 98–369, div. A, title VII, § 735(a)(1), July 18, 1984, 98 Stat. 980]

Section 4061, acts Aug. 16, 1954, ch. 736, 68A Stat. 481; Mar. 30, 1955, ch. 18, § 3(a)(2), 69 Stat. 14; Aug. 12, 1955, ch. 865, § 1, 69 Stat. 709; Mar. 29, 1956, ch. 115, § 3(a)(2), 70 Stat. 66; June 29, 1956, ch. 462, title II, § 203, 70 Stat. 388; Mar. 29, 1957, Pub. L. 85–12, § 3(a)(1), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, § 3(a)(1), 72 Stat. 259; June 30, 1959, Pub. L. 86–75, § 3(a)(1), 73 Stat. 157; June 30, 1960, Pub. L. 86–564, title II § 202(a)(1), 74 Stat. 290; June 29, 1961, Pub. L. 87–61, title II, § 204, 75 Stat. 126; June 30, 1961, Pub. L. 87–72, § 3(a)(1), 75 Stat. 193; June 28, 1962, Pub. L. 87–508, § 3(a)(1), 76 Stat. 114; June 29, 1963, Pub. L. 88–52, § 3(a)(1), 77 Stat. 72; June 30, 1964, Pub. L. 88–348, § 2(a)(1), 78 Stat. 237; June 21, 1965, Pub. L. 89–44, title II, § 201, 79 Stat. 136; Mar. 15, 1966, Pub. L. 89–368, title II, § 201(a), 80 Stat. 65; Apr. 12, 1968, Pub. L. 90–285, § 1(a)(1), 82 Stat. 92; June 28, 1968, Pub. L. 90–364, title I, § 105(a)(1), 82 Stat. 265; Dec. 30, 1969, Pub. L. 91–172, title VII, § 702(a)(1), 83 Stat. 660; Dec. 31, 1970, Pub. L. 91–605, title III, § 303(a)(3), (4), 84 Stat. 1743; Dec. 31, 1970, Pub. L. 91–614, title II, § 201(a)(1), 84 Stat. 1843; Dec. 10, 1971, Pub. L. 92–178, title IV, § 401(a)(1), (g) (1), 85 Stat. 530, 533; May 5, 1976, Pub. L. 94–280, title III, § 303(a)(3), (4), 90 Stat. 456; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Nov. 6, 1978, Pub. L. 95–599, title V, § 502(a)(2), (3), 92 Stat. 2756; Jan. 6, 1983, Pub. L. 97–424, title V, § 512(a)(1), (2), 96 Stat. 2173, 2174, related to imposition of tax on trucks, buses, tractors, etc.

Section 4062, acts Aug. 16, 1954, ch. 736, 68A Stat. 482; Oct. 13, 1964, Pub. L. 88–653, § 5(b), 78 Stat. 1086; Nov. 13, 1966, Pub. L. 89–809, title II, § 212(a), 80 Stat. 1585; Dec. 10, 1971, Pub. L. 92–178, title IV, § 401(g)(2)(A)–(C), 85 Stat. 533, related to articles classified as parts.

Section 4063, acts Aug. 16, 1954, ch. 736, 68A Stat. 482; Aug. 11, 1955, ch. 805, § 1(g), 69 Stat. 690; Oct. 13, 1964, Pub. L. 88–653, § 5(a), 78 Stat. 1086; June 21, 1965, Pub. L. 89–44, title VIII, § 801(a), 79 Stat. 157; Dec. 30, 1969, Pub. L. 91–172, title IX, § 931(a), 83 Stat. 724; Dec. 31, 1970, Pub. L. 91–614, title III, § 303(a), 84 Stat. 1845; Dec. 10, 1971, Pub. L. 92–178, title IV, § 401(a)(2), (g)(3), 85 Stat. 530, 533; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, § 2109(a), 90 Stat. 1834, 1904; Nov. 6, 1978, Pub. L. 95–600, title VII, § 701(ff)(1), 92 Stat. 2924; Nov. 9, 1978, Pub. L. 95–618, title II, § 231(a), 92 Stat. 3187; Jan. 6, 1983, Pub. L. 97–424, title V, § 512(a)(3), 96 Stat. 2174, related to exemptions from tax.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Highway Revenue Act of 1982, Pub. L. 97–424, see section 736 of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 4051 of this title.

§ 4064. Gas guzzler tax

(a) Imposition of tax

There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following table:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 22.5	$0
At least 21.5 but less than 22.5	1,000

[1] Section numbers editorially supplied.

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 20.5 but less than 21.5	1,300
At least 19.5 but less than 20.5	1,700
At least 18.5 but less than 19.5	2,100
At least 17.5 but less than 18.5	2,600
At least 16.5 but less than 17.5	3,000
At least 15.5 but less than 16.5	3,700
At least 14.5 but less than 15.5	4,500
At least 13.5 but less than 14.5	5,400
At least 12.5 but less than 13.5	6,400
Less than 12.5	7,700.

(b) Definitions

For purposes of this section—

(1) Automobile

(A) In general

The term ''automobile'' means any 4-wheeled vehicle propelled by fuel—

(i) which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

(ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

(B) Exception for certain vehicles

The term ''automobile'' does not include any vehicle which is treated as a nonpassenger automobile under the rules which were prescribed by the Secretary of Transportation for purposes of section 32901 of title 49, United States Code, and which were in effect on the date of the enactment of this section.

(C) Exception for emergency vehicles

The term ''automobile'' does not include any vehicle sold for use and used—

(i) as an ambulance or combination ambulance-hearse,

(ii) by the United States or by a State or local government for police or other law enforcement purposes, or

(iii) for other emergency uses prescribed by the Secretary by regulations.

(2) Fuel economy

The term ''fuel economy'' means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under subsection (c).

(3) Model type

The term ''model type'' means a particular class of automobile as determined by regulation by the EPA Administrator.

(4) Model year

The term ''model year'', with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term ''model year'' means the calendar year.

(5) Manufacturer

(A) In general

The term ''manufacturer'' includes a producer or importer.

(B) Lengthening treated as manufacture

For purposes of this section, subchapter G of this chapter, and section 6416(b)(3), the lengthening of an automobile by any person shall be treated as the manufacture of an automobile by such person.

(6) EPA Administrator

The term ''EPA Administrator'' means the Administrator of the Environmental Protection Agency.

(7) Fuel

The term ''fuel'' means gasoline and diesel fuel. The Secretary (after consultation with the Secretary of Transportation) may, by regulation, include any product of petroleum or natural gas within the meaning of such term if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

(c) Determination of fuel economy

For purposes of this section—

(1) In general

Fuel economy for any model type shall be measured in accordance with testing and calculation procedures established by the EPA Administrator by regulation. Procedures so established shall be the procedures utilized by the EPA Administrator for model year 1975 (weighted 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act. The EPA Administrator shall report any measurements of fuel economy to the Secretary.

(2) Special rule for fuels other than gasoline

The EPA Administrator shall by regulation determine that quantity of any other fuel which is the equivalent of one gallon of gasoline.

(3) Time by which regulations must be issued

Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months before the model year to which such procedures apply.

(Added Pub. L. 95–618, title II, § 201(a), Nov. 9, 1978, 92 Stat. 3180; amended Pub. L. 99–514, title XVIII, § 1812(e)(1)(B)(i), (ii), Oct. 22, 1986, 100 Stat. 2836; Pub. L. 101–508, title XI, § 11216(a)–(d), Nov. 5, 1990, 104 Stat. 1388–437; Pub. L. 103–272, § 5(g)(1), July 5, 1994, 108 Stat. 1374; Pub. L. 109–59, title XI, § 11111(a), Aug. 10, 2005, 119 Stat. 1946.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b)(1)(B), is Nov. 9, 1978.

Section 206 of the Clean Air Act, referred to in subsec. (c)(1), is section 206 of act July 14, 1955, ch. 360, title II, as added Dec. 31, 1970, Pub. L. 91–604, § 8(a), 84 Stat. 1694, which is classified to section 7525 of Title 42, The Public Health and Welfare.

AMENDMENTS

2005—Subsec. (b)(1)(A). Pub. L. 109–59 struck out concluding provisions which read as follows: ''In the case

of a limousine, the preceding sentence shall be applied without regard to clause (ii).''

1994—Subsec. (b)(1)(B). Pub. L. 103–272 substituted ''section 32901 of title 49, United States Code,'' for ''section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001)''.

1990—Subsec. (a). Pub. L. 101–508, § 11216(a), amended subsec. (a) generally, substituting present provisions for provisions which set forth gas guzzler tax tables in the case of automobiles built in each of the model years 1980 through 1986 and later.

Subsec. (b)(1)(A). Pub. L. 101–508, § 11216(b), inserted at end ''In the case of a limousine, the preceding sentence shall be applied without regard to clause (ii).''

Subsec. (b)(5)(B). Pub. L. 101–508, § 11216(c), substituted heading for one which read: ''Exception for certain small manufacturers'' and amended text generally. Prior to amendment, text read as follows: ''A person shall not be treated as the manufacturer of any automobile if—

''(i) such person would (but for this subparagraph) be so treated solely by reason of lengthening an existing automobile, and

''(ii) such person is a small manufacturer (as defined in subsection (d)(4)) for the model year in which such lengthening occurs.''

Subsec. (d). Pub. L. 101–508, § 11216(d), struck out subsec. (d) which prescribed special rules for small manufacturers.

1986—Subsec. (b)(1)(A)(ii). Pub. L. 99–514, § 1812(e)(1)(B)(i), substituted ''unloaded gross vehicle weight'' for ''gross vehicle weight''.

Subsec. (b)(5). Pub. L. 99–514, § 1812(e)(1)(B)(ii), amended par. (5) generally, designating existing provisions as subpar. (A), adding subpar. (A) heading, and adding subpar. (B).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, § 11111(b), Aug. 10, 2005, 119 Stat. 1946, provided that: ''The amendment made by this section [amending this section] shall take effect on October 1, 2005.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11216(e) of Pub. L. 101–508 provided that:

''(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to sales after December 31, 1990.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section] shall take effect on January 1, 1991.

''(3) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall take effect on the date of the enactment of this section [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1812(e)(1)(B)(iii) of Pub. L. 99–514 provided that: ''The amendments made by clauses (i) and (ii) [amending this section] shall take effect as if included in the amendments made by section 201 of Public Law 95–618 [see Effective Date note below]; except that the amendment made by clause (i) shall not apply to any station wagon if—

''(I) such station wagon is originally equipped with more than 6 seat belts,

''(II) such station wagon was manufactured before November 1, 1985, and

''(III) such station wagon is of the 1985 or 1986 model year.''

EFFECTIVE DATE

Section 201(g) of Pub. L. 95–618, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section and amending sections 1016, 4217, 4221, 4222, 4293, and 6416 of this title] shall apply with respect to 1980 and later model year automobiles (as defined in section 4064(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART II—TIRES

Sec.
4071. Imposition of tax.
4072. Definitions.
4073. Exemptions.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 869(d)(2), Oct. 22, 2004, 118 Stat. 1623, substituted ''Exemptions'' for ''Exemption for tires with internal wire fastening'' in item 4073.

1984—Pub. L. 98–369, div. A, title VII, § 735(c)(5)(A), (C), July 18, 1984, 98 Stat. 982, struck out ''AND TUBES'' from heading of part II and substituted ''Exemption for tires with internal wire fastening'' for ''Exemptions'' in item 4073.

1956—Act June 29, 1956, ch. 462, title II, § 204(d), 70 Stat. 389, substituted ''Definitions'' for ''Definition of rubber'' in item 4072.

§ 4071. Imposition of tax

(a) Imposition and rate of tax

There is hereby imposed on taxable tires sold by the manufacturer, producer, or importer thereof a tax at the rate of 9.45 cents (4.725 cents in the case of a biasply tire or super single tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds.

(b) Special rule for manufacturers who sell at retail

Under regulations prescribed by the Secretary, if the manufacturer, producer, or importer of any tire delivers such tire to a retail store or retail outlet of such manufacturer, producer, or importer, he shall be liable for tax under subsection (a) in respect of such tire in the same manner as if it had been sold at the time it was delivered to such retail store or outlet. This subsection shall not apply to an article in respect to which tax has been imposed by subsection (a). Subsection (a) shall not apply to an article in respect of which tax has been imposed by this subsection.

(c) Tires on imported articles

For the purposes of subsection (a), if an article imported into the United States is equipped with tires—

(1) the importer of the article shall be treated as the importer of the tires with which such article is equipped, and

(2) the sale of the article by the importer thereof shall be treated as the sale of the tires with which such article is equipped.

This subsection shall not apply with respect to the sale of an automobile bus chassis or an automobile bus body.

(d) Termination

On and after October 1, 2011, the taxes imposed by subsection (a) shall not apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, § 204(a), 70 Stat. 388; Pub. L. 86–440, § 1(a), Apr. 22, 1960, 74 Stat. 80; Pub. L. 87–61, title II, § 202, June 29, 1961, 75 Stat. 124; Pub. L. 89–523, § 1(a), Aug. 1, 1966, 80 Stat. 331; Pub. L. 91–605, title III, § 303(a)(5), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 92–178, title IV, § 401(f), Dec. 10, 1971, 85 Stat. 533; Pub. L. 94–280, title III, § 303(a)(5), May 5, 1976, 90 Stat. 456; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–599, title V, § 502(a)(4), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 96–222, title I, § 108(c)(2)(C), Apr. 1, 1980, 94 Stat. 227; Pub. L. 96–596, § 4(a)(1), Dec. 24, 1980, 94 Stat. 3475; Pub. L. 96–598, § 1(d), Dec. 24, 1980, 94 Stat. 3486; Pub. L. 97–424, title V, §§ 514(a), 516(a)(2), Jan. 6, 1983, 96 Stat. 2181, 2182; Pub. L. 98–369, div. A, title VII, § 735(c)(2), July 18, 1984, 98 Stat. 982; Pub. L. 100–17, title V, § 502(a)(3), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101–508, title XI, § 11211(c)(2), Nov. 5, 1990, 104 Stat. 1388–426; Pub. L. 102–240, title VIII, § 8002(a)(2), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–178, title IX, § 9002(a)(1)(E), June 9, 1998, 112 Stat. 499; Pub. L. 108–357, title VIII, § 869(a), (d)(1), Oct. 22, 2004, 118 Stat. 1623; Pub. L. 109–59, title XI, § 11101(a)(1)(E), Aug. 10, 2005, 119 Stat. 1943.)

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–59 substituted ''2011'' for ''2005''.

2004—Subsec. (a). Pub. L. 108–357, § 869(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, subsec. (a) imposed tax and set forth table of rates providing for no tax if the tire weighed not more than 40 lbs., tax of 15 cents per lb. in excess of 40 lbs. if the tire weighed more than 40 lbs. but not more than 70 lbs., tax of $4.50 plus 30 cents per lb. in excess of 70 lbs. if the tire weighed more than 70 lbs. but not more than 90 lbs., and tax of $10.50 plus 50 cents per lb. in excess of 90 lbs. if the tire weighed more than 90 lbs.

Subsec. (c). Pub. L. 108–357, § 869(d)(1), redesignated subsec. (e) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ''For purposes of this section, weight shall be based on total weight exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary.''

Subsec. (e). Pub. L. 108–357, § 869(d)(1), redesignated subsec. (e) as (c).

1998—Subsec. (d). Pub. L. 105–178 substituted ''2005'' for ''1999''.

1991—Subsec. (d). Pub. L. 102–240 substituted ''1999'' for ''1995''.

1990—Subsec. (d). Pub. L. 101–508 substituted ''1995'' for ''1993''.

1987—Subsec. (d). Pub. L. 100–17 substituted ''1993'' for ''1988''.

1984—Subsec. (b). Pub. L. 98–369, § 735(c)(2)(A), struck out ''or inner tube'' after ''any tire'', and struck out ''or tube'' after ''such tire'' in two places in first sentence.

Subsec. (c). Pub. L. 98–369, § 735(c)(2)(B), substituted ''on total weight exclusive'' for ''on total weight, except that in the case of tires such total weight shall be exclusive''.

Subsec. (e). Pub. L. 98–369, § 735(c)(2)(C), struck out ''or inner tubes (other than bicycle tires and inner tubes)'' after ''equipped with tires'' in provisions preceding par. (1), struck out ''and inner tubes'' before ''with which such article is equipped'' in pars. (1) and (2), and substituted ''sale of an automobile bus chassis or an automobile bus body'' for ''sale of an article if a tax on such sale is imposed under section 4061 or if such article is an automobile bus chassis or an automobile bus body'' in provisions following par. (2).

Subsec. (f). Pub. L. 98–369, § 735(c)(2)(D), struck out subsec. (f) which related to imported recapped or retreaded United States tires.

1983—Subsec. (a). Pub. L. 97–424, § 514(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

''(1) Tires of the type used on highway vehicles, 9.75 cents a pound.

''(2) Other tires (other than laminated tires to which paragraph (5) applies), 4.875 cents a pound.

''(3) Inner tubes, for tires, 10 cents a pound.

''(4) Tread rubber, 5 cents a pound.

''(5) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent, 1 cent a pound.''

Subsec. (d). Pub. L. 97–424, § 516(a)(2), substituted provision that, on and after Oct. 1, 1988, the taxes imposed by subsec. (a) shall not apply, for provision that, on and after Oct. 1, 1984, the tax imposed by subsec. (a)(1) would be 4.875 cents a pound, that by subsec. (a)(3) would be 9 cents a pound, and that subsec. (a)(4) would not apply.

1980—Subsec. (a)(1). Pub. L. 96–596, § 4(a)(1)(A), substituted ''9.75 cents'' for ''10 cents''.

Subsec. (a)(2). Pub. L. 96–596, § 4(a)(1)(B), substituted ''4.875 cents'' for ''5 cents''.

Subsec. (d)(1). Pub. L. 96–596, § 4(a)(1)(C), substituted ''4.875 cents'' for ''5 cents''.

Subsec. (e). Pub. L. 96–222 inserted references to an automobile bus chassis or body.

Subsec. (f). Pub. L. 96–598 added subsec. (f).

1978—Subsec. (d). Pub. L. 95–599 substituted ''1984'' for ''1979''.

1976—Subsecs. (b), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–280 substituted ''1979'' for ''1977''.

1971—Subsec. (e). Pub. L. 92–178 added subsec. (e).

1970—Subsec. (d). Pub. L. 91–605 substituted ''1977'' for ''1972''.

1966—Subsecs. (b) to (d). Pub. L. 89–523 added subsec. (b) and redesignated former subsec. (b) and (c) as (c) and (d), respectively.

1961—Subsec. (a)(1). Pub. L. 87–61, § 202(a), increased tax from 8 to 10 cents a pound.

Subsec. (a)(3). Pub. L. 87–61, § 202(c), increased tax from 9 to 10 cents a pound.

Subsec. (a)(4). Pub. L. 87–61, § 202(c), increased tax from 3 to 5 cents a pound.

Subsec. (c). Pub. L. 87–61, § 202(d), substituted ''October 1, 1972'' for ''July 1, 1972'', added par. (2), and redesignated former par. (2) as (3).

1960—Subsec. (a)(2). Pub. L. 86–440, § 1(a)(1), inserted ''(other than laminated tires to which paragraph (5) applies)'' after ''other tires''.

Subsec. (a)(5). Pub. L. 86–440, § 1(a)(2), added par. (5).

1956—Act June 29, 1956, increased tax on tires of type used on highway vehicles from 5 cents a pound to 8 cents a pound, provided for a tax of 3 cents a pound on tread rubber, and required on and after July 1, 1972, a reduction in tax on tires of type used on highway vehicles from 8 cents a pound to 5 cents a pound, and elimination of tax on tread rubber.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 869(e), Oct. 22, 2004, 118 Stat. 1623, provided that: ''The amendments made by this section [amending this section and sections 4072 and 4073 of this title] shall apply to sales in calendar years beginning more than 30 days after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of

the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 514(b) of Pub. L. 97–424 provided that: ''The amendment made by this section [amending this section] shall apply to articles sold on or after January 1, 1984''.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1(e) of Pub. L. 96–598 provided that: ''The amendments made by this section [amending this section and sections 6416 and 6511 of this title] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Dec. 24, 1980].''

Section 4(a)(2) of Pub. L. 96–596 provided that: ''The amendments made by this subsection [amending this section] shall apply on and after January 1, 1981.''

Amendment by Pub. L. 96–222 effective as if included in the provision of the Energy Tax Act of 1978, Pub. L. 95–618, Nov. 9, 1978, 92 Stat. 3174, to which such amendment relates, see section 108(c)(7) of Pub. L. 96–222, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 401(h) of Pub. L. 92–178 provided that:

''(1) Except as otherwise provided in this section, the amendments made by subsections (a), (f), and (g) [amending this section and sections 4061, 4062, 4063, 4216, 4221, 4222, 6412, and 6416 of this title] of this section shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [Dec. 10, 1971].

''(2) For purposes of paragraph (1), an article shall not be considered sold before the day after the date of the enactment of this Act [Dec. 10, 1971] unless possession or right to possession passes to the purchaser before such day.

''(3) In the case of—

''(A) a lease,

''(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

''(C) a conditional sale, or

''(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into on or before the date of the enactment of this Act [Dec. 10, 1971], payments made after such date, with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold before the day after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 1(b) of Pub. L. 89–523 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first calendar quarter which begins more than 20 days after the date on which this Act is enacted [Aug. 1, 1966].''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 1(b) of Pub. L. 86–440 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [April 22, 1960].''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

ALLOWANCE OF CREDIT OR REFUND OF OVERPAYMENT OF TAX IMPOSED

Section 4(b) of Pub. L. 96–596 provided that:

''(b) DETERMINATION OF OVERPAYMENT.—

''(1) IN GENERAL.—The determination of the extent to which any overpayment of tax imposed by section 4071(a)(1) or (2) or section 4071(b) has arisen by reason of an adjustment of a tire after the original sale pursuant to a warranty or guarantee, and the allowance of a credit or refund of any such overpayment, shall be determined in accordance with the principles set forth in regulations and rulings relating thereto to the extent in effect on March 31, 1978.

''(2) EFFECTIVE DATE.—This subsection shall apply to the adjustment of any tire after March 31, 1978, and prior to January 1, 1983.''

§ 4072. Definitions

(a) Taxable tire

For purposes of this chapter, the term ''taxable tire'' means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use.

(b) Rubber

For purposes of this chapter, the term ''rubber'' includes synthetic and substitute rubber.

(c) Tires of the type used on highway vehicles

For purposes of this part, the term ''tires of the type used on highway vehicles'' means tires of the type used on—

(1) motor vehicles which are highway vehicles, or

(2) vehicles of the type used in connection with motor vehicles which are highway vehicles.

Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).

(d) Biasply

For purposes of this part, the term ''biasply tire'' means a pneumatic tire on which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

(e) Super single tire

For purposes of this part, the term ''super single tire'' means a single tire greater than 13 inches in cross section width designed to replace 2 tires in a dual fitment. Such term shall not include any tire designed for steering.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, § 204(b), 70 Stat. 389; Pub. L. 98–369, div. A, title VII, § 735(c)(3), July 18, 1984, 98 Stat. 982; Pub. L. 108–357, title VIII, §§ 851(c)(1), 869(b), Oct. 22, 2004, 118 Stat. 1608,

1623; Pub. L. 109–58, title XIII, § 1364(a), Aug. 8, 2005, 119 Stat. 1060.)

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–58 inserted at end ''Such term shall not include any tire designed for steering.''

2004—Subsec. (a). Pub. L. 108–357, § 869(b), added subsec. (a) and redesignated former subsec. (a) as (b).

Subsec. (b). Pub. L. 108–357, § 869(b), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Pub. L. 108–357, § 851(c)(1), which directed amendment of par. (2) by inserting at end ''Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).'', was executed by amending subsec. (b) by inserting that language after par. (2) to reflect the probable intent of Congress.

Subsecs. (c), (d). Pub. L. 108–357, § 869(b), redesignated subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Pub. L. 108–357, § 869(b), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 108–357, § 869(b), redesignated subsec. (d) as (e).

1984—Subsecs. (b), (c). Pub. L. 98–369 redesignated subsec. (c) as (b) and struck out former subsec. (b) which defined ''tread rubber''.

1956—Act June 29, 1956, substituted ''Definitions'' for ''Definition of rubber'' in section catchline.

Act June 29, 1956, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1364(b), Aug. 8, 2005, 119 Stat. 1060, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 869 of the American Jobs Creation Act of 2004 [Pub. L. 108–357].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 851(c)(2), Oct. 22, 2004, 118 Stat. 1608, provided that: ''The amendment made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 869(b) of Pub. L. 108–357 applicable to sales in calendar years beginning more than 30 days after Oct. 22, 2004, see section 869(e) of Pub. L. 108–357, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§ 4073. Exemptions

The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, § 204(c), 70 Stat. 389; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title VII, § 735(c)(4), July 18, 1984, 98 Stat. 982; Pub. L. 108–357, title VIII, § 869(c), Oct. 22, 2004, 118 Stat. 1623.)

AMENDMENTS

2004—Pub. L. 108–357 amended section catchline and text generally. Prior to amendment, text read as follows: ''The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent.''

1984—Pub. L. 98–369 substituted ''Exemption for tires with internal wire fastening'' for ''Exemptions'' in section catchline, and in text struck out subsec. (a) relating to exemption from tax on tires not more than 20 inches in diameter and not more than 1¾ inches in cross section, struck out subsec. (c) relating to exemption from tax on tread rubber in certain cases, and struck out letter designation ''(b)'' and subsection heading for subsec. (b) thereby designating text of former subsec. (b) as entire text of section.

1976—Subsec. (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1956—Subsec. (c). Act June 29, 1956, added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to sales in calendar years beginning more than 30 days after Oct. 22, 2004, see section 869(e) of Pub. L. 108–357, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

PART III—PETROLEUM PRODUCTS

Subpart
A. Motor and aviation fuels.
B. Special provisions applicable to fuels tax.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 853(d)(2)(R), Oct. 22, 2004, 118 Stat. 1614, amended analysis generally, substituting items for subparts A ''Motor and aviation fuels'' and B ''Special provisions applicable to fuels tax'' for former items for subparts A ''Gasoline and diesel fuel'', B ''Aviation fuel'', and C ''Special provisions applicable to petroleum products''.

1993—Pub. L. 103–66, title XIII, § 13242(d)(43), Aug. 10, 1993, 107 Stat. 528, substituted ''Gasoline and diesel fuel'' for ''Gasoline'' in item for subpart A and ''Aviation fuel'' for ''Diesel fuel and aviation fuel'' in item for subpart B.

1987—Pub. L. 100–203, title X, § 10502(d)(18), Dec. 22, 1987, 101 Stat. 1330–445, added item relating to subpart B.

1983—Pub. L. 97–424, title V, § 515(b)(13), Jan. 6, 1983, 96 Stat. 2182, struck out the item for subpart B ''Lubricating oil''.

SUBPART A—MOTOR AND AVIATION FUELS

Sec.
4081. Imposition of tax.
4082. Exemptions for diesel fuel and kerosene.
4083. Definitions; special rule; administrative authority.
4084. Cross references.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 853(d)(2)(S), Oct. 22, 2004, 118 Stat. 1614, substituted ''Motor and Aviation Fuels'' for ''Gasoline and Diesel Fuel'' in subpart heading.

1997—Pub. L. 105–34, title X, § 1032(e)(3)(B), Aug. 5, 1997, 111 Stat. 935, inserted ''and kerosene'' after ''diesel fuel'' in item 4082.

1993—Pub. L. 103–66, title XIII, § 13242(a), Aug. 10, 1993, 107 Stat. 514, substituted ''Gasoline and Diesel Fuel'' for ''Gasoline'' in subpart heading and amended section analysis generally, substituting ''Exemptions for diesel fuel'' for ''Definitions'' in item 4082 and ''Definitions; special rule; administrative authority'' for ''Cross references'' in item 4083 and adding item 4084.

1986—Pub. L. 99–514, title XVII, § 1703(a), Oct. 22, 1986, 100 Stat. 2774, struck out item 4083 ''Exemption of sales to producer'' and redesignated former item 4084 as 4083.

1956—Act June 29, 1956, ch. 462, title II, § 208(e)(2), 70 Stat. 397, substituted ''Cross references'' for ''Relief of farmers from tax in case of gasoline used on the farm'' in item 4084.

Act Apr. 2, 1956, ch. 160, § 4(a)(2), 70 Stat. 90, added item 4084.

§ 4081. Imposition of tax

(a) Tax imposed

(1) Tax on removal, entry, or sale

(A) In general

There is hereby imposed a tax at the rate specified in paragraph (2) on—

(i) the removal of a taxable fuel from any refinery,

(ii) the removal of a taxable fuel from any terminal,

(iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and

(iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

(B) Exemption for bulk transfers to registered terminals or refineries

(i) In general

The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (except as provided in clause (ii)), and the operator of such terminal or refinery are registered under section 4101.

(ii) Nonapplication of registration to vessel operators entering by deep-draft vessel

For purposes of clause (i), a vessel operator is not required to be registered with respect to the entry of a taxable fuel transferred in bulk by a vessel described in section 4042(c)(1).

(2) Rates of tax

(A) In general

The rate of the tax imposed by this section is—

(i) in the case of gasoline other than aviation gasoline, 18.3 cents per gallon,

(ii) in the case of aviation gasoline, 19.3 cents per gallon, and

(iii) in the case of diesel fuel or kerosene, 24.3 cents per gallon.

(B) Leaking Underground Storage Tank Trust Fund tax

The rates of tax specified in subparagraph (A) shall each be increased by 0.1 cent per gallon. The increase in tax under this subparagraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

(C) Taxes imposed on fuel used in aviation

In the case of kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in aviation, the rate of tax under subparagraph (A)(iii) shall be—

(i) in the case of use for commercial aviation by a person registered for such use under section 4101, 4.3 cents per gallon, and

(ii) in the case of use for aviation not described in clause (i), 21.8 cents per gallon.

(D) Diesel-water fuel emulsion

In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting ''19.7 cents'' for ''24.3 cents''. The preceding sentence shall not apply to the removal, sale, or use of diesel-water fuel emulsion unless the person so removing, selling, or using such fuel is registered under section 4101.

(3) Certain refueler trucks, tankers, and tank wagons treated as terminal

(A) In general

For purposes of paragraph (2)(C), a refueler truck, tanker, or tank wagon shall be treated as part of a terminal if—

(i) such terminal is located within an airport,

(ii) any kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located,

(iii) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to such terminal, and

(iv) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with kerosene at such terminal.

(B) Requirements

A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to a terminal if such truck, tanker, or wagon—

(i) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

(ii) is not registered for highway use, and

(iii) is operated by—

(I) the terminal operator of such terminal, or

(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

(C) Reporting

The Secretary shall require under section 4101(d) reporting by such terminal operator of—

(i) any information obtained under subparagraph (B)(iii)(II), and

(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.

(D) Applicable rate

For purposes of paragraph (2)(C), in the case of any kerosene treated as removed from a terminal by reason of this paragraph—

(i) the rate of tax specified in paragraph (2)(C)(i) in the case of use described in such paragraph shall apply if such terminal is located within a secured area of an airport, and

(ii) the rate of tax specified in paragraph (2)(C)(ii) shall apply in all other cases.

(4) Liability for tax on kerosene used in commercial aviation

For purposes of paragraph (2)(C)(i), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.

(b) Treatment of removal or subsequent sale by blender

(1) In general

There is hereby imposed a tax at the rate determined under subsection (a) on taxable fuel removed or sold by the blender thereof.

(2) Credit for tax previously paid

If—

(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

(c) Later separation of fuel from diesel-water fuel emulsion

If any person separates the taxable fuel from a diesel-water fuel emulsion on which tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(D) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

(d) Termination

(1) In general

The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after September 30, 2011.

(2) Aviation fuels

The rates of tax specified in subsection (a)(2)(A)(ii) and (a)(2)(C)(ii) shall be 4.3 cents per gallon—

(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(B) after March 31, 2011.

(3) Leaking Underground Storage Tank Trust Fund financing rate

The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall apply after September 30, 1997, and before October 1, 2011.

(e) Refunds in certain cases

Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Mar. 30, 1955, ch. 18, § 3(a)(3), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(3), 70 Stat. 66; June 29, 1956, ch. 462, title II, § 205, 70 Stat. 389; Pub. L. 86–342, title II, § 201(a), Sept. 21, 1959, 73 Stat. 613; Pub. L. 87–61, title II, § 201(b)–(d), June 29, 1961, 75 Stat. 123, 124; Pub. L. 91–605, title III, § 303(a)(6), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94–280, title III, § 303(a)(6), May 5, 1976, 90 Stat. 456; Pub. L. 95–599, title V, § 502(a)(5), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 95–618, title II, § 221(a)(1), Nov. 9, 1978, 92 Stat. 3185; Pub. L. 96–223, title II, § 232(a)(1), (b)(3)(A), (d)(3), Apr. 2, 1980, 94 Stat. 273, 276, 277; Pub. L. 97–424, title V, §§ 511(a)(1), (d)(1), 516(a)(3), Jan. 6, 1983, 96 Stat. 2169, 2171, 2182; Pub. L. 98–369, div. A, title VII, § 732(a)(1), (2), title IX, § 912(b), (f), July 18, 1984, 98 Stat. 976, 977, 1007; Pub. L. 99–499, title V, § 521(a)(1), Oct. 17, 1986, 100 Stat. 1774; Pub. L. 99–514, title XVII, § 1703(a), Oct. 22, 1986, 100 Stat. 2774; Pub. L. 100–17, title V, § 502(a)(4), (c)(2), Apr. 2, 1987, 101 Stat. 256, 257; Pub. L. 100–203, title X, § 10502(d)(2), Dec. 22, 1987, 101 Stat. 1330–444; Pub. L. 100–647, title I, § 1017(c)(1), (14), title II, § 2001(d)(5), title VI, § 6104(a), Nov. 10, 1988, 102 Stat. 3575, 3577, 3595, 3711; Pub. L. 101–508, title XI, §§ 11211(a)(1)–(3), (5)(A)–(C), (c)(3), (e)(3), 11212(a), (d)(1), (e)(2), 11215(a), Nov. 5, 1990, 104 Stat. 1388–423, 1388–424, 1388–426, 1388–427, 1388–430, 1388–432, 1388–436; Pub. L. 102–240, title VIII, § 8002(a)(3), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 102–486, title XIX, § 1920(a), (b), Oct. 24, 1992, 106 Stat. 3026; Pub. L. 103–66, title XIII, §§ 13241(a), 13242(a), Aug. 10, 1993, 107 Stat. 510, 514; Pub. L. 104–188, title I, § 1609(a)(2), (g)(1), (2), (4)(B), Aug. 20, 1996, 110 Stat. 1841–1843; Pub. L. 105–2, § 2(a)(2), Feb. 28, 1997, 111 Stat. 4; Pub. L. 105–34, title X, §§ 1031(a)(2), 1032(b), 1033, Aug. 5, 1997, 111 Stat. 929, 933, 937; Pub. L. 105–178, title IX, §§ 9002(a)(1)(F), 9003(a)(1)(C), (b)(2)(B), (C), June 9, 1998, 112 Stat. 499, 502, 503; Pub. L. 108–357, title III, § 301(c)(7), title VIII, §§ 853(a)(1)–(3)(A), (4), 860(a), Oct. 22, 2004, 118 Stat. 1461, 1609–1611, 1618; Pub. L. 109–6, § 1(a), Mar. 31, 2005, 119 Stat. 20; Pub. L. 109–58, title XIII, §§ 1343(a), (b)(2), 1362(a), Aug. 8, 2005, 119 Stat. 1051, 1052, 1059; Pub. L. 109–59, title XI, §§ 11101(a)(1)(F), 11151(b)(1), (2), 11161(a)(1)–(4)(D),

11166(b)(1), Aug. 10, 2005, 119 Stat. 1944, 1968–1970, 1976; Pub. L. 110–161, div. K, title I, §116(a), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110–190, §2(a), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110–253, §2(a), June 30, 2008, 122 Stat. 2417; Pub. L. 110–330, §2(a), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111–12, §2(a), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111–69, §2(a), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111–116, §2(a), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111–153, §2(a), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111–161, §2(a), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111–197, §2(a), July 2, 2010, 124 Stat. 1353; Pub. L. 111–216, title I, §101(a), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111–249, §2(a), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111–329, §2(a), Dec. 22, 2010, 124 Stat. 3566.)

REFERENCES IN TEXT

Section 211 of the Clean Air Act, referred to in subsec. (a)(2)(D), is classified to section 7545 of Title 42, The Public Health and Welfare.

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (d)(2)(A), is the date of enactment of Pub. L. 105–2, which was approved Feb. 28, 1997.

AMENDMENTS

2010—Subsec. (d)(2)(B). Pub. L. 111–329 substituted ''March 31, 2011'' for ''December 31, 2010''.

Pub. L. 111–249 substituted ''December 31, 2010'' for ''September 30, 2010''.

Pub. L. 111–216 substituted ''September 30, 2010'' for ''August 1, 2010''.

Pub. L. 111–197 substituted ''August 1, 2010'' for ''July 3, 2010''.

Pub. L. 111–161 substituted ''July 3, 2010'' for ''April 30, 2010''.

Pub. L. 111–153 substituted ''April 30, 2010'' for ''March 31, 2010''.

2009—Subsec. (d)(2)(B). Pub. L. 111–116 substituted ''March 31, 2010'' for ''December 31, 2009''.

Pub. L. 111–69 substituted ''December 31, 2009'' for ''September 30, 2009''.

Pub. L. 111–12 substituted ''September 30, 2009'' for ''March 31, 2009''.

2008—Subsec. (d)(2)(B). Pub. L. 110–330 substituted ''March 31, 2009'' for ''September 30, 2008''.

Pub. L. 110–253 substituted ''September 30, 2008'' for ''June 30, 2008''.

Pub. L. 110–190 substituted ''June 30, 2008'' for ''February 29, 2008''.

2007—Subsec. (d)(2)(B). Pub. L. 110–161 substituted ''February 29, 2008'' for ''September 30, 2007''.

2005—Subsec. (a)(1)(B). Pub. L. 109–59, §11166(b)(1), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: ''The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered under section 4101.''

Subsec. (a)(2)(A)(ii) to (iv). Pub. L. 109–59, §11161(a)(1), inserted ''and'' at end of cl. (ii), substituted a period for '', and'' at end of cl. (iii), and struck out cl. (iv) which read as follows: ''in the case of aviation-grade kerosene, 21.8 cents per gallon.''

Subsec. (a)(2)(C). Pub. L. 109–59, §11161(a)(2), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation by a person registered for such use under section 4101, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.''

Pub. L. 109–59, §11151(b)(1), substituted ''for use in commercial aviation by a person registered for such use under section 4101'' for ''for use in commercial aviation''.

Subsec. (a)(2)(D). Pub. L. 109–58, §1343(a), added subpar. (D).

Subsec. (a)(3)(A)(i). Pub. L. 109–59, §11161(a)(3)(A), struck out ''a secured area of'' before ''an airport''.

Subsec. (a)(3)(A)(ii), (iv). Pub. L. 109–59, §11161(a)(4)(A), struck out ''aviation-grade'' before ''kerosene''.

Subsec. (a)(3)(D). Pub. L. 109–59, §11161(a)(3)(B), added subpar. (D).

Subsec. (a)(4). Pub. L. 109–59, §11161(a)(4)(B), (C), struck out ''aviation-grade'' before ''kerosene'' in heading and substituted ''paragraph (2)(C)(i)'' for ''paragraph (2)(C)'' in text.

Subsec. (c). Pub. L. 109–58, §1343(b)(2), added subsec. (c).

Subsec. (d)(1). Pub. L. 109–59, §11101(a)(1)(F), substituted ''2011'' for ''2005''.

Subsec. (d)(2). Pub. L. 109–59, §11161(a)(4)(D), reenacted par. heading without change and amended text of introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The rates of tax specified in clauses (ii) and (iv) of subsection (a)(2)(A) shall be 4.3 cents per gallon—''.

Pub. L. 109–59, §11151(b)(2), amended par. heading and text of introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The rate of tax specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon—''.

Subsec. (d)(3). Pub. L. 109–58, §1362(a), substituted ''2011'' for ''2005''.

Pub. L. 109–6 substituted ''October 1, 2005'' for ''April 1, 2005''.

2004—Subsec. (a)(1)(B). Pub. L. 108–357, §860(a), inserted ''by pipeline or vessel'' after ''transferred in bulk'' and '', the operator of such pipeline or vessel,'' after ''the taxable fuel''.

Subsec. (a)(2)(A)(iv). Pub. L. 108–357, §853(a)(1), added cl. (iv).

Subsec. (a)(2)(C). Pub. L. 108–357, §853(a)(2), added subpar. (C).

Subsec. (a)(3). Pub. L. 108–357, §853(a)(3)(A), added par. (3).

Subsec. (a)(4). Pub. L. 108–357, §853(a)(4), added par. (4).

Subsec. (c). Pub. L. 108–357, §301(c)(7), struck out subsec. (c) which related to taxation of taxable fuels mixed with alcohol.

1998—Subsec. (c)(4)(A). Pub. L. 105–178, §9003(b)(2)(B), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The alcohol mixture rate for a qualified alcohol mixture which contains gasoline is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over—

''(i) 5.4 cents per gallon for 10 percent gasohol,

''(ii) 4.158 cents per gallon for 7.7 percent gasohol, and

''(iii) 3.078 cents per gallon for 5.7 percent gasohol.

In the case of a mixture none of the alcohol in which consists of ethanol, clauses (i), (ii), and (iii) shall be applied by substituting '6 cents' for '5.4 cents', '4.62 cents' for '4.158 cents', and '3.42 cents' for '3.078 cents'.''

Subsec. (c)(5). Pub. L. 105–178, §9003(b)(2)(C), substituted ''the applicable blender rate (as defined in section 4041(b)(2)(C))'' for ''5.4 cents''.

Subsec. (c)(8). Pub. L. 105–178, §9003(a)(1)(C), substituted ''2007'' for ''2000''.

Subsec. (d)(1). Pub. L. 105–178, §9002(a)(1)(F), substituted ''2005'' for ''1999''.

1997—Subsec. (a)(2)(A)(iii). Pub. L. 105–34, §1032(b), inserted ''or kerosene'' after ''diesel fuel''.

Subsec. (d)(1), (2). Pub. L. 105–2 added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) IN GENERAL.—On and after October 1, 1999, the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) (other than the tax on aviation gasoline) shall be 4.3 cents per gallon.

''(2) AVIATION GASOLINE.—On and after January 1, 1997, the rate specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon.''

Subsec. (d)(2)(B). Pub. L. 105–34, §1031(a)(2), substituted ''September 30, 2007'' for ''September 30, 1997''.

Subsec. (d)(3). Pub. L. 105–34, §1033, substituted ''shall apply after September 30, 1997, and before April 1, 2005'' for ''shall not apply after December 31, 1995''.

Pub. L. 105–2 struck out heading and text of par. (3) relating to aviation gasoline. Text read as follows: ''After December 31, 1996, the rate of tax specified in subsection (a)(2)(A)(i) on aviation gasoline shall be 4.3 cents per gallon.''

1996—Subsec. (a)(2)(A). Pub. L. 104–188, §1609(g)(1), added cls. (i) and (ii), redesignated former cl. (ii) as (iii), and struck out former cl. (i) which read as follows: ''in the case of gasoline, 18.3 cents per gallon, and''.

Subsec. (d)(1). Pub. L. 104–188, §1609(a)(2)(B), (g)(4)(B), substituted ''the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) (other than the tax on aviation gasoline)'' for ''each rate of tax specified in subsection (a)(2)(A)''.

Subsec. (d)(2), (3). Pub. L. 104–188, §1609(a)(2)(A), (g)(2), added par. (3) relating to aviation gasoline, redesignated former par. (2), relating to leaking underground storage tank trust fund financing rate, as another par. (3), and added new par. (2) relating to aviation gasoline.

1993—Pub. L. 103–66, §13242(a), amended section generally, substituting, in subsec. (a), provisions imposing tax on taxable fuels for provisions imposing tax on gasoline, in subsec. (b), provisions relating to treatment of removal or subsequent sale of taxable fuels by blender for provisions relating to treatment of removal or subsequent sale of gasoline by blender or compounder, in subsec. (c), provisions relating to taxable fuels mixed with alcohol for provisions relating to gasoline mixed with alcohol at refinery etc., in subsec. (d), provisions decreasing tax rate imposed on taxable fuels to 4.3 cents per gallon beginning on and after Oct. 1, 1999, for provisions terminating the Highway Trust Fund financing and deficit reduction rates on and after Oct. 1, 1999, and Oct. 1, 1995, respectively, and, in subsec. (e), ''taxable fuel'' for ''gasoline'' in two places.

Subsec. (a)(2)(B)(iii). Pub. L. 103–66, §13241(a), amended cl. (iii) generally, substituting ''6.8 cents per gallon'' for ''2.5 cents a gallon''.

1992—Subsec. (c)(1). Pub. L. 102–486, §1920(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Under regulations prescribed by the Secretary, subsection (a) shall be applied by substituting rates which are 10/9th of the otherwise applicable rates in the case of the removal or sale of any gasoline for use in producing gasohol at the time of such removal or sale. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale. For purposes of this paragraph, the term 'gasohol' means any mixture of gasoline if at least 10 percent of such mixture is alcohol. For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon.''

Subsec. (c)(2). Pub. L. 102–486, §1920(b)(1), substituted ''an otherwise applicable rate'' for ''6.1 cents a gallon''.

Subsec. (c)(4). Pub. L. 102–486, §1920(b)(2), substituted heading for one which read: ''Lower rate on gasohol made other than from ethanol'', added text, and struck out former text which read as follows: ''In the case of gasohol none of the alcohol in which consists of ethanol, paragraphs (1) and (2) shall be applied by substituting '5.5 cents' for '6.1 cents'.''

1991—Subsec. (d)(1). Pub. L. 102–240 substituted ''1999'' for ''1995''.

1990—Subsec. (a)(1). Pub. L. 101–508, §11212(a), substituted heading for one which read: ''In general'' and amended text generally. Prior to amendment, text read as follows: ''There is hereby imposed a tax at the rate specified in paragraph (2) on the earlier of—

''(A) the removal, or

''(B) the sale,

of gasoline by the refiner or importer thereof or the terminal operator.''

Subsec. (a)(2)(A)(iii). Pub. L. 101–508, §11211(a)(1), added cl. (iii).

Subsec. (a)(2)(B)(i). Pub. L. 101–508, §11211(a)(2)(A), substituted ''11.5 cents'' for ''9 cents''.

Subsec. (a)(2)(B)(iii). Pub. L. 101–508, §11211(a)(2)(B), (C), added cl. (iii).

Subsec. (a)(3). Pub. L. 101–508, §11212(e)(2), struck out par. (3) which read as follows: ''For purposes of paragraph (1), the bulk transfer of gasoline to a terminal operator by a refiner or importer shall not be considered a removal or sale of gasoline by such refiner or importer.''

Subsec. (c)(1). Pub. L. 101–508, §11211(a)(5)(A), substituted ''applied by substituting rates which are 10/9th of the otherwise applicable rates'' for ''applied by substituting '3⅓ cents' for '9 cents' and by substituting '⅛ cent' for '0.1 cent' '' and inserted ''For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon.''

Subsec. (c)(2). Pub. L. 101–508, §11211(a)(5)(B), which directed the substitution of ''at a Highway Trust Fund financing rate equivalent to 6.1 cents'' for ''at a rate equivalent to 3 cents'', was executed by making the substitution for ''at a Highway Trust Fund financing rate equivalent to 3 cents'' to reflect the probable intent of Congress. See 1986 Amendment note below.

Subsec. (c)(4). Pub. L. 101–508, §11211(a)(5)(C), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 101–508, §11211(e)(3), substituted ''2000'' for ''1993''.

Pub. L. 101–508, §11211(a)(5)(C), redesignated par. (4) as (5).

Subsec. (d)(1). Pub. L. 101–508, §11211(c)(3), substituted ''1995'' for ''1993''.

Subsec. (d)(2). Pub. L. 101–508, §11215(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after the earlier of—

''(i) December 31, 1991, or

''(ii) the last day of the termination month.

''(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues are at least $500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091.

''(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits).''

Subsec. (d)(3). Pub. L. 101–508, §11211(a)(3), added par. (3).

Subsec. (e). Pub. L. 101–508, §11212(d)(1), added subsec. (e).

1988—Subsec. (a). Pub. L. 100–647, §1017(c)(1)(A), added pars. (1) and (2), struck out former par. (1) which imposed a tax at the rate specified in subsec. (d) on the earlier of the removal, or the sale of gasoline by the refiner or importer thereof or the terminal operator, and redesignated former par. (2) as (3).

Subsec. (b)(1). Pub. L. 100–647, §1017(c)(1)(B), substituted ''subsection (a)'' for ''subsection (d)''.

Subsec. (c)(1). Pub. L. 100–647, §6104(a), inserted after first sentence ''Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale.''

Pub. L. 100–647, §2001(d)(5)(A), inserted ''and by substituting '⅛ cent' for '0.1 cent' '' before ''in the case of the removal''.

Pub. L. 100–647, §1017(c)(14), substituted ''3⅓ cents'' for ''3 cents''.

Pub. L. 100–647, §1017(c)(1)(B), substituted ''subsection (a)'' for ''subsection (d)''.

Subsec. (c)(2). Pub. L. 100–647, §2001(d)(5)(B), substituted ''reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or sale of such fuel'' for ''5⅔ cents a gallon''.

Subsec. (d). Pub. L. 100–647, §1017(c)(1)(D), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to the rate of tax.

Subsec. (d)(1). Pub. L. 100–647, §1017(c)(1)(C)(i), substituted ''subsection (a)(2)'' for ''subsection (d)(2)(A)''.

Subsec. (d)(2)(A). Pub. L. 100–647, §1017(c)(1)(C)(ii), substituted ''subsection (a)(2)'' for ''subsection (d)(2)(B)''.

Subsec. (e). Pub. L. 100–647, §1017(c)(1)(D), redesignated subsec. (e) as (d).

1987—Subsec. (c)(4). Pub. L. 100–17, §502(c)(2), substituted ''September 30, 1993'' for ''December 31, 1992''.

Subsec. (e)(1). Pub. L. 100–17, §502(a)(4), substituted ''1993'' for ''1988''.

Subsec. (e)(2)(B). Pub. L. 100–203 substituted ''net revenues are at least $500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091.'' for ''net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.''

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing a tax on the removal or sale of gasoline by the refiner, importer, blender, or compounder thereof or the terminal operator for provisions imposing a tax on gasoline sold by the producer or importer thereof, or by any producer of gasoline.

Subsec. (a). Pub. L. 99–499, §521(a)(1)(B)(i), substituted ''at the rate specified in subsection (d)'' for ''of 9 cents a gallon'' in par. (1) as amended by Pub. L. 99–514.

Pub. L. 99–499, §521(a)(1)(A)(i), amended subsec. (a), as in effect the day before Oct. 22, 1986, generally, substituting ''at the rate specified in subsection (b)'' for ''of 9 cents a gallon''.

Subsec. (b). Pub. L. 99–499, §521(a)(1)(B)(i), substituted ''at the rate specified in subsection (d)'' for ''of 9 cents a gallon'' in par. (1) as amended by Pub. L. 99–514.

Pub. L. 99–499, §521(a)(1)(A)(i), amended subsec. (b), as in effect the day before Oct. 22, 1986, generally. Prior to amendment, subsec. (b), termination, read as follows: ''On and after October 1, 1988, the taxes imposed by this section shall not apply.''

Subsec. (c)(1). Pub. L. 99–499, §521(a)(1)(B)(iii)(I), substituted ''subsection (d)'' for ''subsection (a)'' in par. (1) as amended by Pub. L. 99–514.

Pub. L. 99–499, §521(a)(1)(A)(iii), substituted ''subsection (b)'' for ''subsection (a)'' in introductory provisions as in effect the day before Oct. 22, 1986.

Subsec. (c)(2). Pub. L. 99–499, §521(a)(1)(B)(iii)(II), substituted ''a Highway Trust Fund financing rate'' for ''a rate'' in par. (2) as amended by Pub. L. 99–514.

Pub. L. 99–499, §521(a)(1)(A)(iii)(II), substituted ''a Highway Trust Fund financing rate'' for ''a rate'' in par. (2) as in effect the day before Oct. 22, 1986.

Subsec. (d). Pub. L. 99–499, §521(a)(1)(B)(ii), added subsec. (d) to this section as amended by Pub. L. 99–514, and struck out former subsec. (d), termination, which read as follows: ''On and after October 1, 1988, the taxes imposed by this section shall not apply.''

Pub. L. 99–499, §521(a)(1)(A)(i), in amending this section as in effect the day before Oct. 22, 1986, added subsec. (d).

Subsec. (e). Pub. L. 99–499, §521(a)(1)(B)(ii), added subsec. (e) to this section as amended by Pub. L. 99–514.

1984—Subsec. (c)(1). Pub. L. 98–369, §912(b)(A), (B), substituted ''3 cents'' for ''4 cents'' in subpar. (A), and ''3⅓ cents'' for ''4⅘ cents'' in subpar. (B).

Pub. L. 98–369, §732(a)(1), struck out ''by substituting '4 cents' for '9 cents' in the case of the sale of any gasoline'' after ''shall be applied'' in text preceding subpar. (A), substituted ''by substituting '4 cents' for '9 cents' in the case of the sale of any gasohol (the gasoline in which was not taxed under subparagraph (B)), and'' for ''in a mixture with alcohol, if at least 10 percent of the mixture is alcohol, or'' in subpar. (A), substituted ''by substituting '4⅘ cents' for '9 cents' in the case of the sale of any gasoline for use in producing gasohol'' for ''for use in producing a mixture at least 10 percent of which is alcohol'' in subpar. (B) and inserted definition of ''gasohol'' after subpar. (B).

Subsec. (c)(2). Pub. L. 98–369, §912(b)(A), (C), substituted ''3 cents'' for ''4 cents'' and ''5⅔ cents'' for ''4⅘ cents''.

Pub. L. 98–369, §732(a)(2), substituted ''at a rate equivalent to 4 cents a gallon'' for ''at a rate of 4 cents a gallon'', and ''4⅘ cents a gallon'' for ''5 cents a gallon''.

Subsec. (c)(3). Pub. L. 98–369, §912(f), substituted ''coal (including peat)'' for ''coal''.

1983—Subsec. (a). Pub. L. 97–424, §511(a)(1), increased tax from 4 to 9 cents a gallon.

Subsec. (b). Pub. L. 97–424, §516(a)(3), substituted provision that, on and after Oct. 1, 1988, the taxes imposed by this section shall not apply, for provision that, on and after Oct. 1, 1984, the tax imposed by this section would be 1½ cents a gallon.

Subsec. (c)(1). Pub. L. 97–424, §511(d)(1)(A), substituted ''subsection (a) shall be applied by substituting '4 cents' for '9 cents' in the case of the sale of any gasoline'' for ''no tax shall be imposed by this section on the sale of any gasoline'' after ''Secretary,''.

Subsec. (c)(2). Pub. L. 97–424, §511(d)(1)(B), substituted ''tax was imposed under subsection (a) at the rate of 4 cents a gallon by reason of this subsection'' for ''tax was not imposed by reason of this subsection'' after ''alcohol on which'', and inserted provision that the amount of tax imposed on any sale of such gasoline by such person shall be 5 cents a gallon.

1980—Subsec. (c)(2). Pub. L. 96–223, §232(d)(3), inserted ''(or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1))'' after ''this subsection''.

Subsec. (c)(3). Pub. L. 96–223, §232(b)(3)(A), inserted provision that ''alcohol'' does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Subsec. (c)(4). Pub. L. 96–223, §232(a)(1), added par. (4).

1978—Subsec. (b). Pub. L. 95–599 substituted ''1984'' for ''1979''.

Subsec. (c). Pub. L. 95–618 added subsec. (c).

1976—Subsec. (b). Pub. L. 94–280 substituted ''1979'' for ''1977''.

1970—Subsec. (b). Pub. L. 91–605 substituted ''1977'' for ''1972''.

1961—Subsec. (a). Pub. L. 87–61, §201(b), increased tax from 3 to 4 cents a gallon.

Subsec. (b). Pub. L. 87–61, §201(c), substituted ''October 1, 1972'' for ''July 1, 1972.''

Subsec. (c). Pub. L. 87–61, §201(d), repealed subsec. (c) which authorized a temporary increase in tax for the period October 1, 1959, to July 1, 1961.

1959—Subsec. (c). Pub. L. 86–342 added subsec. (c).

1956—Act Mar. 29, 1956, substituted ''April 1, 1957'' for ''April 1, 1956''.

Subsec. (a). Act June 29, 1956, redesignated first sentence as subsec. (a) and increased tax from 2 to 3 cents a gallon.

Subsec. (b). Act June 29, 1956, redesignated second sentence as subsec. (b) and substituted ''July 1, 1972'' for ''April 1, 1956''.

1955—Act Mar. 30, 1955, substituted ''April 1, 1956'' for ''April 1, 1955''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–329, §2(c), Dec. 22, 2010, 124 Stat. 3566, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on January 1, 2011.''

Pub. L. 111–249, § 2(c), Sept. 30, 2010, 124 Stat. 2627, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2010.''

Pub. L. 111–216, title I, § 101(c), Aug. 1, 2010, 124 Stat. 2349, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on August 2, 2010.''

Pub. L. 111–197, § 2(c), July 2, 2010, 124 Stat. 1353, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 4, 2010.''

Pub. L. 111–161, § 2(c), Apr. 30, 2010, 124 Stat. 1126, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on May 1, 2010.''

Pub. L. 111–153, § 2(c), Mar. 31, 2010, 124 Stat. 1084, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on April 1, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–116, § 2(c), Dec. 16, 2009, 123 Stat. 3031, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on January 1, 2010.''

Pub. L. 111–69, § 2(c), Oct. 1, 2009, 123 Stat. 2054, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2009.''

Pub. L. 111–12, § 2(c), Mar. 30, 2009, 123 Stat. 1457, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on April 1, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–330, § 2(c), Sept. 30, 2008, 122 Stat. 3717, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2008.''

Pub. L. 110–253, § 2(c), June 30, 2008, 122 Stat. 2417, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 1, 2008.''

Pub. L. 110–190, § 2(c), Feb. 28, 2008, 122 Stat. 643, provided that: ''The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on March 1, 2008.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–161, div. K, title I, § 116(d), Dec. 26, 2007, 121 Stat. 2382, provided that: ''The amendments made by this section [amending this section and sections 4261, 4271, and 9502 of this title] shall take effect on October 1, 2007.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–59, title XI, § 11151(f)(1), Aug. 10, 2005, 119 Stat. 1969, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 6421 and 6427 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.''

Amendment by section 11161(a)(1)–(4)(D) of Pub. L. 109–59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Pub. L. 109–59, title XI, § 11166(b)(2), Aug. 10, 2005, 119 Stat. 1977, provided that: ''The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 2005].''

Pub. L. 109–58, title XIII, § 1343(c), Aug. 8, 2005, 119 Stat. 1052, provided that: ''The amendments made by this section [amending this section and section 6427 of this title] shall take effect on January 1, 2006.''

Amendment by section 1362(a) of Pub. L. 109–58 effective Oct. 1, 2005, see section 1362(d)(1) of Pub. L. 109–58, set out as a note under section 4041 of this title.

Pub. L. 109–6, § 1(b), Mar. 31, 2005, 119 Stat. 20, provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 31, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 301(c)(7) of Pub. L. 108–357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108–357, set out as a note under section 40 of this title.

Amendment by section 853(a)(1)–(3)(A), (4) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, § 860(b), Oct. 22, 2004, 118 Stat. 1618, provided that: ''The amendments made by this section [amending this section] shall take effect on March 1, 2005.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 9003(b)(2)(B), (C), of Pub. L. 105–178 effective Jan. 1, 2001, see section 9003(b)(3) of Pub. L. 105–178, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 1031(a)(2) of Pub. L. 105–34 effective Oct. 1, 1997, see section 1031(e)(1) of Pub. L. 105–34, set out as a note under section 4041 of this title.

Amendment by section 1032(b) of Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

Amendment by Pub. L. 105–2 applicable to periods beginning on or after the 7th day after Feb. 28, 1997, see section 2(e)(1) of Pub. L. 105–2, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13241(a) of Pub. L. 103–66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103–66, set out as a note under section 4041 of this title.

Amendment by section 13242(a) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1920(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section] shall apply to gasoline removed (as defined in [former] section 4082 of the Internal Revenue Code of 1986) or entered after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11211(a)(1)–(3), (5)(A)–(C) of Pub. L. 101–508 applicable, except as otherwise provided, to gasoline removed (as defined in [former] section 4082 of this title) after Nov. 30, 1990, see section 11211(a)(6) of Pub. L. 101–508, set out as a note under section 4041 of this title.

Section 11212(f) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 4103 of this title and amending this section and sections 4093, 4101, 4222, 6103, 6416, and 6724 of this title] shall take effect on July 1, 1991.

''(2) REGISTRATION, ETC.—The amendments made by subsections (b), (c), and (e) (other than paragraph (2) thereof) [enacting section 4103 of this title and amending sections 4093, 4101, 4222, 6103, and 6724 of this title] shall take effect on December 1, 1990.''

Section 11215(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on December 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(c)(1), (14) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2001(d)(5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

Section 6104(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect on October 1, 1989.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1703(h) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 34, 4082, 4083, 4101, 4221, 6421, 6427, 7210, 7603 to 7605, 7609, and 7610 of this title and omitting section 4084 of this title] shall apply to gasoline removed (as defined in section 4082 of the Internal Revenue Code of 1986, as amended by this section) after December 31, 1987.''

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 732(a)(1), (2) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Amendment by section 912(b), (f) of Pub. L. 98–369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98–369, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 511(a)(1), (d)(1) of Pub. L. 97–424 effective Apr. 1, 1983, see section 511(h)(1) of Pub. L. 97–424, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 232(b)(3)(A) of Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 221(a)(2) of Pub. L. 95–618, as amended by Pub. L. 96–223, title II, §232(a)(3), Apr. 2, 1980, 94 Stat. 273, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales after December 31, 1978.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

LIST OF AIRPORTS WITH SECURED TERMINALS

Pub. L. 108–357, title VIII, §853(a)(3)(B), Oct. 22, 2004, 118 Stat. 1610, provided that: ''Not later than December 15, 2004, the Secretary of the Treasury shall publish and maintain a list of airports which include a secured area in which a terminal is located (within the meaning of section 4081(a)(3)(A)(i) of the Internal Revenue Code of 1986, as added by this paragraph).''

DELAYED DEPOSITS OF HIGHWAY MOTOR FUEL TAX REVENUES

Due date for deposit of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 901(e) of Pub. L. 105–34, set out as a note under section 6302 of this title.

DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposit of taxes imposed by subsec. (a)(2)(A)(ii) of this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105–34, set out as a note under section 6302 of this title.

MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION

Pub. L. 109–59, title XI, §11141, Aug. 10, 2005, 119 Stat. 1959, provided that:

''(a) ESTABLISHMENT.—There is established a Motor Fuel Tax Enforcement Advisory Commission (in this section referred to as the 'Commission').

''(b) FUNCTION.—The Commission shall—

''(1) review motor fuel revenue collections, historical and current;

''(2) review the progress of investigations with respect to motor fuel taxes;

''(3) develop and review legislative proposals with respect to motor fuel taxes;

''(4) monitor the progress of administrative regulation projects relating to motor fuel taxes;

''(5) review the results of Federal and State agency cooperative efforts regarding motor fuel taxes;

''(6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes; and

''(7) evaluate and make recommendations to the President and Congress regarding—

''(A) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes,

''(B) enforcement personnel allocation, and

''(C) proposals for regulatory projects, legislation, and funding.

''(c) MEMBERSHIP.—

''(1) APPOINTMENT.—The Commission shall be composed of the following representatives appointed by the Chairmen and the Ranking Members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives:

''(A) At least one representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation—Office of Inspector General, the Federal Highway Administration, the Department of Defense, and the Department of Justice.

''(B) At least one representative from the Federation of State Tax Administrators.

''(C) At least one representative from any State department of transportation.

''(D) Two representatives from the highway construction industry.

''(E) Six representatives from industries relating to fuel distribution—refiners (two representatives), distributors (one representative), pipelines (one representative), and terminal operators (two representatives).

''(F) One representative from the retail fuel industry.

''(G) Two representatives from the staff of the Committee on Finance of the Senate and two representatives from the staff of the Committee on Ways and Means of the House of Representatives.

''(2) TERMS.—Members shall be appointed for the life of the Commission.

''(3) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

''(4) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(5) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

''(d) FUNDING.—Such sums as are necessary shall be available from the Highway Trust fund for the expenses of the Commission.

''(e) CONSULTATION.—Upon request of the Commission, representatives of the Department of the Treasury and the Internal Revenue Service shall be available for consultation to assist the Commission in carrying out its duties under this section.

''(f) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

''(g) TERMINATION.—The Commission shall terminate as of the close of September 30, 2009.''

FLOOR STOCKS TAXES

Pub. L. 108–357, title VIII, § 853(f), Oct. 22, 2004, 118 Stat. 1614, provided that:

''(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on January 1, 2005, by any person a tax equal to—

''(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section [amending this section and sections 4041, 4082, 4083, 4101, 4103, 4221, 6206, 6416, 6427, 6724, 9502, and 9508 of this title, redesignating subpart C of part III of subchapter A of chapter 32 of this title as subpart B of part III of subchapter A of chapter 32 of this title, and repealing former subpart B of part III of subchapter A of chapter 32 of this title] been in effect at all times before such date, reduced by

''(B) the sum of—

''(i) the tax imposed before such date on such kerosene under section 4091 of the Internal Revenue Code of 1986, as in effect on such date, and

''(ii) in the case of kerosene held exclusively for such person's own use, the amount which such person would (but for this clause) reasonably expect (as of such date) to be paid as a refund under section 6427(*l*) of such Code with respect to such kerosene.

''(2) EXCEPTION FOR FUEL HELD IN AIRCRAFT FUEL TANK.—Paragraph (1) shall not apply to kerosene held in the fuel tank of an aircraft on January 1, 2005.

''(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

''(A) LIABILITY FOR TAX.—The person holding the kerosene on January 1, 2005, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

''(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

''(4) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

''(A) in any case in which tax was not imposed by section 4091 of such Code, at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

''(B) at the rate under section 4081(a)(2)(A)(iv) of such Code to the extent of the remainder.

''(5) HELD BY A PERSON.—For purposes of this subsection, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

''(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.''

Section 1032(g) of Pub. L. 105–34 provided that:

''(1) IMPOSITION OF TAX.—In the case of kerosene which is held on July 1, 1998, by any person, there is hereby imposed a floor stocks tax of 24.4 cents per gallon.

''(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

''(A) LIABILITY FOR TAX.—A person holding kerosene on July 1, 1998, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

''(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

''(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before August 31, 1998.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) HELD BY A PERSON.—Kerosene shall be considered as 'held by a person' if title thereto has passed to such person (whether or not delivery to the person has been made).

''(B) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

''(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to kerosene held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 of the Internal Revenue Code of 1986 is allowable for such use.

''(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on kerosene held in the tank of a motor vehicle or motorboat.

''(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

''(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on kerosene held on July 1, 1998, by any person if the aggregate amount of kerosene held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

''(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

''(C) CONTROLLED GROUPS.—For purposes of this paragraph—

''(i) CORPORATIONS.—

''(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

''(II) CONTROLLED GROUP.—The term 'controlled group' has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

''(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

''(7) COORDINATION WITH SECTION 4081.—No tax shall be imposed by paragraph (1) on kerosene to the extent that tax has been (or will be) imposed on such kerosene under section 4081 or 4091 of such Code.

''(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081.''

Section 2(d) of Pub. L. 105–2 provided that:

''(1) IMPOSITION OF TAX.—In the case of any aviation liquid on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before the tax effective date and which is held on such date by any person, there is hereby imposed a floor stocks tax of—

''(A) 15 cents per gallon in the case of aviation gasoline, and

''(B) 17.5 cents per gallon in the case of aviation fuel.

''(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

''(A) LIABILITY FOR TAX.—A person holding, on the tax effective date, any aviation liquid to which the tax imposed by paragraph (1) applies shall be liable for such tax.

''(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

''(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the first day of the 5th month beginning after the tax effective date.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) TAX EFFECTIVE DATE.—The term 'tax effective date' means the date which is 7 days after the date of the enactment of this Act [Feb. 28, 1997].

''(B) AVIATION LIQUID.—The term 'aviation liquid' means aviation gasoline and aviation fuel.

''(C) AVIATION GASOLINE.—The term 'aviation gasoline' has the meaning given such term in section 4081 of such Code.

''(D) AVIATION FUEL.—The term 'aviation fuel' has the meaning given such term by section 4093 of such Code.

''(E) HELD BY A PERSON.—Aviation liquid shall be considered as 'held by a person' if title thereto has passed to such person (whether or not delivery to the person has been made).

''(F) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

''(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to—

''(A) aviation liquid held by any person on the tax effective date exclusively for any use for which a credit or refund of the entire tax imposed by section 4081 or 4091 of such Code (as the case may be) is allowable for such liquid purchased on or after such tax effective date for such use, or

''(B) aviation fuel held by any person on the tax effective date exclusively for any use described in section 4092(b) of such Code.

''(5) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

''(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on any aviation liquid held on the tax effective date by any person if the aggregate amount of such liquid (determined separately for aviation gasoline and aviation fuel) held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

''(B) EXEMPT FUEL.—Any liquid to which the tax imposed by paragraph (1) does not apply by reason of paragraph (4) shall not be taken into account under subparagraph (A).

''(C) CONTROLLED GROUPS.—For purposes of this paragraph—

''(i) CORPORATIONS.—

''(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

''(II) CONTROLLED GROUP.—The term 'controlled group' has the meaning given such term by subsection (a) of section 1563 of such Code; except that for such purposes, the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

''(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

''(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 or 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091, as the case may be.''

Section 13241(h) of Pub. L. 103–66 provided that:

''(1) IMPOSITION OF TAX.—In the case of gasoline, diesel fuel, and aviation fuel on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before October 1, 1993, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 4.3 cents per gallon on such gasoline, diesel fuel, and aviation fuel.

''(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

''(A) LIABILITY FOR TAX.—A person holding gasoline, diesel fuel, or aviation fuel on October 1, 1993, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

''(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

''(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before November 30, 1993.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) HELD BY A PERSON.—Gasoline, diesel fuel, and aviation fuel shall be considered as 'held by a person' if title thereto has passed to such person (whether or not delivery to the person has been made).

''(B) GASOLINE.—The term 'gasoline' has the meaning given such term by section 4082 [see section 4083] of such Code.

''(C) DIESEL FUEL.—The term 'diesel fuel' has the meaning given such term by section 4092 [see section 4083] of such Code.

''(D) AVIATION FUEL.—The term 'aviation fuel' has the meaning given such term by section 4092 [see section 4093] of such Code.

''(E) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

''(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline, diesel fuel, or aviation fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 or 4091 of such Code, as the case may be, is allowable for such use.

''(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on gasoline or diesel fuel held in the tank of a motor vehicle or motorboat.

''(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

''(A) IN GENERAL.—No tax shall be imposed by paragraph (1)—

''(i) on gasoline held on October 1, 1993, by any person if the aggregate amount of gasoline held by such person on such date does not exceed 4,000 gallons, and

''(ii) on diesel fuel or aviation fuel held on October 1, 1993, by any person if the aggregate amount of diesel fuel or aviation fuel held by such person on such date does not exceed 2,000 gallons.

The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

''(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by

any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

''(C) CONTROLLED GROUPS.—For purposes of this paragraph—

''(i) CORPORATIONS.—

''(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

''(II) CONTROLLED GROUP.—The term 'controlled group' has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

''(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

''(7) OTHER LAW APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and section 4091 of such Code in the case of diesel fuel and aviation fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091.''

Section 13243 of Pub. L. 103–66 provided that:

''(a) IN GENERAL.—There is hereby imposed a floor stocks tax on diesel fuel held by any person on January 1, 1994, if—

''(1) no tax was imposed on such fuel under section 4041(a) or 4091 of the Internal Revenue Code of 1986 as in effect on December 31, 1993, and

''(2) tax would have been imposed by section 4081 of such Code, as amended by this Act, on any prior removal, entry, or sale of such fuel had such section 4081 applied to such fuel for periods before January 1, 1994.

''(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the amount of tax which would be imposed under section 4081 of the Internal Revenue Code of 1986 if there were a taxable sale of such fuel on such date.

''(c) LIABILITY AND PAYMENT OF TAX.—

''(1) LIABILITY FOR TAX.—A person holding the diesel fuel on January 1, 1994, to which the tax imposed by this section applies shall be liable for such tax.

''(2) METHOD OF PAYMENT.—The tax imposed by this section shall be paid in such manner as the Secretary shall prescribe.

''(3) TIME FOR PAYMENT.—The tax imposed by this section shall be paid on or before July 31, 1994.

''(d) DEFINITIONS.—For purposes of this section—

''(1) DIESEL FUEL.—The term 'diesel fuel' has the meaning given such term by section 4083(a) of such Code.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

''(e) EXCEPTIONS.—

''(1) PERSONS ENTITLED TO CREDIT OR REFUND.—The tax imposed by this section shall not apply to fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 is allowable for such use.

''(2) COMPLIANCE WITH DYEING REQUIRED.—Paragraph (1) shall not apply to the holder of any fuel if the holder of such fuel fails to comply with any requirement imposed by the Secretary with respect to dyeing and marking such fuel.

''(f) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by this section to the same extent as if such taxes were imposed by such section 4081.''

Section 11211(j) of Pub. L. 101–508 imposed a floor stocks tax on (A) gasoline and diesel fuel on which tax was imposed under section 4081 or 4091 of this title before Dec. 1, 1990, and which was held on such date by any person, or (B) diesel fuel on which no tax was imposed under section 4091 of this title at the Highway Trust Fund financing rate before Dec. 1, 1990, and which was held on such date by any person for use as fuel in a train.

Section 1703(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1017(c)(13), title II, §2001(d)(4), Nov. 10, 1988, 102 Stat. 3577, 3595, imposed a floor stocks tax at the rate of 9.1 cents per gallon on gasoline subject to tax under section 4081 of this title which, on Jan. 1, 1988, was held by a dealer for sale, and with respect to which no tax had been imposed under such section.

STUDY OF EVASION OF GASOLINE TAX

Section 1703(g) of Pub. L. 99–514 directed Secretary of the Treasury or his delegate to conduct a study of incidence of evasion of gasoline tax, with report of the study to be submitted, not later than Dec. 31, 1986, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

EXTENSION OF PAYMENT DUE DATE FOR CERTAIN FUEL TAXES

Section 518 of Pub. L. 97–424, as amended by Pub. L. 98–369, div. A, title VII, §734(i), July 18, 1984, 98 Stat. 980; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) 14-DAY EXTENSION.—The Secretary shall prescribe regulations which permit any qualified person whose liability for tax under section 4081 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is payable with respect to semi-monthly periods to pay such tax on or before the day which is 14 days after the close of such semi-monthly period if such payment is made by wire transfer to, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, any Federal Reserve Bank.

''(b) QUALIFIED PERSON DEFINED.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified person' means—

''(A) any person other than any person whose average daily production of crude oil for the preceding calendar quarter exceeds 1,000 barrels, and

''(B) any independent refiner (within the meaning of section 4995(b)(4) of such Code).

''(2) AGGREGATION RULES.—For purposes of paragraph (1), in determining whether any person's production exceeds 1,000 barrels per day, rules similar to the rules of section 4992(e) of the Internal Revenue Code of 1986 shall apply.

''(c) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this subsection, the due date under subsection (a) would fall on a Saturday, Sunday, or a holiday in the District of Columbia, such due date shall be deemed to be the immediately preceding day which is not a Saturday, Sunday, or such a holiday.''

STUDY BY SECRETARY OF THE TREASURY; REPORT TO CONGRESS

Study respecting portion of taxes imposed by this section is attributable to fuel used in recreational motorboats and report to Congress no later than 2 years after Oct. 14, 1980, see Pub. L. 96–451, title II, §204, Oct. 14, 1980, 94 Stat. 1988, set out as a note under section 4041 of this title.

EXPEDITION OF CERTAIN ETHANOL PRODUCTION APPLICATIONS

Section 221(d) of Pub. L. 95–618 directed Secretary of the Treasury to expedite applications submitted by persons with respect to the production of ethanol for use in producing gasoline and that the Secretary develop expeditious procedures for processing such applications, prior to repeal by Pub. L. 96–223, §232(e)(2)(E), Apr. 2, 1980, 94 Stat. 280.

§ 4082. Exemptions for diesel fuel and kerosene

(a) In general

The tax imposed by section 4081 shall not apply to diesel fuel and kerosene—

(1) which the Secretary determines is destined for a nontaxable use,

(2) which is indelibly dyed by mechanical injection in accordance with regulations which the Secretary shall prescribe, and

(3) which meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

Such regulations shall allow an individual choice of dye color approved by the Secretary or chosen from any list of approved dye colors that the Secretary may publish.

(b) Nontaxable use

For purposes of this section, the term ''nontaxable use'' means—

(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

(2) any use in a train, and

(3) any use described in section 4041(a)(1)(C)(iii)(II).

The term ''nontaxable use'' does not include the use of kerosene in an aircraft and such term shall not include any use described in section 6421(e)(2)(C).

(c) Exception to dyeing requirements

Paragraph (2) of subsection (a) shall not apply with respect to any diesel fuel and kerosene—

(1) removed, entered, or sold in a State for ultimate sale or use in an area of such State during the period such area is exempted from the fuel dyeing requirements under subsection (i) of section 211 of the Clean Air Act (as in effect on the date of the enactment of this subsection) by the Administrator of the Environmental Protection Agency under paragraph (4) of such subsection (i) (as so in effect), and

(2) the use of which is certified pursuant to regulations issued by the Secretary.

(d) Additional exceptions to dyeing requirements for kerosene

(1) Use for non-fuel feedstock purposes

Subsection (a)(2) shall not apply to kerosene—

(A) received by pipeline or vessel for use by the person receiving the kerosene in the manufacture or production of any substance (other than gasoline, diesel fuel, or special fuels referred to in section 4041), or

(B) to the extent provided in regulations, removed or entered—

(i) for such a use by the person removing or entering the kerosene, or

(ii) for resale by such person for such a use by the purchaser,

but only if the person receiving, removing, or entering the kerosene and such purchaser (if any) are registered under section 4101 with respect to the tax imposed by section 4081.

(2) Wholesale distributors

To the extent provided in regulations, subsection (a)(2) shall not apply to kerosene received by a wholesale distributor of kerosene if such distributor—

(A) is registered under section 4101 with respect to the tax imposed by section 4081 on kerosene, and

(B) sells kerosene exclusively to ultimate vendors described in section 6427(*l*)(5)(B) with respect to kerosene.

(e) Kerosene removed into an aircraft

In the case of kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft—

(1) the rate of tax under section 4081(a)(2)(A)(iii) shall be zero, and

(2) if such aircraft is employed in foreign trade or trade between the United States and any of its possessions, the increase in such rate under section 4081(a)(2)(B) shall be zero.

For purposes of this subsection, any removal described in section 4081(a)(3)(A) shall be treated as a removal from a terminal but only if such terminal is located within a secure area of an airport.

(f) Exception for Leaking Underground Storage Tank Trust Fund financing rate

(1) In general

Subsection (a) shall not apply to the tax imposed under section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

(2) Exception for export, etc.

Paragraph (1) shall not apply with respect to any fuel if the Secretary determines that such fuel is destined for export or for use by the purchaser as supplies for vessels (within the meaning of section 4221(d)(3)) employed in foreign trade or trade between the United States and any of its possessions.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel and kerosene pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

(h) Cross reference

For tax on train and certain bus uses of fuel purchased tax-free, see subsections (a)(1) and (d)(3) of section 4041.

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Pub. L. 86–342, title II, § 201(e)(1), (2), Sept. 21, 1959, 73 Stat. 615; Pub. L. 89–44, title VIII, § 802(a)(1), (b)(1), June 21, 1965, 79 Stat. 159; Pub. L. 91–258, title II, § 205(c)(6), May 21, 1970, 84 Stat. 242; Pub. L. 98–369, div. A, title VII, §§ 733(a), 734(c)(1), July 18, 1984, 98 Stat. 977, 979; Pub. L. 99–514, title XVII, § 1703(a), Oct. 22, 1986, 100 Stat. 2775; Pub. L. 103–66, title XIII, § 13242(a), Aug. 10, 1993, 107 Stat. 517; Pub. L. 104–188, title I, § 1801(a), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 105–34, title X, § 1032(c)(1), (2), (e)(3)(A), Aug. 5, 1997, 111 Stat. 933, 935; Pub. L. 105–206, title VI, § 6010(h)(3), (4), July 22, 1998, 112 Stat. 815; Pub. L. 108–357, title II, § 241(a)(2)(B), title VIII, §§ 851(d)(2), 853(a)(5),

854(a), 857(a), Oct. 22, 2004, 118 Stat. 1438, 1608, 1611, 1615, 1617; Pub. L. 109–58, title XIII, § 1362(b)(1), Aug. 8, 2005, 119 Stat. 1059; Pub. L. 109–59, title XI, § 11161(a)(4)(A), (E), (b)(3)(C), Aug. 10, 2005, 119 Stat. 1970, 1971; Pub. L. 109–432, div. A, title IV, § 420(b)(2), Dec. 20, 2006, 120 Stat. 2969; Pub. L. 110–172, §§ 6(d)(2)(B), (C), 11(a)(28), Dec. 29, 2007, 121 Stat. 2480, 2481, 2487.)

REFERENCES IN TEXT

Subsection (i) of section 211 of the Clean Air Act, referred to in subsec. (c)(1), is classified to section 7545(i) of Title 42, The Public Health and Welfare.

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–172, § 6(d)(2)(B)(i), struck out ''(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate imposed in all cases other than for export)'' after ''section 4081'' in introductory provisions.

Subsec. (b). Pub. L. 110–172, § 11(a)(28), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'nontaxable use' means—

''(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

''(2) any use in a train, and

''(3) any use described in section 4041(a)(1)(C)(iii)(II).

The term 'nontaxable use' does not include the use of kerosene in an aircraft and such term shall not include any use described in section 6421(e)(2)(C).'' See 2004 Amendment notes below.

Subsec. (e). Pub. L. 110–172, § 6(d)(2)(C)(ii), designated last sentence as concluding provisions.

Pub. L. 110–172, § 6(d)(2)(C)(i), substituted ''an aircraft—'' and pars. (1) and (2) for ''an aircraft, the rate of tax under section 4081(a)(2)(A)(iii) shall be zero.''

Subsecs. (f) to (h). Pub. L. 110–172, § 6(d)(2)(B)(ii), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2006—Subsec. (d)(2)(B). Pub. L. 109–432 substituted ''6427(*l*)(5)(B)'' for ''6427(*l*)(6)(B)''.

2005—Subsec. (a). Pub. L. 109–58 inserted ''(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate imposed in all cases other than for export)'' after ''section 4081'' in introductory provisions.

Subsec. (b). Pub. L. 109–59, § 11161(a)(4)(A), struck out ''aviation-grade'' before ''kerosene'' in concluding provisions.

Subsec. (d)(2)(B). Pub. L. 109–59, § 11161(b)(3)(C), substituted ''section 6427(*l*)(6)(B)'' for ''section 6427(*l*)(5)(B)''.

Subsec. (e). Pub. L. 109–59, § 11161(a)(4)(E), in heading substituted ''Kerosene removed into an aircraft'' for ''Aviation-grade kerosene'' and in text struck out ''aviation-grade'' before ''kerosene'', substituted ''section 4081(a)(2)(A)(iii)'' for ''section 4081(a)(2)(A)(iv)'', and inserted at end ''For purposes of this subsection, any removal described in section 4081(a)(3)(A) shall be treated as a removal from a terminal but only if such terminal is located within a secure area of an airport.''

2004—Subsec. (a)(2). Pub. L. 108–357, § 854(a), inserted ''by mechanical injection'' after ''indelibly dyed''.

Subsec. (b). Pub. L. 108–357, § 853(a)(5)(B)(i), inserted at end ''The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft.''

Pub. L. 108–357, § 851(d)(2), which directed amendment of subsec. (b) by inserting ''and such term shall not include any use described in section 6421(e)(2)(C)'' before period at end, was executed by making the insertion after amendment by Pub. L. 108–357, § 853(a)(5)(B)(i), to reflect the probable intent of Congress. See above.

Subsec. (b)(3). Pub. L. 108–357, § 857(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''any use described in section 6427(b)(1) (after the application of section 6427(b)(3)).''

Subsec. (d). Pub. L. 108–357, § 853(a)(5)(B)(ii), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out heading and text of former par. (1). Text read as follows: ''Subsection (a)(2) shall not apply to aviation-grade kerosene (as determined under regulations prescribed by the Secretary) which the Secretary determines is destined for use as a fuel in an aircraft.''

Subsec. (e). Pub. L. 108–357, § 853(a)(5)(A), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 108–357, § 853(a)(5)(A), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 108–357, § 853(a)(5)(A), redesignated subsec. (f) as (g).

Pub. L. 108–357, § 241(a)(2)(B), which directed substitution of ''subsections (a)(1) and (d)(3) of section 4041'' for ''section 4041(a)(1)'' in subsec. (f), was executed by making the substitution in subsec. (g) to reflect the probable intent of Congress and the amendment by Pub. L. 108–357, § 853(a)(5)(A). See Amendment note above and Effective Date of 2004 Amendment notes below.

1998—Subsec. (d)(1). Pub. L. 105–206, § 6010(h)(3), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''Subsection (a)(2) shall not apply to a removal, entry, or sale of aviation-grade kerosene (as determined under regulations prescribed by the Secretary) if the person receiving the kerosene is registered under section 4101 with respect to the tax imposed by section 4091.''

Subsec. (d)(3). Pub. L. 105–206, § 6010(h)(4), substituted ''kerosene received by'' for ''a removal, entry, or sale of kerosene to'' in introductory provisions.

1997—Pub. L. 105–34, § 1032(e)(3)(A), inserted ''and kerosene'' after ''diesel fuel'' in section catchline.

Subsecs. (a), (c). Pub. L. 105–34, § 1032(c)(1), substituted ''diesel fuel and kerosene'' for ''diesel fuel'' in introductory provisions.

Subsec. (d). Pub. L. 105–34, § 1032(c)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 105–34, § 1032(c)(1), substituted ''diesel fuel and kerosene'' for ''diesel fuel''.

Subsecs. (e), (f). Pub. L. 105–34, § 1032(c)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1996—Subsecs. (c) to (e). Pub. L. 104–188 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1993—Pub. L. 103–66 amended heading and text generally. Prior to amendment, text read as follows:

''(a) GASOLINE.—For purposes of this subpart, the term 'gasoline' includes, to the extent prescribed in regulations—

''(1) gasoline blend stocks, and

''(2) products commonly used as additives in gasoline.

For purposes of paragraph (1), the term 'gasoline blend stocks' means any petroleum product component of gasoline.

''(b) CERTAIN USES DEFINED AS REMOVAL.—If a refiner, importer, terminal operator, blender, or compounder uses (other than in the production of gasoline or special fuels referred to in section 4041) gasoline refined, imported, blended, or compounded by him, such use shall for the purposes of this chapter be considered a removal.''

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally, substituting definitions of ''gasoline'' and ''gasoline blended stocks'' for definition of ''producer''.

Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally, substituting provisions that certain use of gasoline be considered removal for provisions defining ''gasoline''.

Subsecs. (c) to (e). Pub. L. 99–514, in amending section generally, struck out subsecs. (c) to (e) which defined ''sales'', ''wholesale distributor'', and ''producer'', respectively.

1984—Subsec. (d). Pub. L. 98–369, § 733(a), in amending subsec. (d) generally, redesignated existing provisions

of par. (1) as subpar. (A) and added subpar. (B), and in par. (2) inserted ''but only if such person'' before ''elects''.

Subsec. (e). Pub. L. 98–369, § 734(c)(1), added subpar. (e).

1970—Subsec. (c). Pub. L. 91–258 substituted ''special fuels referred to in section 4041'' for ''special motor fuels referred to in section 4041(b)''.

1965—Subsec. (b). Pub. L. 89–44, § 802(a)(1), substituted ''gasoline which are suitable for use as a motor fuel'' for ''gasoline (including casinghead and natural gasoline''.

Subsec. (d)(2). Pub. L. 89–44, § 802(b)(1), struck out ''and give a bond'' after ''elects to register''.

1959—Subsec. (a). Pub. L. 86–342, § 201(e)(1), inserted reference to wholesale distributor.

Subsec. (d). Pub. L. 86–342, § 201(e)(2), added subsec. (d).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendments by section 6(d)(2)(B), (C)(i) of Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendments relate, and amendment by section 6(d)(2)(C)(ii) of Pub. L. 110–172 effective as if included in section 11161 of the SAFETEA–LU, Pub. L. 109–59, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to kerosene sold after Sept. 30, 2005, with special rule for pending claims, see section 420(c) of Pub. L. 109–432, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Amendment by Pub. L. 109–58 effective Oct. 1, 2005, and applicable to fuel entered, removed, or sold after Sept. 30, 2005, see section 1362(d) of Pub. L. 109–58, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 241(a)(2)(B) of Pub. L. 108–357 effective Jan. 1, 2005, see section 241(c) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, § 851(d)(4), Oct. 22, 2004, 118 Stat. 1609, provided that: ''The amendments made by this subsection [amending this section and sections 6421 and 6427 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 853(a)(5) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, § 854(d), Oct. 22, 2004, 118 Stat. 1616, provided that: ''The amendments made by subsections (a) and (c) [enacting section 6715A of this title and amending this section] shall take effect on the 180th day after the date on which the Secretary issues the regulations described in subsection (b) [set out as a note below] [Such regulations were issued effective Oct. 24, 2005. See 70 F.R. 21332.].''

Pub. L. 108–357, title VIII, § 857(d), Oct. 22, 2004, 118 Stat. 1617, provided that: ''The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold after December 31, 2004.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1801(b) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply with respect to fuel removed, entered, or sold on or after the first day of the first calendar quarter beginning after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 733(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act [July 18, 1984].''

Section 734(c)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section and section 6427 of this title] shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 802(d)(1) of Pub. L. 89–44 provided that: ''The amendments made by subsections (a)(1), (b), and (c) [amending this section and sections 4101, 4222, 7103, and 7232 of this title] shall apply with respect to articles sold on or after July 1, 1965.''

EFFECTIVE DATE OF 1959 AMENDMENT

Section 201(e)(3) of Pub. L. 86–342 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall take effect on January 1, 1960.''

REGULATIONS

Pub. L. 108–357, title VIII, § 854(b), Oct. 22, 2004, 118 Stat. 1615, provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a) [amending this section], and such regulations shall include standards for making such systems tamper resistant.''

§ 4083. Definitions; special rule; administrative authority

(a) Taxable fuel

For purposes of this subpart—

(1) In general

The term ''taxable fuel'' means—

(A) gasoline,

(B) diesel fuel, and

(C) kerosene.

(2) Gasoline

The term ''gasoline''—

(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

(B) includes, to the extent prescribed in regulations—

(i) any gasoline blend stock, and

(ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term ''gasoline blend stock'' means any petroleum product component of gasoline.

(3) Diesel fuel

(A) In general

The term ''diesel fuel'' means—

(i) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train,

(ii) transmix, and

(iii) diesel fuel blend stocks identified by the Secretary.

(B) Transmix

For purposes of subparagraph (A), the term ''transmix'' means a byproduct of refined products pipeline operations created by the mixing of different specification products during pipeline transportation.

(b) Commercial aviation

For purposes of this subpart, the term ''commercial aviation'' means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of subsection (h) or (i) of section 4261.

(c) Certain uses defined as removal

If any person uses taxable fuel (other than in the production of taxable fuels or special fuels referred to in section 4041), such use shall for the purposes of this chapter be considered a removal.

(d) Administrative authority

(1) In general

In addition to the authority otherwise granted by this title, the Secretary may in administering compliance with this subpart, section 4041, and penalties and other administrative provisions related thereto—

(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of—

(i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel,

(ii) taking and removing samples of such fuel, and

(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and

(B) detain, for the purposes referred in subparagraph (A), any container which contains or may contain any taxable fuel.

(2) Inspection sites

The Secretary may establish inspection sites for purposes of carrying out the Secretary's authority under paragraph (1)(B).

(3) Penalty for refusal of entry

(A) Forfeiture

The penalty provided by section 7342 shall apply to any refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), except that section 7342 shall be applied by substituting ''$1,000'' for ''$500'' for each such refusal.

(B) Assessable penalty

For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XVII, § 1703(a), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 103–66, title XIII, § 13242(a), Aug. 10, 1993, 107 Stat. 517; Pub. L. 105–34, title IX, § 902(b)(3), title X, § 1032(a), (e)(4), Aug. 5, 1997, 111 Stat. 873, 933, 935; Pub. L. 105–206, title VI, § 6010(h)(1), July 22, 1998, 112 Stat. 815; Pub. L. 108–357, title III, § 301(c)(8), title VIII, §§ 853(b), 858(a), 859(b)(1), 870(a), Oct. 22, 2004, 118 Stat. 1461, 1611, 1617, 1618, 1623; Pub. L. 109–59, title XI, § 11123(b), Aug. 10, 2005, 119 Stat. 1952.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–59 substituted ''subsection (h) or (i) of section 4261'' for ''section 4261(h)''.

2004—Subsec. (a)(2). Pub. L. 108–357, § 301(c)(8), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, par. (2) defined the term ''gasoline'', to the extent prescribed in regulations, as including gasoline blend stocks and products commonly used as additives in gasoline, and defined the term ''gasoline blend stock'' as meaning any petroleum product component of gasoline.

Subsec. (a)(3). Pub. L. 108–357, § 870(a), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, par. (3) defined the term ''diesel fuel'' as meaning any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

Subsecs. (b), (c). Pub. L. 108–357, § 853(b), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 108–357, § 853(b), redesignated subsec. (c) as (d).

Subsec. (d)(1)(A)(iii). Pub. L. 108–357, § 858(a), added cl. (iii).

Subsec. (d)(3). Pub. L. 108–357, § 859(b)(1), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1998—Subsec. (a)(1). Pub. L. 105–206 made technical amendment to directory language of Pub. L. 105–34, § 1032(a). See 1997 Amendment note below.

1997—Subsec. (a)(1)(C). Pub. L. 105–34, § 1032(a), as amended by Pub. L. 105–206, § 6010(h)(1), added subpar. (C).

Subsec. (a)(3). Pub. L. 105–34, § 902(b)(3), substituted ''or a diesel-powered train'' for '', a diesel-powered train, or a diesel-powered boat''.

Subsec. (b). Pub. L. 105–34, § 1032(e)(4), substituted ''taxable fuels'' for ''gasoline, diesel fuel,''.

1993—Pub. L. 103–66 amended heading and text generally. Prior to amendment, text read as follows:

''(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

''(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

''(3) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline not used for taxable purposes, see section 6427.''

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section 4083 ''Exemption of sales to producer'', read as follows: ''Under regulations prescribed by the Secretary the tax imposed by section 4081 shall not apply in the case of sales of gasoline to a producer of gasoline.''

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, § 11123(c), Aug. 10, 2005, 119 Stat. 1952, provided that: ''The amendments made by this section [amending this section and section 4261 of this title] shall apply to transportation beginning after September 30, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 301(c)(8) of Pub. L. 108–357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108–357, set out as a note under section 40 of this title.

Amendment by section 853(b) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, § 858(b), Oct. 22, 2004, 118 Stat. 1617, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, § 859(c), Oct. 22, 2004, 118 Stat. 1618, provided that: ''The amendments made by this section [enacting section 6717 of this title and amending this section] shall take effect on January 1, 2005.''

Pub. L. 108–357, title VIII, § 870(c), Oct. 22, 2004, 118 Stat. 1624, provided that: ''The amendment made by this section [amending this section and section 6427 of this title] shall apply to fuel removed, sold, or used after December 31, 2004.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 902(b)(3) of Pub. L. 105–34 effective Jan. 1, 1998, see section 902(c) of Pub. L. 105–34, set out as a note under section 4041 of this title.

Amendment by section 1032(a), (e)(4) of Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514 set out as a note under section 4081 of this title.

§ 4084. Cross references

(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

(3) For provisions to relieve purchasers from excise tax in the case of taxable fuel not used for taxable purposes, see section 6427.

(Added Pub. L. 103–66, title XIII, § 13242(a), Aug. 10, 1993, 107 Stat. 518.)

PRIOR PROVISIONS

A prior section 4084, added Apr. 2, 1956, ch. 160, § 4(a)(1), 70 Stat. 90; amended June 29, 1956, ch. 462, title II, § 208(e)(1), 70 Stat. 396, contained cross references, prior to the general amendment of this subpart by Pub. L. 99–514, § 1703(a).

A prior section 4091, added Pub. L. 100–203, title X, § 10502(a), Dec. 22, 1987, 101 Stat. 1330–438; amended Pub. L. 100–203, title X, § 10502(g), Dec. 22, 1987, 101 Stat. 1330–446; Pub. L. 100–647, title II, § 2001(d)(6)(A)–(C), Nov. 10, 1988, 102 Stat. 3596; Pub. L. 101–508, title XI, §§ 11211(b)(1), (2), (6)(A), (B), (c)(4), (e)(4), 11213(b)(1), (2)(C), (D), (d)(2)(A), 11704(a)(38), Nov. 5, 1990, 104 Stat. 1388–424 to 1388–427, 1388–432, 1388–433, 1388–435, 1388–520; Pub. L. Pub. L. 102–240, title VIII, § 8002(a)(4), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §§ 13241(b)(1), (2)(B)(i), (ii), 13242(a), Aug. 10, 1993, 107 Stat. 510, 518; Pub. L. 104–188, title I, § 1609(a)(1), Aug. 20, 1996, 110 Stat. 1841; Pub. L. 105–2, § 2(a)(1), Feb. 28, 1997, 111 Stat. 4; Pub. L. 105–34, title X, § 1031(a)(1), title XIV, § 1436(a), Aug. 5, 1997, 111 Stat. 929, 1053; Pub. L. 105–178, title IX, § 9003(a)(1)(D), (b)(2)(D), June 9, 1998, 112 Stat. 502, 503; Pub. L. 105–206, title VI, § 6014(d), July 22, 1998, 112 Stat. 820, related to imposition of tax on the sale of aviation fuel, prior to repeal by Pub. L. 108–357, title VIII, § 853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4091, acts Aug. 16, 1954, ch. 736, 68A Stat. 483; Aug. 11, 1955, ch. 793, § 1(a), 69 Stat. 676; June 21, 1965, Pub. L. 89–44, title II, § 202(a), 79 Stat. 137, imposed a tax of 6 cents a gallon on lubricating oil (other than cutting oils) sold in the United States by the manufacturer or producer to be paid by the manufacturer or producer, prior to repeal by Pub. L. 97–424, title V, § 515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4092, added Pub. L. 100–203, title X, § 10502(a), Dec. 22, 1987, 101 Stat. 1330–440; amended Pub. L. 100–647, title III, § 3003(a), Nov. 10, 1988, 102 Stat. 3616; Pub. L. 103–66, title XIII, §§ 13163(a)(1), (3), 13242(a), Aug. 10, 1993, 107 Stat. 453, 519; Pub. L. 105–34, title XVI, § 1601(f)(4)(C), Aug. 5, 1997, 111 Stat. 1091; Pub. L. 105–206, title VI, § 6023(16), July 22, 1998, 112 Stat. 825, related to exemptions from tax imposed by former section 4091, prior to repeal by Pub. L. 108–357, title VIII, § 853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4092, acts Aug. 16, 1954, ch. 736, 68A Stat. 484; Aug. 11, 1955, ch. 793, § 1(b), 69 Stat. 676; Nov. 9, 1978, Pub. L. 95–618, title IV, § 404(b), 92 Stat. 3205, provided for certain vendees to be considered as manufacturers and defined ''cutting oils'', prior to repeal by Pub. L. 97–424, title V, § 515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4093, added Pub. L. 100–203, title X, § 10502(a), Dec. 22, 1987, 101 Stat. 1330–440; amended Pub. L. 100–647, title II, § 2004(s)(1), title III, § 3001(a), Nov. 10, 1988, 102 Stat. 3609, 3613; Pub. L. 101–508, title XI, §§ 11211(b)(4)(A), 11212(b)(4), 11704(a)(20), Nov. 5, 1990, 104 Stat. 1388–425, 1388–431, 1388–519; Pub. L. 103–66, title XIII, §§ 13241(f)(3), (4), 13242(a), Aug. 10, 1993, 107 Stat. 511, 512, 520; Pub. L. 104–188, title I, § 1702(b)(2)(A), Aug. 20, 1996, 110 Stat. 1868; Pub. L. 105–34, title X, § 1032(e)(5), Aug. 5, 1997, 111 Stat. 935, defined terms for purposes of former subpart B of this part, prior to repeal by Pub.

L. 108–357, title VIII, § 853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4093, acts Aug. 16, 1954, ch. 736, 68A Stat. 484; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Nov. 9, 1978, Pub. L. 95–618, title IV, § 404(a), 92 Stat. 3204, exempted from tax lubricating oils sold to a manufacturer or producer of lubricating oils for resale, or for certain uses of lubricating oil in producing rerefined oil, prior to repeal by Pub. L. 97–424, title V, § 515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4094, added Pub. L. 89–44, title II, § 202(c)(1)(A), June 21, 1965, 79 Stat. 139, provided cross reference to sections 39 and 6424 of this title for provisions to relieve purchasers of lubricating oil from excise tax in the case of lubricating oil used otherwise than in a highway motor vehicle, prior to repeal by Pub. L. 97–424, title V, § 515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

EFFECTIVE DATE

Section effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 4041 of this title.

SUBPART B—SPECIAL PROVISIONS APPLICABLE TO FUELS TAX

Sec.
4101. Registration and bond.
4102. Inspection of records by local officers.
4103. Certain additional persons liable for tax where willful failure to pay.
4104. Information reporting for persons claiming certain tax benefits.
4105. Two-party exchanges.

PRIOR PROVISIONS

A prior subpart B, consisting of sections 4091 to 4093, related to taxation of aviation fuel, prior to repeal by Pub. L. 108–357, title VIII, § 853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

AMENDMENTS

2004—Pub. L. 108–357, title III, § 303(b), title VIII, §§ 853(d)(1), (2)(T), 866(b), Oct. 22, 2004, 118 Stat. 1466, 1612, 1614, 1622, redesignated subpart C as B, substituted ''Special Provisions Applicable to Fuels Tax'' for ''Special Provisions Applicable to Petroleum Products'' in subpart heading, and added items 4104 and 4105.

1990—Pub. L. 101–508, title XI, § 11212(e)(3), Nov. 5, 1990, 104 Stat. 1388–432, added item 4103.

1986—Pub. L. 99–514, title XVII, § 1703(b)(2), Oct. 22, 1986, 100 Stat. 2776, substituted ''Registration and bond'' for ''Registration'' in item 4101.

1976—Pub. L. 94–455, title XII, § 1202(c)(2), Oct. 4, 1976, 90 Stat. 1686, substituted ''Inspection of records by local officers'' for ''Inspection of records, returns, etc., by local officers'' in item 4102.

1965—Pub. L. 89–44, title VIII, § 802(b)(5), June 21, 1965, 79 Stat. 159, struck out ''and bond'' after ''Registration'' in item 4101.

§ 4101. Registration and bond

(a) Registration

(1) In general

Every person required by the Secretary to register under this section with respect to the tax imposed by section 4041(a) or 4081, every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A)), and every person producing cellulosic biofuel (as defined in section 40(b)(6)(E)) shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

(2) Registration of persons within foreign trade zones, etc.

The Secretary shall require registration by any person which—

(A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or

(B) holds an inventory position with respect to a taxable fuel in such a terminal.

(3) Display of registration

Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.

(4) Registration of persons extending credit on certain exempt sales of fuel

The Secretary shall require registration by any person which—

(A) extends credit by credit card to any ultimate purchaser described in subparagraph (C) or (D) of section 6416(b)(2) for the purchase of taxable fuel upon which tax has been imposed under section 4041 or 4081, and

(B) does not collect the amount of such tax from such ultimate purchaser.

(5) Reregistration in event of change in ownership

Under regulations prescribed by the Secretary, a person (other than a corporation the stock of which is regularly traded on an established securities market) shall be required to reregister under this section if after a transaction (or series of related transactions) more than 50 percent of ownership interests in, or assets of, such person are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions).

(b) Bonds and liens

(1) In general

Under regulations prescribed by the Secretary, the Secretary may require, as a condition of permitting any person to be registered under subsection (a), that such person—

(A) give a bond in such sum as the Secretary determines appropriate, and

(B) agree to the imposition of a lien—

(i) on such property (or rights to property) of such person used in the trade or business for which the registration is sought, or

(ii) with the consent of such person, on any other property (or rights to property) of such person as the Secretary determines appropriate.

Rules similar to the rules of section 6323 shall apply to the lien imposed pursuant to this paragraph.

(2) Release or discharge of lien

If a lien is imposed pursuant to paragraph (1), the Secretary shall issue a certificate of discharge or a release of such lien in connection with a transfer of the property if there is furnished to the Secretary (and accepted by him) a bond in such sum as the Secretary determines appropriate or the transferor agrees to the imposition of a substitute lien under paragraph (1)(B) in such sum as the Secretary determines appropriate. The Secretary shall respond to any request to discharge or release a lien imposed pursuant to paragraph (1) in connection with a transfer of property not later than 90 days after the date the request for such a discharge or release is made.

(c) Denial, revocation, or suspension of registration

Rules similar to the rules of section 4222(c) shall apply to registration under this section.

(d) Information reporting

The Secretary may require—

(1) information reporting by any person registered under this section, and

(2) information reporting by such other persons as the Secretary deems necessary to carry out this part.

Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.

(Aug. 16, 1954, ch. 736, 68A Stat. 484; Pub. L. 89–44, title VIII, §802(b)(2), June 21, 1965, 79 Stat. 159; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–424, title V, §515(b)(8), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 99–514, title XVII, §1703(b)(1), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 100–203, title X, §10502(d)(3), Dec. 22, 1987, 101 Stat. 1330–444; Pub. L. 101–508, title XI, §11212(b)(1), Nov. 5, 1990, 104 Stat. 1388–430; Pub. L. 103–66, title XIII, §13242(d)(1), Aug. 10, 1993, 107 Stat. 522; Pub. L. 105–34, title X, §1032(d), Aug. 5, 1997, 111 Stat. 934; Pub. L. 105–206, title VI, §6010(h)(5), July 22, 1998, 112 Stat. 815; Pub. L. 107–147, title VI, §615(a), Mar. 9, 2002, 116 Stat. 62; Pub. L. 108–357, title III, §301(b), title VIII, §§853(d)(2)(F), 861(a), 862(a), 864(a), Oct. 22, 2004, 118 Stat. 1461, 1613, 1618, 1619, 1621; Pub. L. 109–59, title XI, §§11113(c), 11163(a), 11164(a), Aug. 10, 2005, 119 Stat. 1949, 1973, 1975; Pub. L. 110–172, §11(a)(29), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 110–234, title XV, §15321(b)(3)(A), May 22, 2008, 122 Stat. 1513; Pub. L. 110–246, §4(a), title XV, §15321(b)(3)(A), June 18, 2008, 122 Stat. 1664, 2275.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–246, §15321(b)(3)(A), substituted ", every person producing or importing" for "and every person producing or importing" and inserted ", and every person producing cellulosic biofuel (as defined in section 40(b)(6)(E))" before "shall register".

2007—Subsec. (a)(4), (5). Pub. L. 110–172 redesignated par. (4) relating to reregistration in event of change of ownership as (5).

2005—Subsec. (a)(1). Pub. L. 109–59, §11113(c), substituted "4041(a)" for "4041(a)(1)".

Subsec. (a)(4). Pub. L. 109–59, §11164(a), added par. (4) relating to reregistration in event of change in ownership.

Pub. L. 109–59, §11163(a), added par. (4) relating to registration of persons extending credit on certain exempt sales of fuel.

2004—Subsec. (a). Pub. L. 108–357, §861(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 108–357, §853(d)(2)(F), substituted "or 4081" for ", 4081, or 4091".

Pub. L. 108–357, §301(b), amended par. (1), as amended by Pub. L. 108–357, §861, by inserting "and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))" before "shall register with the Secretary".

Subsec. (a)(2), (3). Pub. L. 108–357, §862(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 108–357, §864(a), inserted concluding provisions.

2002—Subsec. (e). Pub. L. 107–147 struck out heading and text of subsec. (e). Text read as follows:

"(1) IN GENERAL.—A terminal for kerosene or diesel fuel may not be an approved facility for storage of nontax-paid diesel fuel or kerosene under this section unless the operator of such terminal offers such fuel in a dyed form for removal for nontaxable use in accordance with section 4082(a).

"(2) EXCEPTION.—Paragraph (1) shall not apply to any terminal exclusively providing aviation-grade kerosene by pipeline to an airport."

1998—Subsec. (e)(1). Pub. L. 105–206 substituted "such fuel in a dyed form" for "dyed diesel fuel and kerosene".

1997—Subsec. (e). Pub. L. 105–34 added subsec. (e).

1993—Subsec. (a). Pub. L. 103–66 substituted "4041(a)(1), 4081," for "4081".

1990—Pub. L. 101–508 amended section generally. Prior to amendment, section read as follows:

"(a) REGISTRATION.—Every person subject to tax under section 4081 or 4091 shall, before incurring any liability for tax under such section, register with the Secretary.

"(b) BOND.—Under regulations prescribed by the Secretary, every person who registers under subsection (a) may be required to give a bond in such sum as the Secretary determines."

1987—Subsec. (a). Pub. L. 100–203 inserted "or 4091" after "section 4081".

1986—Pub. L. 99–514 amended section generally, substituting "Registration and bond" for "Registration" in section catchline, designating existing provisions as subsec. (a), inserting subsec. (a) heading, and adding subsec. (b).

1983—Pub. L. 97–424 struck out "or section 4091" after "4081".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1965—Pub. L. 89–44 struck out all references to a bond to be given and its terms and requirements.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15321(b)(3)(A) of Pub. L. 110–246 applicable to fuel produced after Dec. 31, 2008, see section 15321(g) of Pub. L. 110–246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 11113(c) of Pub. L. 109–59 applicable to any sale or use for any period after Sept. 30,

2006, see section 11113(d) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Pub. L. 109–59, title XI, § 11163(e), Aug. 10, 2005, 119 Stat. 1975, provided that: ''The amendments made by this section [amending this section and sections 6206, 6416, 6427, and 6675 of this title] shall apply to sales after December 31, 2005.''

Pub. L. 109–59, title XI, § 11164(c), Aug. 10, 2005, 119 Stat. 1976, provided that: ''The amendments made by this section [amending this section and sections 6719, 7232, and 7272 of this title] shall apply to actions, or failures to act, after the date of the enactment of this Act [Aug. 10, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 301(b) of Pub. L. 108–357 effective Apr. 1, 2005, see section 301(d)(2) of Pub. L. 108–357, set out as a note under section 40 of this title.

Amendment by section 853(d)(2)(F) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, § 861(c)(1), Oct. 22, 2004, 118 Stat. 1619, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 2005.''

Pub. L. 108–357, title VIII, § 862(c), Oct. 22, 2004, 118 Stat. 1619, provided that: ''The amendments made by this section [amending this section and section 6718 of this title] shall take effect on January 1, 2005.''

Pub. L. 108–357, title VIII, § 864(b), Oct. 22, 2004, 118 Stat. 1621, provided that: ''The amendment made by this section [amending this section] shall apply on January 1, 2006.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 615(b), Mar. 9, 2002, 116 Stat. 62, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2002.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective Jan. 1, 2002, see section 1032(f)(2) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89–44, set out as a note under section 4082 of this title.

TREATMENT OF DEEP-DRAFT VESSELS

Pub. L. 109–59, title XI, § 11166(a), Aug. 10, 2005, 119 Stat. 1976, provided that: ''On and after the date of the enactment of this Act [Aug. 10, 2005], the Secretary of the Treasury shall require that a vessel described in section 4042(c)(1) of the Internal Revenue Code of 1986 be considered a vessel for purposes of the registration of the operator of such vessel under section 4101 of such Code, unless such operator uses such vessel exclusively for purposes of the entry of taxable fuel.''

PUBLICATION OF REGISTERED PERSONS

Pub. L. 108–357, title VIII, § 860(c), Oct. 22, 2004, 118 Stat. 1618, provided that: ''Beginning on January 1, 2005, the Secretary of the Treasury (or the Secretary's delegate) shall periodically publish under section 6103(k)(7) of the Internal Revenue Code of 1986 a current list of persons registered under section 4101 of such Code who are required to register under such section.''

§ 4102. Inspection of records by local officers

Under regulations prescribed by the Secretary, records required to be kept with respect to taxes under this part shall be open to inspection by such officers of a State, or a political subdivision of any such State, as shall be charged with the enforcement or collection of any tax on any taxable fuel (as defined in section 4083).

(Aug. 16, 1954, ch. 736, 68A Stat. 484; Pub. L. 94–455, title XII, § 1202(c)(1), Oct. 4, 1976, 90 Stat. 1686; Pub. L. 97–424, title V, § 515(b)(9), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 103–66, title XIII, § 13242(d)(2), Aug. 10, 1993, 107 Stat. 522.)

AMENDMENTS

1993—Pub. L. 103–66 substituted ''any taxable fuel (as defined in section 4083)'' for ''gasoline''.

1983—Pub. L. 97–424 struck out ''or lubricating oils'' after ''gasoline''.

1976—Pub. L. 94–455 struck out ''returns, etc.'' after ''Inspection of records'', ''or his delegate'' after ''Secretary'', ''and returns, reports, and statements with respect to such taxes filed with the Secretary or his delegate'' after ''under this part'', substituted ''or a political subdivision of any such State'' for ''or, Territory or political subdivision thereof or the District of Columbia'' after ''of any State'', and struck out provision relating to availability and fee for certified copies of statements, returns, or reports filed in Secretary's office.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

§ 4103. Certain additional persons liable for tax where willful failure to pay

In any case in which there is a willful failure to pay the tax imposed by section 4041(a)(1) or 4081, each person—

(1) who is an officer, employee, or agent of the taxpayer who is under a duty to assure the payment of such tax and who willfully fails to perform such duty, or

(2) who willfully causes the taxpayer to fail to pay such tax,

shall be jointly and severally liable with the taxpayer for the tax to which such failure relates.

(Added Pub. L. 101–508, title XI, § 11212(c), Nov. 5, 1990, 104 Stat. 1388–431; amended Pub. L. 103–66, title XIII, § 13242(d)(1), Aug. 10, 1993, 107 Stat. 522; Pub. L. 108–357, title VIII, § 853(d)(2)(F), Oct. 22, 2004, 118 Stat. 1613.)

AMENDMENTS

2004—Pub. L. 108–357 substituted ''or 4081'' for '', 4081, or 4091'' in introductory provisions.

1993—Pub. L. 103–66 substituted ''4041(a)(1), 4081,'' for ''4081'' in introductory provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 4081 of this title.

§ 4104. Information reporting for persons claiming certain tax benefits

(a) In general

The Secretary shall require any person claiming tax benefits—

(1) under the provisions of section[1] 34, 40, and 40A, to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe), and

(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a quarterly return (in such manner as the Secretary may prescribe).

(b) Contents of return

Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

(c) Enforcement

With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.

(Added Pub. L. 108–357, title III, § 303(a), Oct. 22, 2004, 118 Stat. 1466.)

EFFECTIVE DATE

Pub. L. 108–357, title III, § 303(c), Oct. 22, 2004, 118 Stat. 1466, provided that: ''The amendments made by this section [enacting this section] shall take effect on January 1, 2005.''

§ 4105. Two-party exchanges

(a) In general

In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(ii).

(b) Two-party exchange

The term ''two-party exchange'' means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.

(4) The transaction is the subject of a written contract.

(Added Pub. L. 108–357, title VIII, § 866(a), Oct. 22, 2004, 118 Stat. 1621.)

PRIOR PROVISIONS

Prior sections 4111 to 4113, 4121, and 4131 of this title constituted a former subchapter B of this chapter, see Prior Provisions note set out preceding section 4121 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, § 866(c), Oct. 22, 2004, 118 Stat. 1622, provided that: ''The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].''

Subchapter B—Coal

Sec.
4121. Imposition of tax.

PRIOR PROVISIONS

A prior subchapter B consisted of sections 4111 to 4113, 4121, and 4131 of this title.

Section 4111, acts Aug. 16, 1954, ch. 736, 68A Stat. 485; Sept. 2, 1958, Pub. L. 85–859, title I, § 111(a), 72 Stat. 1277, imposed a manufacturers excise tax of 5 percent on household type refrigerators, quick freeze or frozen storage units, or combinations, and a tax of 10 percent on self-contained air-conditioning units, prior to repeal by Pub. L. 89–44, title II, § 203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold on or after June 22, 1956.

Section 4112, acts Aug. 16, 1954, ch. 736, 68A Stat. 485; Aug. 11, 1955, ch. 805, § 1(e), 69 Stat. 689, defined refrigerator components, prior to repeal by Pub. L. 85–859, title I, § 111(b)(1), Sept. 2, 1958, 72 Stat. 1277, effective the first day of the first calendar quarter beginning more than 60 days after Sept. 2, 1958.

Section 4113, act Aug. 16, 1954, ch. 736, 68A Stat. 485, related to exemptions for manufacturers of refrigerator components, prior to repeal by act Aug. 11, 1955, ch. 805, § 1(d), 69 Stat. 689, effective on the first day of the first month beginning more than 10 days after Aug. 11, 1955.

Section 4121, acts Aug. 16, 1954, ch. 736, 68A Stat. 486; Sept. 2, 1958, Pub. L. 85–859, title I, § 112, 72 Stat. 1277,

[1] So in original. Probably should be ''sections''.

imposed a 5 percent tax on electric, gas, and oil household appliances and their accessories, prior to repeal by Pub. L. 89–44, title II, § 203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold on or after June 22, 1965.

Section 4131, act Aug. 16, 1954, ch. 736, 68A Stat. 486, imposed a 10 percent tax on electric light bulbs and tubes, prior to repeal by Pub. L. 89–44, title II, § 203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold on or after Jan. 1, 1965.

§ 4121. Imposition of tax

(a) Tax imposed

(1) In general

There is hereby imposed on coal from mines located in the United States sold by the producer, a tax equal to the rate per ton determined under subsection (b).

(2) Limitation on tax

The amount of the tax imposed by paragraph (1) with respect to a ton of coal shall not exceed the applicable percentage (determined under subsection (b)) of the price at which such ton of coal is sold by the producer.

(b) Determination of rates and limitation on tax

For purposes of subsection (a)—

(1) the rate of tax on coal from underground mines shall be $1.10,

(2) the rate of tax on coal from surface mines shall be $.55, and

(3) the applicable percentage shall be 4.4 percent.

(c) Tax not to apply to lignite

The tax imposed by subsection (a) shall not apply in the case of lignite.

(d) Definitions

For purposes of this subchapter—

(1) Coal from surface mines

Coal shall be treated as produced from a surface mine if all of the geological matter above the coal being mined is removed before the coal is extracted from the earth. Coal extracted by auger shall be treated as coal from a surface mine.

(2) Coal from underground mines

Coal shall be treated as produced from an underground mine if it is not produced from a surface mine.

(3) United States

The term ''United States'' has the meaning given to it by paragraph (1) of section 638.

(4) Ton

The term ''ton'' means 2,000 pounds.

(e) Reduction in amount of tax

(1) In general

Effective with respect to sales after the temporary increase termination date, subsection (b) shall be applied—

(A) by substituting ''$.50'' for ''$1.10'',

(B) by substituting ''$.25'' for ''$.55'', and

(C) by substituting ''2 percent'' for ''4.4 percent''.

(2) Temporary increase termination date

For purposes of paragraph (1), the temporary increase termination date is the earlier of—

(A) December 31, 2018, or

(B) the first December 31 after 2007 as of which there is—

(i) no balance of repayable advances made to the Black Lung Disability Trust Fund, and

(ii) no unpaid interest on such advances.

(Added Pub. L. 95–227, § 2(a), Feb. 10, 1978, 92 Stat. 11; amended Pub. L. 97–119, title I, § 102(a), Dec. 29, 1981, 95 Stat. 1635; Pub. L. 99–272, title XIII, § 13203(a), (c), Apr. 7, 1986, 100 Stat. 312, 313; Pub. L. 99–514, title XVIII, § 1897(a), Oct. 22, 1986, 100 Stat. 2941; Pub. L. 100–203, title X, § 10503, Dec. 22, 1987, 101 Stat. 1330–446; Pub. L. 110–343, div. B, title I, § 113(a), Oct. 3, 2008, 122 Stat. 3824.)

PRIOR PROVISIONS

For prior section 4121, see Prior Provisions note set out preceding this section.

AMENDMENTS

2008—Subsec. (e)(2)(A). Pub. L. 110–343, § 113(a)(1), substituted ''December 31, 2018'' for ''January 1, 2014''.

Subsec. (e)(2)(B). Pub. L. 110–343, § 113(a)(2), substituted ''December 31 after 2007'' for ''January 1 after 1981'' in introductory provisions.

1987—Subsec. (e)(2)(A). Pub. L. 100–203 substituted ''2014'' for ''1996''.

1986—Subsec. (a). Pub. L. 99–272, § 13203(a), amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: ''There is hereby imposed on coal sold by the producer a tax at the rates of—

''(1) 50 cents per ton in the case of coal from underground mines located in the United States, and

''(2) 25 cents per ton in the case of coal from surface mines located in the United States.''

Subsec. (b). Pub. L. 99–514 struck out '', in the case of sales during any calendar year beginning after December 31, 1985'' after ''subsection (a)''.

Pub. L. 99–272, § 13203(a), amended subsec. (b) generally. Prior to amendment subsec. (b), limitation on tax, read as follows: ''The amount of the tax imposed by subsection (a) with respect to a ton of coal shall not exceed 2 percent of the price at which such ton of coal is sold by the producer.''

Subsec. (e). Pub. L. 99–272, § 13203(c), substituted ''Reduction in amount of tax'' for ''Temporary increase in amount of tax'' in heading and amended par. (1) generally. Prior to amendment par. (1) read as follows: ''Effective with respect to sales after December 31, 1981, and before the temporary increase termination date—

''(A) subsection (a) shall be applied—

''(i) by substituting '$1' for '50 cents', and

''(ii) by substituting '50 cents' for '25 cents', and

''(B) subsection (b) shall be applied by substituting '4 percent' for '2 percent'.''

1981—Subsec. (e). Pub. L. 97–119 added subsec. (e).

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1897(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 13203 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [section 13203 of Pub. L. 99–272, see note below].''

Section 13203(d) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to sales after March 31, 1986.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 102(b) of Pub. L. 97–119 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales after December 31, 1981.''

EFFECTIVE DATE

Section 2(d) of Pub. L. 95–227 provided that: ''The amendments made by this section [enacting this sec-

tion and amending sections 4218, 4221, 4293, and 6416 of this title] shall apply with respect to sales after March 31, 1978.''

Section 5 of Pub. L. 95–227 provided that: ''Notwithstanding any other provision of this Act [see Short Title of 1978 Amendment note set out under section 1 of this title] to the contrary, no provision of this Act (including any amendment made by any such provision) shall take effect or apply unless an Act, enacted after the date of enactment of this Act [Feb. 10, 1978], contains a provision, explicitly in satisfaction of the requirements of this section, which states that it is the intent of the Congress that the provisions of this Act shall take effect.''

[Pub. L. 95–239, §20(c), Mar. 1, 1978, 92 Stat. 106, provided that: ''In accordance with the requirements of section 5 of the Black Lung Benefits Revenue Act of 1977 [Pub. L. 95–227, set out above], it is hereby provided that such Act shall take effect in accordance with the provisions of such Act. The provisions of this subsection are hereby deemed to be in explicit satisfaction of the requirements of section 5 of such Act.'']

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95–227, Feb. 10, 1978, 92 Stat. 11, as the ''Black Lung Benefits Revenue Act of 1977'', see Short Title of 1978 Amendments note set out under section 1 of this title.

SPECIAL RULES FOR REFUND OF THE COAL EXCISE TAX TO CERTAIN COAL PRODUCERS AND EXPORTERS

Pub. L. 110–343, div. B, title I, §114, Oct. 3, 2008, 122 Stat. 3826, provided that:

''(a) REFUND.—

''(1) COAL PRODUCERS.—

''(A) IN GENERAL.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, if—

''(i) a coal producer establishes that such coal producer, or a party related to such coal producer, exported coal produced by such coal producer to a foreign country or shipped coal produced by such coal producer to a possession of the United States, or caused such coal to be exported or shipped, the export or shipment of which was other than through an exporter who meets the requirements of paragraph (2),

''(ii) such coal producer filed an excise tax return on or after October 1, 1990, and on or before the date of the enactment of this Act [Oct. 3, 2008], and

''(iii) such coal producer files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such coal producer an amount equal to the tax paid under section 4121 of such Code on such coal exported or shipped by the coal producer or a party related to such coal producer, or caused by the coal producer or a party related to such coal producer to be exported or shipped.

''(B) SPECIAL RULES FOR CERTAIN TAXPAYERS.—For purposes of this section—

''(i) IN GENERAL.—If a coal producer or a party related to a coal producer has received a judgment described in clause (iii), such coal producer shall be deemed to have established the export of coal to a foreign country or shipment of coal to a possession of the United States under subparagraph (A)(i).

''(ii) AMOUNT OF PAYMENT.—If a taxpayer described in clause (i) is entitled to a payment under subparagraph (A), the amount of such payment shall be reduced by any amount paid pursuant to the judgment described in clause (iii).

''(iii) JUDGMENT DESCRIBED.—A judgment is described in this subparagraph if such judgment—

''(I) is made by a court of competent jurisdiction within the United States,

''(II) relates to the constitutionality of any tax paid on exported coal under section 4121 of the Internal Revenue Code of 1986, and

''(III) is in favor of the coal producer or the party related to the coal producer.

''(2) EXPORTERS.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, and a judgment described in paragraph (1)(B)(iii) of this subsection, if—

''(A) an exporter establishes that such exporter exported coal to a foreign country or shipped coal to a possession of the United States, or caused such coal to be so exported or shipped,

''(B) such exporter filed a tax return on or after October 1, 1990, and on or before the date of the enactment of this Act [Oct. 3, 2008], and

''(C) such exporter files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such exporter an amount equal to $0.825 per ton of such coal exported by the exporter or caused to be exported or shipped, or caused to be exported or shipped, [sic] by the exporter.

''(b) LIMITATIONS.—Subsection (a) shall not apply with respect to exported coal if a settlement with the Federal Government has been made with and accepted by, the coal producer, a party related to such coal producer, or the exporter, of such coal, as of the date that the claim is filed under this section with respect to such exported coal. For purposes of this subsection, the term 'settlement with the Federal Government' shall not include any settlement or stipulation entered into as of the date of the enactment of this Act [Oct. 3, 2008], the terms of which contemplate a judgment concerning which any party has reserved the right to file an appeal, or has filed an appeal.

''(c) SUBSEQUENT REFUND PROHIBITED.—No refund shall be made under this section to the extent that a credit or refund of such tax on such exported or shipped coal has been paid to any person.

''(d) DEFINITIONS.—For purposes of this section—

''(1) COAL PRODUCER.—The term 'coal producer' means the person in whom is vested ownership of the coal immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term includes any person who extracts coal from coal waste refuse piles or from the silt waste product which results from the wet washing (or similar processing) of coal.

''(2) EXPORTER.—The term 'exporter' means a person, other than a coal producer, who does not have a contract, fee arrangement, or any other agreement with a producer or seller of such coal to export or ship such coal to a third party on behalf of the producer or seller of such coal and—

''(A) is indicated in the shipper's export declaration or other documentation as the exporter of record, or

''(B) actually exported such coal to a foreign country or shipped such coal to a possession of the United States, or caused such coal to be so exported or shipped.

''(3) RELATED PARTY.—The term 'a party related to such coal producer' means a person who—

''(A) is related to such coal producer through any degree of common management, stock ownership, or voting control,

''(B) is related (within the meaning of section 144(a)(3) of the Internal Revenue Code of 1986) to such coal producer, or

''(C) has a contract, fee arrangement, or any other agreement with such coal producer to sell such coal to a third party on behalf of such coal producer.

''(4) SECRETARY.—The term 'Secretary' means the Secretary of [the] Treasury or the Secretary's designee.

''(e) TIMING OF REFUND.—With respect to any claim for refund filed pursuant to this section, the Secretary shall determine whether the requirements of this section are met not later than 180 days after such claim is filed. If the Secretary determines that the requirements of this section are met, the claim for refund shall be paid not later than 180 days after the Secretary makes such determination.

''(f) INTEREST.—Any refund paid pursuant to this section shall be paid by the Secretary with interest from the date of overpayment determined by using the overpayment rate and method under section 6621 of the Internal Revenue Code of 1986.

''(g) DENIAL OF DOUBLE BENEFIT.—The payment under subsection (a) with respect to any coal shall not exceed—

''(1) in the case of a payment to a coal producer, the amount of tax paid under section 4121 of the Internal Revenue Code of 1986 with respect to such coal by such coal producer or a party related to such coal producer, and

''(2) in the case of a payment to an exporter, an amount equal to $0.825 per ton with respect to such coal exported by the exporter or caused to be exported by the exporter.

''(h) APPLICATION OF SECTION.—This section applies only to claims on coal exported or shipped on or after October 1, 1990, through the date of the enactment of this Act [Oct. 3, 2008].

''(i) STANDING NOT CONFERRED.—

''(1) EXPORTERS.—With respect to exporters, this section shall not confer standing upon an exporter to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by a coal producer of any Federal or State tax, fee, or royalty paid by the coal producer.

''(2) COAL PRODUCERS.—With respect to coal producers, this section shall not confer standing upon a coal producer to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by an exporter of any Federal or State tax, fee, or royalty paid by the producer and alleged to have been passed on to an exporter.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Subchapter C—Certain Vaccines

Sec.
4131. Imposition of tax.
4132. Definitions and special rules.

PRIOR PROVISIONS

A prior subchapter C consisted of sections 4141 to 4143, 4151, and 4152 of this title.

Section 4141, acts Aug. 16, 1954, ch. 736, 68A Stat. 487; Aug. 11, 1955, ch. 805, § 2(a), 69 Stat. 690; Sept. 2, 1958, Pub. L. 85–859, title I, § 113(a), 72 Stat. 1278, imposed a tax equivalent to 10 percent of selling price on radio and television receiving sets, phonographs, radio, television, and phonograph combinations, components, and phonograph records, prior to repeal by Pub. L. 89–44, title II, § 204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4142, acts Aug. 16, 1954, ch. 736, 68A Stat. 487; Sept. 2, 1958, Pub. L. 85–859, title I, § 113(a), 72 Stat. 1278; Oct. 13, 1964, Pub. L. 88–653, § 6(a), 78 Stat. 1086, defined ''radio and television components'' and provided formula to determine selling price of rebuilt television picture tubes, prior to repeal by Pub. L. 89–44, title II, § 204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4143, Pub. L. 85–859, title I, § 113(a), Sept. 2, 1958, 72 Stat. 1278, granted an exemption for certain types of communication, detection, and navigation equipment and components, prior to repeal by Pub. L. 89–44, title II, § 204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4151, act Aug. 16, 1954, ch. 736, 68A Stat. 488, imposed a tax equivalent to 10 percent of selling price upon the sale of musical instruments, prior to repeal by Pub. L. 89–44, title II, § 204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4152, act Aug. 16, 1954, ch. 736, 68A Stat. 488, related to exemption of musical instruments sold for religious or educational use, prior to repeal by Pub. L. 85–859, title I, § 119(b)(2), Sept. 2, 1958, 72 Stat. 1286, effective on the first day of the first calendar quarter which began more than 60 days after Sept. 2, 1958.

§ 4131. Imposition of tax

(a) General rule

There is hereby imposed a tax on any taxable vaccine sold by the manufacturer, producer, or importer thereof.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be 75 cents per dose of any taxable vaccine.

(2) Combinations of vaccines

If any taxable vaccine is described in more than 1 subparagraph of section 4132(a)(1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts for the vaccines which are so included.

(c) Application of section

The tax imposed by this section shall apply—

(1) after December 31, 1987, and before January 1, 1993, and

(2) during periods after the date of the enactment of the Revenue Reconciliation Act of 1993.

(Added Pub. L. 100–203, title IX, § 9201(a), Dec. 22, 1987, 101 Stat. 1330–327; amended Pub. L. 103–66, title XIII, § 13421(a), Aug. 10, 1993, 107 Stat. 565; Pub. L. 105–34, title IX, § 904(a), Aug. 5, 1997, 111 Stat. 873.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b) AMOUNT OF TAX.—

''(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"If the taxable vaccine is:	The tax per dose is:
DPT vaccine	$4.56
DT vaccine	0.06
MMR vaccine	4.44
Polio vaccine	0.29.

''(2) COMBINATIONS OF VACCINES.—If any taxable vaccine is included in more than 1 category of vaccines

in the table contained in paragraph (1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts determined under such table for each category in which such vaccine is so included.''

1993—Subsec. (c). Pub. L. 103–66 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to termination of tax if amounts collected exceeded projected fund liability.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 904(d) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 4132 of this title] shall take effect on the day after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE

Section 9201(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section and section 4132 of this title and amending sections 4221 and 6416 of this title] shall take effect on January 1, 1988.''

FLOOR STOCKS TAX

Section 13421(c) of Pub. L. 103–66 provided that:

''(1) IMPOSITION OF TAX.—On any taxable vaccine—

''(A) which was sold by the manufacturer, producer, or importer on or before the date of the enactment of this Act [Aug. 10, 1993],

''(B) on which no tax was imposed by section 4131 of the Internal Revenue Code of 1986 (or, if such tax was imposed, was credited or refunded), and

''(C) which is held on such date by any person for sale or use,

there is hereby imposed a tax in the amount determined under section 4131(b) of such Code.

''(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

''(A) LIABILITY FOR TAX.—The person holding any taxable vaccine to which the tax imposed by paragraph (1) applies shall be liable for such tax.

''(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

''(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the last day of the 6th month beginning after the date of the enactment of this Act.

''(3) DEFINITIONS.—For purposes of this subsection, terms used in this subsection which are also used in section 4131 of such Code shall have the respective meanings such terms have in such section.

''(4) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4131 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 4131.''

§ 4132. Definitions and special rules

(a) Definitions relating to taxable vaccines

For purposes of this subchapter—

(1) Taxable vaccine

The term ''taxable vaccine'' means any of the following vaccines which are manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing:

(A) Any vaccine containing diphtheria toxoid.

(B) Any vaccine containing tetanus toxoid.

(C) Any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

(D) Any vaccine against measles.

(E) Any vaccine against mumps.

(F) Any vaccine against rubella.

(G) Any vaccine containing polio virus.

(H) Any HIB vaccine.

(I) Any vaccine against hepatitis A.

(J) Any vaccine against hepatitis B.

(K) Any vaccine against chicken pox.

(L) Any vaccine against rotavirus gastroenteritis.

(M) Any conjugate vaccine against streptococcus pneumoniae.

(N) Any trivalent vaccine against influenza.

(O) Any meningococcal vaccine.

(P) Any vaccine against the human papillomavirus.

(2) Vaccine

The term ''vaccine'' means any substance designed to be administered to a human being for the prevention of 1 or more diseases.

(3) United States

The term ''United States'' has the meaning given such term by section 4612(a)(4).

(4) Importer

The term ''importer'' means the person entering the vaccine for consumption, use, or warehousing.

(b) Credit or refund where vaccine returned to manufacturer, etc., or destroyed

(1) In general

Under regulations prescribed by the Secretary, whenever any vaccine on which tax was imposed by section 4131 is—

(A) returned (other than for resale) to the person who paid such tax, or

(B) destroyed,

the Secretary shall abate such tax or allow a credit, or pay a refund (without interest), to such person equal to the tax paid under section 4131 with respect to such vaccine.

(2) Claim must be filed within 6 months

Paragraph (1) shall apply to any returned or destroyed vaccine only with respect to claims filed within 6 months after the date the vaccine is returned or destroyed.

(3) Condition of allowance of credit or refund

No credit or refund shall be allowed or made under paragraph (1) with respect to any vaccine unless the person who paid the tax establishes that he—

(A) has repaid or agreed to repay the amount of the tax to the ultimate purchaser of the vaccine, or

(B) has obtained the written consent of such purchaser to the allowance of the credit or the making of the refund.

(4) Tax imposed only once

No tax shall be imposed by section 4131 on the sale of any vaccine if tax was imposed by section 4131 on any prior sale of such vaccine and such tax is not abated, credited, or refunded.

(c) Other special rules

(1) Certain uses treated as sales

Any manufacturer, producer, or importer of a vaccine which uses such vaccine before it is

sold shall be liable for the tax imposed by section 4131 in the same manner as if such vaccine were sold by such manufacturer, producer, or importer.

(2) Treatment of vaccines shipped to United States possessions

Section 4221(a)(2) shall not apply to any vaccine shipped to a possession of the United States.

(3) Fractional part of a dose

In the case of a fraction of a dose, the tax imposed by section 4131 shall be the same fraction of the amount of such tax imposed by a whole dose.

(4) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4131.

(Added Pub. L. 100–203, title IX, § 9201(a), Dec. 22, 1987, 101 Stat. 1330–329; amended Pub. L. 100–647, title II, § 2006(a), Nov. 10, 1988, 102 Stat. 3612; Pub. L. 105–34, title IX, § 904(b), (c), Aug. 5, 1997, 111 Stat. 873, 874; Pub. L. 105–277, div. C, title XV, § 1503(a), div. J, title III, § 3002(a), Oct. 21, 1998, 112 Stat. 2681–741, 2681–905; Pub. L. 106–170, title V, § 523(a)(1), (b)(1), Dec. 17, 1999, 113 Stat. 1927; Pub. L. 108–357, title VIII, §§ 889(a), 890(a), Oct. 22, 2004, 118 Stat. 1643, 1644; Pub. L. 109–432, div. A, title IV, § 408(a), (b), Dec. 20, 2006, 120 Stat. 2962.)

AMENDMENTS

2006—Subsec. (a)(1)(O), (P). Pub. L. 109–432 added subpars. (O) and (P).

2004—Subsec. (a)(1)(I) to (M). Pub. L. 108–357, § 889(a), added subpar. (I) and redesignated former subpars. (I) to (L) as (J) to (M), respectively.

Subsec. (a)(1)(N). Pub. L. 108–357, § 890(a), added subpar. (N).

1999—Subsec. (a)(1)(K). Pub. L. 106–170, § 523(b)(1), repealed Pub. L. 105–277, § 1503(a). See 1998 Amendment note below.

Subsec. (a)(1)(L). Pub. L. 106–170, § 523(a)(1), added subpar. (L).

1998—Subsec. (a)(1)(K). Pub. L. 105–277, § 3002(a), added a subpar. (K) identical to that added by Pub. L. 105–277, § 1503(a). See below.

Pub. L. 105–277, § 1503(a), which directed amendment of section 4132(1) by adding a new subpar. (K) at the end, was repealed by Pub. L. 106–170, § 523(b)(1).

1997—Subsec. (a)(1). Pub. L. 105–34, § 904(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The term 'taxable vaccine' means any vaccine—

''(A) which is listed in the table contained in section 4131(b)(1), and

''(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.''

Subsec. (a)(2) to (8). Pub. L. 105–34, § 904(c), redesignated pars. (6) to (8) as (2) to (4), respectively, and struck out former pars. (2) to (5) which read as follows:

''(2) DPT VACCINE.—The term 'DPT vaccine' means any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

''(3) DT VACCINE.—The term 'DT vaccine' means any vaccine (other than a DPT vaccine) containing diphtheria toxoid or tetanus toxoid.

''(4) MMR VACCINE.—The term 'MMR vaccine' means any vaccine against measles, mumps, or rubella. Not more than 1 tax shall be imposed by section 4131 on any MMR vaccine by reason of being a vaccine against more than 1 of measles, mumps, or rubella.

''(5) POLIO VACCINE.—The term 'polio vaccine' means any vaccine containing polio virus.''

1988—Subsec. (c). Pub. L. 100–647 added pars. (1) and (2) and redesignated former pars. (1) and (2) as (3) and (4), respectively.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 408(c), Dec. 20, 2006, 120 Stat. 2962, provided that:

''(1) SALES, ETC.—The amendments made by this section [amending this section] shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Dec. 20, 2006].

''(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 889(b), Oct. 22, 2004, 118 Stat. 1643, provided that:

''(1) SALES, ETC.—The amendments made by subsection (a) [amending this section] shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Oct. 22, 2004].

''(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.''

Pub. L. 108–357, title VIII, § 890(b), Oct. 22, 2004, 118 Stat. 1644, provided that:

''(1) SALES, ETC.—The amendment made by this section [amending this section] shall apply to sales and uses on or after the later of—

''(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Oct. 22, 2004], or

''(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

''(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 523(a)(2), Dec. 17, 1999, 113 Stat. 1927, provided that:

''(A) SALES.—The amendment made by this subsection [amending this section] shall apply to vaccine sales after the date of the enactment of this Act [Dec. 17, 1999], but shall not take effect if subsection (b) [see note below] does not take effect.

''(B) DELIVERIES.—For purposes of subparagraph (A), in the case of sales on or before the date described in such subparagraph for which delivery is made after such date, the delivery date shall be considered the sale date.''

Pub. L. 106–170, title V, § 523(b)(3), Dec. 17, 1999, 113 Stat. 1928, provided that: ''The amendments made by this subsection [amending this section and section 9510 of this title and repealing provisions set out as notes under this section and section 9510 of this title] shall take effect as if included in the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 [Pub. L. 105–277] to which they relate.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title XV, § 1503(b), div. I, title III, § 3002(b), Oct. 21, 1998, 112 Stat. 2681–741, 2681–905,

which provided that amendment of this section by Pub. L. 105–277 was applicable to sales after Oct. 21, 1998, and that delivery date would be considered sale date in the case of sales on or before Oct. 21, 1998, was repealed by Pub. L. 106–170, title V, § 523(b)(1), Dec. 17, 1999, 113 Stat. 1927.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective on the day after Aug. 5, 1997, see section 904(d) of Pub. L. 105–34, set out as a note under section 4131 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2006(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 9510 of this title] shall take effect as if included in the amendments made by section 9201 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

LIMITATION ON CERTAIN CREDITS OR REFUNDS

Section 904(e) of Pub. L. 105–34 provided that: ''For purposes of applying section 4132(b) of the Internal Revenue Code of 1986 with respect to any claim for credit or refund filed before January 1, 1999, the amount of tax taken into account shall not exceed the tax computed under the rate in effect on the day after the date of the enactment of this Act [Aug. 5, 1997].''

Subchapter D—Recreational Equipment

Part
I. Sporting goods.
[II. Repealed.]
III. Firearms.

AMENDMENTS

1965—Pub. L. 89–44, title II, § 205(b), June 21, 1965, 79 Stat. 140, struck out item relating to part II.

PART I—SPORTING GOODS

Sec.
4161. Imposition of tax.
4162. Definitions; treatment of certain resales.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title X, § 1015(d), July 18, 1984, 98 Stat. 1019, added item 4162.

§ 4161. Imposition of tax

(a) Sport fishing equipment

(1) Imposition of tax

(A) In general

There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

(B) Limitation on tax imposed on fishing rods and poles

The tax imposed by subparagraph (A) on any fishing rod or pole shall not exceed $10.

(2) 3 percent rate of tax for electric outboard motors

In the case of an electric outboard motor, paragraph (1) shall be applied by substituting ''3 percent'' for ''10 percent''.

(3) 3 percent rate of tax for tackle boxes

In the case of fishing tackle boxes, paragraph (1) shall be applied by substituting ''3 percent'' for ''10 percent''.

(4) Parts or accessories sold in connection with taxable sale

In the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof.

(b) Bows and arrows, etc.

(1) Bows

(A) In general

There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

(B) Archery equipment

There is hereby imposed on the sale by the manufacturer, producer, or importer—

(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

(ii) of any quiver, broadhead, or point suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.

(2) Arrows

(A) In general

There is hereby imposed on the first sale by the manufacturer, producer, or importer of any shaft (whether sold separately or incorporated as part of a finished or unfinished product) of a type used in the manufacture of any arrow which after its assembly—

(i) measures 18 inches overall or more in length, or

(ii) measures less than 18 inches overall in length but is suitable for use with a bow described in paragraph (1)(A),

a tax equal to 39 cents per shaft.

(B) Exemption for certain wooden arrow shafts

Subparagraph (A) shall not apply to any shaft consisting of all natural wood with no laminations or artificial means of enhancing the spine of such shaft (whether sold separately or incorporated as part of a finished or unfinished product) of a type used in the manufacture of any arrow which after its assembly—

(i) measures 5/16 of an inch or less in diameter, and

(ii) is not suitable for use with a bow described in paragraph (1)(A).

(C) Adjustment for inflation

(i) In general

In the case of any calendar year beginning after 2005, the 39-cent amount specified in subparagraph (A) shall be increased by an amount equal to the product of—

(I) such amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substitut-

ing ''2004'' for ''1992'' in subparagraph (B) thereof.

(ii) Rounding

If any increase determined under clause (i) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent.

(3) Coordination with subsection (a)

No tax shall be imposed under this subsection with respect to any article taxable under subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 489; Pub. L. 89–44, title II, § 205(a), June 21, 1965, 79 Stat. 140; Pub. L. 92–558, title II, § 201(a), Oct. 25, 1972, 86 Stat. 1173; Pub. L. 98–369, div. A, title X, §§ 1015(a), 1017(a), (b), July 18, 1984, 98 Stat. 1017, 1021; Pub. L. 99–514, title XVIII, § 1899A(48), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 105–34, title XIV, § 1433(a), Aug. 5, 1997, 111 Stat. 1051; Pub. L. 108–357, title III, §§ 332(a)–(c), 333(a), Oct. 22, 2004, 118 Stat. 1477, 1478; Pub. L. 108–493, § 1(a)–(c), Dec. 23, 2004, 118 Stat. 3984; Pub. L. 109–59, title XI, § 11117(a), (b), Aug. 10, 2005, 119 Stat. 1951; Pub. L. 109–135, title IV, § 412(uu), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–343, div. C, title V, § 503(a), Oct. 3, 2008, 122 Stat. 3877.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2008—Subsec. (b)(2)(B), (C). Pub. L. 110–343 added subpar. (B) and redesignated former subpar. (B) as (C).

2005—Subsec. (a)(1). Pub. L. 109–59, § 11117(a), reenacted heading without change and amended text of par. (1) generally, designating existing provisions as subpar. (A), inserting subpar. heading, and adding subpar. (B).

Subsec. (a)(2). Pub. L. 109–135 amended heading and text of par. (2) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—In the case of an electric outboard motor or a sonar device suitable for finding fish, paragraph (1)(A) shall be applied by substituting '3 percent' for '10 percent'.

''(B) $30 LIMITATION ON TAX IMPOSED ON SONAR DEVICES SUITABLE FOR FINDING FISH.—The tax imposed by paragraph (1)(A) on any sonar device suitable for finding fish shall not exceed $30.''

Pub. L. 109–59, § 11117(b), substituted ''paragraph (1)(A)'' for ''paragraph (1)'' in two places.

2004—Subsec. (a)(3), (4). Pub. L. 108–357, § 333(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 108–357, § 332(a), reenacted heading without change and amended text of par. (1) generally, substituting provisions imposing a tax on the sale of any bow which has a peak draw weight of 30 pounds or more, any part or accessory, and any quiver or broadhead suitable for use with an arrow described in par. (2), for provisions imposing a tax on the sale of any bow which has a draw weight of 10 pounds or more, any part of accessory, and any quiver suitable for use with arrows described in par. (2).

Subsec. (b)(1)(B)(ii). Pub. L. 108–493, § 1(c), substituted ''quiver, broadhead, or point'' for ''quiver or broadhead''.

Subsec. (b)(2). Pub. L. 108–493, § 1(b), amended heading and text of par. (2) generally, substituting provisions relating to arrows for provisions relating to arrow components.

Pub. L. 108–357, § 332(c), substituted ''Arrow components'' for ''Arrows'' in heading and inserted ''(other than broadheads)'' after ''point'' in introductory provisions.

Subsec. (b)(3), (4). Pub. L. 108–493, § 1(a), repealed Pub. L. 108–357, § 332(b). See note below.

Pub. L. 108–357, § 332(b), which directed the amendment of subsec. (b) by adding par. (3), relating to arrows, and redesignating former par. (3) as (4), was repealed by Pub. L. 108–493, § 1(a). See Construction of 2004 Amendment note below.

1997—Subsec. (b). Pub. L. 105–34 amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) imposing taxes on bows and arrows and parts and accessories and providing for coordination of taxes under subsecs. (a) and (b).

1986—Subsec. (b)(1)(B)(ii). Pub. L. 99–514 substituted a comma for the period at end.

1984—Subsec. (a). Pub. L. 98–369, § 1015(a), in amending subsec. (a) generally, designated existing provisions as par. (1), substituted ''any article of sport fishing equipment by the manufacturer, producer, or importer'' for ''fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of such articles sold on or in connection therewith, or with the sale thereof) by the manufacturer, producer, or importer'', and added pars. (2) and (3).

Subsec. (b)(1)(B). Pub. L. 98–369, § 1017(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(2)(A). Pub. L. 98–369, § 1017(b)(2), struck out ''(other than a fishing reel)'' after ''part or accessory''.

Subsec. (b)(3). Pub. L. 98–369, § 1017(b)(1), added par. (3).

1972—Subsec. (a). Pub. L. 92–558, § 201(a)(1), designated existing provisions as subsec. (a) and inserted catchline.

Subsec. (b). Pub. L. 92–558, § 201(a)(2), added subsec. (b).

1965—Pub. L. 89–44 removed 10 percent tax on equipment for billiards, pool, bowling, trap shooting, cricket, croquet, badminton, curling, deck tennis, golf, lacrosse, polo, skiing, squash, table tennis, and tennis, and retained tax only for fishing equipment.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title V, § 503(b), Oct. 3, 2008, 122 Stat. 3877, provided that: ''The amendments made by this section [amending this section] shall apply to shafts first sold after the date of enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, § 11117(c), Aug. 10, 2005, 119 Stat. 1951, provided that: ''The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–493, § 1(d), Dec. 23, 2004, 118 Stat. 3985, provided that: ''The amendments made by subsections (b) and (c) [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after March 31, 2005.''

Pub. L. 108–357, title III, § 332(d), Oct. 22, 2004, 118 Stat. 1478, provided that: ''The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after the date which is 30 days after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title III, § 333(b), Oct. 22, 2004, 118 Stat. 1478, provided that: ''The amendments made this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1433(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 1997.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1015(a) of Pub. L. 98–369 applicable with respect to articles sold by the manufacturer,

producer, or importer after Sept. 30, 1984, see section 1015(e) of Pub. L. 98–369, set out as an Effective Date note under section 4162 of this title.

Section 1017(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 201(b) of Pub. L. 92–558, as amended by Pub. L. 93–313, June 8, 1974, 88 Stat. 238, provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer thereof on or after January 1, 1975.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(a) of Pub. L. 89–44 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by titles I and II of this Act [enacting sections 4094 and 6424 of this title, amending this section and sections 4055, 4057, 4061, 4091, 4216, 4218, 4221, 4222, 4227, 6011, 6206, 6412, 6416, 6675, 7210, 7603, 7604, and 7605 of this title, repealing sections 4001 to 4003, 4011 to 4013, 4021, 4022, 4031, 4051 to 4053, 4111, 4121, 4131, 4141 to 4143, 4151, 4171 to 4173, 4191, 4192, 4201, 4211, and 4224 of this title, and amending provisions set out as a note under section 120 of Title 23, Highways] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965].

''(2) SPECIAL RULES.—The amendments made by sections 201(b)(2) [amending section 4061 of this title] (relating to automobile parts and accessories) and 202(a) [amending section 4091 of this title] (relating to lubricating oil) shall apply with respect to articles sold on or after January 1, 1966. The amendments made by section 202(b) [enacting section 6424 of this title] and (c) [enacting section 4094 and amending sections 6206, 6675, 7210, 7603, 7604, and 7605 of this title] (relating to payments with respect to lubricating oil) shall take effect January 1, 1966. The amendments made by section 203 [repealing sections 4111, 4121, and 4131 of this title], insofar as they relate to the tax imposed by section 4131 (relating to electric light bulbs) of the Code, and the amendments made by section 208 [amending sections 4216, 4218, 4221, 4222, and 4227], insofar as they relate to the tax imposed by section 4061(b) (relating to automotive parts and accessories), section 4091 (relating to lubricating oil), or section 4131 (relating to electric light bulbs) of the Code, shall apply with respect to articles sold on or after January 1, 1966. The amendments made by section 207 [amending sections 4216 and 6416 of this title] (relating to partial payments; sales of installment accounts) and 209(a) [amending section 6412 of this title] (relating to floor stocks refunds on passenger automobiles, etc.) shall take effect on the day after the date of the enactment of this Act [June 21, 1965]. The amendments made by section 210 [amending provisions set out as a note under section 120 of Title 23, Highways] (relating to Highway Trust Fund) shall take effect January 1, 1966.

''(3) INSTALLMENT SALES, ETC.—For purposes of paragraphs (1) and (2), an article shall not be considered sold before the day after the date of the enactment of this Act [June 21, 1965] or before January 1, 1966, as the case may be, unless possession or right to possession passes to the purchaser before such day or such date. In the case of—

''(A) a lease,

''(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

''(C) a conditional sale, or

''(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into before such day or such date, payments made on or after such day or such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold on or after such day or such date, if the lessor or vendor establishes that the amount of payments payable on or after such day or such date with respect to such article has been reduced by an amount equal to the tax reduction applicable with respect to the lease or sale of such article.

''(4) ELECTRIC LIGHT BULBS USED IN MANUFACTURE OF ARTICLES UPON WHICH TAX IS REPEALED.—For purposes of applying section 4218(a) of the Code with respect to the use of an electric light bulb or tube by the manufacturer, producer, or importer thereof, and for purposes of applying section 4221(d)(6)(A) of the Code with respect to the sale of an electric light bulb or tube for use in further manufacture, an article which was taxable under chapter 32 of the Code on the date of the enactment of this Act [June 21, 1965] shall, during the period beginning with the day after the date of the enactment of this Act through December 31, 1965, be treated as an article taxable under such chapter.''

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108–493, § 1(a), Dec. 23, 2004, 118 Stat. 3984, provided that: ''Subsection (b) of section 332 of the American Jobs Creation Act of 2004 [Pub. L. 108–357], and the amendments made by such subsection [amending this section], are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsection and amendments had never been enacted.''

§ 4162. Definitions; treatment of certain resales

(a) Sport fishing equipment defined

For purposes of this part, the term ''sport fishing equipment'' means—

(1) fishing rods and poles (and component parts therefor),

(2) fishing reels,

(3) fly fishing lines, and other fishing lines not over 130 pounds test,

(4) fishing spears, spear guns, and spear tips,

(5) items of terminal tackle, including—

(A) leaders,

(B) artificial lures,

(C) artificial baits,

(D) artificial flies,

(E) fishing hooks,

(F) bobbers,

(G) sinkers,

(H) snaps,

(I) drayles, and

(J) swivels,

but not including natural bait or any item of terminal tackle designed for use and ordinarily used on fishing lines not described in paragraph (3), and

(6) the following items of fishing supplies and accessories—

(A) fish stringers,

(B) creels,

(C) tackle boxes,

(D) bags, baskets, and other containers designed to hold fish,

(E) portable bait containers,

(F) fishing vests,

(G) landing nets,

(H) gaff hooks,

(I) fishing hook disgorgers, and

(J) dressing for fishing lines and artificial flies,

(7) fishing tip-ups and tilts,

(8) fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers, and

(9) electric outboard boat motors.

(b) Treatment of certain resales

(1) In general

If—

(A) the manufacturer, producer, or importer sells any article taxable under section 4161(a) to any person,

(B) the constructive sale price rules of section 4216(b) do not apply to such sale, and

(C) such person (or any other person) sells such article to a related person with respect to the manufacturer, producer, or importer,

then such related person shall be liable for tax under section 4161 in the same manner as if such related person were the manufacturer of the article.

(2) Credit for tax previously paid

If—

(A) tax is imposed on the sale of any article by reason of paragraph (1), and

(B) the related person establishes the amount of the tax which was paid on the sale described in paragraph (1)(A),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

(3) Related person

For purposes of this subsection, the term ''related person'' has the meaning given such term by section 465(b)(3)(C).

(4) Regulations

Except to the extent provided in regulations, rules similar to the rules of this subsection shall also apply in cases (not described in paragraph (1)) in which intermediaries or other devices are used for purposes of reducing the amount of the tax imposed by section 4161(a).

(Added Pub. L. 98–369, div. A, title X, § 1015(b), July 18, 1984, 98 Stat. 1017; amended Pub. L. 99–514, title II, § 201(d)(7)(C), (12), title XVIII, § 1878(b), Oct. 22, 1986, 100 Stat. 2141, 2142, 2903; Pub. L. 108–357, title III, § 334(a), (b), Oct. 22, 2004, 118 Stat. 1478.)

AMENDMENTS

2004—Subsec. (a)(8) to (10). Pub. L. 108–357, § 334(a), inserted ''and'' at end of par. (8), substituted a period for '', and'' at end of par. (9), and struck out par. (10) which read as follows: ''sonar devices suitable for finding fish.''

Subsecs. (b), (c). Pub. L. 108–357, § 334(b), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''For purposes of this part, the term 'sonar device suitable for finding fish' shall not include any sonar device which is—

''(1) a graph recorder,

''(2) a digital type,

''(3) a meter readout, or

''(4) a combination graph recorder or combination meter readout.''

1986—Subsec. (a)(6)(I). Pub. L. 99–514, § 1878(b), amended subpar. (I) generally, substituting ''hook'' for ''hood''.

Subsec. (c)(3). Pub. L. 99–514, § 201(d)(7)(C), (12), made identical amendments, substituting ''section 465(b)(3)(C)'' for ''section 168(e)(4)(D)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 334(c), Oct. 22, 2004, 118 Stat. 1478, provided that: ''The amendments made this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(C), (12) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(7)(C), (12) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1878(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 1015(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 4161 and 6302 of this title] shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984.

''(2) TREATMENT OF CERTAIN RESALES.—Subsection (c) of section 4162 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to treatment of certain resales), as added by this section, shall apply to sales by related persons (as defined in such subsection) after the date of the enactment of this Act [July 18, 1984].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[PART II—REPEALED]

[§§ 4171 to 4173. Repealed. Pub. L. 89–44, title II, § 205(b), June 21, 1965, 79 Stat. 140]

Section 4171, act Aug. 16, 1954, ch. 736, 68A Stat. 489, imposed a 10 percent tax on cameras, camera lenses, and unexposed photographic film on rolls and a 5 percent tax on electric motion or still picture projectors of the household type.

Section 4172, act Aug. 16, 1954, ch. 736, 68A Stat. 490, defined certain vendees of unexposed films as manufacturers for purposes of payment of the tax imposed by section 4171.

Section 4173, act Aug. 16, 1954, ch. 736, 68A Stat. 490, granted exemptions for specified types of cameras, lenses of specified focal lengths, and certain types of film.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 84–44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

PART III—FIREARMS

Sec.
4181. Imposition of tax.
4182. Exemptions.

§4181. Imposition of tax

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent—

Pistols.
Revolvers.

Articles taxable at 11 percent—

Firearms (other than pistols and revolvers).
Shells, and cartridges.

(Aug. 16, 1954, ch. 736, 68A Stat. 490.)

§4182. Exemptions

(a) Machine guns and short barrelled firearms

The tax imposed by section 4181 shall not apply to any firearm on which the tax provided by section 5811 has been paid.

(b) Sales to defense department

No firearms, pistols, revolvers, shells, and cartridges purchased with funds appropriated for the military department shall be subject to any tax imposed on the sale or transfer of such articles.

(c) Small manufacturers, etc.

(1) In general

The tax imposed by section 4181 shall not apply to any pistol, revolver, or firearm described in such section if manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of such articles during the calendar year.

(2) Controlled groups

All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as one person for purposes of paragraph (1).

(d) Records

Notwithstanding the provisions of sections 922(b)(5) and 923(g) of title 18, United States Code, no person holding a Federal license under chapter 44 of title 18, United States Code, shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for the aforesaid types of ammunition.

(Aug. 16, 1954, ch. 736, 68A Stat. 490; Pub. L. 91–128, §5, Nov. 26, 1969, 83 Stat. 269; Pub. L. 109–59, title XI, §11131(a), Aug. 10, 2005, 119 Stat. 1959.)

AMENDMENTS

2005—Subsecs. (c), (d). Pub. L. 109–59 added subsec. (c) and redesignated former subsec. (c) as (d).

1969—Subsec. (c). Pub. L. 91–128 added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11131(b), Aug. 10, 2005, 119 Stat. 1959, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

''(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.''

SHORT TITLE OF 1969 AMENDMENT

Section 1(a) of Pub. L. 91–128 provided that: ''This Act [amending this section and sections 4911, 4912, 4914, 4915, 4919, 4920, 6011, and 6680 of this title and enacting provisions set out as notes under section 6680 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1969'.''

Subchapter E—Medical Devices

Sec.
4191. Medical devices.

PRIOR PROVISIONS

A prior subchapter E consisted of sections 4191, 4192, 4201, and 4211 of this title, prior to repeal by Pub. L. 89–44, title II, §206, title VII, §701(a), June 21, 1965, 79 Stat. 140, 155, applicable with respect to articles sold on or after June 22, 1965.

Section 4191, act Aug. 16, 1954, ch. 736, 68A Stat. 491, imposed a tax equivalent to 10 percent of the selling price upon over fifty specified office and business machines including adding machines, bookkeeping machines, cash registers, punch card and computing machines, typewriters, and tabulating machines.

Section 4192, acts Aug. 16, 1954, ch. 736, 68A Stat. 491; Sept. 2, 1958, Pub. L. 85–859, title I, §114(a), 72 Stat. 1278, granted an exemption for cash registers used in registering over-the-counter retail sales and for stencil cutting machines.

Section 4201, acts Aug. 16, 1954, ch. 736, 68A Stat. 492; Sept. 14, 1960, Pub. L. 86–779, §9(a), 74 Stat. 1003, imposed a tax equivalent to 10 percent of the selling price on mechanical pencils, fountain pens, and ballpoint pens and 10 cents on mechanical cigarette lighters.

Section 4211, act Aug. 16, 1954, ch. 736, 68A Stat. 492, imposed a tax of 2 cents per 1,000 for matches, except fancy wooden matches, and a tax of 5½ cents per 1,000 on fancy wooden matches.

§4191. Medical devices

(a) In general

There is hereby imposed on the sale of any taxable medical device by the manufacturer, producer, or importer a tax equal to 2.3 percent of the price for which so sold.

(b) Taxable medical device

For purposes of this section—

(1) In general

The term ''taxable medical device'' means any device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) intended for humans.

(2) Exemptions

Such term shall not include—

(A) eyeglasses,
(B) contact lenses,
(C) hearing aids, and
(D) any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.

(Added Pub. L. 111–152, title I, §1405(a)(1), Mar. 30, 2010, 124 Stat. 1064.)

REFERENCES IN TEXT

Section 201(h) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is classified to section 321(h) of Title 21, Food and Drugs.

PRIOR PROVISIONS

For prior sections 4191, 4192, 4201, and 4211, see Prior Provisions note set out preceding this section.

EFFECTIVE DATE

Pub. L. 111–152, title I, § 1405(c), Mar. 30, 2010, 124 Stat. 1065, provided that: ''The amendments made by this section [enacting this section and amending sections 4221 and 6416 of this title] shall apply to sales after December 31, 2012.''

Subchapter F—Special Provisions Applicable to Manufacturers Tax

Sec.
4216. Definition of price.
4217. Leases.
4218. Use by manufacturer or importer considered sale.
4219. Application of tax in case of sales by other than manufacturer or importer.
[4220 to 4225. Repealed.]

AMENDMENTS

1958—Pub. L. 85–859, title I, §§ 117(d), 119(b)(3), Sept. 2, 1958, 72 Stat. 1281, 1286, substituted ''Leases'' for ''Lease considered sale'' in item 4217, and struck out items 4220 to 4225.

1956—Act June 29, 1956, ch. 462, title II, § 207(b), 70 Stat. 392, added item 4226 and redesignated former item 4226 as 4227.

§ 4216. Definition of price

(a) Containers, packing and transportation charges.

In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary in accordance with the regulations.

(b) Constructive sale price

(1) In general

If an article is—

(A) sold at retail,

(B) sold on consignment, or

(C) sold (otherwise than through an arm's length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article sold at retail, the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. This paragraph shall not apply if paragraph (2) applies.

(2) Special rule

If an article is sold at retail or to a retailer, and if—

(A) the manufacturer, producer, or importer of such article regularly sells such articles at retail or to retailers, as the case may be,

(B) the manufacturer, producer, or importer of such article regularly sells such articles to one or more wholesale distributors in arm's length transactions and he establishes that his prices in such cases are determined without regard to any tax benefit under this paragraph, and

(C) the transaction is an arm's length transaction,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors (other than special dealers).

(3) Constructive sale price in case of certain articles

Except as provided in paragraph (4), for purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells such article to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer, and

(B) such distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors,

the constructive sale price of such article shall be 90 percent of the lowest price for which such distributor regularly sells such article in arm's-length transactions to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (e) and under section 6416(b)(1). If both this paragraph and paragraph (4) apply with respect to an article, the constructive sale price for such article shall be the lower of the constructive sale price determined under this paragraph or paragraph (4).

(4) Constructive sale price in case of certain other articles

For purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells (except for tax-free sales) only to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer,

(B) the distributor regularly sells (except for tax-free sales) such article only to retailers, and

(C) the normal method of sales for such articles within the industry by manufacturers, producers, or importers is to sell such articles in arm's-length transactions to distributors,

the constructive sale price for such article shall be the price at which such article is sold to retailers by the distributor, reduced by a percentage of such price equal to the percentage which (i) the difference between the price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, and the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of (ii) the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustment under subsections (a) and (e) and under section 6416(b)(1).

(5) Definition of lowest price

For purposes of paragraphs (1) and (3), the lowest price shall be determined—

(A) without requiring that any given percentage of sales be made at that price, and

(B) without including any fixed amount to which the purchaser has a right as a result of contractual arrangements existing at the time of the sale.

(c) Partial payments

In the case of—

(1) a lease (other than a lease to which section 4217(b) applies),

(2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(3) a conditional sale, or

(4) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments,

there shall be paid upon each payment with respect to the article a percentage of such payment equal to the rate of tax in effect on the date such payment is due.

(d) Sales of installment accounts

If installment accounts, with respect to payments on which tax is being computed as provided in subsection (c), are sold or otherwise disposed of, then subsection (c) shall not apply with respect to any subsequent payments on such accounts (other than subsequent payments on returned accounts with respect to which credit or refund is allowable by reason of section 6416(b)(5)), but instead—

(1) there shall be paid an amount equal to the difference between (A) the tax previously paid on the payments on such installment accounts, and (B) the total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)); except that

(2) if any such sale is pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount computed under paragraph (1) shall not exceed the sum of the amounts computed by multiplying (A) the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment by (B) the rate of tax under this chapter in effect on the date such unpaid installment payment is or was due.

The sum of the amounts payable under this subsection and subsection (c) in respect of the sale of any article shall not exceed the total tax.

(e) Exclusion of local advertising charge from sale price

(1) Exclusion

In determining, for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) is a separate charge made when the article is sold, and

(C) is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

(2) Aggregate amount which may be excluded

In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) The sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter, taking into account the items specified in subparagraphs (A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

(3) No adjustment for other advertising charges

Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclu-

sion from, or as a readjustment of, the price of any article.

(4) Local advertising defined

For purposes of this section and section 6416(b)(1), the term ''local advertising'' means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(Aug. 16, 1954, ch. 736, 68A Stat. 493; Aug. 9, 1955, ch. 677, §§1, 2, 69 Stat. 613; Pub. L. 85–859, title I, §§115, 116, 117(b), Sept. 2, 1958, 72 Stat. 1279–1281; Pub. L. 86–781, §1, Sept. 14, 1960, 74 Stat. 1017; Pub. L. 87–770, §2(a), Oct. 9, 1962, 76 Stat. 768; Pub. L. 87–858, §1(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 89–44, title II, §§207(a), (b), 208(a), (b), title VIII, §801(b), June 21, 1965, 79 Stat. 140, 141, 158; Pub. L. 91–172, title IX, §932(a), Dec. 30, 1969, 83 Stat. 725; Pub. L. 91–614, title III, §301(a), (b), Dec. 31, 1970, 84 Stat. 1844; Pub. L. 92–178, title IV, §401(g)(4), Dec. 10, 1971, 85 Stat. 533; Pub. L. 94–455, title XIX, §§1904(a)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1811, 1834; Pub. L. 95–458, §1(a), (b), Oct. 14, 1978, 92 Stat. 1255; Pub. L. 98–369, div. A, title VII, §735(c)(6), July 18, 1984, 98 Stat. 982.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–369, §735(c)(6)(A), in provisions following subpar. (C) struck out ''(other than an article the sale of which is taxable under section 4061(a))'' in second sentence, before ''the computation under the preceding sentence'', and struck out provision that in the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost).

Subsec. (b)(2)(B) to (D). Pub. L. 98–369, §735(c)(6)(B), inserted ''and'' at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which related to articles upon which tax is imposed under section 4061(a) of this title.

Subsec. (b)(3). Pub. L. 98–369, §735(c)(6)(D), substituted ''paragraph (4)'' for ''paragraphs (4) and (5)''.

Subsec. (b)(5), (6). Pub. L. 98–369, §735(c)(6)(C), (E), redesignated par. (6) as par. (5), substituted ''(1) and (3)'' for ''(1), (3) and (5)'', and struck out former par. (5) which related to constructive sale price in the case of automobiles, trucks, etc.

Subsec. (f). Pub. L. 98–369, §735(c)(6)(F), struck out subsec. (f) which related to certain trucks incorporating used components.

1978—Subsec. (b)(1). Pub. L. 95–458 substituted ''article sold at retail (other than an article the sale of which is taxable under section 4061(a)), the computation'' for ''article sold at retail, the computation'' and inserted provision requiring the computation of tax on articles taxable under section 4061(a) which are sold at retail to be a percentage, but not greater than 100% of the actual selling price based on the highest price for which the articles are sold by manufacturers and producers in the ordinary course of trade, determined without regard to individual manufacturer's or producer's cost.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§1904(a)(2)(B), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in two places in par. (1), and substituted ''subsections (a) and (e)'' for ''subsections (a) and (f)'' in pars. (3), (4), and (5), after ''or readjustments under''.

Subsecs. (d) to (g). Pub. L. 94–455, §1904(a)(2)(A), redesignated subsecs. (e) to (g) as (d) to (f), respectively.

1971—Subsec. (b)(2)(C), (5). Pub. L. 92–178, §401(g)(4)(A), substituted ''(relating to trucks, buses, tractor, etc.)'' for ''(relating to automobiles, trucks, etc.)''.

Subsec. (g). Pub. L. 92–178, §401(g)(4)(B), inserted reference to ''tractors,'' after ''buses,''.

1970—Subsec. (b)(3). Pub. L. 91–614, §301(b), substituted ''Constructive sale price'' for ''Fair market price'' in heading, ''constructive sale price'' for ''fair market price'' three places in text, substituted ''paragraphs (4) and (5)'' for ''paragraph (4)'' and ''paragraph (1)'' for ''paragraph (1)(C)''.

Subsec. (b)(4). Pub. L. 91–614, §301(b)(2), substituted ''Constructive sale price'' for ''Fair market price'' in heading, ''constructive sale price'' for ''fair market price'' in text, and ''paragraph (1)'' for ''paragraph (1)(C)''.

Subsec. (b)(5), (6). Pub. L. 91–614, §301(a), added pars. (5) and (6).

1969—Subsec. (b)(3), (4). Pub. L. 91–172 added pars. (3) and (4).

1965—Subsec. (b)(2). Pub. L. 89–44, §208(a), struck out reference to special dealers and to articles upon which tax is imposed under section 4191 or 4211 of this title.

Subsec. (b)(3). Pub. L. 89–44, §208(b), struck out par. (3) which related to special dealers.

Subsec. (c). Pub. L. 89–44, §207(a), struck out ''that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment'' in text following par. (4) and inserted in lieu thereof ''a percentage of such payment equal to the rate of tax in effect on the date such payment is due''.

Subsec. (e)(1). Pub. L. 89–44, §207(b)(1), substituted ''total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)) for ''total tax''.

Subsec. (e)(2). Pub. L. 89–44, §207(b)(2), substituted, as factor (A) in the formula for computing the maximum amount, the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment for the amount for which such accounts are sold, and, as factor (B) in the formula, the rate of tax on the date that such unpaid installment payment is or was due for the rate of tax which applied on the day on which the transaction giving rise to such installment accounts took place.

Subsec. (g). Pub. L. 89–44, §801(b), added subsec. (g).

1962—Subsec. (b)(2)(C). Pub. L. 87–858 inserted ''in the case of articles upon which tax is imposed under section 4061(a) (relating to automobiles, trucks, etc.), 4191 (relating to business machines), or 4211 (relating to matches),'' before ''the normal method''.

Subsec. (f)(4)(C). Pub. L. 87–770 substituted '', appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster'' for ''or appears in a newspaper''.

1960—Subsec. (f). Pub. L. 86–781 added subsec. (f).

1958—Subsec. (b). Pub. L. 85–859, §115, inserted provisions in par. (1) requiring, in the case of an article sold at retail, the computation to be on either the price for which the article is sold, or the highest price for which the articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, whichever is lower, and added pars. (2) and (3).

Subsec. (c). Pub. L. 85–859, §117(b), substituted ''section 4217(b)'' for ''subsection (d)''.

Subsec. (d). Pub. L. 85–859, §117(b), repealed subsec. (d) which related to tax on leases of certain trailers.

Subsec. (e). Pub. L. 85–859, §116, added subsec. (e).

1955—Subsec. (c)(1). Act Aug. 9, 1955, § 1, inserted ''(other than a lease to which subsection (d) applies)''.

Subsec. (d). Act Aug. 9, 1955, § 2, added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(c) of Pub. L. 95–458 provided that: ''The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act [Oct. 14, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(a)(2) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92–178, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 301(c) of Pub. L. 91–614, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply with respect to articles sold after December 31, 1970; except that section 4216(b)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall also apply to (1) the application of paragraph (1) of such section 4216(b) to articles sold after June 30, 1962, and before January 1, 1971, and (2) the application of paragraph (3) of such section 4216(b) to articles sold after December 31, 1969, and before January 1, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 932(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold after December 31, 1969.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 207(a), (b) of Pub. L. 89–44 effective June 22, 1965, and amendment by section 208 of Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, or 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

Section 801(e) of Pub. L. 89–44 provided that: ''The amendments made by subsections (a), (b), and (d) [amending this section and sections 4063, 4221, and 6416 of this title] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965]. The amendment made by subsection (c) [amending section 4221 of this title] shall apply with respect to articles sold on or after January 1, 1965.''

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 1(b) of Pub. L. 87–858 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after October 1, 1962.''

Section 2(b) of Pub. L. 87–770 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the date of the enactment of this Act [Oct. 9, 1962].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3 of Pub. L. 86–781 provided that: ''The amendments made by this Act [amending this section and section 6416 of this title] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than twenty days after the date of the enactment of this Act [Sept. 14, 1960].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 9, 1955, as amended by act Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided that: ''The amendments made by subsection (a) [probably should refer to amendments made by sections 1 to 3 of act Aug. 9, 1955, amending this section and section 4217 of this title] shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this act [Aug. 9, 1955]. In the application of section 4216(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this Act) to any article which has been leased before the effective date specified in the preceding sentence, under regulations prescribed by the Secretary of the Treasury or his delegate—

''(1) the fair market value of such article shall be the fair market value determined as of such effective date;

''(2) only payments under a lease received on or after such effective date shall be considered in determining when the total tax (as defined in such section 4216(d)) has been paid;

''(3) any lease existing on such effective date, or if there is none, the first lease entered into after such effective date, shall be considered an initial lease (except that fair market value shall be determined as provided in paragraph (1) of this sentence); and

''(4) any lease existing on such effective date shall be considered as having been entered into on such date.''

§ 4217. Leases

(a) Lease considered as sale

For purposes of this chapter, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a sale of such article.

(b) Limitation on tax

In the case of any lease described in subsection (a) of an article taxable under this chapter, if the tax under this chapter is based on the price for which such articles are sold, there shall be paid on each lease payment with respect to such article a percentage of such payment equal to the rate of tax in effect on the date of such payment, until the total of the tax payments under such lease and any prior lease to which this subsection applies equals the total tax.

(c) Definition of total tax

For purposes of this section, the term ''total tax'' means—

(1) except as provided in paragraph (2), the tax computed on the constructive sale price

for such article which would be determined under section 4216(b) if such article were sold at retail on the date of the first lease to which subsection (b) applies; or

(2) if the first lease to which subsection (b) applies is not the first lease of the article, the tax computed on the fair market value of such article on the date of the first lease to which subsection (b) applies.

Any such computation of tax shall be made at the applicable rate specified in this chapter in effect on the date of the first lease to which subsection (b) applies.

(d) Special rules

(1) Lessor must also be engaged in selling

Subsection (b) shall not apply to any lease of an article unless at the time of making the lease, or any prior lease of such article to which subsection (b) applies, the person making the lease or prior lease was also engaged in the business of selling in arm's length transactions the same type and model of article.

(2) Sale before total tax becomes payable

If the taxpayer sells an article before the total tax has become payable, then the tax payable on such sale shall be whichever of the following is the smaller:

(A) the difference between (i) the tax imposed on lease payments under leases of such article to which subsection (b) applies, and (ii) the total tax, or

(B) a tax computed, at the rate in effect on the date of the sale, on the price for which the article is sold.

For purposes of subparagraph (B), if the sale is at arm's length, section 4216(b) shall not apply.

(3) Sale after total tax has become payable

If the taxpayer sells an article after the total tax has become payable, no tax shall be imposed under this chapter on such sale.

(e) Leases of automobiles subject to gas guzzler tax

(1) In general

In the case of the lease of an automobile the sale of which by the manufacturer would be taxable under section 4064, the foregoing provisions of this section shall not apply, but, for purposes of this chapter—

(A) the first lease of such automobile by the manufacturer shall be considered to be a sale, and

(B) any lease of such automobile by the manufacturer after the first lease of such automobile shall not be considered to be a sale.

(2) Payment of tax

In the case of a lease described in paragraph (1)(A)—

(A) there shall be paid by the manufacturer on each lease payment that portion of the total gas guzzler tax which bears the same ratio to such total gas guzzler tax as such payment bears to the total amount to be paid under such lease,

(B) if such lease is canceled, or the automobile is sold or otherwise disposed of, before the total gas guzzler tax is payable, there shall be paid by the manufacturer on such cancellation, sale, or disposition the difference between the tax imposed under subparagraph (A) on the lease payments and the total gas guzzler tax, and

(C) if the automobile is sold or otherwise disposed of after the total gas guzzler tax is payable, no tax shall be imposed under section 4064 on such sale or disposition.

(3) Definitions

For purposes of this subsection—

(A) Manufacturer

The term ''manufacturer'' includes a producer or importer.

(B) Total gas guzzler tax

The term ''total gas guzzler tax'' means the tax imposed by section 4064, computed at the rate in effect on the date of the first lease.

(Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 9, 1955, ch. 677, § 3, 69 Stat. 614; Pub. L. 85–859, title I, § 117(a), Sept. 2, 1958, 72 Stat. 1280; Pub. L. 94–455, title XIX, § 1904 (a)(3), Oct. 4, 1976, 90 Stat. 1811; Pub. L. 95–618, title II, § 201(d), Nov. 9, 1978, 92 Stat. 3184.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–618 added subsec. (e).

1976—Subsec. (d)(4). Pub. L. 94–455 struck out par. (4) relating to special transitional rules applicable to leases.

1958—Pub. L. 85–859 substituted ''Leases'' for ''Lease considered as sale'' in section catchline.

Subsec. (a). Pub. L. 85–859 redesignated existing provisions as subsec. (a) and struck out provisions which made subsection inapplicable to the lease of an article upon which the tax has been paid in the manner provided in section 4216(d)(1) or the total tax has been paid in the manner provided in section 4216(d)(2) of this title.

Subsecs. (b) to (d). Pub. L. 85–859 added subsecs. (b) to (d).

1955—Act Aug. 9, 1955, exempted lease of an article upon which tax has been paid under section 4216(d)(1) or section 4216(d)(2) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

EFFECTIVE DATE OF 1955 AMENDMENT

Section effective on first day of first month which begins more than ten days after Aug. 9, 1955, see section 4 of act Aug. 9, 1955, set out as a note under section 4216 of this title.

APPLICATION OF LEASES OF UTILITY TRAILERS

Section 117(c) of Pub. L. 85–859, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''The amendments made by subsections (a) and (b) [amending this section and section 4216 of this title] shall not apply to any lease of an article if section 4216(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, prior subsec. (d) of section 4216 of this title] applied to any lease of such article before the effective date specified in section 1(c) of this Act.''

§4218. Use by manufacturer or importer considered sale

(a) General rule

If any person manufactures, produces, or imports an article (other than a tire taxable under section 4071) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him. This subsection shall not apply in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him. For the purpose of applying the first sentence of this subsection to coal taxable under section 4121, the words ''(otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him)'' shall be disregarded.

(b) Tires

If any person manufactures, produces, or imports a tire taxable under section 4071, and sells it on or in connection with the sale of any article, or uses it, then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

(c) Computation of tax

Except as provided in section 4223(b), in any case in which a person is made liable for tax by the preceding provisions of this section, the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers, thereof, as determined by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 11, 1955, ch. 805, §1(a), (b), 69 Stat. 689; Pub. L. 85–859, title I, §118, Sept. 2, 1958, 72 Stat. 1281; Pub. L. 86–418, §2(a), Apr. 8, 1960, 74 Stat. 38; Pub. L. 87–61, title II, §205(b), June 29, 1961, 75 Stat. 126; Pub. L. 89–44, title II, §208(c), June 21, 1965, 79 Stat. 141; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–227, §2(b)(1), Feb. 10, 1978, 92 Stat. 11; Pub. L. 98–369, div. A, title VII, §735(c)(7), July 18, 1984, 98 Stat. 983.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, §735(c)(7)(D), substituted ''(other than a tire taxable under section 4071)'' for ''(other than an article specified in subsection (b), (c), or (d))''.

Subsec. (b). Pub. L. 98–369, §735(c)(7)(A), (B), struck out ''and tubes'' after ''Tires'' in heading, and in text substituted ''If'' for ''Except as provided in subsection (d), if'', and struck out ''or inner tube'' before ''taxable under section 4071''.

Subsec. (c). Pub. L. 98–369, §735(c)(7)(C), redesignated subsec. (e) as (c). Former subsec. (c), which related to automotive parts and accessories, was struck out.

Subsec. (d). Pub. L. 98–369, §735(c)(7)(C), struck out subsec. (d) which related to bicycle tires and tubes.

Subsec. (e). Pub. L. 98–369, §735(c)(7)(C), redesignated subsec. (e) as (c).

1978—Subsec. (a). Pub. L. 95–227 inserted provisions relating to applying first sentence of this subsection to coal taxable under section 4121 of this title.

1976—Subsec. (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1965—Subsec. (b). Pub. L. 89–44, §208(c)(1), (2), struck out references to automobile receiving sets from heading, and ''or an automobile radio or television receiving set taxable under section 4141,'' before ''and sells it''.

Subsec. (c). Pub. L. 89–44, §208(c)(3), (4), struck out reference to radio components and camera lenses from heading, and ''a radio or television component taxable under section 4141, or a camera lens taxable under section 4171,'' before ''and uses it''.

1961—Subsec. (a). Pub. L. 87–61 inserted sentence making subsection inapplicable in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

1960—Subsec. (a). Pub. L. 86–418, §2(a)(1), substituted ''subsection (b), (c), or (d)'' for ''subsection (b) or (c)''.

Subsec. (b). Pub. L. 86–418, §2(a)(2), substituted ''Except as provided in subsection (d), if any'' for ''If any.''

Subsecs. (d), (e). Pub. L. 86–418, §2(a)(3), added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Pub. L. 85–859 amended section generally, striking out provisions which related to refrigerator components and to sales free of tax by virtue of section 4220 or 4224 of this title, and substituting provisions making manufacturers, producers and importers of parts or accessories taxable under section 4061(b), radio or television components taxable under section 4141, or camera lenses taxable under section 4171 liable for the tax if they use the parts or accessories otherwise than as material in the manufacture or production of, or as component parts of, any other article to be manufactured or produced by them, for provisions which made section inapplicable with respect to such parts if they were used by them as material in the manufacture or production of, or as a component part of, any article.

1955—Subsec. (a)(1). Act Aug. 11, 1955, §1(a), inserted as tax exempt articles under this chapter, automobile parts or accessories, refrigerator, radio, or television components, or camera lenses taxable under section 4061(b), 4111, or 4171, respectively, of this title.

Subsec. (b). Act Aug. 11, 1955, §1(b), excepted from application of section automobile parts or accessories, refrigerator, radio, or television components, and camera lenses, taxable under sections 4061(b), 4111, 4141, and 4171, respectively, of this title, when for use by the purchaser in the manufacture or production of, or as a component part of, any article.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95–227, set out as an Effective Date note under section 4121 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, ap-

plicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 applicable only in the case of gasoline used on or after October 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86–418, set out as a note under section 4221 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 11, 1955, effective on first day of first month which begins more than ten days after Aug. 11, 1955, see section 3 of act Aug. 11, 1955, set out as a note under section 6416 of this title.

§ 4219. Application of tax in case of sales by other than manufacturer or importer

In case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any transaction not taxable under this chapter, the right to sell such article, the sale of such article by such person shall be taxable under this chapter as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 494.)

[§§ 4220 to 4225. Repealed. Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1282]

Section 4220, acts Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 11, 1955, ch. 805, § 1(c), 69 Stat. 689, related to exemption for sales or resales to manufacturers. See section 4221 et seq. of this title.

For sections 4221 to 4225, see Prior Provisions notes set out under sections 4221 to 4225 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

Subchapter G—Exemptions, Registration, Etc.

Sec.
4221. Certain tax-free sales.
4222. Registration.
4223. Special rules relating to further manufacture.
[4224. Repealed.]
4225. Exemption of articles manufactured or produced by Indians.
[4226. Repealed.]
4227. Cross reference.

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, § 1899A(74), Oct. 22, 1986, 100 Stat. 2963, substituted ''reference'' for ''references'' in item 4227.

1983—Pub. L. 97–473, title II, § 202(b)(9), Jan. 14, 1983, 96 Stat. 2610, purported to substitute ''Cross references'' for ''Cross reference'' in item 4227. No change in text was required because item 4227 as originally enacted by section 119(a) of Pub. L. 85–859 already read ''Cross references''.

1976—Pub. L. 94–455, title XIX, § 1904(b)(3), Oct. 4, 1976, 90 Stat. 1815, struck out item 4226 ''Floor stocks taxes''.

1965—Pub. L. 89–44, title I, § 101(b)(5), June 21, 1965, 79 Stat. 136, struck out item 4224 ''Exemption for articles taxable as jewelry.''

1958—Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1282, added subchapter heading and section analysis.

§ 4221. Certain tax-free sales

(a) General rule

Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121 or 4081) on the sale by the manufacturer (or under subchapter A or C of chapter 31 on the first retail sale) of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government,

(5) to a nonprofit educational organization for its exclusive use, or

(6) to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood,

but only if such exportation or use is to occur before any other use. Paragraphs (4), (5), and (6) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051,[1] or 4071, paragraphs (4) and (5) shall not apply on and after October 1, 2011. In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply. In the case of taxes imposed by subchapter C or D, paragraph (6) shall not apply. In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.

(b) Proof of resale for further manufacture; proof of export

Where an article has been sold free of tax under subsection (a)—

(1) for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture, or

(2) for export, or for resale by the purchaser to a second purchaser for export,

subsection (a) shall cease to apply in respect of such sale of such article unless, within the 6-month period which begins on the date of the sale by the manufacturer (or, if earlier, on the date of shipment by the manufacturer), the manufacturer receives proof that the article has

[1] So in original. The comma probably should not appear.

been exported or resold for use in further manufacture.

(c) Manufacturer relieved from liability in certain cases

In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4001(c), 4001(d), or 4053(6), if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) Definitions

For purposes of this section—

(1) Manufacturer

The term ''manufacturer'' includes a producer or importer of an article, and, in the case of taxes imposed by subchapter A or C of chapter 31, includes the retailer with respect to the first retail sale.

(2) Export

The term ''export'' includes shipment to a possession of the United States; and the term ''exported'' includes shipped to a possession of the United States.

(3) Supplies for vessels or aircraft

The term ''supplies for vessels or aircraft'' means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term ''vessels'' includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term ''vessels of war of the United States or of any foreign nation'' includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(4) State or local government

The term ''State or local government'' means any State, any political subdivision thereof, or the District of Columbia.

(5) Nonprofit educational organization

The term ''nonprofit educational organization'' means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(6) Use in further manufacture

An article shall be treated as sold for use in further manufacture if—

(A) such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him; or

(B) in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

(7) Qualified bus

(A) In general

The term ''qualified bus'' means—

(i) an intercity or local bus, and

(ii) a school bus.

(B) Intercity or local bus

The term ''intercity or local bus'' means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if—

(i) such transportation is scheduled and along regular routes, or

(ii) the seating capacity of such bus is at least 20 adults (not including the driver).

(C) School bus

The term ''school bus'' means any automobile bus substantially all the use of which is in transporting students and employees of schools. For purposes of the preceding sentence, the term ''school'' means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on.

(e) Special rules

(1) Reciprocity required in case of civil aircraft

In the case of articles sold for use as supplies for aircraft, the privileges granted under subsection (a)(3) in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under subsection (a)(3) shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

(2) Tires

(A) Tax-free sales

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire if—

(i) such tire is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and

(ii) such other article is to be sold by such purchaser in a sale which either will satisfy the requirements of paragraph (2), (3), (4), or (5) of subsection (a) for a tax-free sale, or would satisfy such requirements but for the fact that such other article is not subject to tax under this chapter.

(B) Proof

Where a tire has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-moth period which begins on the date of the sale by him (or, if earlier on the date of the shipment by him), the manufacturer of such tire receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

(C) Subsection (a)(1) does not apply

Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire.

(3) Tires used on intercity, local, and school buses

Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus.

(Added Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1282; amended Pub. L. 86–70, § 22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86–344, § 2(b), Sept. 21, 1959, 73 Stat. 617; Pub. L. 86–418, § 1, Apr. 8, 1960, 74 Stat. 38; Pub. L. 86–624, § 18(e), July 12, 1960, 74 Stat. 416; Pub. L. 87–61, title II, § 205(a), June 29, 1961, 75 Stat. 126; Pub. L. 89–44, title II, § 208(d), title VIII, § 801(c), (d)(1), June 21, 1965, 79 Stat. 141, 158; Pub. L. 91–172, title I, § 101(j)(26), Dec. 30, 1969, 83 Stat. 529; Pub. L. 92–178, title IV, § 401(a)(3)(A), Dec. 10, 1971, 85 Stat. 531; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–227, § 2(b)(2), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95–600, title VII, § 701(ff)(2)(A), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 95–618, title II, §§ 201(c)(1), 232(a), 233(c)(1), (2), Nov. 9, 1978, 92 Stat. 3183, 3189, 3191, 3192; Pub. L. 96–222, title I, § 108(c)(5), Apr. 1, 1980, 94 Stat. 227; Pub. L. 97–424, title V, §§ 515(b)(1), 516(b)(2), Jan. 6, 1983, 96 Stat. 2181, 2183; Pub. L. 98–369, div. A, title VII, § 735(c)(8), July 18, 1984, 98 Stat. 983; Pub. L. 99–499, title V, § 521(d)(4), Oct. 17, 1986, 100 Stat. 1779; Pub. L. 99–514, title XVII, § 1703(c)(2)(C), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 100–17, title V, § 502(b)(4), Apr. 2, 1987, 101 Stat. 257; Pub. L. 100–203, title IX, § 9201(b)(1), title X, § 10502(d)(4), Dec. 22, 1987, 101 Stat. 1330–330, 1330–444; Pub. L. 101–239, title VII, § 7841(d)(17), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101–508, title XI, §§ 11211(d)(3), 11221(b), (d)(1), (2), Nov. 5, 1990, 104 Stat. 1388–427, 1388–444; Pub. L. 102–240, title VIII, § 8002(b)(3), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, § 13161(b)(1), Aug. 10, 1993, 107 Stat. 452; Pub. L. 105–178, title IX, § 9002(b)(1), June 9, 1998, 112 Stat. 500; Pub. L. 105–206, title VI, § 6023(17), July 22, 1998, 112 Stat. 825; Pub. L. 108–357, title VIII, § 853(d)(2)(F), Oct. 22, 2004, 118 Stat. 1613; Pub. L. 109–59, title XI, § 11101(b)(1), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 109–280, title XII, § 1207(b)(1)–(3)(A), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 111–152, title I, § 1405(b)(1), Mar. 30, 2010, 124 Stat. 1065.)

CODIFICATION

Section 1207(b)(1)–(3)(A) of Pub. L. 109–280, which directed the amendment of section 4221 without specifying the act to be amended, was executed to this section, which is section 4221 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

PRIOR PROVISIONS

A prior section 4221, act Aug. 16, 1954, ch. 736, 68A Stat. 495, related to exemption for articles taxable as jewelry, prior to repeal by Pub. L. 85–859, § 119(a).

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–152 inserted at end of concluding provisions ''In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.''

2006—Subsec. (a). Pub. L. 109–280, § 1207(b)(2), (3)(A), in concluding provisions, substituted ''Paragraphs (4), (5), and (6)'' for ''Paragraphs (4) and (5)'' and inserted at end ''In the case of taxes imposed by subchapter C or D, paragraph (6) shall not apply.'' See Codification note above.

Subsec. (a)(6). Pub. L. 109–280, § 1207(b)(1), added par. (6). See Codification note above.

2005—Subsec. (a). Pub. L. 109–59 substituted ''2011'' for ''2005'' in concluding provisions.

2004—Subsec. (a). Pub. L. 108–357 substituted ''or 4081'' for '', 4081, or 4091'' in introductory provisions.

1998—Subsec. (a). Pub. L. 105–178 substituted ''2005'' for ''1999'' in concluding provisions.

Subsec. (c). Pub. L. 105–206 substituted ''4053(6)'' for ''4053(a)(6)''.

1993—Subsec. (c). Pub. L. 103–66 substituted ''4001(d)'' for ''4002(b), 4003(c), 4004(a)''.

1991—Subsec. (a). Pub. L. 102–240 substituted ''1999'' for ''1995'' in concluding provisions.

1990—Subsec. (a). Pub. L. 101–508, § 11221(b), substituted ''subchapter A or C of chapter 31'' for ''section 4051'' in introductory provisions and inserted at end ''In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply.''

Pub. L. 101–508, § 11211(d)(3), substituted ''1995'' for ''1993'' in concluding provisions.

Subsec. (c). Pub. L. 101–508, § 11221(d)(1), substituted ''section 4001(c), 4002(b), 4003(c), 4004(a), or 4053(a)(6)'' for ''section 4053(a)(6)''.

Subsec. (d)(1). Pub. L. 101–508, § 11221(d)(2), substituted ''taxes imposed by subchapter A or C of chapter 31'' for ''the tax imposed by section 4051''.

1989—Subsec. (c). Pub. L. 101–239 struck out ''or 4083'' after ''4053(a)(6)''.

1987—Subsec. (a). Pub. L. 100–203, § 10502(d)(4), substituted ''(other than under section 4121, 4081, or 4091) on the sale by the manufacturer'' for ''(other than under section 4121 or section 4081 (at the Highway Trust Fund financing rate)) on the sale by the manufacturer'' in introductory text.

Pub. L. 100–203, § 9201(b)(1), inserted at end ''In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe.''

Pub. L. 100–17 substituted ''1993'' for ''1988''.

1986—Subsec. (a). Pub. L. 99–514, as amended by Pub. L. 99–499, § 521(d)(4)(B), in introductory text, inserted

''or section 4081 (at the Highway Trust Fund financing rate)'' after ''section 4121'' as the probable intent of Congress, notwithstanding directory language that the insertion be made before ''section 4121'', and substituted ''or 4071'' for ''4071, or 4081 (at the Highway Trust Fund financing rate)'' in last sentence.

Pub. L. 99–499, § 521(d)(4)(A), inserted ''(at the Highway Trust Fund financing rate)'' after ''4081'' in last sentence.

1984—Subsec. (a). Pub. L. 98–369, § 735(c)(8)(A), inserted ''(or under section 4051 on the first retail sale)''.

Subsec. (c). Pub. L. 98–369, § 735(c)(8)(B), substituted ''section 4053(a)(6)'' for ''section 4063(a)(6) or (7), 4063(b), 4063(e),''.

Subsec. (d)(1). Pub. L. 98–369, § 735(c)(8)(C), inserted '', and, in the case of the tax imposed by section 4051, includes the retailer with respect to the first retail sale''.

Subsec. (d)(6). Pub. L. 98–369, § 735(c)(8)(D)(i), struck out provision at end that for purposes of subparagraph (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

Subsec. (d)(6)(A). Pub. L. 98–369, § 735(c)(8)(D)(ii), (iv), struck out ''(other than an article referred to in subparagraph (B))'' after ''such article'', and inserted ''or'' at end.

Subsec. (d)(6)(B), (C). Pub. L. 98–369, § 735(c)(8)(D)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to parts or accessories taxable under former section 4061(b) of this title.

Subsec. (e)(2). Pub. L. 98–369, § 735(c)(8)(E), (F), struck out ''and tubes'' from heading, and in text struck out ''or inner tube'' and ''or tube'', as the case may be, after ''tire'' wherever appearing.

Subsec. (e)(3) to (6). Pub. L. 98–369, § 735(c)(8)(G), added par. (3), struck out par. (4) which related to bicycle tires or tubes sold to bicycle manufacturers in general, the definition of a bicycle tire, and proof, struck out par. (5) which related to tires, tubes and tread rubber used on intercity, local, and school buses, and struck out par. (6) which related to bus parts and accessories.

1983—Subsec. (a). Pub. L. 97–424, § 516(b)(2), inserted provision that, in the case of taxes imposed by section 4051, 4071, or 4081, pars. (4) and (5) shall not apply on and after Oct. 1, 1988.

Subsec. (c). Pub. L. 97–424, § 515(b)(1), substituted ''or 4083'' for ''4083, or 4093'' after ''4063(e),''.

1980—Subsec. (e)(6). Pub. L. 96–222 inserted provisions respecting selling by a purchaser or a second purchaser.

1978—Subsec. (a). Pub. L. 95–618, § 201(c)(1), inserted provision that paragraphs (4) and (5) not apply to the tax imposed by section 4064.

Pub. L. 95–227 inserted ''(other than under section 4121)'' after ''this chapter''.

Subsec. (c). Pub. L. 95–600 substituted ''4063(b), 4063(e),'' for ''4063(b),''.

Subsec. (d)(7). Pub. L. 95–618, § 233(c)(2), added par. (7).

Subsec. (e)(5). Pub. L. 95–618, § 233(c)(1), substituted provisions relating to the applicability of the taxes imposed by section 4071(a)(1) and (3) in the case of tires or inner tubes for tires sold for use by the purchaser on or in connection with a qualified bus and the tax imposed by section 4071(a)(4) in the case of tread rubber sold for use by the purchaser in the recapping or retreading of any tire to be used by the purchaser on or in connection with a qualified bus for provisions relating to the applicability of the tax imposed by section 4061(a) to a bus sold to any person for use exclusively in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations.

Subsec. (e)(6). Pub. L. 95–618, § 232(a), added par. (6).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1971—Subsec. (c). Pub. L. 92–178 inserted reference to section 4063(a)(6) or (7).

1969—Subsec. (d)(5). Pub. L. 91–172 substituted ''section 170(b)(1)(A)(ii)'' for ''section 503(b)(2)''.

1965—Subsec. (d)(6)(B). Pub. L. 89–44, § 208(d)(1), struck out ''a radio or television component taxable under section 4141, or a camera lens taxable under section 4171,''.

Subsec. (d)(6). Pub. L. 89–44, § 801(c), inserted sentence providing that for purpose of subpar. (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

Subsec. (e)(2). Pub. L. 89–44, § 208(d)(2)–(5), struck out reference to automobile receiving sets from catchline and wherever appearing in subpars. (A) to (C), and reference to tax imposed under section 4141 of this title from subpars. (A) and (C).

Subsec. (e)(3). Pub. L. 89–44, § 208(d)(6), struck out par. (3) which related to musical instruments sold for religious use.

Subsec. (e)(5). Pub. L. 89–44, § 801(d)(1), added par. (5).

Subsec. (f). Pub. L. 89–44, § 208(d)(7), struck out subsec. (f) which related to sales of mechanical pencils and pens for export.

1961—Subsec. (d)(6)(C). Pub. L. 87–61 added subpar. (C).

1960—Subsec. (d)(4). Pub. L. 86–624 substituted ''any State, any political subdivision thereof, or the District of Columbia'' for ''any State, Hawaii, the District of Columbia, or any political subdivision of any of the foregoing''.

Subsec. (e)(4). Pub. L. 86–418 added par. (4).

1959—Subsec. (d)(4). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

Subsec. (d)(5). Pub. L. 86–344 included in definition of ''nonprofit educational organization'' a school operated as an activity of certain organizations exempt from the income tax and having a regular situs, faculty, curriculum and student body.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 applicable to sales after Dec. 31, 2012, see section 1405(c) of Pub. L. 111–152, set out as an Effective Date note under section 4191 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103–66, set out as a note under section 4001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11221(b), (d)(1), (2) of Pub. L. 101–508 effective Jan. 1, 1991, with exception for contracts binding on Sept. 30, 1990, and at all times thereafter, see section 11221(f) of Pub. L. 101–508, set out as an Effective Date note under section 4001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100–647, title I, § 1017(c)(5), Nov. 10, 1988, 102 Stat. 3576, provided that: ''The amendment made by section 10502(d)(4) of the Revenue Act of 1987 [Pub. L. 100–203, amending this section] shall be treated as if included in the amendments made by section 1703 of the Reform Act [Pub. L. 99–514] except that the reference to section 4091 of the Internal Revenue Code of 1986 shall not apply to sales before April 1, 1988.''

Amendment by section 9201(b)(1) of Pub. L. 100–203 effective Jan. 1, 1988, see section 9201(d) of Pub. L. 100–203, set out as an Effective Date note under section 4131 of this title.

Amendment by section 10502(d)(4) of Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section

10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 515(b)(1) of Pub. L. 97–424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the provision of the Energy Tax Act of 1978, Pub. L. 95–618, to which such amendment relates, see section 108(c)(7) of Pub. L. 96–222, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by section 201(c)(1) of Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Section 232(c) of Pub. L. 95–618 provided that: ''The amendments made by this section [amending this section and section 6416 of this title] shall apply to sales on or after the first day of the first calendar month beginning more than 10 days after the date of the enactment of this Act [Nov. 9, 1978].''

Amendment by section 233(c)(1), (2) of Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

Section 701(ff)(3) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 4061 and 4222 of this title] shall take effect on the first day of the first calendar month beginning more than 20 days after the date of the enactment of this Act [Nov. 6, 1978].''

Amendment by Pub. L. 95–227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95–227, set out as an Effective Date note section 4121 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92–178, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(d) of Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

Amendment by section 801(c), (d)(1) of Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, see section 801(e) of Pub. L. 89–44, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 applicable only in the case of gasoline sold on or after Oct. 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by Pub. L. 86–624 effective on Aug. 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

Section 4 of Pub. L. 86–418 provided that: ''The amendments made by this Act [amending this section and sections 4218, 4223, and 6416 of this title] shall apply only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [Apr. 8, 1960].''

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86–344 effective Jan. 1, 1959, see section 2(e) of Pub. L. 86–344.

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

EFFECTIVE DATE

Section effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

§ 4222. Registration

(a) General rule

Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered under this section. Registration under this section shall be made at such time, in such manner and form, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

(b) Exceptions

(1) Purchases by State and local governments

Subsection (a) shall not apply to any State or local government in connection with the purchase by it of any article if such State or local government complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

(2) Under regulations

Subject to such regulations as the Secretary may prescribe for the purpose of this paragraph, the Secretary may relieve the purchaser or the second purchaser, or both, from the requirement of registering under this section.

(3) Certain purchases and sales by the United States

Subsection (a) shall apply to purchases and sales by the United States only to the extent

provided by regulations prescribed by the Secretary.

[(4) Repealed. Pub. L. 89–44, title II, § 208(e), June 21, 1965, 79 Stat. 141]

(5) Supplies for vessels or aircraft

Subsection (a) shall not apply to a sale of an article for use by the purchaser as supplies for any vessel or aircraft if such purchaser complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

(c) Denial, revocation, or suspension of registration

Under regulations prescribed by the Secretary, the registration of any person under this section may be denied, revoked, or suspended if the Secretary determines—

(1) that such person has used such registration to avoid the payment of any tax imposed by this chapter, or to postpone or in any manner to interfere with the collection of any such tax, or

(2) that such denial, revocation, or suspension is necessary to protect the revenue.

The denial, revocation, or suspension under this subsection shall be in addition to any penalty provided by law for any act or failure to act.

(d) Registration in the case of certain other exemptions

The provisions of this section may be extended to, and made applicable with respect to, the exemptions provided by sections 4001(c), 4001(d), 4053(6), 4064(b)(1)(C), 4101, and 4182(b), and the exemptions authorized under section 4293 in respect of the taxes imposed by this chapter, to the extent provided by regulations prescribed by the Secretary.

(e) Definitions

Terms used in this section which are defined in section 4221(d) shall have the meaning given to them by section 4221(d).

(Added Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1284; amended Pub. L. 89–44, title II, § 208(e), title VIII, § 802(c), June 21, 1965, 79 Stat. 141, 159; Pub. L. 92–178, title IV, § 401(a)(3)(B), Dec. 10, 1971, 85 Stat. 531; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title VII, § 701(ff)(2)(B), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 95–618, title II, §§ 201(e), 231(f)(2), Nov. 9, 1978, 92 Stat. 3184, 3189; Pub. L. 97–424, title V, § 515(b)(2), Jan. 6, 1983, 96 Stat. 2181; Pub. L. 98–369, div. A, title VII, § 735(c)(9), July 18, 1984, 98 Stat. 983; Pub. L. 100–647, title I, § 1017(c)(16), Nov. 10, 1988, 102 Stat. 3577; Pub. L. 101–508, title XI, §§ 11212(b)(2), 11221(d)(3), Nov. 5, 1990, 104 Stat. 1388–431, 1388–444; Pub. L. 103–66, title XIII, § 13161(b)(2), Aug. 10, 1993, 107 Stat. 452; Pub. L. 105–34, title XIV, § 1431(a), Aug. 5, 1997, 111 Stat. 1050; Pub. L. 105–206, title VI, § 6023(17), July 22, 1998, 112 Stat. 825.)

PRIOR PROVISIONS

A prior section 4222, act Aug. 16, 1954, ch. 736, 68 Stat. 495, related to exemption from tax of certain supplies for vessels and airplanes, prior to repeal by Pub. L. 85–859, § 119(a). See section 4221 of this title.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–206 substituted ''4053(6)'' for ''4053(a)(6)''.

1997—Subsec. (b)(2). Pub. L. 105–34 substituted ''Under regulations'' for ''Export'' in heading and struck out ''in the case of any sale or resale for export,'' after ''this paragraph,'' in text.

1993—Subsec. (d). Pub. L. 103–66 substituted ''4001(d)'' for ''4002(b), 4003(c), 4004(a)''.

1990—Subsec. (c). Pub. L. 101–508, § 11212(b)(2), substituted ''Denial, revocation, or suspension'' for ''Revocation or suspension'' in heading, ''denied, revoked, or suspended'' for ''revoked or suspended'' in introductory provisions, and ''denial, revocation, or suspension'' for ''revocation or suspension'' in par. (2) and concluding provisions.

Subsec. (d). Pub. L. 101–508, § 11221(d)(3), substituted ''sections 4001(c), 4002(b), 4003(c), 4004(a), 4053(a)(6)'' for ''sections 4053(a)(6)''.

1988—Subsec. (d). Pub. L. 100–647 substituted ''4101'' for ''4083''.

1984—Subsec. (d). Pub. L. 98–369 substituted ''4053(a)(6)'' for ''4063(a)(7), 4063(b), 4063(e)''.

1983—Subsec. (d). Pub. L. 97–424 struck out ''4093,'' after ''4083,''.

1978—Subsec. (d). Pub. L. 95–618 substituted ''4063(a)(7), 4063(b), 4064(b)(1)(C),'' for ''4063(a)(6) and (7), 4063(b),''.

Pub. L. 95–600 substituted ''4063(b), 4063(e),'' for ''4063(b),''.

1976—Subsecs. (a) to (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1971—Subsec. (d). Pub. L. 92–178 inserted reference to section 4063(a)(6) and (7).

1965—Subsec. (b)(4). Pub. L. 89–44, § 208(e), struck out par. (4) which related to mechanical pencils, fountain pens, and ball point pens.

Subsec. (b)(5). Pub. L. 89–44, § 802(c), added par. (5).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1431(b) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103–66, set out as a note under section 4001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11212(b)(2) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as a note under section 4081 of this title.

Amendment by section 11221(d)(3) of Pub. L. 101–508 effective Jan. 1, 1991, with exception for contract binding on Sept. 30, 1990, and at all times thereafter, see section 11221(f) of Pub. L. 101–508, set out as an Effective Date note under section 4001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by section 201(e) of Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Section 231(g) of Pub. L. 95–618 provided that:

''(1) The amendments made by subsections (a) and (f) [amending this section and sections 4063 and 6412 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Nov. 9, 1978].

''(2) For purposes of paragraph (1), an article shall not be considered sold on or before the date of the enactment of this Act [Nov. 9, 1978] unless possession or right to possession passes to the purchaser on or before such date.

''(3) In the case of—

''(A) a lease,

''(B) a contract for the sale of an article providing that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

''(C) a conditional sale, or

''(D) a chattel mortgage arrangement providing that the sale price shall be paid in installments,

entered into on or before the date of the enactment of this Act [Nov. 9, 1978], payments made after such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold on or before the date of the enactment of this Act.''

Amendment by Pub. L. 95–600 effective on first day of first calendar month beginning more than 20 days after Nov. 6, 1978, see section 701(ff)(3) of Pub. L. 95–600, set out as a note under section 4221 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92–178, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(e) of Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

Amendment by section 802(c) of Pub. L. 89–44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89–44, set out as a note under section 4082 of this title.

§ 4223. Special rules relating to further manufacture

(a) Purchasing manufacturer to be treated as the manufacturer

For purposes of this chapter, a manufacturer or producer to whom an article is sold or resold free of tax under section 4221(a)(1) for use by him in further manufacture shall be treated as the manufacturer or producer of such article.

(b) Computation of tax

If the manufacturer or producer referred to in subsection (a) incurs liability for tax under this chapter on his sale or use of an article referred to in subsection (a) and the tax is based on the price for which the article is sold, the article shall be treated as having been sold by him—

(1) at the price for which the article was sold by him (or, where the tax is on his use of the article, at the price referred to in section 4218(c)); or

(2) if he so elects and establishes such price to the satisfaction of the Secretary—

(A) at the price for which the article was sold to him; or

(B) at the price for which the article was sold by the person who (without regard to subsection (a)) is the manufacturer, producer, or importer of such article.

For purposes of this subsection, the price for which the article was sold shall be determined as provided in section 4216. For purposes of paragraph (2) no adjustment or readjustment shall be made in such price by reason of any discount, rebate, allowance, return or repossession of a container or covering, or otherwise. An election under paragraph (2) shall be made in the return reporting the tax applicable to the sale or use of the article, and may not be revoked.

(Added Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1285; amended Pub. L. 86–418, § 2(b), Apr. 8, 1960, 74 Stat. 38; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title VII, § 735(c)(10), July 18, 1984, 98 Stat. 983.)

PRIOR PROVISIONS

A prior section 4223, act Aug. 16, 1954, ch. 736, 68A Stat. 495, related to exemption of articles manufactured or produced by Indians, prior to repeal by Pub. L. 85–859, § 119(a). See section 4225 of this title.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–369 substituted ''4218(c)'' for ''section 4218(e)''.

1976—Subsec. (b) Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1960—Subsec. (b)(1). Pub. L. 86–418 substituted ''section 4218(e)'' for ''section 4218(d)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86–418, set out as a note under section 4221 of this title.

[§ 4224. Repealed. Pub. L. 89–44, title I, § 101(b)(5), June 21, 1965, 79 Stat. 136]

Section, Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1286, exempted, with specified exemptions, articles taxable under section 4001 from the imposition of the manufacturers excise tax.

A prior section 4224, act Aug. 16, 1954, ch. 736, 68A Stat. 495, exempted articles for the exclusive use of any State, Territory, or political subdivision of either, or the District of Columbia, prior to repeal by Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1282.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89–44,

set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

§ 4225. Exemption of articles manufactured or produced by Indians

No tax shall be imposed under this chapter on any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska.

(Added Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1286.)

PRIOR PROVISIONS

A prior section 4225, act Aug. 16, 1954, ch. 736, 68A Stat. 496, related to exemption for exports, prior to repeal by Pub. L. 85–859, § 119(a). See section 4221 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

[§ 4226. Repealed. Pub. L. 94–455, title XIX, § 1904(a)(4), Oct. 4, 1976, 90 Stat. 1811]

Section, added June 29, 1956, ch. 462, title II, § 207(a), 70 Stat. 391; amended Sept. 21, 1959, Pub. L. 86–342, title II, § 201(c)(1)–(3), 73 Stat. 614; June 29, 1961, Pub. L. 87–61, title II, § 206(a), (b), 75 Stat. 127; Aug. 1, 1966, Pub. L. 89–523, § 2, 80 Stat. 331, related to floor stocks taxes for 1956 on tires of the type used on highway vehicles, on tread rubber, on gasoline, for 1959 on gasoline, for 1961 on certain tires and inner tubes and tread rubber, provisions relating to overpayment of floor stocks taxes, due date for taxes, taxes on certain tires and tubes, and definitions of ''dealer'' and ''held by a dealer''.

A prior section 4226 of this title was renumbered section 4227.

§ 4227. Cross reference

For exception for a sale to an Indian tribal government (or its subdivision) for the exclusive use of an Indian tribal government (or its subdivision), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 496, § 4226; renumbered § 4227, June 29, 1956, ch. 462, title II, § 207(a), 70 Stat. 391; amended Pub. L. 89–44, title II, § 208(f), June 21, 1965, 79 Stat. 141; Pub. L. 94–455, title XIX, § 1904(a)(5), Oct. 4, 1976, 90 Stat. 1811; Pub. L. 97–473, title II, § 202(b)(8), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title VII, § 735(c)(11), July 18, 1984, 98 Stat. 983; Pub. L. 99–514, title XVIII, § 1899A(49), Oct. 22, 1986, 100 Stat. 2961.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting ''reference'' for ''references'' in section catchline, struck out par. (1) designation, substituted ''exception'' for ''exemption'', and struck out par. (2) relating to cross reference to credit for taxes on tires.

1984—Par. (2). Pub. L. 98–369 struck out ''and tubes'' after ''on tires''.

1983—Pub. L. 97–473 designated existing provisions as par. (2) and added par. (1).

1976—Pub. L. 94–455 struck out pars. (1) and (3) relating to cross references to exemption from tax in case of certain sales to the United States and to administrative provisions of general applicability, respectively.

1965—Par. (2). Pub. L. 89–44 struck out ''and automobile radio and television receiving sets,'' after ''tires and inner tubes,''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(5) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

CHAPTER 33—FACILITIES AND SERVICES

Subchapter		Sec.[1]
[A.	Repealed.]	
B.	Communications	4251
C.	Transportation by air	4261
[D.	Repealed.]	
E.	Special provisions applicable to services and facilities taxes	4291

REPEAL OF SUBCHAPTER B

Table of subchapters for chapter 33 amended by striking out the item relating to subchapter B dealing with Communications, effective Jan. 1, 1982, see Pub. L. 90–364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843. Repeal of item B was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

AMENDMENTS

1970—Pub. L. 91–258, title II, § 205(c)(5), May 21, 1970, 84 Stat. 242, substituted ''Transportation by air'' for ''Transportation of persons by air'' in item for subchapter C.

1965—Pub. L. 89–44, title III, §§ 301, 304, June 21, 1965, 79 Stat. 145, 148, struck out items for subchapters A and D.

1962—Pub. L. 87–508, § 5(c)(1), June 28, 1962, 76 Stat. 118, substituted ''Transportation of persons by air'' for ''Transportation of persons'' in item for subchapter C.

1958—Pub. L. 85–475, § 4(b)(1), June 30, 1958, 72 Stat. 260, substituted ''Transportation of persons'' for ''Transportation'' in item for subchapter C.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, § 5(d), June 28, 1962, 76 Stat. 119, provided in part that: ''The amendment made by sub-

[1] Section numbers editorially supplied.

section (c)(1) [amending item for subchapter C in the analysis] shall apply only with respect to transportation beginning after November 15, 1962.''

[Subchapter A—Repealed]

[§§ 4231 to 4234. Repealed. Pub. L. 89–44, title III, § 301, June 21, 1965, 79 Stat. 145]

Section 4231, acts Aug. 16, 1954, ch. 736, 68A Stat. 497; Aug. 6, 1956, ch. 1019, § 1, 70 Stat. 1074; Sept. 2, 1958, Pub. L. 85–859, title I, § 131(a)–(c), 72 Stat. 1286, 1287; Apr. 8, 1960, Pub. L. 86–422, § 1, 74 Stat. 41, imposed a tax on admissions, permanent use or lease of boxes or seats, sales outside of box office in excess of established price, sales by proprietors in excess of established price, and cabarets.

Section 4232, acts Aug. 16, 1954, ch. 736, 68A Stat. 498; Sept. 2, 1958, Pub. L. 85–859, title I, § 131(d), 72 Stat. 1287, defined admission, roof garden, cabaret, or other similar place, and performance for profit as used in section 4231.

Section 4233, acts Aug. 16, 1954, ch. 736, 68A Stat. 498; Aug. 11, 1955, ch. 792, § 1, 69 Stat. 675; Apr. 16, 1958, Pub. L. 85–380, §§ 1–3, 72 Stat. 88; Sept. 2, 1958, Pub. L. 85–859, title I, § 131(e), (f), 72 Stat. 1287; June 25, 1959, Pub. L. 86–70, § 22(a), 73 Stat. 146; Sept. 21, 1959, Pub. L. 86–319, § 1, 73 Stat. 590; Sept. 21, 1959, Pub. L. 86–344, § 2(c), 73 Stat. 617; July 12, 1960, Pub. L. 86–624, § 18(d), 74 Stat. 416, granted certain exemptions to certain charitable, educational, or religious entertainments, agricultural fairs, certain musical or dramatic performances, swimming pools, etc., home and garden tours, historic sites, certain amateur theatricals, certain amateur baseball games, rodeos, pageants, and certain benefit performances.

Section 4234, act Aug. 16, 1954, ch. 736, 68A Stat. 501, required that price of tickets be printed on face or back of such tickets and provided a penalty for selling tickets not so stamped.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to admissions, services, or uses after noon, December 31, 1965, see section 701(b)(1) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4291 of this title.

[§§ 4241 to 4243. Repealed. Pub. L. 89–44, title III, § 301, June 21, 1965, 79 Stat. 145]

Section 4241, acts Aug. 16, 1954, ch. 736, 68A Stat. 501; Sept. 2, 1958, Pub. L. 85–859, title I, § 132(a), 72 Stat. 1288; Sept. 21, 1959, Pub. L. 86–344, § 3(b), 73 Stat. 618, imposed a tax on dues or membership fees, initiation, fees, and life memberships in social, athletic, or sporting clubs or organizations.

Section 4242, act Aug. 16, 1954, ch. 736, 68A Stat. 501, defined dues and initiation fees as used in section 4241.

Section 4243, acts Aug. 16, 1954, ch. 736, 68A Stat. 502; Sept. 2, 1958, Pub. L. 85–859, title I, § 132(b), 72 Stat. 1288; Sept. 21, 1959, Pub. L. 86–344, § 3(a), 73 Stat. 618, granted exemptions to fraternal organizations, payments for capital improvements, and nonprofit swimming or skating facilities.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to dues and membership fees attributable to periods beginning on or after January 1, 1966, initiation fees and amounts paid for life memberships attributable to memberships beginning on or after January 1, 1966, initiation fees paid on or after July 1, 1965, to a new club or organization first making its facilities available to members on or after such a date, and, in the case of amounts described in section 4243(b) of this title, 3-year periods beginning on or after January 1, 1966, see section 701(b)(1) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4291 of this title.

Subchapter B—Communications

Sec.
4251. Imposition of tax.
4252. Definitions.
4253. Exemptions.
4254. Computation of tax.

REPEAL

This subchapter, relating to the tax on communication, was repealed by Pub. L. 90–364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, Pub. L. 100–203, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

§ 4251. Imposition of tax

(a) Tax imposed

(1) In general

There is hereby imposed on amounts paid for communications services a tax equal to the applicable percentage of amounts so paid.

(2) Payment of tax

The tax imposed by this section shall be paid by the person paying for such services.

(b) Definitions

For purposes of subsection (a)—

(1) Communications services

The term ''communications services'' means—

(A) local telephone service;

(B) toll telephone service; and

(C) teletypewriter exchange service.

(2) Applicable percentage

The term ''applicable percentage'' means 3 percent.

(c) Special rule

For purposes of subsections (a) and (b), in the case of communications services rendered before November 1 of a calendar year for which a bill has not been rendered before the close of such year, a bill shall be treated as having been first rendered on December 31 of such year.

(d) Treatment of prepaid telephone cards

(1) In general

For purposes of this subchapter, in the case of communications services acquired by means of a prepaid telephone card—

(A) the face amount of such card shall be treated as the amount paid for such communications services, and

(B) that amount shall be treated as paid when the card is transferred by any telecommunications carrier to any person who is not such a carrier.

(2) Determination of face amount in absence of specified dollar amount

In the case of any prepaid telephone card which entitles the user other than to a specified dollar amount of use, the face amount shall be determined under regulations prescribed by the Secretary.

(3) Prepaid telephone card

For purposes of this subsection, the term ''prepaid telephone card'' means any card or any other similar arrangement which permits its holder to obtain communications services and pay for such services in advance.

(Aug. 16, 1954, ch. 736, 68A Stat. 503; Pub. L. 85–859, title I, §133(a), Sept. 2, 1958, 72 Stat. 1289; Pub. L. 86–75, §5, June 30, 1959, 73 Stat. 158; Pub. L. 86–564, title II, §202(a)(2), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, §3(a)(2), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §3(a)(2), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §3(a)(2), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(a)(2), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title III, §302, title VII, §701(b)(2)(B), June 21, 1965, 79 Stat. 145, 156; Pub. L. 89–368, title II, §202(a), Mar. 15, 1966, 80 Stat. 66; Pub. L. 90–285, §1(a)(3), Apr. 12, 1968, 82 Stat. 92; Pub. L. 90–364, title I, §105(b)(1), (2), June 28, 1968, 82 Stat. 265; Pub. L. 91–172, title VII, §702(b)(1), (2), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(1), (2), Dec. 31, 1970, 84 Stat. 1843; Pub. L. 96–499, title XI, §1151, Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97–34, title VIII, §821, Aug. 13, 1981, 95 Stat. 351; Pub. L. 97–248, title II, §282(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 98–369, div. A, title I, §26, July 18, 1984, 98 Stat. 507; Pub. L. 99–514, title XVIII, §1801(b), Oct. 22, 1986, 100 Stat. 2785; Pub. L. 100–203, title X, §10501, Dec. 22, 1987, 101 Stat. 1330–438; Pub. L. 101–508, title XI, §11217(a), Nov. 5, 1990, 104 Stat. 1388–437; Pub. L. 105–34, title X, §1034(a), Aug. 5, 1997, 111 Stat. 937; Pub. L. 105–206, title VI, §6010(i), July 22, 1998, 112 Stat. 815.)

REPEAL

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981.

Pub. L. 96–499, title XI, §1151, Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97–34, title VIII, §821, Aug. 13, 1981, 95 Stat. 351; Pub. L. 97–248, title II, §282(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 98–369, div. A, title I, §26, July 18, 1984, 98 Stat. 507; Pub. L. 99–514, title XVIII, §1801(b), Oct. 22, 1986, 100 Stat. 2785; Pub. L. 100–203, title X, §10501, Dec. 22, 1987, 101 Stat. 1330–438; Pub. L. 101–508, title XI, §11217(a), Nov. 5, 1990, 104 Stat. 1388–437, amended section 4251 of this title, relating to the imposition of the tax on communications, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date, without amending Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, which, as amended, had repealed this subchapter, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982.

AMENDMENTS

1998—Subsec. (d)(3). Pub. L. 105–206 substituted ''any other similar arrangement'' for ''other similar arrangement''.

1997—Subsec. (d). Pub. L. 105–34 added subsec. (d).

1990—Subsec. (b)(2). Pub. L. 101–508 substituted ''percent.'' for ''percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero.''

1987—Subsec. (b)(2). Pub. L. 100–203 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'applicable percentage' means—

"With respect to amount paid pursuant to bills first rendered:	**The percentage is:**
During 1983, 1984, 1985, 1986, or 1987	3
During 1988 or thereafter	0.''

1986—Subsec. (b)(2). Pub. L. 99–514 inserted ''1985,'' after ''1984,'' in table.

1984—Subsec. (b)(2). Pub. L. 98–369 substituted ''During 1983, 1984, 1986, or 1987'' for ''During 1983, 1984, or 1985'' in item relating to an applicable percentage of 3 and substituted ''During 1988 or thereafter'' for ''During 1986 or thereafter'' in item relating to an applicable percentage of 0.

1982—Subsec. (a). Pub. L. 97–248 added subsec. (a) and struck out former subsec. (a) which provided that there was a tax on communication services specified as local telephone service, toll telephone service, and teletypewriter exchange service, directed that the tax was to be paid by the person paying for such services, and designated the tax as the percentage of the amount paid for the services as set out in the following table:

"Amounts paid pursuant to bills first rendered—	**Percent—**
''Before January 1, 1973	10
During 1973	9
During 1974	8
During 1975	7
During 1976	6
During 1977	5
During 1978	4
During 1979	3
During 1980 or 1981	2
During 1982, 1983, or 1984	1''

Subsec. (b). Pub. L. 97–248 added subsec. (b) and struck out former subsec. (b) which provided that the tax imposed by former subsec. (a) would not apply to amounts paid pursuant to bills first rendered on or after January 1, 1985.

1981—Subsec. (a)(2). Pub. L. 97–34, §821(a), substituted ''During 1982, 1983, or 1984'' for ''During 1982'' in table.

Subsec. (b). Pub. L. 97–34, §821(b), extended termination date to Jan. 1, 1985, from Jan. 1, 1983.

1980—Subsec. (a)(2). Pub. L. 96–499, §1151(a), substituted ''During 1980 or 1981'' for ''During 1980'' and ''During 1982'' for ''During 1981'' in table.

Subsec. (b). Pub. L. 96–499, §1151(b), substituted ''1983'' for ''1982''.

1970—Subsec. (a)(2). Pub. L. 91–614, §201(b)(1), substituted provisions providing the rate of tax on amounts paid for communication services pursuant to bills first rendered before Jan. 1, 1973 is 10% of such amount, amounts paid pursuant to bills first rendered during 1973 is 9% of such amount, during 1974 is 8% of such amount, during 1975 is 7% of such amount, during 1976 is 6% of such amount, during 1977 is 5% of such amount, during 1978 is 4% of such amount, during 1979 is 3% of such amount, during 1980 is 2% of such amount, and during 1981 is 1% of such amount for provisions providing the rate of tax on amounts paid for communica-

tion services pursuant to bills first rendered before Jan. 1, 1971 is 10% of such amount, amounts paid pursuant to bills first rendered during 1971 is 5% of such amount, during 1972 is 3% of such amount, and during 1973 is 1% of such amount.

Subsec. (b). Pub. L. 91–614, § 201(b)(2), substituted ''January 1, 1982'' for ''January 1, 1974''.

1969—Subsec. (a)(2). Pub. L. 91–172, § 702(b)(1), increased rate of tax on amounts paid for communication services from 5 to 10 percent during 1970, from 3 to 5 percent during 1971, from 1 to 3 percent during 1972, and imposed a 1 percent tax on amounts paid for communication services during 1973.

Subsec. (b). Pub. L. 91–172, § 702(b)(2), substituted ''January 1, 1974'' for ''January 1, 1973''.

1968—Subsec. (a)(2). Pub. L. 90–364, § 105(b)(1), extended from April 30, 1968, through the end of 1969 the period for the imposition of the 10 percent rate, thereby increasing the rate from 1 percent to 10 percent for the period May 1, 1968, through the end of 1968 and from 0 percent to 10 percent for 1969, and imposed a rate of 5 percent during 1970, a rate of 3 percent during 1971, and a rate of 1 percent during 1972.

Pub. L. 90–285 substituted ''April 30, 1968'' and ''May 1, 1968'' for ''March 31, 1968'' and ''April 1, 1968'' respectively.

Subsec. (b). Pub. L. 90–364, § 105(b)(2), substituted ''1973'' for ''1969''.

Subsec. (c). Pub. L. 90–364, § 105(b)(2), extended provisions calling for treatment of bills not rendered before the end of a year for service rendered before November 1 of that year as having been first rendered on December 31 of that year so as to include years subsequent to 1968 and struck out special provision for the application of subsec. (a) in the case of communication services rendered before March 1, 1968, for which a bill was not rendered before May 1, 1968.

Pub. L. 90–285 substituted ''March 1, 1968,'' for ''February 1, 1968'', ''May 1, 1968'' for ''April 1, 1968'', ''April 30, 1968'' for ''March 31, 1968'', and ''February 29, 1968'' for ''January 31, 1968''.

1966—Subsec. (a)(2). Pub. L. 89–368, § 202(a)(1), increased to 10 percent the schedule of rates for tax imposed for the period up to April 1, 1968, and authorized a reduction to 1 percent for the period after March 31, 1968, and before January 1, 1969.

Subsec. (c). Pub. L. 89–368, § 202(a)(2), conformed subsection to rate reduction schedule alterations by providing that, in the case of communications services rendered before February 1, 1968, for which a bill has not been rendered before April 1, 1968, the bill shall be treated as having been first rendered on March 31, 1968, and, in the case of services rendered after January 31, 1968, and before November 1, 1968, for which a bill has not been rendered before January 1, 1969, the bill shall be treated as having first been rendered on December 31, 1968.

1965—Subsec. (a). Pub. L. 89–44, § 302, substituted local telephone service, toll telephone service, and teletypewriter exchange service, for general telephone service, toll telephone service, telegraph service, teletypewriter exchange service, wire mileage service, and wire and equipment service as the taxed services and reduced the rate of tax to 3 percent during 1966, 2 percent during 1967, and 1 percent during 1968.

Subsec. (b). Pub. L. 89–44, § 302, added subsec. (b). Pub. L. 89–44, § 701(b)(2)(B), repealed former subsec. (b), as in effect June 30, 1965, effective on and after July 1, 1965. Such repealed provision had called for termination of the tax on general telephone service as of July 1, 1965.

Subsec. (c). Pub. L. 89–44, § 302, added subsec. (c).

1964—Subsec. (b)(2). Pub. L. 88–348 substituted ''July 1, 1965'' for ''July 1, 1964'' in two places.

1963—Subsec. (b)(2). Pub. L. 88–52 substituted ''July 1, 1964'' for ''July 1, 1963'' in two places.

1962—Subsec. (b)(2). Pub. L. 87–508 substituted ''July 1, 1963'' for ''July 1, 1962'' in two places.

1961—Subsec. (b)(2). Pub. L. 87–72 substituted ''July 1, 1962'' for ''July 1, 1961'' in two places.

1960—Subsec. (b)(2). Pub. L. 86–564 substituted ''July 1, 1961'' for ''July 1, 1960'' in two places.

1959—Pub. L. 86–75 designated former provisions as subsec. (a) and added subsec. (b).

1958—Pub. L. 85–859 redesignated ''local telephone service'' as ''general telephone service'', ''long distance telephone service'' as ''toll telephone service'' and ''leased wire, teletypewriter or talking circuit special service'' as ''teletypewriter exchange service'' and ''wire mileage service''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1034(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid in calendar months beginning more than 60 days after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 282(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid for communications services pursuant to bills first rendered after December 31, 1982.''

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90–364 effective Apr. 30, 1968, see section 105(c) of Pub. L. 90–364, set out as a note under section 6412 of this title.

Amendment by Pub. L. 90–285 effective Mar. 31, 1968, see section 1(b) of Pub. L. 90–285, set out as a note under section 6412 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 202(c) of Pub. L. 89–368 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 4253 of this title] shall apply to amounts paid pursuant to bills first rendered on or after April 1, 1966, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after such date for services which were rendered before such date and for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered, subject to the provision of section 701(b)(2) of the Excise Tax Reduction Act of 1965 [see Effective Date of 1965 Amendment note below], shall apply to the amounts paid for such services.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(b)(2)(A) of Pub. L. 89–44 provided that: ''The amendments made by section 302 [amending this section and sections 4252, 4253, and 4254 of this title] (relating to communication services) shall apply to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after January 1, 1966, for services which were rendered before such date and for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of

services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered shall apply to the amounts paid for such services.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 133(b) of Pub. L. 85–859, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Subject to the provisions of paragraph (2), the amendment made by subsection (a) [amending this section and sections 4252 to 4254 of this title] shall apply with respect to amounts paid on or after the effective date prescribed in section (1)(c) of this Act for services rendered on or after such date.

''(2) The amendment made by subsection (a) [amending this section and sections 4252 to 4254 of this title] shall not apply with respect to amounts paid pursuant to bills rendered before the effective date prescribed in section 1(c) of this Act. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in effect at the time such services were rendered shall apply to the amounts paid for such services.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4252. Definitions

(a) Local telephone service

For purposes of this subchapter, the term ''local telephone service'' means—

(1) the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and

(2) any facility or service provided in connection with a service described in paragraph (1).

The term ''local telephone service'' does not include any service which is a ''toll telephone service'' or a ''private communication service'' as defined in subsections (b) and (d).

(b) Toll telephone service

For purposes of this subchapter, the term ''toll telephone service'' means—

(1) a telephonic quality communication for which (A) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (B) the charge is paid within the United States, and

(2) a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

(c) Teletypewriter exchange service

For purposes of this subchapter, the term ''teletypewriter exchange service'' means the access from a teletypewriter or other data station to the teletypewriter exchange system of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter or other data stations constituting a part of the same teletypewriter exchange system, to which the subscriber is entitled upon payment of a charge or charges (whether such charge or charges are determined as a flat periodic amount, on the basis of distance and elapsed transmission time, or in some other manner). The term ''teletypewriter exchange service'' does not include any service which is ''local telephone service'' as defined in subsection (a).

(d) Private communication service

For purposes of this subchapter, the term ''private communication service'' means—

(1) the communication service furnished to a subscriber which entitles the subscriber—

(A) to exclusive or priority use of any communication channel or groups of channels, or

(B) to the use of an intercommunication system for the subscriber's stations,

regardless of whether such channel, groups of channels, or intercommunication system may be connected through switching with a service described in subsection (a), (b), or (c),

(2) switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of, channels or systems described in paragraph (1), and

(3) the channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system,

except that such term does not include any communication service unless a separate charge is made for such service.

(Aug. 16, 1954, ch. 736, 68A Stat. 503; Pub. L. 85–859, title I, § 133(a), Sept. 2, 1958, 72 Stat. 1290; Pub. L. 87–508, § 4(a), June 28, 1962, 76 Stat. 115; Pub. L. 89–44, title III, § 302, June 21, 1965, 79 Stat. 145.)

REPEAL

This subchapter, relating to the tax on communications was repealed by Pub. L. 90–364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31,

1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, Pub. L. 100–203, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–44 substituted definition of ''local telephone service'' for definition of ''general telephone service''.

Subsec. (b). Pub. L. 89–44 replaced definition of ''toll telephone service'' as telephone or radio telephone message or conversation for which there is a toll charge paid within the United States with a definition which defined the term as a telephonic quality communication carrying a varying toll charge depending upon distance and elapsed transmission time and a service entitling the subscriber, upon payment of a periodic charge, to unlimited telephonic communication in an area outside the local telephone system area.

Subsec. (c). Pub. L. 89–44 substituted definition of ''teletypewriter exchange service'' for definition of ''telegraph service''.

Subsec. (d). Pub. L. 89–44 substituted definition of ''private communication service'' for definition of ''teletypewriter exchange service''.

Subsecs. (e), (f). Pub. L. 89–44 struck out subsecs. (e) and (f) which defined wire mileage service and wire and equipment service.

1962—Subsec. (e)(1), (2). Pub. L. 87–508 limited wire mileage service to service not used in the conduct of a trade or business.

1958—Subsec. (a). Pub. L. 85–859 substituted definition of ''general telephone service'' for provisions which defined ''local telephone service'' as any telephone service not taxable as long distance telephone service; leased wire; teletypewriter or talking circuit special service; or wire and equipment service, and provided that amounts paid for the installation of instruments, wires, poles, switchboards, apparatus, and equipment shall not be considered amounts paid for service, and that amounts paid for services and facilities which are exempted from other communication taxes by section 4253(b) should not be deemed to be within the definition of local telephone service.

Subsec. (b). Pub. L. 85–859 substituted ''toll telephone service'' for ''long distance telephone service'' and struck out provisions which defined ''long distance telephone service'' as a telephone or radio telephone message or conversation for which the toll charge is more than 24 cents.

Subsec. (c). Pub. L. 85–859 substituted ''For purposes of this subchapter, the term 'telegraph service' means a telegram'' for ''As used in section 4251 the term 'telegraph service' means a telegraph''.

Subsec. (d). Pub. L. 85–859 substituted provisions defining ''teletypewriter exchange service'' for provisions which defined ''leased wire, teletypewriter or talking circuit special service''.

Subsec. (e). Pub. L. 85–859 substituted provisions defining ''wire mileage service'' for provisions which defined ''wire and equipment service'', which were covered by subsec. (f) of this section.

Subsec. (f). Pub. L. 85–859 added subsec. (f). Similar provisions were formerly contained in subsec. (e) of this section.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(c) of Pub. L. 87–508 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 4253 of this title] shall apply with respect to services furnished on or after January 1, 1963.''

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133(b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

§ 4253. Exemptions

(a) Certain coin-operated service

Service paid for by inserting coins in coin-operated telephones available to the public shall not be subject to the tax imposed by section 4251 with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

(b) News services

No tax shall be imposed under section 4251, except with respect to local telephone service, on any payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

(c) International, etc., organizations

No tax shall be imposed under section 4251 on any payment received for services furnished to an international organization, or to the American National Red Cross.

(d) Servicemen in combat zone

No tax shall be imposed under section 4251 on any payment received for any toll telephone service which originates within a combat zone, as defined in section 112, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment.

(e) Items otherwise taxed

Only one payment of tax under section 4251 shall be required with respect to the tax on any service, notwithstanding the lines or stations of one or more persons are used in furnishing such service.

(f) Common carriers and communications companies

No tax shall be imposed under section 4251 on the amount paid for any toll telephone service

described in section 4252(b)(2) to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

(g) Installation charges

No tax shall be imposed under section 4251 on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

(h) Nonprofit hospitals

No tax shall be imposed under section 4251 on any amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term ''nonprofit hospital'' means a hospital referred to in section 170(b)(1)(A)(iii) which is exempt from income tax under section 501(a).

(i) State and local governmental exemption

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4251 upon any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

(j) Exception for nonprofit educational organizations

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term ''nonprofit educational organization'' means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(k) Exemption for qualified blood collector organizations

Under regulations provided by the Secretary, no tax shall be imposed under section 4251 on any amount paid by a qualified blood collector organization (as defined in section 7701(a)(49)) for services or facilities furnished to such organization.

(*l*) Filing of exemption certificates

(1) In general

In order to claim an exemption under subsection (c), (h), (i), (j), or (k), a person shall provide to the provider of communications services a statement (in such form and manner as the Secretary may provide) certifying that such person is entitled to such exemption.

(2) Duration of certificate

Any statement provided under paragraph (1) shall remain in effect until—

(A) the provider of communications services has actual knowledge that the information provided in such statement is false, or

(B) such provider is notified by the Secretary that the provider of the statement is no longer entitled to an exemption described in paragraph (1).

If any information provided in such statement is no longer accurate, the person providing such statement shall inform the provider of communications services within 30 days of any change of information.

(Aug. 16, 1954, ch. 736, 68A Stat. 504; Pub. L. 85–859, title I, § 133(a), Sept. 2, 1958, 72 Stat. 1290; Pub. L. 86–344, § 4(a), Sept. 21, 1959, 73 Stat. 619; Pub. L. 87–508, § 4(b), June 28, 1962, 76 Stat. 115; Pub. L. 89–44, title III, § 302, June 21, 1965, 79 Stat. 146; Pub. L. 89–368, title II, § 202(b), Mar. 15, 1966, 80 Stat. 66; Pub. L. 91–172, title I, § 101(j)(27), Dec. 30, 1969, 83 Stat. 529; Pub. L. 94–455, title XIX, §§ 1904(a)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1811, 1834; Pub. L. 101–508, title XI, § 11217(c)(1), Nov. 5, 1990, 104 Stat. 1388–438; Pub. L. 109–280, title XII, § 1207(c), Aug. 17, 2006, 120 Stat. 1070.)

REPEAL

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90–364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, Pub. L. 100–203, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

CODIFICATION

Section 1207(c) of Pub. L. 109–280, which directed the amendment of section 4253 without specifying the act to be amended, was executed to this section, which is section 4253 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (k). Pub. L. 109–280, § 1207(c)(1), added subsec. (k). Former subsec. (k) redesignated (*l*). See Codification note above.

Subsec. (*l*). Pub. L. 109–280, § 1207(c)(1), redesignated subsec. (k) as (*l*). See Codification note above.

Subsec. (*l*)(1). Pub. L. 109–280, § 1207(c)(2), substituted ''(j), or (k)'' for ''or (j)''. See Codification note above.

1990—Subsec. (k). Pub. L. 101–508 added subsec. (k).

1976—Subsec. (d). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (i), (j). Pub. L. 94–455, § 1904(a)(6), added subsecs. (i) and (j).

1969—Subsec. (h). Pub. L. 91–172 substituted ''section 170(b)(1)(A)(iii)'' for ''section 503(b)(5)''.

1966—Subsec. (h). Pub. L. 89–368 added subsec. (h).

1965—Subsec. (a). Pub. L. 89–44 substituted ''with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents'', for ''with respect to gen-

eral telephone service, or with respect to toll telephone service or telegraph service if the charge for such toll telephone service or telegraph service is less than 25 cents''.

Subsec. (b). Pub. L. 89–44 substituted ''local telephone service'' for ''general telephone service'' and ''such service'' for ''such services''.

Subsec. (c). Pub. L. 89–44 substituted ''International, etc., organizations'' for ''Certain organizations'' in heading.

Subsec. (d). Pub. L. 89–44 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 89–44 substituted ''any service'' for ''toll telephone service, telegraph service, or teletypewriter exchange service''.

Subsec. (f). Pub. L. 89–44 substituted amounts paid for any toll telephone service for amounts paid for wire mileage service, wire and equipment service, and use of any telephone or radiotelephone line or channel which constitutes general telephone service if such line or channel connects stations between any two of which there would otherwise be a toll charge.

Subsec. (g). Pub. L. 89–44 reenacted subsec. (g) without change.

Subsecs. (h) to (j). Pub. L. 89–44 struck out subsecs. (h) to (j), which related to terminal facilities in case of wire mileage service and to certain interior and private communications services.

1962—Subsec. (j). Pub. L. 87–508 added subsec. (j).

1959—Subsec. (f). Pub. L. 86–344 substituted ''Common carriers and communications companies'' for ''Special wire service in company business'' in heading, incorporated existing provisions in opening and closing statements and par. (1) and added par. (2).

1958—Subsec. (a). Pub. L. 85–859 substituted ''general telephone service, or with respect to toll telephone service or telegraph service if the charge for such toll telephone service or telegraph service is less than 25 cents'' for ''local telephone service''.

Subsec. (b). Pub. L. 85–859 substituted ''general telephone service, on any payment received from any person for services used'' for ''local telephone service, upon any payment received from any person for services or facilities utilized''.

Subsec. (c). Pub. L. 85–859 substituted ''on any payment received for services furnished to an international organization, or to the American National Red Cross'' for ''upon any payment received for services or facilities furnished to an international organization, or any organization created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864''.

Subsec. (d). Pub. L. 85–859 substituted ''on any payment received for any toll telephone service'' for ''with respect to long distance telephone service upon any payment received for any telephone or radio telephone message''.

Subsec. (e). Pub. L. 85–859 substituted ''toll telephone service, telegraph service, or teletypewriter exchange service'' for ''long distance telephone service or telegraph service'' and ''in furnishing such service'' for ''in the transmission of such dispatch, message or conversation''.

Subsec. (f). Pub. L. 85–859 substituted ''any wire mileage service or wire and equipment service as is used in the conduct'' for ''the service described in sections 4252(d) and (e) as is utilized in the conduct''.

Subsecs. (g) to (i). Pub. L. 85–859 added subsecs. (g) to (i).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11217(c)(2) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to any claim for exemption made after the date of the enactment of this Act [Nov. 5, 1990].

''(B) DURATION OF EXISTING CERTIFICATES.—Any annual certificate of exemption effective on the date of the enactment of this Act [Nov. 5, 1990] shall remain effective until the end of the annual period.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(a)(6) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–368 applicable to amounts paid pursuant to bills first rendered on or after April 1, 1966, for services rendered on or after such date and to amounts paid pursuant to bills rendered on or after such date for services which were rendered before such date and for which no previous bill was rendered except with respect to such services as were rendered more than two months before such date and, as to services rendered more than 2 months before such date, direction that the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered, be applied, subject to the provision of section 701(b)(2) of the Excise Tax Reduction Act of 1965.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date, but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–508 applicable with respect to services furnished on or after Jan. 1, 1963, see section 4(c) of Pub. L. 87–508, set out as a note under section 4252 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 4(b) of Pub. L. 86–344, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Subject to the provisions of paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid on or after January 1, 1959, for services rendered on or after such date.

''(2) The amendment made by subsection (a) [amending this section] shall not apply with respect to amounts paid pursuant to bills rendered before January 1, 1959. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no bill was rendered before such date, such amendment shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in effect at the time such services were rendered shall apply to the amounts paid for such services.''

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133(b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

§ 4254. Computation of tax

(a) General rule

If a bill is rendered the taxpayer for local telephone service or toll telephone service—

(1) the amount on which the tax with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that

(2) if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then (A) the amount on which the tax with respect to each such group shall be based shall be the sum of all items within that group, and (B) the tax on the remaining items not included in any such group shall be based on the charge for each item separately.

(b) Where payment is made for toll telephone service in coin-operated telephones

If the tax imposed by section 4251 with respect to toll telephone service is paid by inserting coins in coin-operated telephones, tax shall be computed to the nearest multiple of 5 cents, except that, where the tax is midway between multiples of 5 cents, the next higher multiple shall apply.

(c) Certain State and local taxes not included

For purposes of this subchapter, in determining the amounts paid for communications services, there shall not be included the amount of any State or local tax imposed on the furnishing or sale of such services, if the amount of such tax is separately stated in the bill.

(Aug. 16, 1954, ch. 736, 68A Stat. 504; Pub. L. 85–859, title I, § 133(a), Sept. 2, 1958, 72 Stat. 1291; Pub. L. 89–44, title III, § 302, June 21, 1965, 79 Stat. 147; Pub. L. 95–172, § 2(a), Nov. 12, 1977, 91 Stat. 1358.)

REPEAL

This subchapter, relating to the tax on communications was repealed by Pub. L. 90–364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, Pub. L. 100–203, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–172 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–44 substituted ''local telephone service or toll telephone service'' for ''general telephone service, toll telephone service, or telegraph service''.

Subsec. (b). Pub. L. 89–44 substituted ''toll telephone service'' for ''toll telephone service or telegraph service'' in catchline and text.

1958—Subsec. (a). Pub. L. 85–859 provided that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then the amount on which the tax with respect to each group shall be based shall be the sum of all items within that group, and the tax on remaining items not included in any such group shall be based on the charge of each item separately.

Subsec. (b). Pub. L. 85–859 substituted ''toll telephone service'' for ''long distance telephone service''.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(b) of Pub. L. 95–172 provided that: ''The amendment made by this section [amending this section] shall take effect only with respect to amounts paid pursuant to bills first rendered on or after the first day of the first month which begins more than 20 days after the date of the enactment of this Act [Nov. 12, 1977]. For purposes of the preceding sentence, in the case of communications services rendered more than 2 months before the effective date provided in the preceding sentence, no bill shall be treated as having been first rendered on or after such effective date.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for service rendered on or after such date, but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133(b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

Subchapter C—Transportation by Air

Part
I. Persons.
II. Property.
III. Special provisions relating to taxes on transportation by air.[1]

PART I—PERSONS

Sec.
4261. Imposition of tax.
4262. Definition of taxable transportation.
4263. Special rules.

AMENDMENTS

1970—Pub. L. 91–258, title II, § 205(c)(4), May 21, 1970, 84 Stat. 242, substituted ''Transportation by Air'' for ''Transportation of Persons by Air'' in subchapter heading, inserted part I to III headings in subchapter analysis, inserted ''PART I—PERSONS'' as analysis heading preceding section 4261, struck out item 4263, and redesignated item 4264 as 4263.

1962—Pub. L. 87–508, § 5(b), June 28, 1962, 76 Stat. 115, substituted ''Transportation of Persons by Air'' for ''Transportation of Persons'' in subchapter heading.

1958—Pub. L. 85–475, § 4(b)(2), June 30, 1958, 72 Stat. 260, substituted ''Transportation of Persons'' for ''Transportation'' in subchapter heading and struck out parts I–III, which were included in subchapter C.

1956—Act July 25, 1956, ch. 725, § 5, 70 Stat. 646, added items 4262 and 4264 and redesignated former item 4262 as 4263.

[1] So in original. Does not conform to part heading.

§ 4261. Imposition of tax

(a) In general

There is hereby imposed on the amount paid for taxable transportation of any person a tax equal to 7.5 percent of the amount so paid.

(b) Domestic segments of taxable transportation

(1) In general

There is hereby imposed on the amount paid for each domestic segment of taxable transportation by air a tax in the amount determined in accordance with the following table for the period in which the segment begins:

In the case of segments beginning:	The tax is:
After September 30, 1997, and before October 1, 1998	$1.00
After September 30, 1998, and before October 1, 1999	$2.00
After September 30, 1999, and before January 1, 2000	$2.25
During 2000	$2.50
During 2001	$2.75
During 2002 or thereafter	$3.00.

(2) Domestic segment

For purposes of this section, the term ''domestic segment'' means any segment consisting of 1 takeoff and 1 landing and which is taxable transportation described in section 4262(a)(1).

(3) Changes in segments by reason of rerouting

If—

(A) transportation is purchased between 2 locations on specified flights, and

(B) there is a change in the route taken between such 2 locations which changes the number of domestic segments, but there is no change in the amount charged for such transportation,

the tax imposed by paragraph (1) shall be determined without regard to such change in route.

(c) Use of international travel facilities

(1) In general

There is hereby imposed a tax of $12.00 on any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins or ends in the United States.

(2) Exception for transportation entirely taxable under subsection (a)

This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

(3) Special rule for Alaska and Hawaii

In any case in which the tax imposed by paragraph (1) applies to a domestic segment beginning or ending in Alaska or Hawaii, such tax shall apply only to departures and shall be at the rate of $6.

(d) By whom paid

Except as provided in section 4263(a), the taxes imposed by this section shall be paid by the person making the payment subject to the tax.

(e) Special rules

(1) Segments to and from rural airports

(A) Exception from segment tax

The tax imposed by subsection (b)(1) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

(B) Rural airport

For purposes of this paragraph, the term ''rural airport'' means, with respect to any calendar year, any airport if—

(i) there were fewer than 100,000 commercial passengers departing by air (in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles) during the second preceding calendar year from such airport, and

(ii) such airport—

(I) is not located within 75 miles of another airport which is not described in clause (i),

(II) is receiving essential air service subsidies as of the date of the enactment of this paragraph, or

(III) is not connected by paved roads to another airport.

(C) No phasein of reduced ticket tax

In the case of transportation beginning before October 1, 1999—

(i) In general

Paragraph (5) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

(ii) Transportation involving multiple segments

In the case of transportation involving more than 1 domestic segment at least 1 of which does not begin or end at a rural airport, the 7.5 percent rate applicable by reason of clause (i) shall be applied by taking into account only an amount which bears the same ratio to the amount paid for such transportation as the number of specified miles in domestic segments which begin or end at a rural airport bears to the total number of specified miles in such transportation.

(2) Amounts paid outside the United States

In the case of amounts paid outside the United States for taxable transportation, the taxes imposed by subsections (a) and (b) shall apply only if such transportation begins and ends in the United States.

(3) Amounts paid for right to award free or reduced rate air transportation

(A) In general

Any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air shall be treated for purposes of subsection (a) as an amount paid for taxable

transportation, and such amount shall be taxable under subsection (a) without regard to any other provision of this subchapter.

(B) Controlled group

For purposes of subparagraph (A), a corporation and all wholly owned subsidiaries of such corporation shall be treated as 1 corporation.

(C) Regulations

The Secretary shall prescribe rules which reallocate items of income, deduction, credit, exclusion, or other allowance to the extent necessary to prevent the avoidance of tax imposed by reason of this paragraph. The Secretary may prescribe rules which exclude from the tax imposed by subsection (a) amounts attributable to mileage awards which are used other than for transportation of persons by air.

(4) Inflation adjustment of dollar rates of tax

(A) In general

In the case of taxable events in a calendar year after the last nonindexed year, the $3.00 amount contained in subsection (b) and each dollar amount contained in subsection (c) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting the year before the last nonindexed year for ''calendar year 1992'' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of 10 cents, such increase shall be rounded to the nearest multiple of 10 cents.

(B) Last nonindexed year

For purposes of subparagraph (A), the last nonindexed year is—

(i) 2002 in the case of the $3.00 amount contained in subsection (b), and

(ii) 1998 in the case of the dollar amounts contained in subsection (c).

(C) Taxable event

For purposes of subparagraph (A), in the case of the tax imposed by subsection (b), the beginning of the domestic segment shall be treated as the taxable event.

(D) Special rule for amounts paid for domestic segments beginning after 2002

If an amount is paid during a calendar year for a domestic segment beginning in a later calendar year, then the rate of tax under subsection (b) on such amount shall be the rate in effect for the calendar year in which such amount is paid.

(5) Rates of ticket tax for transportation beginning before October 1, 1999

Subsection (a) shall be applied by substituting for ''7.5 percent''—

(A) ''9 percent'' in the case of transportation beginning after September 30, 1997, and before October 1, 1998, and

(B) ''8 percent'' in the case of transportation beginning after September 30, 1998, and before October 1, 1999.

(f) Exemption for certain uses

No tax shall be imposed under subsection (a) or (b) on air transportation—

(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.

(g) Exemption for air ambulances providing certain emergency medical transportation

No tax shall be imposed under this section or section 4271 on any air transportation for the purpose of providing emergency medical services—

(1) by helicopter, or

(2) by a fixed-wing aircraft equipped for and exclusively dedicated on that flight to acute care emergency medical services.

(h) Exemption for skydiving uses

No tax shall be imposed by this section or section 4271 on any air transportation exclusively for the purpose of skydiving.

(i) Exemption for seaplanes

No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.

(j) Application of taxes

(1) In general

The taxes imposed by this section shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on March 31, 2011, and

(B) amounts paid during such period for transportation beginning after such period.

(2) Refunds

If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

(Aug. 16, 1954, ch. 736, 68A Stat. 506; July 25, 1956, ch. 725, §§1, 4(b), 70 Stat. 644, 646; Pub. L. 86–75,

§ 4, June 30, 1959, 73 Stat. 158; Pub. L. 86–564, title II, § 202(a)(3), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, § 3(a)(3), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, § 5(a), (b), June 28, 1962, 76 Stat. 115; Pub. L. 88–52, § 3(a)(3), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, § 2(a)(3), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title III, § 303(a), June 21, 1965, 79 Stat. 148; Pub. L. 91–258, title II, § 203(a), May 21, 1970, 84 Stat. 238; Pub. L. 94–455, title XIX, § 1904(a)(7), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 96–298, § 1(b), July 1, 1980, 94 Stat. 829; Pub. L. 97–248, title II, § 280(a), Sept. 3, 1982, 96 Stat. 564; Pub. L. 98–369, div. A, title X, § 1018(b), July 18, 1984, 98 Stat. 1021; Pub. L. 99–514, title XVIII, § 1878(c)(2), Oct. 22, 1986, 100 Stat. 2903; Pub. L. 100–223, title IV, §§ 402(a)(1), 404(a), (c), Dec. 30, 1987, 101 Stat. 1532, 1533; Pub. L. 101–239, title VII, § 7503(a), Dec. 19, 1989, 103 Stat. 2362; Pub. L. 101–508, title XI, § 11213(a)(1), (d)(1), Nov. 5, 1990, 104 Stat. 1388–432, 1388–435; Pub. L. 103–272, § 5(g)(2), July 5, 1994, 108 Stat. 1374; Pub. L. 104–188, title I, § 1609(b), (d), (e), Aug. 20, 1996, 110 Stat. 1841, 1842; Pub. L. 105–2, § 2(b)(1), Feb. 28, 1997, 111 Stat. 5; Pub. L. 105–34, title X, § 1031(b)(1), (c)(1), (2), title XIV, § 1435(a), title XVI, § 1601(f)(4)(D), Aug. 5, 1997, 111 Stat. 929, 930, 1052, 1091; Pub. L. 108–176, title IX, § 902(a), Dec. 12, 2003, 117 Stat. 2598; Pub. L. 109–59, title XI, §§ 11121(c), 11122(a), 11123(a), Aug. 10, 2005, 119 Stat. 1951, 1952; Pub. L. 109–135, title IV, § 412(vv), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–161, div. K, title I, § 116(b)(1), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110–190, § 2(b)(1), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110–253, § 2(b)(1), June 30, 2008, 122 Stat. 2417; Pub. L. 110–330, § 2(b)(1), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111–12, § 2(b)(1), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111–69, § 2(b)(1), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111–116, § 2(b)(1), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111–153, § 2(b)(1), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111–161, § 2(b)(1), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111–197, § 2(b)(1), July 2, 2010, 124 Stat. 1353; Pub. L. 111–216, title I, § 101(b)(1), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111–249, § 2(b)(1), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111–329, § 2(b)(1), Dec. 22, 2010, 124 Stat. 3566.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Service announcements listed in a table below.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (e)(1)(B)(ii)(II), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The Airport and Airway Development Act of 1970, referred to in subsec. (f), is title I of Pub. L. 91–258, May 21, 1970, 84 Stat. 219, as amended, which was classified principally to chapter 25 (§ 1701 et seq.) of former Title 49, Transportation. Sections 1 to 30 of title I of Pub. L. 91–258, which enacted sections 1701 to 1703, 1711 to 1713, and 1714 to 1730 of former Title 49 and a provision set out as a note under section 1701 of former Title 49, were repealed by Pub. L. 97–248, title V, § 523(a), Sept. 3, 1982, 96 Stat. 695. Sections 31, 51, 52(a), (b)(4), (6), (c), (d), and 53 of title I of Pub. L. 91–258 were repealed by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (j)(1)(A)(i), is the date of enactment of Pub. L. 105–2, which was approved Feb. 28, 1997.

AMENDMENTS

2010—Subsec. (j)(1)(A)(ii). Pub. L. 111–329 substituted ''March 31, 2011'' for ''December 31, 2010''.

Pub. L. 111–249 substituted ''December 31, 2010'' for ''September 30, 2010''.

Pub. L. 111–216 substituted ''September 30, 2010'' for ''August 1, 2010''.

Pub. L. 111–197 substituted ''August 1, 2010'' for ''July 3, 2010''.

Pub. L. 111–161 substituted ''July 3, 2010'' for ''April 30, 2010''.

Pub. L. 111–153 substituted ''April 30, 2010'' for ''March 31, 2010''.

2009—Subsec. (j)(1)(A)(ii). Pub. L. 111–116 substituted ''March 31, 2010'' for ''December 31, 2009''.

Pub. L. 111–69 substituted ''December 31, 2009'' for ''September 30, 2009''.

Pub. L. 111–12 substituted ''September 30, 2009'' for ''March 31, 2009''.

2008—Subsec. (j)(1)(A)(ii). Pub. L. 110–330 substituted ''March 31, 2009'' for ''September 30, 2008''.

Pub. L. 110–253 substituted ''September 30, 2008'' for ''June 30, 2008''.

Pub. L. 110–190 substituted ''June 30, 2008'' for ''February 29, 2008''.

2007—Subsec. (j)(1)(A)(ii). Pub. L. 110–161 substituted ''February 29, 2008'' for ''September 30, 2007''.

2005—Subsec. (e)(1)(B)(i). Pub. L. 109–59, § 11122(a)(1), inserted ''(in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles)'' after ''by air''.

Subsec. (e)(1)(B)(ii)(III). Pub. L. 109–59, § 11122(a)(2), added subcl. (III).

Subsec. (e)(4)(C). Pub. L. 109–135 substituted ''imposed by subsection (b)'' for ''imposed subsection (b)''.

Subsec. (f). Pub. L. 109–59, § 11121(c), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''No tax shall be imposed under subsection (a) or (b) on air transportation by helicopter for the purpose of—

''(1) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

''(2) the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.''

Subsecs. (i), (j). Pub. L. 109–59, § 11123(a), added subsec. (i) and redesignated former subsec. (i) as (j).

2003—Subsec. (e)(4)(D). Pub. L. 108–176 added subpar. (D).

1997—Subsec. (a). Pub. L. 105–34, § 1031(c)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''There is hereby imposed upon the amount paid for taxable transportation (as defined in section 4262) of any person a tax equal to 10 percent of the amount so paid. In the case of amounts paid outside of the United States for taxable transportation, the tax imposed by this subsection shall apply only if such transportation begins and ends in the United States.''

Subsec. (b). Pub. L. 105–34, § 1031(c)(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''There is hereby imposed upon the amount paid for seating or sleeping accommodations in connection with transportation and with respect to which a tax is imposed by subsection (a), a tax equal to 10 percent of the amount so paid.''

Subsec. (c). Pub. L. 105–34, §1031(c)(1), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''There is hereby imposed a tax of $6 upon any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins in the United States. This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).''

Subsecs. (e), (f). Pub. L. 105–34, §1031(c)(2), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105–34, §1031(c)(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 105–2 amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: ''The taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997.''

Subsec. (g)(1)(A)(ii). Pub. L. 105–34, §1031(b)(1), substituted ''September 30, 2007'' for ''September 30, 1997''.

Subsec. (g)(2). Pub. L. 105–34, §1601(f)(4)(D), inserted ''on that flight'' after ''dedicated''.

Subsec. (h). Pub. L. 105–34, §1435(a), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 105–34, §1031(c)(2), redesignated subsec. (g) as (h).

Subsec. (i). Pub. L. 105–34, §1435(a), redesignated subsec. (h) as (i).

1996—Subsec. (e). Pub. L. 104–188, §1609(e), inserted at end ''In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.''

Subsec. (f). Pub. L. 104–188, §1609(d), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(f) EXEMPTION FOR CERTAIN EMERGENCY MEDICAL TRANSPORTATION.—No tax shall be imposed under this section or section 4271 on any air transportation by helicopter for the purpose of providing emergency medical services if such helicopter—

''(1) does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970 during such transportation, and

''(2) does not otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such transportation.''

Subsec. (g). Pub. L. 104–188, §1609(b), substituted ''January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997'' for ''January 1, 1996''.

1994—Subsecs. (e), (f)(2). Pub. L. 103–272, §5(g)(2), substituted ''section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code,'' for ''the Airport and Airway Improvement Act of 1982''.

1990—Subsecs. (a), (b). Pub. L. 101–508, §11213(a)(1), substituted ''10 percent'' for ''8 percent''.

Subsec. (g). Pub. L. 101–508, §11213(d)(1), substituted ''January 1, 1996'' for ''January 1, 1991''.

1989—Subsec. (c). Pub. L. 101–239 substituted ''$6'' for ''$3''.

1987—Subsec. (e). Pub. L. 100–223, §404(c), which directed the substitution of ''Improvement Act'' for ''System Improvement Act'' could not be executed because such words do not appear.

Subsec. (f). Pub. L. 100–223, §404(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 100–223, §402(a)(1), substituted ''January 1, 1991'' for ''January 1, 1988''.

Subsec. (g). Pub. L. 100–223, §404(a), redesignated former subsec. (f) as (g).

1986—Subsec. (e)(1). Pub. L. 99–514, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''transporting individuals, equipment, or supplies in—

''(A) the exploration for, or the development or removal of, hard minerals, or

''(B) the exploration for oil or gas, or''.

1984—Subsec. (e)(1). Pub. L. 98–369 amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

1982—Subsec. (e). Pub. L. 97–248 substituted provisions relating to exemptions for certain helicopter uses for provisions that effective with respect to transportation beginning after Sept. 30, 1980, the rate of taxes imposed by subsecs. (a) and (b) would be 5 percent and taxes imposed by subsec. (c) would not apply.

Subsec. (f). Pub. L. 97–248 added subsec. (f).

1980—Subsec. (e). Pub. L. 96–298 substituted ''September 30, 1980'' for ''June 30, 1980''.

1976—Subsec. (a). Pub. L. 94–455, §1904(a)(7)(A), struck out ''which begins after June 30, 1970'' after ''any person''.

Subsec. (b). Pub. L. 94–455, §1904(a)(7)(A), struck out ''which begins after June 30, 1970'' after ''with transportation''.

Subsec. (c). Pub. L. 94–455, §1904(a)(7)(B), struck out ''and begins after June 30, 1970'' after ''United States''.

1970—Subsec. (a). Pub. L. 91–258 consolidated former provisions of subsecs. (a) and (b) for imposition of tax on amounts paid within and outside the United States, substituting an 8 percent rate commencing after June 30, 1970, for prior 5 percent rate commencing after Nov. 15, 1962.

Subsec. (b). Pub. L. 91–258 redesignated subsec. (c) as (b), substituting an 8 percent rate in connection with transportation which begins after June 30, 1970, and with respect to which a tax is imposed by subsec. (a) for prior 5 percent rate in connection with transportation which began after Nov. 15, 1962, and with respect to which a tax had been imposed by former provisions of subsecs. (a) and (b). Former subsec. (b) provisions for imposition of tax on amounts paid outside the United States were incorporated in subsec. (a).

Subsecs. (c), (d). Pub. L. 91–258 added subsec. (c), redesignated former subsec. (c) as (d), and substituted ''section 4263(a)'' for ''section 4264''.

Subsec. (e). Pub. L. 91–258 added subsec. (e).

1965—Pub. L. 89–44 substituted ''November 15, 1962'' for ''November 15, 1962, and before July 1, 1965'' wherever appearing.

1964—Pub. L. 88–348 substituted ''July 1, 1965'' for ''July 1, 1964'' wherever appearing.

1963—Pub. L. 88–52 substituted ''July 1, 1964'' for ''July 1, 1963'' wherever appearing.

1962—Subsecs. (a), (b). Pub. L. 87–508, §5(b), struck out imposition of tax on transportation of persons by rail, motor vehicle, or water and substituted ''tax equal to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963'' for ''tax equal to 10 percent of the amount so paid for transportation which begins before November 16, 1962''.

Pub. L. 87–508, §5(a), substituted provisions imposing a tax equal to 10 percent of the amount paid for transportation which begins before Nov. 16, 1962, for provisions imposing a tax equal to 10 percent of the amount paid before July 1, 1962, or 5 percent of the amount paid on or after July 1, 1962.

Subsec. (c). Pub. L. 87–508, §5(b), substituted ''tax equivalent to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963'' for ''tax equivalent to 10 percent of the amount so paid in connection with transportation which begins before November 16, 1962''.

Pub. L. 87–508, §5(a), substituted provision imposing a tax equivalent to 10 percent of the amount paid in connection with transportation which begins before Nov. 16, 1962 for provision imposing a tax equivalent to 10 percent of the amount paid before July 1, 1962, or 5 percent of the amount paid on or after July 1, 1962.

1961—Pub. L. 87–72 substituted ''July 1, 1962'' for ''July 1, 1961'', wherever appearing.

1960—Pub. L. 86–564 substituted ''July 1, 1961'' for ''July 1, 1960'' wherever appearing.

1959—Pub. L. 86–75 reduced tax on transportation of persons from ten to five percent effective July 1, 1960.

1956—Subsec. (a). Act July 25, 1956, § 1, substituted ''taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air a tax'' for ''the transportation of persons by rail, motor vehicle, water, or air within or without the United States a tax''.

Subsec. (b). Act July 25, 1956, § 1, substituted ''taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air, but only if such transportation begins and ends in the United States'' for ''transportation of persons by rail, motor vehicle, water, or air which begins and ends in the United States''.

Subsec. (d). Act July 25, 1956, § 4(b), substituted ''Except as provided in section 4264, the'' for ''The''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–329 effective Jan. 1, 2011, see section 2(c) of Pub. L. 111–329, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–249 effective Oct. 1, 2010, see section 2(c) of Pub. L. 111–249, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–216 effective Aug. 2, 2010, see section 101(c) of Pub. L. 111–216, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–197 effective July 4, 2010, see section 2(c) of Pub. L. 111–197, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–161 effective May 1, 2010, see section 2(c) of Pub. L. 111–161, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–153 effective Apr. 1, 2010, see section 2(c) of Pub. L. 111–153, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–116 effective Jan. 1, 2010, see section 2(c) of Pub. L. 111–116, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–69 effective Oct. 1, 2009, see section 2(c) of Pub. L. 111–69, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–12 effective Apr. 1, 2009, see section 2(c) of Pub. L. 111–12, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–330 effective Oct. 1, 2008, see section 2(c) of Pub. L. 110–330, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110–253 effective July 1, 2008, see section 2(c) of Pub. L. 110–253, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110–190 effective Mar. 1, 2008, see section 2(c) of Pub. L. 110–190, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–161 effective Oct. 1, 2007, see section 116(d) of div. K of Pub. L. 110–161, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, § 11121(d), Aug. 10, 2005, 119 Stat. 1952, provided that: ''The amendments made by this section [amending this section and section 6420 of this title] shall apply to fuel use or air transportation after September 30, 2005.''

Pub. L. 109–59, title XI, § 11122(b), Aug. 10, 2005, 119 Stat. 1952, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2005.''

Amendment by section 11123(a) of Pub. L. 109–59 applicable to transportation beginning after Sept. 30, 2005, see section 11123(c) of Pub. L. 109–59, set out as a note under section 4083 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–176, title IX, § 902(b), Dec. 12, 2003, 117 Stat. 2598, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate.''

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 1031(e)(2) of Pub. L. 105–34 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsections (b) and (c) [amending this section and sections 4263 and 4271 of this title] shall apply to transportation beginning on or after October 1, 1997.

''(B) TREATMENT OF AMOUNTS PAID FOR TICKETS PURCHASED BEFORE OCTOBER 1, 1997.—The amendments made by subsection (c) [amending this section and section 4263 of this title] shall not apply to amounts paid before October 1, 1997; except that—

''(i) the amendment made to section 4261(c) of the Internal Revenue Code of 1986 shall apply to amounts paid more than 7 days after the date of the enactment of this Act [Aug. 5, 1997] for transportation beginning on or after October 1, 1997, and

''(ii) the amendment made to section 4263(c) of such Code shall apply to the extent related to taxes imposed under the amendment made to such section 4261(c) on the amounts described in clause (i).

''(C) AMOUNTS PAID FOR RIGHT TO AWARD MILEAGE AWARDS.—

''(i) IN GENERAL.—Paragraph (3) of section 4261(e) of the Internal Revenue Code of 1986 (as added by the amendment made by subsection (c)) shall apply to amounts paid (and other benefits provided) after September 30, 1997.

''(ii) PAYMENTS WITHIN CONTROLLED GROUP.—For purposes of clause (i), any amount paid after June 11, 1997, and before October 1, 1997, by 1 member of a controlled group for a right which is described in such section 4261(e)(3) and is furnished by another member of such group after September 30, 1997, shall be treated as paid after September 30, 1997. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of such Code shall be treated as members of a controlled group.''

Section 1435(c)(1) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts paid after September 30, 1997.''

Amendment by section 1601(f)(4)(D) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

Section 2(e)(2) of Pub. L. 105–2 provided that:

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and section 4271 of this title] shall apply to transportation beginning on or after such 7th day [means the 7th day after Feb. 28, 1997].

''(B) EXCEPTION FOR CERTAIN PAYMENTS.—Except as provided in subparagraph (C), the amendments made by subsection (b) shall not apply to any amount paid before such 7th day.

''(C) PAYMENTS OF PROPERTY TRANSPORTATION TAX WITHIN CONTROLLED GROUP.—In the case of the tax imposed by section 4271 of the Internal Revenue Code of 1986, subparagraph (B) shall not apply to any amount paid by 1 member of a controlled group for transportation furnished by another member of such group. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as members of a controlled group.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, but not applicable to any

amount paid before such date, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11213(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and section 4271 of this title] shall apply to transportation beginning after November 30, 1990, but shall not apply to amounts paid on or before such date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7503(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to transportation beginning after December 31, 1989, which was not paid for before such date.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 404(d)(1) of Pub. L. 100–223 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transportation beginning after September 30, 1988, but shall not apply to amounts paid on or before such date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1018(c)(2) of Pub. L. 98–369 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to transportation beginning after March 31, 1984, but shall not apply to any amount paid on or before such date.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 280(d) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 4271, 4281, and 6156 of this title and repealing sections 4491 to 4494 and 6426 of this title] shall apply with respect to transportation beginning after August 31, 1982; except that such amendments shall not apply to any amount paid on or before such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(b)(3) of Pub. L. 89–44 provided that: ''The amendments made by section 303 [amending this section] shall apply with respect to amounts paid for transportation, and amounts paid for accommodations in connection with transportation, beginning on or after July 1, 1965.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5(b) of Pub. L. 87–508 provided that the amendment made by that section is effective with respect to transportation beginning after Nov. 15, 1962.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 6 of act July 25, 1956, provided that: ''The amendments made by this Act [amending this section and sections 4262 to 4264, 4291, and 6421 of this title] shall apply to amounts paid on or after the first day of the first month which begins more than sixty days after the date of the enactment of this Act [July 25, 1956] for transportation commencing on or after such first day.''

DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposits of taxes imposed by this section which would be required to be made after Aug. 14, 1997, and before Oct. 1, 1997, to be Oct. 10, 1997, and due date for deposits of taxes imposed by this section which would be required to be made after Aug. 14, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105–34, set out as a note under section 6302 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2011—Internal Revenue News Release IR 2010–129, Dec. 29, 2010.

2010—Internal Revenue News Release IR 2009–120, Dec. 23, 2009.

§ 4262. Definition of taxable transportation

(a) Taxable transportation; in general

For purposes of this part, except as provided in subsection (b), the term ''taxable transportation'' means—

(1) transportation by air which begins in the United States or in the 225–mile zone and ends in the United States or in the 225–mile zone; and

(2) in the case of transportation by air other than transportation described in paragraph (1), that portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3)).

(b) Exclusion of certain travel

For purposes of this part, the term ''taxable transportation'' does not include that portion of any transportation by air which meets all 4 of the following requirements:

(1) such portion is outside the United States;

(2) neither such portion nor any segment thereof is directly or indirectly—

(A) between (i) a point where the route of the transportation leaves or enters the continental United States, or (ii) a port or station in the 225-mile zone, and

(B) a port or station in the 225-mile zone;

(3) such portion—

(A) begins at either (i) the point where the route of the transportation leaves the United States, or (ii) a port or station in the 225-mile zone, and

(B) ends at either (i) the point where the route of the transportation enters the United States, or (ii) a port or station in the 225-mile zone; and

(4) a direct line from the point (or the port or station) specified in paragraph (3)(A), to the point (or the port or station) specified in paragraph (3)(B), passes through or over a point which is not within 225 miles of the United States.

(c) Definitions

For purposes of this section—

(1) Continental United States

The term ''continental United States'' means the District of Columbia and the States other than Alaska and Hawaii.

(2) 225-mile zone

The term ''225-mile zone'' means that portion of Canada and Mexico which is not more than 225 miles from the nearest point in the continental United States.

(3) Uninterrupted international air transportation

The term ''uninterrupted international air transportation'' means any transportation by air which is not transportation described in subsection (a)(1) and in which—

(A) the scheduled interval between (i) the beginning or end of the portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States and (ii) the end or beginning of the other portion of such transportation is not more than 12 hours, and

(B) the scheduled interval between the beginning or end and the end or beginning of any two segments of the portion of such transportation referred to in subparagraph (A)(i) is not more than 12 hours.

For purposes of this paragraph, in the case of personnel of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard traveling in uniform at their own expense when on official leave, furlough, or pass, the scheduled interval described in subparagraph (A) shall be deemed to be not more than 12 hours if a ticket for the subsequent portion of such transportation is purchased within 12 hours after the end of the earlier portion of such transportation and the purchaser accepts and utilizes the first accommodations actually available to him for such subsequent portion.

(d) Transportation

For purposes of this part, the term ''transportation'' includes layover or waiting time and movement of the aircraft in deadhead service.

(e) Authority to waive 225-mile zone provisions

(1) In general

If the Secretary of the Treasury determines that Canada or Mexico has entered into a qualified agreement—

(A) the Secretary shall publish a notice of such determination in the Federal Register, and

(B) effective with respect to transportation beginning after the date specified in such notice, to the extent provided in the agreement, the term ''225-mile zone'' shall not include part or all of the country with respect to which such determination is made.

(2) Termination of waiver

If a determination was made under paragraph (1) with respect to any country and the Secretary of the Treasury subsequently determines that the agreement is no longer in effect or that the agreement is no longer a qualified agreement—

(A) the Secretary shall publish a notice of such determination in the Federal Register, and

(B) subparagraph (B) of paragraph (1) shall cease to apply with respect to transportation beginning after the date specified in such notice.

(3) Qualified agreement

For purposes of this subsection, the term ''qualified agreement'' means an agreement between the United States and Canada or Mexico (as the case may be)—

(A) setting forth that portion of such country which is not to be treated as within the 225-mile zone, and

(B) providing that the tax imposed by such country on transportation described in subparagraph (A) will be at a level which the Secretary of the Treasury determines to be appropriate.

(4) Requirement that agreement be submitted to Congress

No notice may be published under paragraph (1)(A) with respect to any qualified agreement before the date 90 days after the date on which a copy of such agreement was furnished to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(Added July 25, 1956, ch. 725, § 3, 70 Stat. 644; amended Pub. L. 86–70, § 22(b), June 25, 1959, 73 Stat. 146; Pub. L. 86–624, § 18(a), July 12, 1960, 74 Stat. 416; Pub. L. 87–508, § 5(b), June 28, 1962, 76 Stat. 116; Pub. L. 89–44, title VIII, § 803(a), June 21, 1965, 79 Stat. 160; Pub. L. 91–258, title II, § 203(b), May 21, 1970, 84 Stat. 238; Pub. L. 97–248, title II, § 281A(a)(1), (2), Sept. 3, 1982, 96 Stat. 566, 567.)

PRIOR PROVISIONS

A prior section 4262 was renumbered 4263 of this title and later repealed.

AMENDMENTS

1982—Subsec. (c)(3). Pub. L. 97–248, § 281A(a)(1), substituted ''12 hours'' for ''6 hours'' wherever appearing.

Subsec. (e). Pub. L. 97–248, § 281A(a)(2), added subsec. (e).

1970—Subsec. (a). Pub. L. 91–258, § 203(b)(1)–(3), substituted ''part'' for ''subchapter'' in introductory text, ''transportation by air'' for ''transportation'' in par. (1), and ''in the case of transportation by air'' for ''in the case of transportation'' in par. (2), respectively.

Subsec. (b). Pub. L. 91–258, § 203(b)(1), (4), substituted ''part'' for ''subchapter'' and ''transportation by air which'' for ''transportation which'', in introductory text, respectively.

Subsec. (d). Pub. L. 91–258, § 203(b)(5), added subsec. (d).

1965—Subsec. (c)(4). Pub. L. 89–44 inserted sentence relating to personnel of the Armed Forces traveling in uniform at their own expense following subpar. (B).

1962—Subsec. (a). Pub. L. 87–508 substituted in introductory phrase ''subchapter'' for ''part'' and inserted in par. (2) '', but only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3))''.

Subsec. (b). Pub. L. 87–508 substituted in introductory phrase ''subchapter'' for ''part''.

Subsec. (c)(3). Pub. L. 87–508 added par. (3).

1960—Subsec. (c)(1). Pub. L. 86–624 inserted ''and Hawaii'' after ''Alaska''.

1959—Subsec. (c)(1). Pub. L. 86–70 substituted ''the District of Columbia and the States other than Alaska'' for ''the existing 48 States and the District of Columbia''.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 281A(a)(3) of Pub. L. 97–248 provided that: ''The amendments made by this subsection [amending this section] shall apply to transportation beginning after August 31, 1982.''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 803(b) of Pub. L. 89–44 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid for transportation beginning on or after July 1, 1965.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5(b) of Pub. L. 87–508 provided that the amendment made by that section is effective with respect to transportation beginning after Nov. 15, 1962.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective August 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

EFFECTIVE DATE

Section applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as an Effective Date of 1956 Amendment note under section 4261 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4263. Special rules

(a) Payments made outside the United States for prepaid orders

If the payment upon which tax is imposed by section 4261 is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such order shall collect the amount of the tax.

(b) Tax deducted upon refunds

Every person who refunds any amount with respect to a ticket or order which was purchased without payment of the tax imposed by section 4261 shall deduct from the amount refundable, to the extent available, any tax due under such section as a result of the use of a portion of the transportation purchased in connection with such ticket or order, and shall report to the Secretary the amount of any such tax remaining uncollected.

(c) Payment of tax

Where any tax imposed by section 4261 is not paid at the time payment for transportation is made, then, under regulations prescribed by the Secretary, to the extent that such tax is not collected under any other provision of this subchapter, such tax shall be paid by the carrier providing the initial segment of such transportation which begins or ends in the United States.

(d) Application of tax

The tax imposed by section 4261 shall apply to any amount paid within the United States for transportation of any person by air unless the taxpayer establishes, pursuant to regulations prescribed by the Secretary at the time of payment for the transportation, that the transportation is not transportation in respect of which tax is imposed by section 4261.

(e) Round trips

In applying this subchapter to a round trip, such round trip shall be considered to consist of transportation from the point of departure to the destination, and of separate transportation thereafter.

(f) Transportation outside the northern portion of the Western Hemisphere

In applying this subchapter to transportation any part of which is outside the northern portion of the Western Hemisphere, if the route of such transportation leaves and reenters the northern portion of the Western Hemisphere, such transportation shall be considered to consist of transportation to a point outside such northern portion, and of separate transportation thereafter. For purposes of this subsection, the term ''northern portion of the Western Hemisphere'' means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any country of South America.

(Added July 25, 1956, ch. 725, § 4(a), 70 Stat. 645, § 4264; amended Pub. L. 87–508, § 5(b), June 28, 1962, 76 Stat. 117; renumbered § 4263, Pub. L. 91–258, title II, § 205(c)(2), May 21, 1970, 84 Stat. 242; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title X, § 1031(c)(3), Aug. 5, 1997, 111 Stat. 932.)

PRIOR PROVISIONS

A prior section 4263, acts Aug. 16, 1954, ch. 736, 68A Stat. 506, § 4263, formerly § 4262; renumbered § 4263 and

amended July 25, 1956, ch. 725, § 2, 70 Stat. 644; Aug. 7, 1956, ch. 1024, § 1, 70 Stat. 1077; June 29, 1957, Pub. L. 85–74, 71 Stat. 243; Sept. 2, 1958, Pub. L. 85–859, title I, § 134, 72 Stat. 1292; June 28, 1962, Pub. L. 87–508, § 5(b), 76 Stat. 117, provided for exemptions, subsecs. (a) to (d) relating to commutation travel, etc., certain organizations; members of the Armed Forces, and small aircraft on nonestablished lines, respectively, prior to repeal by Pub. L. 91–258, title II, § 205(c)(1), May 21, 1970, 84 Stat. 242, effective on July 1, 1970, as provided in section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 substituted ''subchapter, such tax shall be paid by the carrier providing the initial segment of such transportation which begins or ends in the United States.'' for ''subchapter—

''(1) such tax shall be paid by the person paying for the transportation or by the person using the transportation;

''(2) such tax shall be paid within such time as the Secretary shall prescribe by regulations after whichever of the following first occurs:

''(A) the rights to the transportation expire; or

''(B) the time when the transportation becomes subject to tax; and

''(3) payment of such tax shall be made to the Secretary, to the person to whom the payment for transportation was made, or, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of such transportation.''

1976—Subsecs. (b) to (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1962—Subsec. (c)(3). Pub. L. 87–508 provided for payment of tax, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of the transportation.

Subsec. (d). Pub. L. 87–508 inserted ''by air'' after ''transportation of any person''.

Subsec. (e). Pub. L. 87–508 substituted ''subchapter'' for ''part''.

Subsec. (f). Pub. L. 87–508 substituted ''subchapter'' for ''part'', struck out par. (1) designation for provision respecting transportation outside the northern portion of the Western Hemisphere and par. (2) prohibiting consideration as a stop at a port within the United States a stop at an intermediate port at which vessel is not authorized to discharge and take on passengers.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transportation beginning on or after Oct. 1, 1997, with special rule for applicability to amounts paid before Oct. 1, 1997, see section 1031(e)(2) of Pub. L. 105–34, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5(b) of Pub. L. 87–508 provided that the amendment made by that section is effective with respect to transportation beginning after Nov. 15, 1962.

EFFECTIVE DATE

Section applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as an Effective Date of 1956 Amendment note under section 4261 of this title.

PART II—PROPERTY

Sec.
4271. Imposition of tax.
4272. Definition of taxable transportation, etc.

AMENDMENTS

1970—Pub. L. 91–258, title II, § 204, May 21, 1970, 84 Stat. 239, added ''PART II—PROPERTY'' and items 4271 and 4272.

§ 4271. Imposition of tax

(a) In general

There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property a tax equal to 6.25 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

(b) By whom paid

(1) In general

Except as provided by paragraph (2), the tax imposed by subsection (a) shall be paid by the person making the payment subject to tax.

(2) Payments made outside the United States

If a payment subject to tax under subsection (a) is made outside the United States and the person making such payment does not pay such tax, such tax—

(A) shall be paid by the person to whom the property is delivered in the United States by the person furnishing the last segment of the taxable transportation in respect of which such tax is imposed, and

(B) shall be collected by the person furnishing the last segment of such taxable transportation.

(c) Determination of amounts paid in certain cases

For purposes of this section, in any case in which a person engaged in the business of transporting property by air for hire and one or more other persons not so engaged jointly provide services which include taxable transportation of property, and the person so engaged receives, for the furnishing of such taxable transportation, a portion of the receipts from the joint providing of such services, the amount paid for the taxable transportation shall be treated as being the sum of (1) the portion of the receipts so received, and (2) any expenses incurred by any of the persons not so engaged which are properly attributable to such taxable transportation and which are taken into account in determining the portion of the receipts so received.

(d) Application of tax

(1) In general

The tax imposed by subsection (a) shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on March 31, 2011, and

(B) amounts paid during such period for transportation beginning after such period.

(2) Refunds

If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

(Added Pub. L. 91–258, title II, § 204, May 21, 1970, 84 Stat. 239; amended Pub. L. 94–455, title XIX, § 1904(a)(8), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 96–298, § 1(b), July 1, 1980, 94 Stat. 829; Pub. L. 97–248, title II, § 280(b), Sept. 3, 1982, 96 Stat. 564; Pub. L. 100–223, title IV, § 402(a)(2), Dec. 30, 1987, 101 Stat. 1532; Pub. L. 101–508, title XI, § 11213(a)(2), (d)(1), Nov. 5, 1990, 104 Stat. 1388–432, 1388–435; Pub. L. 104–188, title I, § 1609(b), Aug. 20, 1996, 110 Stat. 1841; Pub. L. 105–2, § 2(b)(2), Feb. 28, 1997, 111 Stat. 5; Pub. L. 105–34, title X, § 1031(b)(2), Aug. 5, 1997, 111 Stat. 929; Pub. L. 110–161, div. K, title I, § 116(b)(2), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110–190, § 2(b)(2), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110–253, § 2(b)(2), June 30, 2008, 122 Stat. 2417; Pub. L. 110–330, § 2(b)(2), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111–12, § 2(b)(2), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111–69, § 2(b)(2), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111–116, § 2(b)(2), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111–153, § 2(b)(2), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111–161, § 2(b)(2), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111–197, § 2(b)(2), July 2, 2010, 124 Stat. 1353; Pub. L. 111–216, title I, § 101(b)(2), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111–249, § 2(b)(2), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111–329, § 2(b)(2), Dec. 22, 2010, 124 Stat. 3566.)

REFERENCES IN TEXT

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (d)(1)(A)(i), is the date of enactment of Pub. L. 105–2, which was approved Feb. 28, 1997.

PRIOR PROVISIONS

A prior section 4271, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to tax for the transportation of property, prior to repeal by Pub. L. 85–475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

AMENDMENTS

2010—Subsec. (d)(1)(A)(ii). Pub. L. 111–329 substituted ''March 31, 2011'' for ''December 31, 2010''.

Pub. L. 111–249 substituted ''December 31, 2010'' for ''September 30, 2010''.

Pub. L. 111–216 substituted ''September 30, 2010'' for ''August 1, 2010''.

Pub. L. 111–197 substituted ''August 1, 2010'' for ''July 3, 2010''.

Pub. L. 111–161 substituted ''July 3, 2010'' for ''April 30, 2010''.

Pub. L. 111–153 substituted ''April 30, 2010'' for ''March 31, 2010''.

2009—Subsec. (d)(1)(A)(ii). Pub. L. 111–116 substituted ''March 31, 2010'' for ''December 31, 2009''.

Pub. L. 111–69 substituted ''December 31, 2009'' for ''September 30, 2009''.

Pub. L. 111–12 substituted ''September 30, 2009'' for ''March 31, 2009''.

2008—Subsec. (d)(1)(A)(ii). Pub. L. 110–330 substituted ''March 31, 2009'' for ''September 30, 2008''.

Pub. L. 110–253 substituted ''September 30, 2008'' for ''June 30, 2008''.

Pub. L. 110–190 substituted ''June 30, 2008'' for ''February 29, 2008''.

2007—Subsec. (d)(1)(A)(ii). Pub. L. 110–161 substituted ''February 29, 2008'' for ''September 30, 2007''.

1997—Subsec. (d). Pub. L. 105–2 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''The tax imposed by subsection (a) shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997.''

Subsec. (d)(1)(A)(ii). Pub. L. 105–34 substituted ''September 30, 2007'' for ''September 30, 1997''.

1996—Subsec. (d). Pub. L. 104–188 substituted ''January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997'' for ''January 1, 1996''.

1990—Subsec. (a). Pub. L. 101–508, § 11213(a)(2), substituted ''6.25 percent'' for ''5 percent''.

Subsec. (d). Pub. L. 101–508, § 11213(d)(1), substituted ''January 1, 1996'' for ''January 1, 1991''.

1987—Subsec. (d). Pub. L. 100–223 substituted ''1991'' for ''1988''.

1982—Subsec. (d). Pub. L. 97–248 substituted provision that the tax imposed by subsec. (a) shall apply with respect to transportation beginning after Aug. 31, 1982, and before Jan. 1, 1988, for provision that effective with respect to transportation beginning after Sept. 30, 1980, the tax imposed by subsec. (a) would not apply.

1980—Subsec. (d). Pub. L. 96–298 substituted ''September 30, 1980'' for ''June 30, 1980''.

1976—Subsec. (a). Pub. L. 94–455 struck out ''which begins after June 30, 1970'' after ''of property''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–329 effective Jan. 1, 2011, see section 2(c) of Pub. L. 111–329, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–249 effective Oct. 1, 2010, see section 2(c) of Pub. L. 111–249, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–216 effective Aug. 2, 2010, see section 101(c) of Pub. L. 111–216, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–197 effective July 4, 2010, see section 2(c) of Pub. L. 111–197, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–161 effective May 1, 2010, see section 2(c) of Pub. L. 111–161, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–153 effective Apr. 1, 2010, see section 2(c) of Pub. L. 111–153, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–116 effective Jan. 1, 2010, see section 2(c) of Pub. L. 111–116, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–69 effective Oct. 1, 2009, see section 2(c) of Pub. L. 111–69, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–12 effective Apr. 1, 2009, see section 2(c) of Pub. L. 111–12, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–330 effective Oct. 1, 2008, see section 2(c) of Pub. L. 110–330, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110–253 effective July 1, 2008, see section 2(c) of Pub. L. 110–253, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110–190 effective Mar. 1, 2008, see section 2(c) of Pub. L. 110–190, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–161 effective Oct. 1, 2007, see section 116(d) of div. K of Pub. L. 110–161, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–34 applicable to transportation beginning on or after Oct. 1, 1997, see section 1031(e)(2) of Pub. L. 105–34, set out as a note under section 4261 of this title.

Amendment by Pub. L. 105–2 applicable to transportation beginning on or after the 7th day after Feb. 28, 1997, with special rule for applicability to amounts paid before such 7th day, see section 2(e)(2) of Pub. L. 105–2, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, but not applicable to any amount paid before such date, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11213(a)(2) of Pub. L. 101–508 applicable to transportation beginning after Nov. 30, 1990, but inapplicable to amounts paid on or before such date, see section 11213(a)(3) of Pub. L. 101–508, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97–248, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as an Effective Date of 1970 Amendment note under section 4041 of this title.

DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposits of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105–34, set out as a note under section 6302 of this title.

§ 4272. Definition of taxable transportation, etc.

(a) In general

For purposes of this part, except as provided in subsection (b), the term ''taxable transportation'' means transportation by air which begins and ends in the United States.

(b) Exceptions

For purposes of this part, the term ''taxable transportation'' does not include—

(1) that portion of any transportation which meets the requirements of paragraphs (1), (2), (3), and (4) of section 4262(b), or

(2) under regulations prescribed by the Secretary, transportation of property in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported.

(c) Excess baggage of passengers

For purposes of this part, the term ''property'' does not include excess baggage accompanying a passenger traveling on an aircraft operated on an established line.

(d) Transportation

For purposes of this part, the term ''transportation'' includes layover or waiting time and movement of the aircraft in deadhead service.

(Added Pub. L. 91–258, title II, § 204, May 21, 1970, 84 Stat. 240; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

Prior sections 4272 and 4273 were repealed by Pub. L. 85–475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

Section 4272, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to exemptions from tax for the transportation of property.

Section 4273, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to registration in connection with the tax for the transportation of property.

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

PART III—SPECIAL PROVISIONS APPLICABLE TO TAXES ON TRANSPORTATION BY AIR

Sec.
4281. Small aircraft on nonestablished lines.
4282. Transportation by air for other members of affiliated group.
[4283. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11213(e)(2), Nov. 5, 1990, 104 Stat. 1388–436, struck out item 4283 ''Reduction in aviation-related taxes in certain cases''.

1987—Pub. L. 100–223, title IV, § 405(c), Dec. 30, 1987, 101 Stat. 1535, added item 4283.

1970—Pub. L. 91–258, title II, § 205(a)(1), May 21, 1970, 84 Stat. 241, inserted ''PART III—SPECIAL PROVISIONS APPLICABLE TO TAXES ON TRANSPORTATION BY AIR.''

§ 4281. Small aircraft on nonestablished lines

The taxes imposed by sections 4261 and 4271 shall not apply to transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when such aircraft is operated on an established line. For purposes of the preceding sentence, the term ''maximum certificated takeoff weight'' means the maximum such weight contained in the type certificate or airworthiness certificate. For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.

(Added Pub. L. 91–258, title II, § 205(a)(1), May 21, 1970, 84 Stat. 241; amended Pub. L. 97–248, title II, § 280(c)(2)(B), Sept. 3, 1982, 96 Stat. 564; Pub. L. 109–59, title XI, § 11124(a), Aug. 10, 2005, 119 Stat. 1952.)

PRIOR PROVISIONS

A prior section 4281, act Aug. 16, 1954, ch. 736, 68A Stat. 508, related to tax on transportation of oil by pipeline, prior to repeal by Pub. L. 85–475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

AMENDMENTS

2005—Pub. L. 109–59 inserted at end ''For purposes of this section, an aircraft shall not be considered as oper-

ated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.''

1982—Pub. L. 97–248 struck out ''(as defined in section 4492(b))'' after ''certificated takeoff weight'', and inserted provision defining ''maximum certificated takeoff weight''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, § 11124(b), Aug. 10, 2005, 119 Stat. 1953, provided that: ''The amendment made by this section [amending this section] shall apply with respect to transportation beginning after September 30, 2005, but shall not apply to any amount paid before such date for such transportation.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97–248, set out as a note under section 4261 of this title.

EFFECTIVE DATE

Section effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as an Effective Date of 1970 Amendment note under section 4041 of this title.

§ 4282. Transportation by air for other members of affiliated group

(a) General rule

Under regulations prescribed by the Secretary, if—

(1) one member of an affiliated group is the owner or lessee of an aircraft, and

(2) such aircraft is not available for hire by persons who are not members of such group,

no tax shall be imposed under section 4261 or 4271 upon any payment received by one member of the affiliated group from another member of such group for services furnished to such other member in connection with the use of such aircraft.

(b) Availability for hire

For purposes of subsection (a), the determination of whether an aircraft is available for hire by persons who are not members of an affiliated group shall be made on a flight-by-flight basis.

(c) Affiliated group

For purposes of subsection (a), the term ''affiliated group'' has the meaning assigned to such term by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(Added Pub. L. 91–258, title II, § 205(a)(1), May 21, 1970, 84 Stat. 241; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 104–188, title I, § 1609(f), Aug. 20, 1996, 110 Stat. 1842.)

PRIOR PROVISIONS

A prior section 4282, act Aug. 16, 1954, ch. 736, 68A Stat. 508, defined ''fair charge'' in connection with tax on transportation of oil by pipeline, prior to repeal by Pub. L. 85–475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104–188 added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

[§ 4283. Repealed. Pub. L. 101–508, title XI, § 11213(e)(1), Nov. 5, 1990, 104 Stat. 1388–436]

Section, added Pub. L. 100–223, title IV, § 405(a), Dec. 30, 1987, 101 Stat. 1533; amended Pub. L. 101–239, title VII, § 7501(a)–(b)(2), Dec. 19, 1989, 103 Stat. 2361, provided for reduction in aviation-related taxes in certain cases.

[Subchapter D—Repealed]

[§§ 4286, 4287. Repealed. Pub. L. 89–44, title III, § 304, June 21, 1965, 79 Stat. 148]

Section 4286, act Aug. 16, 1954, ch. 736, 68A Stat. 510, imposed a tax equivalent to 10 percent of the amount collected for the use of safety deposit boxes.

Section 4287, act Aug. 16, 1954, ch. 736, 68A Stat. 510, defined safety deposit box.

EFFECTIVE DATE OF REPEAL

Section 701(b)(4) of Pub. L. 89–44 provided that: ''The amendments made by section 304 [repealing these sections] shall apply with respect to use periods beginning on or after July 1, 1965.''

Subchapter E—Special Provisions Applicable to Services and Facilities Taxes

Sec.
4291. Cases where persons receiving payment must collect tax.
[4292. Repealed.]
4293. Exemption for United States and possessions.
[4294, 4295. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1904(b)(4), Oct. 4, 1976, 90 Stat. 1815, struck out items 4292, 4294, and 4295 relating to State and local governmental exemption, exemption for nonprofit educational organizations, and cross reference to general administrative provisions, respectively.

1958—Pub. L. 85–859, title I, § 135(b), Sept. 2, 1958, 72 Stat. 1292, added item 4294 and redesignated former item 4294 as 4295.

§ 4291. Cases where persons receiving payment must collect tax

Except as otherwise provided in section 4263(a), every person receiving any payment for facilities or services on which a tax is imposed upon the payor thereof under this chapter shall collect the amount of the tax from the person making such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 511; July 25, 1956, ch. 725, § 4(c), 70 Stat. 646; Pub. L. 85–859, title I, § 131(g), Sept. 2, 1958, 72 Stat. 1287; Pub. L. 89–44, title III, § 305(a), June 21, 1965, 79 Stat. 148; Pub. L. 91–258, title II, § 205(c)(3), May 21, 1970, 84 Stat. 242.)

AMENDMENTS

1970—Pub. L. 91–258 substituted ''section 4263(a)'' for ''section 4264(a)''.

1965—Pub. L. 89–44 struck out reference to section 4231 and struck out sentence referring to tax imposed on life memberships by section 4241.

1958—Pub. L. 85–859 substituted ''Except as otherwise provided in sections 3241 and 4262(a)'' for ''Except as provided in section 4264(a)''.

1956—Act July 25, 1956, inserted ''Except as provided in section 4264(a)'', and struck out provisions which related to collection of tax where payment specified in section 4261 was made outside the United States for a prepaid order, exchange order, or similar order.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(b)(1) of Pub. L. 89–44 provided that:

''(A) The amendments made by sections 301 and 305 [repealing sections 4231 to 4234 and 4241 to 4243 of this title and amending this section and section 6040 of this title] insofar as they relate to the taxes imposed by section 4231 of the Code, shall apply with respect to admissions, services, or uses after noon, December 31, 1965.

''(B) The amendments made by sections 301 and 305 insofar as they relate to the taxes imposed by section 4241 of the Code, shall apply with respect to—

''(i) dues and membership fees attributable to periods beginning on or after January 1, 1966;

''(ii) initiation fees (other than initiation fees to which clause (iii) applies) and amounts paid for life memberships attributable to memberships beginning on or after January 1, 1966;

''(iii) initiation fees paid on or after July 1, 1965, to a new club or organization which first makes its facilities available to members on or after such date; and

''(iv) in the case of amounts described in section 4243(b) of the Code, 3-year periods beginning on or after January 1, 1966.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 25, 1956, applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

[§ 4292. Repealed. Pub. L. 94–455, title XIX, § 1904(a)(9), Oct. 4, 1976, 90 Stat. 1812]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 511; June 30, 1958, Pub. L. 85–475, § 4(b)(3), 72 Stat. 260; May 21, 1970, Pub. L. 91–258, title II, § 205(a)(2), 84 Stat. 241, provided tax exemption for any payment received for services or facilities furnished to any State, Territory, or political subdivision of such, or the District of Columbia.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

§ 4293. Exemption for United States and possessions

The Secretary of the Treasury may authorize exemption from the taxes imposed by subchapter A of chapter 31, section 4041, section 4051, chapter 32 (other than the taxes imposed by sections 4064 and 4121) and subchapter B of chapter 33, as to any particular article, or service or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 511; Pub. L. 91–258, title II, § 205(a)(3), May 21, 1970, 84 Stat. 241; Pub. L. 94–455, title XIX, § 1906(b)(13)(B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–227, § 2(b)(3), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95–502, title II, § 202(b), Oct. 21, 1978, 92 Stat. 1697; Pub. L. 95–618, title II, § 201(c)(2), Nov. 9, 1978, 92 Stat. 3184; Pub. L. 100–647, title VI, § 6103(a), Nov. 10, 1988, 102 Stat. 3711; Pub. L. 101–508, title XI, § 11221(c), Nov. 5, 1990, 104 Stat. 1388–444.)

AMENDMENTS

1990—Pub. L. 101–508 inserted ''subchapter A of chapter 31,'' before ''section 4041''.

1988—Pub. L. 100–647 inserted reference to section 4051 of this title.

1978—Pub. L. 95–618 substituted ''taxes imposed by sections 4064 and 4121'' for ''tax imposed by section 4121''.

Pub. L. 95–502 substituted ''section 4041, chapter 32'' for ''chapters 31 and 32''.

Pub. L. 95–227 inserted ''(other than the tax imposed by section 4121)'' after ''chapters 31 and 32''.

1976—Pub. L. 94–455 substituted ''Secretary of the Treasury'' for ''Secretary'' after ''The''.

1970—Pub. L. 91–258 substituted ''subchapter B'' for ''subchapters B and C''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, with exception for contracts binding on Sept. 30, 1990, and at all times thereafter, see section 11221(f) of Pub. L. 101–508, set out as an Effective Date note under section 4001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6103(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Amendment by Pub. L. 95–502 effective Oct. 1, 1980, see section 202(d) of Pub. L. 95–502, set out as an Effective Date note under section 4042 of this title.

Amendment by Pub. L. 95–227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95–227, set out as an Effective Date note under section 4121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

[§§ 4294, 4295. Repealed. Pub. L. 94–455, title XIX, § 1904(a)(10), (11), Oct. 4, 1976, 90 Stat. 1812]

Section 4294, added Pub. L. 85–859, title I, § 135(a), Sept. 2, 1958, 72 Stat. 1292; amended Pub. L. 86–344, § 2(d), Sept. 21, 1959, 73 Stat. 618; Pub. L. 91–72, title I, § 101(j)(28), Dec. 30, 1969, 83 Stat. 529; Pub. L. 91–258, title II, § 205(a)(4), May 21, 1970, 84 Stat. 241, provided an exemption from tax for services and facilities furnished to a nonprofit educational organization and defined ''nonprofit educational organization''.

Section 4295, act Aug. 16, 1954, ch. 736, 68A Stat. 511, § 4295, formerly § 4294, renumbered Sept. 2, 1958, Pub. L. 85–859, title I, § 135(a), 72 Stat. 1292, related to a cross reference to general administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES

Subchapter		Sec.[1]
A.	Policies issued by foreign insurers	4371
B.	Insured and self-insured health plans	4375

PRIOR PROVISIONS

The provisions of a prior chapter 34, Documentary Stamp Taxes, were set out as:

Subchapter A, Issuance of capital stock and certificates of indebtedness by a corporation, comprising sections 4301 to 4305 and 4311 to 4316.

Subchapter B, Sale or transfers of capital stock and certificates of indebtedness of a corporation, comprising sections 4321 to 4324, 4331 to 4333, 4341 to 4345, and 4351 to 4354.

Subchapter C, Conveyances, comprising sections 4361 to 4363.

Subchapter D, Policies issued by foreign insurers, comprising sections 4371 to 4375.

Subchapter E, Miscellaneous provisions applicable to documentary stamp taxes, comprising sections 4381 to 4384.

Subchapters A and B were repealed by Pub. L. 89–44, title IV, § 401(a), June 21, 1965, 79 Stat. 148.

Subchapter C was struck out by Pub. L. 94–455, title XIX, § 1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.

Subchapter D heading was struck out, sections 4371 to 4373 were reenacted without change, section 4374, ''liability for tax'', was substituted for section 4374, ''payment of tax'', and section 4375 was struck out by Pub. L. 94–455, title XIX, § 1904(a)(12).

Subchapter E, section 4381 was repealed by Pub. L. 89–44, title IV, § 401(c), June 21, 1965, 79 Stat. 148, and sections 4382 to 4384 were struck out by Pub. L. 94–455, title XIX, § 1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.

The subject matter of the prior sections was as follows:

A prior section 4301, acts Aug. 16, 1954, ch. 736, 68A Stat. 513; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1293; Apr. 8, 1960, Pub. L. 86–416, § 1, 74 Stat. 36, imposed a tax, based upon the actual value of the certificates or shares, upon each original issue of shares or certificates of stock issued by a corporation.

A prior section 4302, acts Aug. 16, 1954, ch. 736, 68A Stat. 513; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1293, made provision for a determination of tax in the case of recapitalization.

A prior section 4303, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1293, granted exemptions for common trust funds, pooled investment funds, and installment purchases of certain shares or certificates, and directed attention to section 4382 for other exemptions.

A prior section 4304, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, called for the affixing of the stamps representing the tax imposed by section 4301 upon the stock books or corresponding records of the corporation.

A prior section 4305, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, made cross-references to sections 4381 and 4384 and subtitle F.

A prior section 4311, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, imposed a tax on all certificates of indebtedness issued by a corporation.

A prior section 4312, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, § 4312, formerly § 4313; renumbered § 4312, Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, provided that every renewal of any certificate of indebtedness should be taxed as a new issue.

A prior section 4313, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, § 4313, formerly § 4314; renumbered § 4313, Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, provided for the method of determining the rate of taxation in the case of a bond conditioned for the repayment of money and given in a penal sum greater than the debt secured.

A prior section 4314, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, § 4314, formerly § 4315; renumbered § 4314, Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, granted an exemption to instruments under the terms of which the obligee was required to make installment payments of not more than 20 percent annually, and made reference to section 4382 for other exemptions.

A prior section 4315, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, § 4315, formerly § 4316; renumbered § 4315 and amended Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, made cross references to sections 4381 and 4384 and subtitle F.

A prior section 4321, acts Aug. 16, 1954, ch. 736, 68A Stat. 515; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1295; Sept. 21, 1959, Pub. L. 86–344, § 5(a), 73 Stat. 619, imposed a tax upon the sale or transfer of shares or certificates of stock or of rights to subscribe to receive such shares or certificates issued by a corporation.

A prior section 4322, acts Aug. 16, 1954, ch. 736, 68A Stat. 515; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1295, granted exemptions in the case of sales by brokers or registered nominees and in the case of odd lot sales.

A prior section 4323, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296; Sept. 21, 1959, Pub. L. 86–344, § 5(b), 73 Stat. 619, called for the affixing of the stamps representing the tax upon the books of the corporation and the certification of the actual value of the shares transferred, and made reference to section 4352 in the case of transfers shown otherwise than by the books of the corporation.

A prior section 4324, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296, made cross references to other sections and subtitles for definitions, penalties, and other general and administrative provisions.

A prior section 4331, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296, imposed a tax upon each sale or transfer of any certificate of indebtedness issued by a corporation.

A prior section 4332, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Jan. 28, 1956, ch. 19, 70 Stat. 9; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296, granted exemptions in the case of transfers and sales by brokers and installment purchases of obligations and made reference to other exemptions listed in other sections.

A prior section 4333, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296, made cross references to other sections and subtitles for definitions, penalties, and other general and administrative provisions.

A prior section 4341, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72

[1] Section numbers editorially supplied.

Stat. 1297, granted an exemption from the imposition of the tax under sections 4321 and 4331 in the case of transfers as collateral security and as security for performance.

A prior section 4342, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1297, granted exemptions in the case of delivery or transfer of instruments by a fiduciary to his nominee or between nominees or by a custodian.

A prior section 4343, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1297, provided that taxes imposed by sections 4321 and 4331 would not apply in specified cases involving decedents, minors, incompetents, financial institutions, bankrupts, successors, foreign governments and aliens, trustees, and survivors.

A prior section 4344, Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1298, made provision for an exemption from tax in the case of specified loan transactions, worthless stock and obligations, and transfers between certain revocable trusts.

A prior section 4345, acts Aug. 16, 1954, ch. 736, 68A Stat. 518, § 4345, formerly § 4344; renumbered § 4345 and amended Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1298, required an exemption certificate setting forth the facts as prescribed by regulations.

A prior section 4346, acts Aug. 16, 1954, ch. 736, 68A Stat. 518, § 4346, formerly § 4345; renumbered § 4346, Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1298, made cross reference to other sections for additional exemptions.

A prior section 4351, acts Aug. 16, 1954, ch. 736, 68A Stat. 518; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1299, defined registered nominee and sale or transfer.

A prior section 4352, acts Aug. 16, 1954, ch. 736, 68A Stat. 519, § 4352, formerly § 4353; renumbered § 4352, Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1299, provided for the affixing of the stamps required either on the instrument itself or on the memorandum or bill of sale.

A prior section 4353, Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1299, made provision for the payment of tax through the national securities exchanges without the use of stamps.

A prior section 4354, acts Aug. 16, 1954, ch. 736, 68A Stat. 519; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1299, made cross references to section 4384 and subtitle F for penalties and other general and administrative provisions.

A prior section 4361, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1299; June 21, 1965, Pub. L. 89–44, title IV, § 401(b), 79 Stat. 148, related to the imposition of a tax on each deed, instrument, or writing by which any realty is sold, assigned, transferred, or otherwise conveyed.

A prior section 4362, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1300, related to exemptions to the tax imposed by former section 4361.

A prior section 4363, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1300, related to cross references to former section 4384 and subtitle F of this title.

A prior section 4375, acts Aug. 16, 1954, ch. 736, 68A Stat. 522; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1301, made cross-references to section 4384 and subtitle F.

A prior section 4381, acts Aug. 16, 1954, ch. 736, 68A Stat. 523, Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1302, defined certificates of indebtedness, corporation, and shares or certificates of stock.

A prior section 4382, acts Aug. 16, 1954, ch. 736, 68A Stat. 523; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1302; Oct. 16, 1962, Pub. L. 87–834, § 6(e)(2), 76 Stat. 984, granted exemptions to Government and state obligations, etc.

A prior section 4383, Pub. L. 85–859, title I, 141(a), Sept. 2, 1958, 72 Stat. 1303, related to the taxation of continuing and terminated partnerships.

A prior section 4384, acts Aug. 16, 1954, ch. 736, 68A Stat. 524, § 4384, formerly § 4383; renumbered § 4384 and amended Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1303, related to liability for the tax.

AMENDMENTS

2010—Pub. L. 111–148, title VI, § 6301(e)(2)(B)(i), Mar. 23, 2010, 124 Stat. 746, substituted ''TAXES ON CERTAIN INSURANCE POLICIES'' for ''POLICIES ISSUED BY FOREIGN INSURERS'' as chapter heading and added items relating to subchapters A and B.

1976—Pub. L. 94–455, title XIX, § 1904(a)(12), Oct. 4, 1976, 90 Stat. 1812, substituted ''POLICIES ISSUED BY FOREIGN INSURERS'' for ''DOCUMENTARY STAMP TAXES'' as chapter heading and struck out items relating to subchapters C to E.

1965—Pub. L. 89–44, title IV, § 401(a), June 21, 1965, 79 Stat. 148, struck out items relating to subchapters A and B.

EFFECTIVE DATES OF REPEAL

Section 701(c)(1) of Pub. L. 89–44 provided that: ''The amendments made by section 401 [repealing sections 4301 to 4305, 4311 to 4315, 4321 to 4324, 4331 to 4333, 4341 to 4346, 4351 to 4354 and 4381 of this title] (relating to documentary stamp taxes) shall apply on and after January 1, 1966.''

Repeal of sections 4361 to 4363, 4375, 4382 to 4384 by section 1904(a)(12) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

Subchapter A—Policies Issued By Foreign Insurers

Sec.
4371. Imposition of tax.
4372. Definitions.
4373. Exemptions.
4374. Liability for tax.

AMENDMENTS

2010—Pub. L. 111–148, title VI, § 6301(e)(2)(B)(i), Mar. 23, 2010, 124 Stat. 746, added subchapter heading.

§ 4371. Imposition of tax

There is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax at the following rates:

(1) Casualty insurance and indemnity bonds

4 cents on each dollar, or fractional part thereof, of the premium paid on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372(d);

(2) Life insurance, sickness, and accident policies, and annuity contracts

1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of life, sickness, or accident insurance, or annuity contract; and

(3) Reinsurance

1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 521; Mar. 13, 1956, ch. 83, § 5(9), 70 Stat. 49; Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1300; Pub. L. 86–69, § 3(f)(3), June 25, 1959, 73 Stat. 140; Pub. L. 89–44,

title VIII, § 804(b), June 21, 1965, 79 Stat. 160; Pub. L. 94–455, title XIX, § 1904(a)(12), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 98–369, div. A, title II, § 211(b)(23), July 18, 1984, 98 Stat. 757; Pub. L. 100–203, title X, § 10242(c)(3), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 101–239, title VII, § 7811(i)(11), Dec. 19, 1989, 103 Stat. 2411.)

AMENDMENTS

1989—Par. (2). Pub. L. 101–239 struck out ‘‘, unless the insurer is subject to tax under section 842(b)’’ after ‘‘or annuity contract’’.

1987—Par. (2). Pub. L. 100–203 substituted ‘‘section 842(b)’’ for ‘‘section 813’’.

1984—Par. (2). Pub. L. 98–369 substituted ‘‘section 813’’ for ‘‘section 819’’.

1976—Pub. L. 94–455 substituted in par. (1) ‘‘4 cents’’ for ‘‘four cents’’ and ‘‘premium paid’’ for ‘‘premium charged’’, in pars. (2) and (3) ‘‘1 cent’’ for ‘‘one cent’’ and ‘‘premium paid’’ for ‘‘premium charged’’, and struck out provision following par. (3) relating to computation of tax on premium paid in lieu of premium charged.

1965—Pub. L. 89–44 inserted last sentence relating to computation of tax on premium paid in lieu of premium charged.

1959—Par. (2). Pub. L. 86–69 substituted ‘‘section 819’’ for ‘‘section 816’’.

1958—Pub. L. 85–859 substituted ‘‘is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax’’ for ‘‘shall be imposed a tax on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer’’.

1956—Par. (2). Act Mar. 13, 1956, substituted ‘‘section 816’’ for ‘‘section 807’’.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to policies, bonds, and contracts with respect to which the tax imposed by this section is required to be paid on the basis of a return, see section 804(c) of Pub. L. 89–44, set out as a note under section 4374 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§ 4372. Definitions

(a) Foreign insurer or reinsurer

For purposes of section 4371, the term ‘‘foreign insurer or reinsurer’’ means an insurer or reinsurer who is a nonresident alien individual, or a foreign partnership, or a foreign corporation. The term includes a nonresident alien individual, foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond. The term does not include a foreign government, or municipal or other corporation exercising the taxing power.

(b) Policy of casualty insurance

For purposes of section 4371(1), the term ‘‘policy of casualty insurance’’ means any policy (other than life) or other instrument by whatever name called whereby a contract of insurance is made, continued, or renewed.

(c) Indemnity bond

For purposes of this chapter the term ‘‘indemnity bond’’ means any instrument by whatever name called whereby an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed. The term includes any bond for indemnifying any person who shall have become bound or engaged as surety, and any bond for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, where a premium is charged for the execution of such bond.

(d) Insured

For purposes of section 4371(1), the term ‘‘insured’’ means—

(1) a domestic corporation or partnership, or an individual resident of the United States, against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, or

(2) a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States, against, or with respect to hazards, risks, or liabilities within the United States.

(e) Policy of life, sickness, or accident insurance, or annuity contract

For the purpose of section 4371(2), the term ‘‘policy of life, sickness, or accident insurance, or annuity contract’’ means any policy or other instrument by whatever name called whereby a contract of insurance or an annuity contract is made, continued, or renewed with respect to the life or hazards to the person of a citizen or resident of the United States.

(f) Policy of reinsurance

For the purpose of section 4371(3), the term ‘‘policy of reinsurance’’ means any policy or

other instrument by whatever name called whereby a contract of reinsurance is made, continued, or renewed against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts taxable under paragraph (1) or (2) of section 4371.

(Aug. 16, 1954, ch. 736, 68A Stat. 521; Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1300; Pub. L. 94–455, title XIX, § 1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 substituted ''section 4371'' for ''this subchapter'', and inserted provision that term does not include a foreign government, or municipal or other corporation exercising the taxing power.

Subsec. (c). Pub. L. 94–455 substituted ''this chapter'' for ''this subchapter''.

1958—Subsec. (d)(2). Pub. L. 85–859 inserted ''against, or'' before ''with respect to''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

§ 4373. Exemptions

The tax imposed by section 4371 shall not apply to—

(1) Effectively connected items

Any amount which is effectively connected with the conduct of a trade or business within the United States unless such amount is exempt from the application of section 882(a) pursuant to a treaty obligation of the United States.

(2) Indemnity bond

Any indemnity bond required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-saving certificate, warrant or check, issued by the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 522; Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1301; Pub. L. 94–455, title XIX, § 1904(a)(12), Oct. 4, 1976, 90 Stat. 1813; Pub. L. 100–647, title I, § 1012(q)(13)(A), Nov. 10, 1988, 102 Stat. 3525.)

AMENDMENTS

1988—Par. (1). Pub. L. 100–647 amended par. (1) generally, substituting provisions relating to effectively connected items for provisions relating to domestic agent.

1976—Par. (1). Pub. L. 94–455 substituted ''State, or in the District of Columbia, within'' for ''State, Territory, or District of the United States within''.

1958—Pub. L. 85–859 reenacted section without change.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(q)(13)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to premiums paid after the date 30 days after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

§ 4374. Liability for tax

The tax imposed by this chapter shall be paid, on the basis of a return, by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 522; Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1301; Pub. L. 89–44, title VIII, § 804(a)(1), (2), June 21, 1965, 79 Stat. 160; Pub. L. 94–455, title XIX, § 1904(a)(12), Oct. 4, 1976, 90 Stat. 1813.)

PRIOR PROVISIONS

For provisions of prior sections 4375, 4381 to 4384, see Prior Provisions note preceding section 4371 of this title.

AMENDMENTS

1976—Pub. L. 94–455 substituted in section catchline ''Liability for tax'' for ''Payment of tax'' and in text provisions relating to payment of tax on basis of a return and to tax-exempt status of United States and its agencies and instrumentalities for provisions relating to placing of stamps on any policy, indemnity bond, or annuity contract referred to in section 4371 and to regulation by Secretary that tax be paid on basis of a return.

1965—Pub. L. 89–44 substituted ''Payment of tax'' for ''Affixing of stamps'' in section catchline, and inserted sentence authorizing Secretary or his delegate to provide by regulation for payment on basis of a return of tax imposed by section 4371.

1958—Pub. L. 85–859 reenacted section without change.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 804(c) of Pub. L. 89–44 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1965. The amendments made by subsection (b) [amending section 4371 of this title] shall apply with respect to policies, bonds, and contracts with respect to which the tax imposed by section 4371 of the Code is required to be paid on the basis of a return.''

DETERMINATION OF PARTNERSHIP AS CONTINUING OR TERMINATED PARTNERSHIP

Section 141(b) of Pub. L. 85–859 mandated that only changes in the partnership occurring on or after the effective date specified in section 1(c) of Pub. L. 85–859 shall be taken into account in the determination of whether a partnership is a continuing or terminated one.

Subchapter B—Insured and Self-Insured Health Plans

Sec.
4375. Health insurance.
4376. Self-insured health plans.
4377. Definitions and special rules.

§ 4375. Health insurance

(a) Imposition of fee

There is hereby imposed on each specified health insurance policy for each policy year ending after September 30, 2012, a fee equal to the product of $2 ($1 in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the policy.

(b) Liability for fee

The fee imposed by subsection (a) shall be paid by the issuer of the policy.

(c) Specified health insurance policy

For purposes of this section:

(1) In general

Except as otherwise provided in this section, the term ''specified health insurance policy'' means any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States.

(2) Exemption for certain policies

The term ''specified health insurance policy'' does not include any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

(3) Treatment of prepaid health coverage arrangements

(A) In general

In the case of any arrangement described in subparagraph (B), such arrangement shall be treated as a specified health insurance policy, and the person referred to in such subparagraph shall be treated as the issuer.

(B) Description of arrangements

An arrangement is described in this subparagraph if under such arrangement fixed payments or premiums are received as consideration for any person's agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided.

(d) Adjustments for increases in health care spending

In the case of any policy year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such policy year shall be equal to the sum of such dollar amount for policy years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(1) such dollar amount for policy years ending in the previous fiscal year, multiplied by

(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

(e) Termination

This section shall not apply to policy years ending after September 30, 2019.

(Added Pub. L. 111–148, title VI, § 6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 743.)

§ 4376. Self-insured health plans

(a) Imposition of fee

In the case of any applicable self-insured health plan for each plan year ending after September 30, 2012, there is hereby imposed a fee equal to $2 ($1 in the case of plan years ending during fiscal year 2013) multiplied by the average number of lives covered under the plan.

(b) Liability for fee

(1) In general

The fee imposed by subsection (a) shall be paid by the plan sponsor.

(2) Plan sponsor

For purposes of paragraph (1) the term ''plan sponsor'' means—

(A) the employer in the case of a plan established or maintained by a single employer,

(B) the employee organization in the case of a plan established or maintained by an employee organization,

(C) in the case of—

(i) a plan established or maintained by 2 or more employers or jointly by 1 or more employers and 1 or more employee organizations,

(ii) a multiple employer welfare arrangement, or

(iii) a voluntary employees' beneficiary association described in section 501(c)(9), the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, or

(D) the cooperative or association described in subsection (c)(2)(F) in the case of a plan established or maintained by such a cooperative or association.

(c) Applicable self-insured health plan

For purposes of this section, the term ''applicable self-insured health plan'' means any plan for providing accident or health coverage if—

(1) any portion of such coverage is provided other than through an insurance policy, and

(2) such plan is established or maintained—

(A) by 1 or more employers for the benefit of their employees or former employees,

(B) by 1 or more employee organizations for the benefit of their members or former members,

(C) jointly by 1 or more employers and 1 or more employee organizations for the benefit of employees or former employees,

(D) by a voluntary employees' beneficiary association described in section 501(c)(9),

(E) by any organization described in section 501(c)(6), or

(F) in the case of a plan not described in the preceding subparagraphs, by a multiple employer welfare arrangement (as defined in section 3(40) of Employee Retirement Income Security Act of 1974), a rural electric cooperative (as defined in section 3(40)(B)(iv) of such Act), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of such Act).

(d) Adjustments for increases in health care spending

In the case of any plan year ending in any fiscal year beginning after September 30, 2014, the

dollar amount in effect under subsection (a) for such plan year shall be equal to the sum of such dollar amount for plan years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(1) such dollar amount for plan years ending in the previous fiscal year, multiplied by

(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

(e) Termination

This section shall not apply to plan years ending after September 30, 2019.

(Added Pub. L. 111–148, title VI, § 6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 744.)

REFERENCES IN TEXT

Section 3(40) of Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(2)(F), is classified to section 1002(40) of Title 29, Labor.

§ 4377. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Accident and health coverage

The term ''accident and health coverage'' means any coverage which, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section 4375(c)).

(2) Insurance policy

The term ''insurance policy'' means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

(3) United States

The term ''United States'' includes any possession of the United States.

(b) Treatment of governmental entities

(1) In general

For purposes of this subchapter—

(A) the term ''person'' includes any governmental entity, and

(B) notwithstanding any other law or rule of law, governmental entities shall not be exempt from the fees imposed by this subchapter except as provided in paragraph (2).

(2) Treatment of exempt governmental programs

In the case of an exempt governmental program, no fee shall be imposed under section 4375 or section 4376 on any covered life under such program.

(3) Exempt governmental program defined

For purposes of this subchapter, the term ''exempt governmental program'' means—

(A) any insurance program established under title XVIII of the Social Security Act,

(B) the medical assistance program established by title XIX or XXI of the Social Security Act,

(C) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being members of the Armed Forces of the United States or veterans, and

(D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

(c) Treatment as tax

For purposes of subtitle F, the fees imposed by this subchapter shall be treated as if they were taxes.

(d) No cover over to possessions

Notwithstanding any other provision of law, no amount collected under this subchapter shall be covered over to any possession of the United States.

(Added Pub. L. 111–148, title VI, § 6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 746.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 4(d) of the Indian Health Care Improvement Act, referred to in subsec. (b)(3)(D), is classified to section 1603(d) of Title 25, Indians.

CHAPTER 35—TAXES ON WAGERING

Subchapter		Sec.[1]
A.	Tax on wagers	4401
B.	Occupational tax	4411
C.	Miscellaneous provisions	4421

Subchapter A—Tax on Wagers

Sec.	
4401.	Imposition of tax.
4402.	Exemptions.
4403.	Record requirements.
4404.	Territorial extent.
4405.	Cross references.

§ 4401. Imposition of tax

(a) Wagers

(1) State authorized wagers

There shall be imposed on any wager authorized under the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager.

(2) Unauthorized wagers

There shall be imposed on any wager not described in paragraph (1) an excise tax equal to 2 percent of the amount of such wager.

(b) Amount of wager

In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax im-

[1] Section numbers editorially supplied.

posed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) Persons liable for tax

Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another person without having registered under section 4412 the name and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

(Aug. 16, 1954, ch. 736, 68A Stat. 525; Pub. L. 85–859, title I, § 151(a), Sept. 2, 1958, 72 Stat. 1304; Pub. L. 93–499, § 3(a), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–362, title I, § 109(a), Oct. 25, 1982, 96 Stat. 1731.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–362 substituted provision that there shall be imposed on any wager authorized under the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager and that there shall be imposed on any other wager an excise tax equal to 2 percent of the amount of such wager for provision that there be imposed on wagers, as defined in section 4421, an excise tax equal to 2 percent of the amount thereof.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (a). Pub. L. 93–499 substituted ''2 percent'' for ''10 percent''.

1958—Subsec. (c). Pub. L. 85–859 made all persons required to register under section 4412 of this title who receive wagers for or on behalf of another person without having registered under section 4412 of this title the name and place of residence of such other person liable for the tax on all such wagers received by them.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 109(c)(1) of Pub. L. 97–362 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1983.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(d)(1) of Pub. L. 93–499 provided that: ''The amendments made by this section [enacting section 4424 and amending this section and section 4411 of this title] take effect on December 1, 1974, and shall apply only with respect to wagers placed on or after such date.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 151(b) of Pub. L. 85–859 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to wagers received after the date of the enactment of this Act [Sept. 2, 1958].''

§ 4402. Exemptions

No tax shall be imposed by this subchapter—

(1) Parimutuels

On any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law,

(2) Coin-operated devices

On any wager placed in a coin-operated device (as defined in section 4462 as in effect for years beginning before July 1, 1980), or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2) (as so in effect), or

(3) State-conducted lotteries, etc.

On any wager placed in a sweepstakes, wagering pool, or lottery which is conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

(Aug. 16, 1954, ch. 736, 68A Stat. 525; Pub. L. 85–859, title I, § 152(b), Sept. 2, 1958, 72 Stat. 1305; Pub. L. 89–44, title IV, § 405(a), title VIII, § 813(a), June 21, 1965, 79 Stat. 149, 170; Pub. L. 94–455, title XII, § 1208(a), Oct. 4, 1976, 90 Stat. 1709; Pub. L. 95–600, title V, § 521(c)(1), Nov. 6, 1978, 92 Stat. 2884.)

REFERENCES IN TEXT

Section 4462, referred to in par. (2), was repealed by Pub. L. 95–600, title V, § 521(b), Nov. 6, 1978, 92 Stat. 2884.

AMENDMENTS

1978—Par. (2). Pub. L. 95–600 substituted ''(as defined in section 4462 as in effect for years beginning before July 1, 1980)'' for ''with respect to which an occupational tax is imposed by section 4461'' and ''(as so in effect), or'' for ''if an occupational tax is imposed with respect to such device by section 4461, or''.

1976—Par. (3). Pub. L. 94–455, among other changes, substituted in heading ''State-conducted lotteries, etc.'' for ''State-conducted sweepstakes.'', and struck out provision that no tax be imposed on any wager placed in a sweepstakes, wagering pool, or lottery in which the ultimate winners are determined by the results of a horse race.

1965—Par. (2). Pub. L. 89–44, § 405(a), substituted ''section 4462(a)(2),'' for ''section 4462(a)(2)(B),''.

Par. (3). Pub. L. 89–44, § 813(a), added par. (3).

1958—Par. (2). Pub. L. 85–859 inserted provisions exempting from the tax amounts paid to operate a device described in section 4462(a)(2)(B), if an occupational tax is imposed with respect to such device by section 4461 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, § 521(d)(2), Nov. 6, 1978, 92 Stat. 2885, provided that: ''The amendments made by subsections (b) [repealing sections 4461 to 4464 of this title] and (c) [amending this section and section 4901 of this title] shall apply with respect to years beginning after June 30, 1980.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1208(c)(1) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section)] shall apply with respect to wagers placed after March 10, 1964''.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(c)(2) of Pub. L. 89–44 provided in part that: ''The amendments made by sections 403 [amending sections 4461 and 4462 of this title] (relating to occupational tax on coin-operated devices) and 404 [repealing sections 4471 to 4474] (relating to occupational tax on bowling alleys, billiard and pool tables), and by subsections (a) [amending this section], (b) [amending section 4901 of this title] and (d) [amending section 4914 of this title] of section 405 (relating to technical and conforming changes) shall apply on and after July 1, 1965.''

Section 813(b) of Pub. L. 89–44 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to wagers placed after March 10, 1964.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 152(c) of Pub. L. 85–859, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 4462 of this title] shall take effect on the effective date specified in section 1(c) of this Act [the first day of the first calendar quarter beginning more than 60 days after Sept. 2, 1958]. In the case of the year beginning July 1, 1958, where the trade or business on which the tax is imposed under section 4461 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] was commenced before such effective date, the tax imposed for such year solely by reason of the amendment made by subsection (a)—

''(1) shall be the amount reckoned proportionately from such effective date through June 30, 1959, and

''(2) shall be due on, and payable on or before, the last day of the month the first day of which is such effective date.''

§ 4403. Record requirements

Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 525.)

§ 4404. Territorial extent

The tax imposed by this subchapter shall apply only to wagers

(1) accepted in the United States, or

(2) placed by a person who is in the United States

(A) with a person who is a citizen or resident of the United States, or

(B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 525.)

§ 4405. Cross references

For penalties and other administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 526.)

Subchapter B—Occupational Tax

Sec.
4411. Imposition of tax.
4412. Registration.
4413. Certain provisions made applicable.
4414. Cross references.

§ 4411. Imposition of tax

(a) In general

There shall be imposed a special tax of $500 per year to be paid by each person who is liable for the tax imposed under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

(b) Authorized persons

Subsection (a) shall be applied by substituting ''$50'' for ''$500'' in the case of—

(1) any person whose liability for tax under section 4401 is determined only under paragraph (1) of section 4401(a), and

(2) any person who is engaged in receiving wagers only for or on behalf of persons described in paragraph (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 527; Pub. L. 93–499, § 3(b), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 97–362, title I, § 109(b), Oct. 25, 1982, 96 Stat. 1731.)

AMENDMENTS

1982—Pub. L. 97–362 designated existing provisions as subsec. (a), in subsec. (a), as so designated, substituted ''liable for the tax imposed'' for ''liable for tax'', and added subsec. (b).

1974—Pub. L. 93–499 substituted ''$500'' for ''$50''.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 109(c)(2) of Pub. L. 97–362 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on July 1, 1983.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–499 effective Dec. 1, 1974, and applicable only with respect to wagers placed on or after such date, see section 3(d)(1) of Pub. L. 93–499, set out as a note under section 4401 of this title.

PERSONS ENGAGED IN ACTIVITIES ON DECEMBER 1, 1974, REQUIRING PAYMENT OF TAX; PERSONS PAYING TAX AND REGISTERING BEFORE DECEMBER 1, 1974

Section 3(d)(2) of Pub. L. 93–499, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) Any person who, on December 1, 1974, is engaged in an activity which makes him liable for payment of the tax imposed by section 4411 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on such date) shall be treated as commencing such activity on such date for purposes of such section and section 4901 of such Code.

''(B) Any person who, before December 1, 1974.—

''(i) became liable for and paid the tax imposed by section 4411 of the Internal Revenue Code of 1986 (as in effect on July 1, 1974) for the year ending June 30, 1975, shall not be liable for any additional tax under such section for such year, and

''(ii) registered under section 4412 of such Code (as in effect on July 1, 1974) for the year ending June 30, 1975, shall not be required to reregister under such section for such year.''

§ 4412. Registration

(a) Requirement

Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Firm or company

Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) Supplemental information

In accordance with regulations prescribed by the Secretary, the Secretary may require from

time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 527; Pub. L. 94–455, title XIX, § 1906(b)(13)(I), Oct. 4, 1976, 90 Stat. 1835.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 substituted ''the Secretary may'' for ''he or his delegate may''.

PERSONS PAYING TAX AND REGISTERING BEFORE DECEMBER 1, 1974

Persons registered before Dec. 1, 1974 under this section (as in effect on July 1, 1974) for the year ending June 30, 1975, not required to reregister under this section for such year, see section 3(d)(2) of Pub. L. 93–499, set out as a note under section 4411 of this title.

§ 4413. Certain provisions made applicable

Sections 4901, 4902, 4904, 4905, and 4906 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation referred to in such sections. No other provision of sections 4901 to 4907, inclusive, shall so extend or apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 527.)

§ 4414. Cross references

For penalties and other general and administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 527.)

Subchapter C—Miscellaneous Provisions

Sec.
4421. Definitions.
4422. Applicability of Federal and State laws.
4423. Inspection of books.
4424. Disclosure of wagering tax information.

AMENDMENTS

1974—Pub. L. 93–499, § 3(c)(2), Oct. 29, 1974, 88 Stat. 1551, added item 4424.

§ 4421. Definitions

For purposes of this chapter—

(1) Wager

The term ''wager'' means—

(A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

(B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

(C) any wager placed in a lottery conducted for profit.

(2) Lottery

The term ''lottery'' includes the numbers game, policy, and similar types of wagering. The term does not include—

(A) any game of a type in which usually

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and

(B) any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

§ 4422. Applicability of Federal and State laws

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

§ 4423. Inspection of books

Notwithstanding section 7605(b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

§ 4424. Disclosure of wagering tax information

(a) General rule

Except as otherwise provided in this section, neither the Secretary nor any other officer or employee of the Treasury Department may divulge or make known in any manner whatever to any person—

(1) any original, copy, or abstract of any return, payment, or registration made pursuant to this chapter,

(2) any record required for making any such return, payment, or registration, which the Secretary is permitted by the taxpayer to examine or which is produced pursuant to section 7602, or

(3) any information come at by the exploitation of any such return, payment, registration, or record.

(b) Permissible disclosure

A disclosure otherwise prohibited by subsection (a) may be made in connection with the administration or civil or criminal enforcement of any tax imposed by this title. However, any document or information so disclosed may not be—

(1) divulged or made known in any manner whatever by any officer or employee of the United States to any person except in connection with the administration or civil or criminal enforcement of this title, nor

(2) used, directly or indirectly, in any criminal prosecution for any offense occurring before the date of enactment of this section.

(c) Use of documents possessed by taxpayer

Except in connection with the administration or civil or criminal enforcement of any tax imposed by this title—

(1) any stamp denoting payment of the special tax under this chapter,

(2) any original, copy, or abstract possessed by a taxpayer of any return, payment, or registration made by such taxpayer pursuant to this chapter, and

(3) any information come at by the exploitation of any such document,

shall not be used against such taxpayer in any criminal proceeding.

(d) Inspection by committees of Congress

Section 6103(f) shall apply with respect to any return, payment, or registration made pursuant to this chapter.

(Added Pub. L. 93–499, § 3(c)(1), Oct. 29, 1974, 88 Stat. 1550; amended Pub. L. 94–455, title XII, § 1202(h)(6), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1688, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 94–455, § 1202(h)(6), substituted ''6103(f)'' for ''6103(d)''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1202(h)(6) of Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1974, and applicable only with respect to wagers placed on or after such date, see section 3(d)(1) of Pub. L. 93–499, set out as an Effective Date of 1974 Amendment note under section 4401 of this title.

CHAPTER 36—CERTAIN OTHER EXCISE TAXES

Subchapter		Sec.[1]
A.	Harbor maintenance tax	4461
B.	Transportation by water	4471
B.	Occupational tax on coin-operated devices	[2] 4461
[C.	Repealed.]	
D.	Tax on use of certain vehicles	4481
[E, F.	Repealed.]	

AMENDMENTS

1997—Pub. L. 105–34, title XIV, § 1432(b)(2), Aug. 5, 1997, 110 Stat. 1050, struck out item for subchapter F ''Tax on removal of hard mineral resources from deep seabed''.

1989—Pub. L. 101–239, title VII, § 7504(b), Dec. 19, 1989, 103 Stat. 2363, added item for subchapter B.

1986—Pub. L. 99–662, title XIV, § 1402(b), Nov. 17, 1986, 100 Stat. 4269, added item for subchapter A.

1982—Pub. L. 97–248, title II, § 280(c)(2)(A), Sept. 3, 1982, 96 Stat. 564, struck out item for subchapter E.

1980—Pub. L. 96–283, title IV, § 402(b), June 28, 1980, 94 Stat. 584, added item for subchapter F.

1970—Pub. L. 91–258, title II, § 206(d)(1), May 21, 1970, 84 Stat. 246, added item for subchapter E.

1965—Pub. L. 89–44, title IV, §§ 402, 404, June 21, 1965, 79 Stat. 148, 149, struck out items for subchapters A and C.

1956—Act June 29, 1956, ch. 462, title II, § 206(c), 70 Stat. 391, added item for subchapter D.

Subchapter A—Harbor Maintenance Tax

Sec.
4461. Imposition of tax.
4462. Definitions and special rules.

PRIOR PROVISIONS

A prior subchapter A (§§ 4451 to 4457), act Aug. 16, 1954, ch. 736, 68A Stat. 529, 530, related to tax on playing cards, prior to repeal by Pub. L. 89–44, title IV, § 402, June 21, 1965, 79 Stat. 148. Repeal of sections 4451 to 4457 applicable on and after June 22, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as an Effective Date of 1965 Amendment note under section 4905 of this title.

§ 4461. Imposition of tax

(a) General rule

There is hereby imposed a tax on any port use.

(b) Amount of tax

The amount of the tax imposed by subsection (a) on any port use shall be an amount equal to 0.125 percent of the value of the commercial cargo involved.

(c) Liability and time of imposition of tax

(1) Liability

The tax imposed by subsection (a) shall be paid by—

(A) in the case of cargo entering the United States, the importer, or

(B) in any other case, the shipper.

(2) Time of imposition

Except as provided by regulations, the tax imposed by subsection (a) shall be imposed at the time of unloading.

(Added Pub. L. 99–662, title XIV, § 1402(a), Nov. 17, 1986, 100 Stat. 4266; amended Pub. L. 101–508, title XI, § 11214(a), Nov. 5, 1990, 104 Stat. 1388–436; Pub. L. 109–59, title XI, § 11116(b), Aug. 10, 2005, 119 Stat. 1951.)

PRIOR PROVISIONS

For prior section 4461, see Prior Provisions note set out preceding section 4471 of this title.

AMENDMENTS

2005—Subsec. (c)(1). Pub. L. 109–59, § 11116(b)(1), inserted ''or'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''in the case of cargo to be exported from the United States, the exporter, or''.

Subsec. (c)(2). Pub. L. 109–59, § 11116(b)(2), substituted ''imposed'' for ''imposed—

''(A) in the case of cargo to be exported from the United States, at the time of loading, and

''(B) in any other case,''.

1990—Subsec. (b). Pub. L. 101–508 substituted ''0.125 percent'' for ''0.04 percent''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, § 11116(c), Aug. 10, 2005, 119 Stat. 1951, provided that: ''The amendments made by this section [amending this section and section 4462 of this title] shall take effect before, on, and after the date of the enactment of this Act [Aug. 10, 2005].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11214(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1991.''

EFFECTIVE DATE

Section 1402(c) of Pub. L. 99–662 provided that: ''The amendments made by this section [enacting this sec-

[1] Section numbers editorially supplied.

[2] Subchapter repealed by Pub. L. 95–600 without corresponding amendment of chapter analysis.

tion and section 4462 of this title] shall take effect on April 1, 1987.''

AUTHORIZATION OF APPROPRIATIONS

Section 1403(b) of Pub. L. 99–662, authorized to be appropriated to Department of the Treasury (from fees collected under section 58c(9), (10) of Title 19, Customs Duties) such sums as necessary to pay all expenses of administration incurred by such Department in administering this subchapter for periods to which such fees apply, prior to repeal by Pub. L. 103–182, title VI, § 690(c)(8), Dec. 8, 1993, 107 Stat. 2223.

STUDY OF CARGO DIVERSION

Section 1407 of Pub. L. 99–662, as amended by Pub. L. 100–647, title II, § 2002(c), Nov. 10, 1988, 102 Stat. 3597, provided that:

''(a) INITIAL STUDY.—The Secretary of the Treasury, in consultation with United States ports, the Secretary of the Army, the Secretary of Transportation, the United States Trade Representative and other appropriate Federal agencies, shall conduct a study to determine the impact of the port use tax imposed under section 4461(a) of the Internal Revenue Code of 1954 [now 1986] on potential diversions of cargo from particular United States ports to any port in a country contiguous to the United States. The report of the study shall be submitted to the Ways and Means Committee of the House of Representatives and the Committee on Finance of the United States Senate not later than December 1, 1988.

''(b) REVIEW.—The Secretary of the Treasury may, at any time, review and revise the findings of the study conducted pursuant to subsection (a) with respect to any United States port (or to any transaction or class of transactions at such port).

''(c) IMPLEMENTATION OF FINDINGS.—For purposes of section 4462(d)(2)(B) of the Internal Revenue Code of 1954 [now 1986], the findings of the study or review conducted pursuant to subsections (a) and (b) of this section shall be effective 60 days after notification to the ports concerned.''

§ 4462. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Port use

The term ''port use'' means—

(A) the loading of commercial cargo on, or

(B) the unloading of commercial cargo from,

a commercial vessel at a port.

(2) Port

(A) In general

The term ''port'' means any channel or harbor (or component thereof) in the United States, which—

(i) is not an inland waterway, and

(ii) is open to public navigation.

(B) Exception for certain facilities

The term ''port'' does not include any channel or harbor with respect to which no Federal funds have been used since 1977 for construction, maintenance, or operation, or which was deauthorized by Federal law before 1985.

(C) Special rule for Columbia River

The term ''port'' shall include the channels of the Columbia River in the States of Oregon and Washington only up to the downstream side of Bonneville lock and dam.

(3) Commercial cargo

(A) In general

The term ''commercial cargo'' means any cargo transported on a commercial vessel, including passengers transported for compensation or hire.

(B) Certain items not included

The term ''commercial cargo'' does not include—

(i) bunker fuel, ship's stores, sea stores, or the legitimate equipment necessary to the operation of a vessel, or

(ii) fish or other aquatic animal life caught and not previously landed on shore.

(4) Commercial vessel

(A) In general

The term ''commercial vessel'' means any vessel used—

(i) in transporting cargo by water for compensation or hire, or

(ii) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel.

(B) Exclusion of ferries

(i) In general

The term ''commercial vessel'' does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries.

(ii) Ferry

The term ''ferry'' means any vessel which arrives in the United States on a regular schedule during its operating season at intervals of at least once each business day.

(5) Value

(A) In general

The term ''value'' means, except as provided in regulations, the value of any commercial cargo as determined by standard commercial documentation.

(B) Transportation of passengers

In the case of the transportation of passengers for hire, the term ''value'' means the actual charge paid for such service or the prevailing charge for comparable service if no actual charge is paid.

(b) Special rule for Alaska, Hawaii, and possessions

(1) In general

No tax shall be imposed under section 4461(a) with respect to—

(A) cargo loaded on a vessel in a port in the United States mainland for transportation to Alaska, Hawaii, or any possession of the United States for ultimate use or consumption in Alaska, Hawaii, or any possession of the United States,

(B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a posses-

sion for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,

(C) the unloading of cargo described in subparagraph (A) or (B) in Alaska, Hawaii, or any possession of the United States, or in the United States mainland, respectively, or

(D) cargo loaded on a vessel in Alaska, Hawaii, or a possession of the United States and unloaded in the State or possession in which loaded, or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters.

(2) Cargo does not include crude oil with respect to Alaska

For purposes of this subsection, the term ''cargo'' does not include crude oil with respect to Alaska.

(3) United States mainland

For purposes of this subsection, the term ''United States mainland'' means the continental United States (not including Alaska).

(c) Coordination of tax where transportation subject to tax imposed by section 4042

No tax shall be imposed under this subchapter with respect to the loading or unloading of any cargo on or from a vessel if any fuel of such vessel has been (or will be) subject to the tax imposed by section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

(d) Nonapplicability of tax to exports

The tax imposed by section 4461(a) shall not apply to any port use with respect to any commercial cargo to be exported from the United States.

(e) Exemption for United States

No tax shall be imposed under this subchapter on the United States or any agency or instrumentality thereof.

(f) Extension of provisions of law applicable to customs duty

(1) In general

Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations shall apply in respect of the tax imposed by this subchapter (and in respect of persons liable therefor) as if such tax were a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo.

(2) Jurisdiction of courts and agencies

For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the tax imposed by this subchapter shall be treated as if such tax were a customs duty.

(3) Administrative provisions applicable to tax law not to apply

The tax imposed by this subchapter shall not be treated as a tax for purposes of subtitle F or any other provision of law relating to the administration and enforcement of internal revenue taxes.

(g) Special rules

Except as provided by regulations—

(1) Tax imposed only once

Only 1 tax shall be imposed under section 4461(a) with respect to the loading on and unloading from, or the unloading from and the loading on, the same vessel of the same cargo.

(2) Exception for intraport movements

Under regulations, no tax shall be imposed under section 4461(a) on the mere movement of cargo within a port.

(3) Relay cargo

Only 1 tax shall be imposed under section 4461(a) on cargo (moving under a single bill of lading) which is unloaded from one vessel and loaded onto another vessel at any port in the United States for relay to or from any port in Alaska, Hawaii, or any possession of the United States. For purposes of this paragraph, the term ''cargo'' does not include any item not treated as cargo under subsection (b)(2).

(h) Exemption for humanitarian and development assistance cargos

No tax shall be imposed under this subchapter on any nonprofit organization or cooperative for cargo which is owned or financed by such nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in humanitarian or development assistance overseas.

(i) Regulations

The Secretary may prescribe such additional regulations as may be necessary to carry out the purposes of this subchapter including, but not limited to, regulations—

(1) providing for the manner and method of payment and collection of the tax imposed by this subchapter,

(2) providing for the posting of bonds to secure payment of such tax,

(3) exempting any transaction or class of transactions from such tax where the collection of such tax is not administratively practical, and

(4) providing for the remittance or mitigation of penalties and the settlement or compromise of claims.

(Added Pub. L. 99–662, title XIV, § 1402(a), Nov. 17, 1986, 100 Stat. 4266; amended Pub. L. 100–647, title II, § 2002(b), title VI, §§ 6109(a), 6110(a), Nov. 10, 1988, 102 Stat. 3597, 3712; Pub. L. 104–188, title I, § 1704(i)(1), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 109–59, title XI, § 11116(a), Aug. 10, 2005, 119 Stat. 1950.)

PRIOR PROVISIONS

For prior section 4462, see Prior Provisions note set out preceding section 4471 of this title.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–59 amended heading and text of subsec. (d) generally, substituting provisions relating to nonapplicability of tax imposed by section 4461(a) to exports for provisions relating to nonappli-

cability of tax imposed by section 4461(a) to bonded commercial cargo entering the United States for transportation and direct exportation to a foreign country and inapplicability of this provision to certain cargo exported to Canada or Mexico.

1996—Subsec. (b)(1)(D). Pub. L. 104–188 inserted before period at end ", or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters".

1988—Subsec. (b)(1)(B). Pub. L. 100–647, § 2002(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland for ultimate use or consumption in the United States mainland,".

Subsec. (g)(3). Pub. L. 100–647, § 6110(a), added par. (3).

Subsecs. (h), (i). Pub. L. 100–647, § 6109(a), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective before, on, and after Aug. 10, 2005, see section 11116(c) of Pub. L. 109–59, set out as a note under section 4461 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(i)(2) of Pub. L. 104–188 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1402(a) of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99–662, title XIV]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 2002(b) of Pub. L. 100–647 effective as if included in the provision of the Harbor Maintenance Revenue Act of 1986, Pub. L. 99–662, title XIV, to which it relates, see section 2002(d) of Pub. L. 100–647, set out as a note under section 4042 of this title.

Section 6109(b) of Pub. L. 100–647 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on April 1, 1987."

Section 6110(b) of Pub. L. 100–647 provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE

Section effective Apr. 1, 1987, see section 1402(c) of Pub. L. 99–662, set out as a note under section 4461 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Subchapter B—Transportation by Water

Sec.
4471. Imposition of tax.
4472. Definitions.

PRIOR PROVISIONS

A prior subchapter B, consisted of sections 4461 to 4464 of this title, prior to repeal by Pub. L. 95–600, title V, § 521(b), Nov. 6, 1978, 92 Stat. 2884, applicable with respect to years beginning after June 30, 1980.

Section 4461, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 21, 1959, Pub. L. 86–344, § 6(a), 73 Stat. 620; June 21, 1965, Pub. L. 89–44, title IV, § 403(a), 79 Stat. 148, imposed a special tax on persons who maintained for use or permitted use of coin-operated gaming devices and provided an exception from such tax.

Section 4462, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 2, 1958, Pub. L. 85–859, title I, § 152(a), 72 Stat. 1304; June 21, 1965, Pub. L. 89–44, title IV, § 403(b), 79 Stat. 149; Oct. 4, 1976, Pub. L. 94–455, title XII, § 1208(b), 90 Stat. 1709, defined coin-operated gaming devices.

Section 4463, act Aug. 16, 1954, ch. 736, 68A Stat. 531, related to administrative provisions.

Section 4464, added Pub. L. 92–178, title IV, § 402(a), Dec. 10, 1971, 85 Stat. 534, and amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title V, § 521(a), Nov. 6, 1978, 92 Stat. 2884, related to credit for State-imposed taxes.

AMENDMENTS

1996—Pub. L. 104–188, title I, § 1704(t)(11), Aug. 20, 1996, 110 Stat. 1888, struck out "and special rules" after "Definitions" in item 4472.

§ 4471. Imposition of tax

(a) In general

There is hereby imposed a tax of $3 per passenger on a covered voyage.

(b) By whom paid

The tax imposed by this section shall be paid by the person providing the covered voyage.

(c) Time of imposition

The tax imposed by this section shall be imposed only once for each passenger on a covered voyage, either at the time of first embarkation or disembarkation in the United States.

(Added Pub. L. 101–239, title VII, § 7504(a), Dec. 19, 1989, 103 Stat. 2362.)

PRIOR PROVISIONS

A prior section 4471 was contained in subchapter C of this chapter prior to repeal by Pub. L. 89–44, title IV, § 404, June 21, 1965, 79 Stat. 149.

EFFECTIVE DATE

Section 7504(c) of Pub. L. 101–239 provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this subchapter] shall apply to voyages beginning after December 31, 1989, which were not paid for before such date.

"(2) NO DEPOSITS REQUIRED BEFORE APRIL 1, 1990.—No deposit of any tax imposed by subchapter B of chapter 36 of the Internal Revenue Code of 1986, as added by this section, shall be required to be made before April 1, 1990."

§ 4472. Definitions

For purposes of this subchapter—

(1) Covered voyage

(A) In general

The term "covered voyage" means a voyage of—

(i) a commercial passenger vessel which extends over 1 or more nights, or

(ii) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States,

during which passengers embark or disembark the vessel in the United States. Such term shall not include any voyage on any vessel owned or operated by the United States, a State, or any agency or subdivision thereof.

(B) Exception for certain voyages on passenger vessels

The term ''covered voyage'' shall not include a voyage of a passenger vessel of less than 12 hours between 2 ports in the United States.

(2) Passenger vessel

The term ''passenger vessel'' means any vessel having berth or stateroom accommodations for more than 16 passengers.

(Added Pub. L. 101–239, title VII, § 7504(a), Dec. 19, 1989, 103 Stat. 2362.)

PRIOR PROVISIONS

A prior section 4472 was contained in subchapter C of this chapter prior to repeal by Pub. L. 89–44, title IV, § 404, June 21, 1965, 79 Stat. 149.

[Subchapter C—Repealed]

[§§ 4471 to 4474. Repealed. Pub. L. 89–44, title IV, § 404, June 21, 1965, 79 Stat. 149]

Section 4471, act Aug. 16, 1954, ch. 736, 68A Stat. 532, imposed a $20 annual tax upon bowling alleys, billiard tables, and pool tables to be paid by operators of bowling alleys, billiard rooms, and pool rooms.

Section 4472, act Aug. 16, 1954, ch. 736, 68A Stat. 532, defined bowling alley, billiard room, and pool room.

Section 4473, acts Aug. 16, 1954, ch. 736, 68A Stat. 532; Sept. 2, 1958, Pub. L. 85–859, title I, § 153(a), 72 Stat. 1305, granted exemptions for hospitals, the armed forces, and certain non-profit and governmental organizations.

Section 4474, act Aug. 16, 1954, ch. 736, 68A Stat. 532, made cross references to chapter 40 and subtitle F for penalties and administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as an Effective Date of 1965 Amendment note under section 4402 of this title.

Subchapter D—Tax on Use of Certain Vehicles

Sec.
4481. Imposition of tax.
4482. Definitions.
4483. Exemptions.
4484. Cross references.

AMENDMENTS

1983—Pub. L. 97–473, title II, § 202(b)(11), Jan. 14, 1983, 96 Stat. 2610, substituted ''Cross references'' for ''Cross reference'' in item 4484.

1956—Act June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 389, added subchapter heading and analysis of sections.

§ 4481. Imposition of tax

(a) Imposition of tax

A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified in the following table:

Taxable gross weight:	Rate of tax:
At least 55,000 pounds, but not over 75,000 pounds.	$100 per year plus $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds.
Over 75,000 pounds	$550.

(b) By whom paid

The tax imposed by this section shall be paid by the person in whose name the highway motor vehicle is, or is required to be, registered under the law of the State or contiguous foreign country in which such vehicle is, or is required to be, registered, or, in case the highway motor vehicle is owned by the United States, by the agency or instrumentality of the United States operating such vehicle.

(c) Proration of tax

(1) Where first use occurs after first month

If in any taxable period the first use of the highway motor vehicle is after the first month in such period, the tax shall be reckoned proportionately from the first day of the month in which such use occurs to and including the last day in such taxable period.

(2) Where vehicle sold, destroyed, or stolen

(A) In general

If in any taxable period a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was sold, destroyed, or stolen.

(B) Destroyed

For purposes of subparagraph (A), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.

(d) One tax liability per period

(1) In general

To the extent that the tax imposed by this section is paid with respect to any highway motor vehicle for any taxable period, no further tax shall be imposed by this section for such taxable period with respect to such vehicle.

(2) Cross reference

For privilege of paying tax imposed by this section in installments, see section 6156.[1]

(e) Electronic filing

Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.

(f) Period tax in effect

The tax imposed by this section shall apply only to use before October 1, 2011.

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 390; amended Pub. L. 87–61, title II, § 203(a), (b)(1), (2)(A), (B), June 29, 1961, 75 Stat. 124; Pub. L. 91–605, title III, § 303(a)(7), (8), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94–280, title III, § 303(a)(7), (8), May 5, 1976, 90 Stat. 456; Pub. L. 95–599, title V, § 502(a)(6), (7), Nov. 6, 1978, 92 Stat. 2756; Pub. L.

[1] See References in Text note below.

97–424, title V, §§ 513(a), (d), 516(a)(4), Jan. 6, 1983, 96 Stat. 2177, 2179, 2182; Pub. L. 98–369, div. A, title VII, § 734(f), title IX, § 901(a), July 18, 1984, 98 Stat. 980, 1003; Pub. L. 100–17, title V, §§ 502(a)(5), 507(a), Apr. 2, 1987, 101 Stat. 256, 260; Pub. L. 101–508, title XI, § 11211(c)(5), Nov. 5, 1990, 104 Stat. 1388–426; Pub. L. 102–240, title VIII, § 8002(a)(5), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 104–188, title I, § 1704(t)(57), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–178, title IX, § 9002(a)(1)(G), June 9, 1998, 112 Stat. 499; Pub. L. 108–357, title VIII, § 867(a), (c), Oct. 22, 2004, 118 Stat. 1622; Pub. L. 109–14, § 9(c)(1), May 31, 2005, 119 Stat. 336; Pub. L. 109–59, title XI, § 11101(a)(2)(A), Aug. 10, 2005, 119 Stat. 1944.)

REFERENCES IN TEXT

Section 6156, referred to in subsec. (d)(2), was repealed by Pub. L. 108–357, title VIII, § 867(b)(1), Oct. 22, 2004, 118 Stat. 1622.

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–59 substituted ''2011'' for ''2006''.

Pub. L. 109–14 substituted ''2006'' for ''2005''.

2004—Subsec. (c)(2). Pub. L. 108–357, § 867(a)(2), substituted ''sold, destroyed, or stolen'' for ''destroyed or stolen'' in heading.

Subsec. (c)(2)(A). Pub. L. 108–357, § 867(a)(1), substituted ''sold, destroyed, or stolen'' for ''destroyed or stolen'' in two places.

Subsecs. (e), (f). Pub. L. 108–357, § 867(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1998—Subsec. (e). Pub. L. 105–178 substituted ''2005'' for ''1999''.

1996—Subsec. (e). Pub. L. 104–188 provided that section 8002(a)(5) of Pub. L. 102–240 shall be applied as if ''4481(e)'' appeared instead of ''4481(c)''. See 1991 Amendment note below.

1991—Subsec. (e). Pub. L. 102–240, which directed the substitution of ''1999'' for ''1995'' in subsec. (c), was executed by making the substitution in subsec. (e). See 1996 Amendment note above.

1990—Subsec. (e). Pub. L. 101–508 substituted ''1995'' for ''1993''.

1987—Subsec. (b). Pub. L. 100–17, § 507(a), inserted ''or contiguous foreign country'' after ''State''.

Subsec. (e). Pub. L. 100–17, § 502(a)(5), substituted ''1993'' for ''1988''.

1984—Subsec. (a). Pub. L. 98–369, § 901(a), in amending subsec. (a) generally, substituted ''55,000'' for ''33,000'' in provisions preceding table, struck out heading ''(1) In general'', substituted table provisions for former table which provided:

Taxable gross weight		Rate of tax
At least	But less than	
33,000 pounds	55,000	$50 a year, plus $25 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds.
55,000 pounds	80,000	$600 a year, plus the applicable rate for each 1,000 pounds or fraction thereof in excess of 55,000 pounds
80,000 pounds or more	.....	The maximum tax a year.

and struck out par. (2) which provided applicable rates and maximum taxes for taxable periods beginning July 1, 1984 through 1988 or thereafter.

Pub. L. 98–369, § 734(f), struck out from subsec. (a), as subsec. (a) was in effect before the amendments made by section 513(a) of Pub. L. 97–424: ''In case of the taxable period beginning on July 1, 1984, and ending on September 30, 1984, the tax shall be at the rate of 75 cents for such period for each 1,000 pounds of taxable gross weight or fraction thereof.'' See 1983 Amendment note below.

1983—Subsec. (a). Pub. L. 97–424, § 513(a), substituted ''at least 33,000 pounds at the rate specified in the following table:'' for ''more than 26,000 pounds, at the rate of $3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof.'', and added pars. (1) and (2).

Subsec. (c). Pub. L. 97–424, § 513(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 97–424, § 516(a)(4), substituted ''1988'' for ''1984'' after ''October 1,''.

1978—Subsec. (a). Pub. L. 95–599, § 502(a)(6), substituted ''1984'' for ''1979'' in two places.

Subsec. (e). Pub. L. 95–599, § 502(a)(7), substituted ''1984'' for ''1979''.

1976—Subsec. (a). Pub. L. 94–280, § 303(a)(7), substituted ''1979'' for ''1977'' in two places.

Subsec. (e). Pub. L. 94–280, § 303(a)(8), substituted ''1979'' for ''1977''.

1970—Subsec. (a). Pub. L. 91–605, § 303(a)(7), substituted ''1977'' for ''1972'' in two places.

Subsec. (e). Pub. L. 91–605, § 303(a)(8), substituted ''1977'' for ''1972''.

1961—Subsec. (a). Pub. L. 87–61, § 203(a), (b)(2)(A), increased rate of tax from $1.50 to $3.00 a year, and provided for a tax at the rate of 75 cents for each 1,000 pounds during the period beginning on July 1, 1972, and ending on September 30, 1972.

Subsec. (c). Pub. L. 87–61, § 203(b)(2)(B), substituted ''any taxable period'' for ''any year'', ''after the first month in such period'' for ''after July 31'', and ''the last day in such taxable period'' for ''the last day of June following''.

Subsec. (d). Pub. L. 87–61, § 203(b)(2)(B), made conforming changes to refer to payment of tax for a taxable period instead of payment for a year, and inserted cross reference to section 6156.

Subsec. (e). Pub. L. 87–61, § 203(b)(1), substituted ''before October 1, 1972'' for ''after June 30, 1956, and before July 1, 1972''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–14, § 9(d), May 31, 2005, 119 Stat. 336, provided that: ''The amendments made by this section [amending this section and sections 4482, 4483, 9503, and 9504 of this title] shall take effect on the date of the enactment of this Act [May 31, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 867(e), Oct. 22, 2004, 118 Stat. 1622, provided that: ''The amendments made by this section [amending this section and section 4483 of this title and repealing section 6156 of this title] shall apply to taxable periods beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 507(d) of Pub. L. 100–17 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 4483 of this title] shall take effect on July 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 734(f) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Section 901(c) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] (and the provisions of subsection (b) [set out below]) shall take effect on July 1, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 513(f) of Pub. L. 97–424, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 4482 and 4483 of this title and enacting provisions set out below] shall take effect on July 1, 1984.

''(2) SPECIAL RULE IN THE CASE OF CERTAIN OWNER-OPERATORS.—

''(A) IN GENERAL.—In the case of a small owner-operator, paragraph (1) of this subsection and paragraph (2) of section 4481(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall be applied by substituting for each date contained in such paragraphs a date which is 1 year after the date so contained.

''(B) SMALL OWNER-OPERATOR.—For purposes of this paragraph, the term ''small owner-operator'' means any person who owns and operates at any time during the taxable period no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481 of such Code for such taxable period.

''[No subpar. (C) has been enacted.]

''(D) AGGREGATION OF VEHICLE OWNERSHIPS.—For purposes of subparagraph (B), all highway motor vehicles with respect to which a tax is imposed by section 4481 of such Code which are owned by—

''(i) any trade or business (whether or not incorporated) which is under common control with the taxpayer (within the meaning of section 52(b)), or

''(ii) any member of any controlled groups of corporations of which the taxpayer is a member, for any taxable period shall be treated as being owned by the taxpayer during such period. The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who own highway motor vehicles through partnerships, joint ventures, and corporations.

''(E) CONTROLLED GROUPS OF CORPORATIONS.—For purposes of this paragraph, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

''(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

''(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

''(F) HIGHWAY MOTOR VEHICLES.—For purposes of this paragraph, the term 'highway motor vehicle' has the meaning given to such term by section 4482(a) of such Code.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as an Effective Date of 1956 Amendment note under section 4041 of this title.

REGULATIONS

Section 507(c) of Pub. L. 100–17 provided that: ''The Secretary of the Treasury or the delegate of the Secretary shall within 120 days after the date of the enactment of this section [Apr. 2, 1987] prescribe regulations governing payment of the tax imposed by section 4481 of the Internal Revenue Code of 1986 on any highway motor vehicle operated by a motor carrier domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country. Such regulations shall include a procedure by which the operator of such motor vehicle shall evidence that such operator has paid such tax at the time such motor vehicle enters the United States. In the event of the failure to provide evidence of payment, such regulations may provide for denial of entry of such motor vehicle into the United States.''

SPECIAL RULES IN THE CASE OF CERTAIN OWNER-OPERATORS

Section 901(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) SPECIAL RULE FOR TAXABLE PERIOD BEGINNING ON JULY 1, 1984.—In the case of a small owner-operator, the amount of the tax imposed by section 4481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the use of any highway motor vehicle subject to tax under section 4481(a) of such Code (as amended by subsection (a)) for the taxable period which begins on July 1, 1984, shall be the lesser of—

''(A) $3 for each 1,000 pounds of taxable gross weight (or fraction thereof), or

''(B) the amount of the tax which would be imposed under such section 4481(a) without regard to this paragraph.

''(2) EXEMPTION FOR VEHICLES USED FOR LESS THAN 5,000 MILES (AND CERTAIN OTHER AMENDMENTS) TO TAKE EFFECT ON JULY 1, 1984.—In the case of a small owner-operator, notwithstanding subsection (f)(2) of section 513 of the Highway Revenue Act of 1982 [section 513(f)(2) of Pub. L. 97–424, set out as an Effective Date of 1983 Amendment note above], the amendments made by subsections (b), (c), and (d) of such section [amending sections 4481 to 4483 of this title] shall take effect on July 1, 1984.

''(3) SMALL OWNER-OPERATOR DEFINED.—For purposes of this subsection, the term 'small owner-operator' has the meaning given such term by section 513(f)(2) of the Highway Revenue Act of 1982.

''(4) TAXABLE GROSS WEIGHT.—For purposes of this subsection, the term 'taxable gross weight' has the same meaning as when used in section 4481 of the Internal Revenue Code of 1986.''

STUDIES RELATING TO HEAVY VEHICLE USE TAX

Part I [§§ 931–934] of subtitle D of title IX of div. A of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''SEC. 931. WHETHER HEAVY VEHICLES BEAR FAIR SHARE OF HIGHWAY COSTS.

''The Secretary of Transportation shall conduct a study of whether highway motor vehicles with taxable gross weights of 80,000 pounds or more bear their fair share of the costs of the highway system.

''SEC. 932. TRANS-BORDER TRUCKING.

''The Secretary of Transportation shall conduct a study to determine the significance of the tax imposed by section 4481 of the Internal Revenue Code of 1986 (relating to tax on use of certain vehicles) on trans-border trucking operations.

''SEC. 933. WEIGHT-DISTANCE TAXES.

''The Secretary of Transportation shall conduct a study to evaluate the feasibility and ability of weight-distance truck taxes to provide the greatest degree of equity among highway users, to ease the costs of compliance of such taxes, and to improve the efficiency by which such taxes might be administered. Such study shall also include an evaluation of the evasion potential for weight-distance taxes and an assessment of the benefits to interstate commerce of replacing all Federal truck taxes (other than fuel taxes) with a weight-distance tax.

''SEC. 934. REPORTS, ETC.

''(a) CONSULTATION WITH TREASURY.—Studies conducted under this part shall be conducted in consultation with the Secretary of the Treasury.

''(b) REPORT.—Not later than October 1, 1987, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on each study conducted under this part together with such recommendations as the Secretary may deem advisable.''

STUDY OF ALTERNATIVES TO TAX ON USE OF HEAVY TRUCKS

Section 513(g) of Pub. L. 97–424 provided that the Secretary of Transportation, in consultation with the Secretary of the Treasury, conduct a study of alternatives to the tax on heavy vehicles imposed by section 4481(a) of the Internal Revenue Code, and plans for improving the collecting and enforcement of such tax and alternatives to such tax, such alternatives to include taxes based either singly or in suitable combinations on vehicle size or configuration; vehicle weight, both registered and actual operating weight; and distance traveled, and such plans for improving tax collection and enforcement to provide for Federal and State co-operation in such activities. The study was to be conducted in consultation with State officials, motor carriers, and other affected parties, and the Secretary of Transportation was to submit a report and recommendations to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than Jan. 1, 1985.

§ 4482. Definitions

(a) Highway motor vehicle

For purposes of this subchapter, the term ''highway motor vehicle'' means any motor vehicle which is a highway vehicle.

(b) Taxable gross weight

For purposes of this subchapter, the term ''taxable gross weight'' when used with respect to any highway motor vehicle, means the sum of—

(1) the actual unloaded weight of—

(A) such highway motor vehicle fully equipped for service, and

(B) the semitrailers and trailers (fully equipped for service) customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle, and

(2) the weight of the maximum load customarily carried on highway motor vehicles of the same type as such highway motor vehicle and on the semitrailers and trailers referred to in paragraph (1)(B).

Taxable gross weight shall be determined under regulations prescribed by the Secretary (which regulations may include formulas or other methods for determining the taxable gross weight of vehicles by classes, specifications, or otherwise).

(c) Other definitions and special rule

For purposes of this subchapter—

(1) State

The term ''State'' means a State and the District of Columbia.

(2) Year

The term ''year'' means the one-year period beginning on July 1.

(3) Use

The term ''use'' means use in the United States on the public highways.

(4) Taxable period

The term ''taxable period'' means any year beginning before July 1, 2011, and the period which begins on July 1, 2011, and ends at the close of September 30, 2011.

(5) Customary use

A semitrailer or trailer shall be treated as customarily used in connection with a highway motor vehicle if such vehicle is equipped to tow such semitrailer or trailer.

(d) Special rule for taxable period in which termination date occurs

In the case of the taxable period which ends on September 30, 2011, the amount of the tax imposed by section 4481 with respect to any highway motor vehicle shall be determined by reducing each dollar amount in the table contained in section 4481(a) by 75 percent.

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 390; amended Pub. L. 87–61, title II, § 203(b)(2)(C), June 29, 1961, 75 Stat. 125; Pub. L. 91–605, title III, § 303(a)(9), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94–280, title III, § 303(a)(9), May 5, 1976, 90 Stat. 456; Pub. L. 94–455, title XIX, §§ 1904(c), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L. 95–599, title V, § 502(a)(8), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 97–424, title V, §§ 513(c), (e), 516(a)(4), Jan. 6, 1983, 96 Stat. 2179, 2182; Pub. L. 100–17, title V, § 502(a)(5), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101–508, title XI, § 11211(c)(5), Nov. 5, 1990, 104 Stat. 1388–426; Pub. L. 102–240, title VIII, § 8002(a)(5), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–178, title IX, § 9002(a)(1)(H), (I), June 9, 1998, 112 Stat. 499; Pub. L. 109–14, § 9(c)(2), (3), May 31, 2005, 119 Stat. 336; Pub. L. 109–59, title XI, § 11101(a)(2)(B), (C), Aug. 10, 2005, 119 Stat. 1944.)

AMENDMENTS

2005—Subsecs. (c)(4), (d). Pub. L. 109–59 substituted ''2011'' for ''2006'' wherever appearing.

Pub. L. 109–14 substituted ''2006'' for ''2005'' wherever appearing.

1998—Subsecs. (c)(4), (d). Pub. L. 105–178 substituted ''2005'' for ''1999'' wherever appearing.

1991—Subsecs. (c)(4), (d). Pub. L. 102–240 substituted ''1999'' for ''1995'' wherever appearing.

1990—Subsecs. (c)(4), (d). Pub. L. 101–508 substituted ''1995'' for ''1993'' wherever appearing.

1987—Subsecs. (c)(4), (d). Pub. L. 100–17 substituted ''1993'' for ''1988'' wherever appearing.

1983—Subsec. (c). Pub. L. 97–424, § 513(c)(2), inserted ''and special rule'' in heading.

Subsec. (c)(4). Pub. L. 97–424, § 516(a)(4), substituted ''1988'' for ''1984'' wherever appearing.

Subsec. (c)(5). Pub. L. 97–424, § 513(c)(1), added par. (5).

Subsec. (d). Pub. L. 97–424, § 513(e), added subsec. (d).

1978—Subsec. (c)(4). Pub. L. 95–599 substituted ''1984'' for ''1979'' wherever appearing.

1976—Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 94–455, § 1904(c), substituted ''State and the District of Columbia'' for ''State, a Territory of the United States, and the District of Columbia''.

Subsec. (c)(4). Pub. L. 94–280 substituted ''1979'' for ''1977'' wherever appearing.

1970—Subsec. (c)(4). Pub. L. 91–605 substituted ''1977'' for ''1972'' wherever appearing.

1961—Subsec. (c)(4). Pub. L. 87–61 added par. (4).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 513(c), (e) of Pub. L. 97–424 effective July 1, 1984, see section 513(f) of Pub. L. 97–424, set out as a note under section 4481 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(c) of Pub. L. 94–455 effective on first day of first month which begins more than

90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

SPECIAL RULES IN THE CASE OF SMALL OWNER-OPERATORS

Amendment by section 513(c) of Pub. L. 97–424 effective July 1, 1984, in the case of a small owner-operator, notwithstanding section 513(f)(2) of Pub. L. 97–424, see section 901(b)(2) of Pub. L. 98–369, set out as a note under section 4481 of this title.

§ 4483. Exemptions

(a) State and local governmental exemption

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any highway motor vehicle by any State or any political subdivision of a State.

(b) Exemption for United States

The Secretary of the Treasury may authorize exemption from the tax imposed by section 4481 as to the use by the United States of any particular highway motor vehicle, or class of highway motor vehicles, if he determines that the imposition of such tax with respect to such use will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

(c) Certain transit-type buses

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any bus which is of the transit type (rather than of the intercity type) by a person who, for the last 3 months of the preceding year (or for such other period as the Secretary may by regulations prescribe for purposes of this subsection), met the 60-percent passenger fare revenue test set forth in section 6421(b)(2) (as in effect on the day before the date of the enactment of the Energy Tax Act of 1978) as applied to the period prescribed for purposes of this subsection.

(d) Exemption for trucks used for less than 5,000 miles on public highways

(1) Suspension of tax

(A) In general

If—

(i) it is reasonable to expect that the use of any highway motor vehicle on public highways during any taxable period will be less than 5,000 miles, and

(ii) the owner of such vehicle furnishes such information as the Secretary may by forms or regulations require with respect to the expected use of such vehicle,

then the collection of the tax imposed by section 4481 with respect to the use of such vehicle shall be suspended during the taxable period.

(B) Suspension ceases to apply where use exceeds 5,000 miles

Subparagraph (A) shall cease to apply with respect to any highway motor vehicle whenever the use of such vehicle on public highways during the taxable period exceeds 5,000 miles.

(2) Exemption

If—

(A) the collection of the tax imposed by section 4481 with respect to any highway motor vehicle is suspended under paragraph (1),

(B) such vehicle is not used during the taxable period on public highways for more than 5,000 miles, and

(C) except as otherwise provided in regulations, the owner of such vehicle furnishes such information as the Secretary may require with respect to the use of such vehicle during the taxable period,

then no tax shall be imposed by section 4481 on the use of such vehicle for the taxable period.

(3) Refund where tax paid and vehicle not used for more than 5,000 miles

If—

(A) the tax imposed by section 4481 is paid with respect to any highway motor vehicle for any taxable period, and

(B) the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to such taxable period,

the amount of such tax shall be credited or refunded (without interest) to the person who paid such tax.

(4) Relief from liability for tax under certain circumstances where truck is transferred

Under regulations prescribed by the Secretary, the owner of a highway motor vehicle with respect to which the collection of the tax imposed by section 4481 is suspended under paragraph (1) shall not be liable for the tax imposed by section 4481 (and the new owner shall be liable for such tax) with respect to such vehicle if—

(A) such vehicle is transferred to a new owner,

(B) such suspension is in effect at the time of such transfer, and

(C) the old owner furnishes such information as the Secretary by forms and regulations requires with respect to the transfer of such vehicle.

(5) 7,500-miles exemption for agricultural vehicles

(A) In general

In the case of an agricultural vehicle, paragraphs (1) and (2) shall be applied by substituting ''7,500'' for ''5,000'' each place it appears.

(B) Definitions

For purposes of this paragraph—

(i) Agricultural vehicle

The term ''agricultural vehicle'' means any highway motor vehicle—

(I) used primarily for farming purposes, and

(II) registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

(ii) Farming purposes

The term ''farming purposes'' means the transporting of any farm commodity to or from a farm or the use directly in agricultural production.

(iii) Farm commodity

The term ''farm commodity'' means any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife.

(6) Owner defined

For purposes of this subsection, the term ''owner'' means, with respect to any highway motor vehicle, the person described in section 4481(b).

(e) Reduction in tax for trucks used in logging

The tax imposed by section 4481 shall be reduced by 25 percent with respect to any highway motor vehicle if—

(1) the exclusive use of such vehicle during any taxable period is the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

(2) such vehicle is registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used in the transportation of harvested forest products.

[(f) Repealed. Pub. L. 108–357, title VIII, § 867(d), Oct. 22, 2004, 118 Stat. 1622]

(g) Exemption for mobile machinery

No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).

(h) Exemption for vehicles used in blood collection

(1) In general

No tax shall be imposed by section 4481 on the use of any qualified blood collector vehicle by a qualified blood collector organization.

(2) Qualified blood collector vehicle

For purposes of this subsection, the term ''qualified blood collector vehicle'' means a vehicle at least 80 percent of the use of which during the prior taxable period was by a qualified blood collector organization in the collection, storage, or transportation of blood.

(3) Special rule for vehicles first placed in service in a taxable period

In the case of a vehicle first placed in service in a taxable period, a vehicle shall be treated as a qualified blood collector vehicle for such taxable period if such qualified blood collector organization certifies to the Secretary that the organization reasonably expects at least 80 percent of the use of such vehicle by the organization during such taxable period will be in the collection, storage, or transportation of blood.

(4) Qualified blood collector organization

The term ''qualified blood collector organization'' has the meaning given such term by section 7701(a)(49).

(i) Termination of exemptions

Subsections (a) and (c) shall not apply on and after October 1, 2011.

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 391; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), (B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–618, title II, § 233(a)(3)(C), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 97–424, title V, §§ 513(b), 516(b)(3), Jan. 6, 1983, 96 Stat. 2177, 2183; Pub. L. 98–369, div. A, title IX, §§ 902(a), 903(a), July 18, 1984, 98 Stat. 1004; Pub. L. 100–17, title V, §§ 502(b)(5), 507(b), Apr. 2, 1987, 101 Stat. 257, 260; Pub. L. 101–508, title XI, § 11211(d)(4), Nov. 5, 1990, 104 Stat. 1388–427; Pub. L. 102–240, title VIII, § 8002(b)(4), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–178, title IX, § 9002(b)(2), June 9, 1998, 112 Stat. 500; Pub. L. 108–357, title VIII, §§ 851(b)(1), 867(d), Oct. 22, 2004, 118 Stat. 1607, 1622; Pub. L. 109–14, § 9(c)(4), May 31, 2005, 119 Stat. 336; Pub. L. 109–59, title XI, § 11101(b)(2), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 109–280, title XII, § 1207(d), Aug. 17, 2006, 120 Stat. 1070.)

REFERENCES IN TEXT

The date of the enactment of the Energy Tax Act of 1978, referred to in subsec. (c), is the date of enactment of Pub. L. 95–618, which was approved Nov. 9, 1978.

AMENDMENTS

2006—Subsecs. (h), (i). Pub. L. 109–280, which directed the amendment of section 4483 by adding subsec. (h) and redesignating former subsec. (h) as (i), without specifying the act to be amended, was executed by making the amendments to this section, which is section 4483 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (h). Pub. L. 109–59 substituted ''2011'' for ''2006''.

Pub. L. 109–14 substituted ''2006'' for ''2005''.

2004—Subsec. (f). Pub. L. 108–357, § 867(d), struck out heading and text of subsec. (f). Text read as follows: ''If the base for registration purposes of any highway motor vehicle is in a contiguous foreign country for any taxable period, the tax imposed by section 4481 for such period shall be 75 percent of the tax which would (but for this subsection) be imposed by section 4481 for such period.''

Subsecs. (g), (h). Pub. L. 108–357, § 851(b)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsec. (g). Pub. L. 105–178 substituted ''2005'' for ''1999''.

1991—Subsec. (g). Pub. L. 102–240 substituted ''1999'' for ''1995''.

1990—Subsec. (g). Pub. L. 101–508 substituted ''1995'' for ''1993''.

1987—Subsec. (f). Pub. L. 100–17, § 507(b), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 100–17, § 502(b)(5), substituted ''1993'' for ''1988''.

Subsec. (g). Pub. L. 100–17, § 507(b), redesignated former subsec. (f) as (g).

1984—Subsec. (d)(5), (6). Pub. L. 98–369, § 903(a), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (e), (f). Pub. L. 98–369, § 902(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1983—Subsec. (d). Pub. L. 97–424, § 513(b), added subsec. (d).

Subsec. (e). Pub. L. 97–424, § 516(b)(3), added subsec. (e).

1978—Subsec. (c). Pub. L. 95–618 inserted ''(as in effect on the day before the date of the enactment of the Energy Tax Act of 1978)'' after ''section 6421(b)(2)''.

1976—Subsecs. (a), (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(B), inserted ''of the Treasury'' after ''Secretary''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Jan. 1, 2007, and applicable to taxable periods beginning on or after

July 1, 2007, see section 1207(g) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 851(b)(2), Oct. 22, 2004, 118 Stat. 1608, provided that: ''The amendments made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 867(d) of Pub. L. 108–357 applicable to taxable periods beginning after Oct. 22, 2004, see section 867(e) of Pub. L. 108–357, set out as a note under section 4481 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 507(b) of Pub. L. 100–17 effective July 1, 1987, see section 507(d) of Pub. L. 100–17, set out as a note under section 4481 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 902(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall take effect on July 1, 1984.''

Section 903(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 513 of the Highway Revenue Act of 1982 [Pub. L. 97–424, see section 513(f) of Pub. L. 97–424, set out as an Effective Date of 1983 Amendment note under section 4481 of this title].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 513(b) of Pub. L. 97–424 effective July 1, 1984, see section 513(f) of Pub. L. 97–424, set out as a note under section 4481 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

SPECIAL RULES IN THE CASE OF SMALL OWNER-OPERATORS

Amendment by section 513(b) of Pub. L. 97–424 effective July 1, 1984, in the case of a small owner-operator, notwithstanding section 513(f)(2) of Pub. L. 97–424, see section 901(b)(2) of Pub. L. 98–369, set out as a note under section 4481 of this title.

§ 4484. Cross references

(1) For penalties and administrative provisions applicable to this subchapter, see subtitle F.

(2) For exemption for uses by Indian tribal governments (or their subdivisions), see section 7871.

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 391; amended Pub. L. 97–473, title II, § 202(b)(10), Jan. 14, 1983, 96 Stat. 2610.)

AMENDMENTS

1983—Pub. L. 97–473 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(5) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as an Effective Date of 1956 Amendment note under section 4041 of this title.

[Subchapter E—Repealed]

[§§ 4491 to 4494. Repealed. Pub. L. 97–248, title II, § 280(c)(1), Sept. 3, 1982, 96 Stat. 564]

Section 4491, added Pub. L. 91–258, title II, § 206(a), May 21, 1970, 84 Stat. 243; amended Pub. L. 91–614, title III, § 305(a), Dec. 31, 1970, 84 Stat. 1846; Pub. L. 96–298, § 1(c)(1), July 1, 1980, 94 Stat. 829, provided for imposition of a tax on use of civil aircraft.

Section 4492, added Pub. L. 91–258, title II, § 206(a), May 21, 1970, 84 Stat. 243; amended Pub. L. 94–530, § 2(a), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95–163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, § 2(b), Oct. 24, 1978, 92 Stat. 1705, provided definitions to be used for purposes of this subchapter.

Section 4493, added Pub. L. 91–258, title II, § 206(a), May 21, 1970, 84 Stat. 244; amended Pub. L. 94–455, title XIX, §§ 1904(a)(13), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1814, 1834, enumerated special rules for payment of tax by lessees and certain persons engaged in foreign air commerce.

Section 4494, added Pub. L. 91–258, title II, § 206(a), May 21, 1970, 84 Stat. 245, provided a cross reference to subtitle F of this title for penalties and administrative provisions applicable to this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendment note under section 4261 of this title.

TAX ON USE OF AIRCRAFT

Pub. L. 96–298, § 1(c)(2), (3), July 1, 1980, 94 Stat. 829, set out various changes in the amount and rate of tax under former section 4491 of this title for period beginning on July 1, 1980, and ending on Oct. 1, 1980, and provided that due date for filing any tax return of tax imposed by such section 4491, with respect to any use after June 30, 1980, would not be earlier than Oct. 31, 1980.

[Subchapter F—Repealed]

[§§ 4495 to 4498. Repealed. Pub. L. 105–34, title XIV, § 1432(b)(1), Aug. 5, 1997, 111 Stat. 1050]

Section 4495, added Pub. L. 96–283, title IV, § 402(a), June 28, 1980, 94 Stat. 582, provided for imposition of tax on removal of hard mineral resource from deep seabed.

Section 4496, added Pub. L. 96–283, title IV, § 402(a), June 28, 1980, 94 Stat. 583, defined terms for purposes of this subchapter.

Section 4497, added Pub. L. 96–283, title IV, § 402(a), June 28, 1980, 94 Stat. 583; amended Pub. L. 99–514, title XV, § 1511(c)(7), Oct. 22, 1986, 100 Stat. 2745, related to imputed values for commercially recoverable metals and minerals and provided for suspension of tax on minerals held for later processing.

Section 4498, added Pub. L. 96–283, title IV, § 402(a), June 28, 1980, 94 Stat. 584, provided for termination of tax imposed by section 4495.

[CHAPTER 37—REPEALED]

[§§ 4501 to 4503. Repealed. Pub. L. 101–508, title XI, § 11801(a)(48), Nov. 5, 1990, 104 Stat. 1388–522]

Section 4501, acts Aug. 16, 1954, ch. 736, 68A Stat. 533; May 29, 1956, ch. 342, § 19, 70 Stat. 221; Sept. 2, 1958, Pub. L. 85–859, title I, § 162(b), 72 Stat. 1306; July 6, 1960, Pub. L. 86–592, § 2, 74 Stat. 330; Mar. 31, 1961, Pub. L. 87–15, § 2(a), 75 Stat. 40; May 24, 1962, Pub. L. 87–456, title III, § 302(a), (b), 76 Stat. 77; July 13, 1962, Pub. L. 87–535, § 18(a), 76 Stat. 166; Nov. 8, 1965, Pub. L. 89–331, § 13, 79 Stat. 1280; Oct. 14, 1971, Pub. L. 92–138, § 18(b), 85 Stat. 390, related to imposition of tax upon sugar manufactured in United States.

Section 4502, acts Aug. 16, 1954, ch. 736, 68A Stat. 534; May 29, 1956, ch. 342, § 20, 70 Stat. 221; June 25, 1959, Pub. L. 86–70, § 22(c), 73 Stat. 146; July 12, 1960, Pub. L. 86–624, § 18(f), 74 Stat. 416, provided for applicable definitions.

Section 4503, act Aug. 16, 1954, ch. 736, 68A Stat. 534, related to exemption for sugar manufactured for home consumption.

Prior sections 4504 and 4511 to 4514 were repealed by Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77, effective with respect to articles entered or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, as provided by section 501(a) of Pub. L. 87–456.

Section 4504, acts Aug. 16, 1954, ch. 736, 68A Stat. 535; May 29, 1956, ch. 342, § 21(a), 70 Stat. 221, required the tax imposed by section 4501(b) to be levied, assessed, collected and paid in the same manner as a duty imposed by the Tariff Act of 1930.

Section 4511, act Aug. 16, 1954, ch. 736, 68A Stat. 536, imposed a tax upon the processing of coconut oil, etc.

Section 4512, act Aug. 16, 1954, ch. 736, 68A Stat. 536, defined ''first domestic processing''.

Section 4513, act Aug. 16, 1954, ch. 736, 68A Stat. 536, related to exemptions from the tax imposed.

Section 4514, act Aug. 16, 1954, ch. 736, 68A Stat. 536, set forth a cross-reference to subtitle F for administrative provisions.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[CHAPTER 38—REPEALED] [1]

[§ 4521. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 539, imposed a tax on petroleum products imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

[§§ 4531, 4532. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 540, imposed a tax on coal imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

[§§ 4541, 4542. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 541, imposed a tax on copper imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

[§§ 4551 to 4553. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 542, imposed a tax on lumber imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

[§§ 4561, 4562. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 543, imposed a tax on animal oils imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

[§§ 4571, 4572. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 543, 544, imposed a tax on seeds and seed oil imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

[§§ 4581, 4582. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 544, imposed a tax on imports of any article, merchandise, or combination (except oils specified in section 4511), 10 percent or more of the quantity by weight of which consists of, or is derived directly or indirectly from, one or more of the products specified in sections 4561 and 4571, or of the oils, fatty acids, or salts specified in section 4511.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

[§§ 4591 to 4597. Repealed. Pub. L. 94–455, title XIX, § 1904(a)(15), Oct. 4, 1976, 90 Stat. 1814]

Sections, comprising subchapter F, ''Oleomargarine'', were struck out in the repeal of this chapter by Pub. L. 94–455.

Section 4591, act Aug. 16, 1954, ch. 736, 68A Stat. 545, related to imposition of a tax on all oleomargarine imported from foreign countries.

Section 4592, act Aug. 16, 1954, ch. 736, 68A Stat. 545, related to definitions of oleomargarine, manufacturer, wholesale dealer, and retail sales.

Section 4593, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to exemptions to tax imposed by section 4591.

Section 4594, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to packing requirements for manufacturers of oleomargarine.

Section 4595, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to wholesale and retail selling requirements for oleomargarine.

Section 4596, act Aug. 16, 1954, ch. 736, 68A Stat. 547, related to filing of bonds by manufacturers of oleomargarine.

Section 4597, act Aug. 16, 1954, ch. 736, 68A Stat. 547, related to books and returns of wholesale dealers and manufacturers.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455 set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[§§ 4601 to 4603. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77]

Section 4601, acts Aug. 16, 1954, ch. 736, 68A Stat. 548; Sept. 2, 1958, Pub. L. 85–859, title I, § 119(b)(4), 72 Stat.

[1] A new chapter 38 (§ 4611 et seq.) follows.

1286, related to applicability of certain tariff provisions.

Sections 4602, 4603, act Aug. 16, 1954, ch. 736, 68A Stat. 548, related to contravention of trade agreements by certain taxes.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

CHAPTER 38—ENVIRONMENTAL TAXES

Subchapter		Sec.[1]
A.	Tax on petroleum	4611
B.	Tax on certain chemicals	4661
C.	Tax on certain imported substances	4671
D.	Ozone-depleting chemicals, etc.	4681

PRIOR PROVISIONS

A prior chapter 38, consisting of sections 4521 to 4603 and relating to import taxes, was repealed by Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77, and Pub. L. 94–455, title XIX, § 1904(a)(15), Oct. 4, 1976, 90 Stat. 1814.

AMENDMENTS

1989—Pub. L. 101–239, title VII, § 7506(b), Dec. 19, 1989, 103 Stat. 2369, added item for subchapter D.

1986—Pub. L. 99–499, title V, § 515(b), Oct. 17, 1986, 100 Stat. 1769, added item for subchapter C.

Pub. L. 99–499, title V, § 514(a)(2), Oct. 17, 1986, 100 Stat. 1767, struck out item for subchapter C.

1980—Pub. L. 96–510, title II, § 231(b), Dec. 11, 1980, 94 Stat. 2804, added item for subchapter C.

Pub. L. 96–510, title II, § 211(a), Dec. 11, 1980, 94 Stat. 2797, added chapter 38 and analysis of subchapters consisting of items A and B.

Subchapter A—Tax on Petroleum

Sec.
4611. Imposition of tax.
4612. Definitions and special rules.

§ 4611. Imposition of tax

(a) General Rule

There is hereby imposed a tax at the rate specified in subsection (c) on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) Tax on certain uses and exportation

(1) In general

If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax at the rate specified in subsection (c) is hereby imposed on such crude oil.

(2) Exception for use on premises where produced

Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) Rate of tax

(1) In general

The rate of the taxes imposed by this section is the sum of—

(A) the Hazardous Substance Superfund financing rate, and

(B) the Oil Spill Liability Trust Fund financing rate.

(2) Rates

For purposes of paragraph (1)—

(A) the Hazardous Substance Superfund financing rate is 9.7 cents a barrel, and

(B) the Oil Spill Liability Trust Fund financing rate is—

(i) in the case of crude oil received or petroleum products entered before January 1, 2017, 8 cents a barrel, and

(ii) in the case of crude oil received or petroleum products entered after December 31, 2016, 9 cents a barrel.

(d) Persons liable for tax

(1) Crude oil received at refinery

The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) Imported petroleum product

The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) Tax on certain uses or exports

The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

(e) Application of Hazardous Substance Superfund financing rate

(1) In general

Except as provided in paragraphs (2) and (3), the Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996.

(2) No tax if unobligated balance in Fund exceeds $3,500,000,000

If on December 31, 1993, or December 31, 1994—

(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,500,000,000, and

(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed $3,500,000,000 on December 31 of 1994 or 1995, respectively, if no tax is imposed under section 59A, this section, and sections 4661 and 4671,

then no tax shall be imposed under this section (to the extent attributable to the Hazardous Substance Superfund financing rate) during 1994 or 1995, as the case may be.

(3) No tax if amounts collected exceed $11,970,000,000

(A) Estimates by Secretary

The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under section 59A, this section (to the extent attributable to the Hazardous Substance Superfund financ-

[1] Section numbers editorially supplied.

ing rate), and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1995.

(B) Termination if $11,970,000,000 credited before January 1, 1996

If the Secretary estimates under subparagraph (A) that more than $11,970,000,000 will be credited to the Fund before January 1, 1996, the Hazardous Substance Superfund financing rate under this section shall not apply after the date on which (as estimated by the Secretary) $11,970,000,000 will be so credited to the Fund.

(f) Application of Oil Spill Liability Trust Fund financing rate

(1) In general

Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply on and after April 1, 2006, or if later, the date which is 30 days after the last day of any calendar quarter for which the Secretary estimates that, as of the close of that quarter, the unobligated balance in the Oil Spill Liability Trust Fund is less than $2,000,000,000.

(2) Termination

The Oil Spill Liability Trust Fund financing rate shall not apply after December 31, 2017.

(Added Pub. L. 96–510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2797; amended Pub. L. 99–499, title V, §§511(a), 512(a), (b), Oct. 17, 1986, 100 Stat. 1760, 1761; Pub. L. 99–509, title VIII, §8032(a), (c)(1), (2), Oct. 21, 1986, 100 Stat. 1957, 1958; Pub. L. 100–647, title VI, §6108, Nov. 10, 1988, 102 Stat. 3712; Pub. L. 101–221, §8(a), Dec. 12, 1989, 103 Stat. 1891; Pub. L. 101–239, title VII, §7505(a), (b), Dec. 19, 1989, 103 Stat. 2363; Pub. L. 101–508, title XI, §11231(a)(1)(B), (2), (b), Nov. 5, 1990, 104 Stat. 1388–445; Pub. L. 109–58, title XIII, §1361, Aug. 8, 2005, 119 Stat. 1058; Pub. L. 110–343, div. B, title IV, §405(a)(1), (b)(1), (2), Oct. 3, 2008, 122 Stat. 3860, 3861.)

CODIFICATION

Amendments by Pub. L. 99–509, title VIII, §8031(a), (b), and (d)(1), Oct. 21, 1986, 100 Stat. 1955, to subsecs. (a) to (e) of this section were not executed to text pursuant to Pub. L. 99–509, title VIII, §8031(e)(2), which provided that the amendments made by section 8031 shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99–499, approved Oct. 17, 1986.

AMENDMENTS

2008—Subsec. (c)(2)(B). Pub. L. 110–343, §405(a)(1), substituted ''is—'' for ''is 5 cents a barrel.'' and added cls. (i) and (ii).

Subsec. (f)(1). Pub. L. 110–343, §405(b)(2), substituted ''paragraph (2)'' for ''paragraphs (2) and (3)''.

Subsec. (f)(2), (3). Pub. L. 110–343, §405(b)(1), added par. (2) and struck out former pars. (2) and (3), which provided that the Oil Spill Liability Trust Fund financing rate would not apply if the unobligated balance in the Fund exceeded $2,700,000,000 and that the Fund financing rate would not apply after Dec. 31, 2014.

2005—Subsec. (f). Pub. L. 109–58 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995.

''(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $1,000,000,000.—The Oil Spill Liability Trust Fund financing rate shall not apply during any calendar quarter if the Secretary estimates that as of the close of the preceding calendar quarter the unobligated balance in the Oil Spill Liability Trust Fund exceeds $1,000,000,000.''

1990—Subsec. (e)(1). Pub. L. 101–508, §11231(a)(1)(B), substituted ''January 1, 1996'' for ''January 1, 1992''.

Subsec. (e)(2). Pub. L. 101–508, §11231(a)(2), substituted ''1993'' for ''1989'' and ''1994'' for ''1990'' in introductory provisions and ''1994'' for ''1990'' and ''1995'' for ''1991'' in subpar. (B) and concluding provisions.

Subsec. (e)(3). Pub. L. 101–508, §11231(b), substituted ''$11,970,000,000'' for ''$6,650,000,000'' in heading.

Subsec. (e)(3)(A). Pub. L. 101–508, §11231(b), substituted ''December 31, 1995'' for ''December 31, 1991''.

Subsec. (e)(3)(B). Pub. L. 101–508, §11231(a)(1)(B), (b), substituted ''January 1, 1996'' for ''January 1, 1992'' in heading and text and ''$11,970,000,000'' for ''$6,650,000,000'' in heading and twice in text.

1989—Subsec. (c)(2)(A). Pub. L. 101–221 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the Hazardous Substance Superfund financing rate is—

''(i) except as provided in clause (ii), 8.2 cents a barrel, and

''(ii) 11.7 cents a barrel in the case of the tax imposed by subsection (a)(2), and''.

Subsec. (c)(2)(B). Pub. L. 101–239, §7505(b), substituted ''5 cents'' for ''1.3 cents''.

Subsec. (f). Pub. L. 101–239, §7505(a)(1), amended subsec. (f) generally, substituting pars. (1) and (2) for former pars. (1) general applicability, (2) commencement date, and (3) limit on tax of $300,000,000.

1988—Subsec. (f)(2)(B). Pub. L. 100–647 substituted ''December 31, 1990'' for ''September 1, 1987''.

1986—Subsecs. (a), (b)(1). Pub. L. 99–499, §512(a), substituted ''at the rate specified in subsection (c)'' for ''of 0.79 cent a barrel''.

Subsec. (c). Pub. L. 99–509, §8032(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) IN GENERAL.—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

''(2) IMPORTED PETROLEUM PRODUCTS.—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel.''

Pub. L. 99–499, §512(b), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 99–499, §512(b), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99–509, §8032(c)(1), substituted ''Hazardous Substance Superfund financing rate'' for ''taxes'' in heading, substituted ''the Hazardous Substance Superfund financing rate under this section'' for ''the taxes imposed by this section'' in par. (1), inserted ''(to the extent attributable to the Hazardous Substance Superfund financing rate)'' after ''this section'' in pars. (2) and (3)(A), and substituted ''the Hazardous Substance Superfund financing rate under this section shall not apply'' for ''no tax shall be imposed under this section'' in par. (3)(B).

Pub. L. 99–499, §§511(a), 512(b), amended subsec. (d) generally and redesignated it as (e). Prior to amendment and redesignation, subsec. (d), termination, read as follows: ''The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

''(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

''(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).''

Subsec. (f). Pub. L. 99–509, § 8032(c)(2), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, § 405(a)(2), Oct. 3, 2008, 122 Stat. 3860, provided that: ''The amendment made by this subsection [amending this section] shall apply on and after the first day of the first calendar quarter beginning more than 60 days after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–343, div. B, title IV, § 405(b)(3), Oct. 3, 2008, 122 Stat. 3861, provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8(b) of Pub. L. 101–221 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 12, 1989].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–509, title VIII, § 8032(d), Oct. 21, 1986, 100 Stat. 1959, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 4612, 4661, 4671, and 9507 of this title] shall take effect on the commencement date (as defined in [former] section 4611(f)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section).

''(2) COORDINATION WITH SUPERFUND REAUTHORIZATION.—The amendments made by this section shall take effect only if the Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499, approved Oct. 17, 1986] is enacted.''

[Section 7505(d)(1) of Pub. L. 101–239 provided that: ''For purposes of sections 8032(d) and 8033(c) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, set out as notes above and under section 9509 of this title], the commencement date is January 1, 1990.'']

Section 511(c) of Pub. L. 99–499 provided that: ''The amendments made by this section [amending this section and repealing section 9653 of Title 42, The Public Health and Welfare] shall take effect on January 1, 1987.''

Section 512(d) of Pub. L. 99–499 provided that: ''The amendments made by this section [amending this section and section 4612 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE

Section 211(c) of Pub. L. 96–510 provided that: ''The amendments made by this section [enacting subchapters A and B of this chapter] shall take effect on April 1, 1981.''

SHORT TITLE

For short title of title II of Pub. L. 96–510 as the ''Hazardous Substance Response Revenue Act of 1980'', see Short Title of 1980 Amendment note, set out under section 1 of this title.

§ 4612. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Crude oil

The term ''crude oil'' includes crude oil condensates and natural gasoline.

(2) Domestic crude oil

The term ''domestic crude oil'' means any crude oil produced from a well located in the United States.

(3) Petroleum product

The term ''petroleum product'' includes crude oil.

(4) United States

(A) In general

The term ''United States'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(B) United States includes continental shelf areas

The principles of section 638 shall apply for purposes of the term ''United States''.

(C) United States includes foreign trade zones

The term ''United States'' includes any foreign trade zone of the United States.

(5) United States refinery

The term ''United States refinery'' means any facility in the United States at which crude oil is refined.

(6) Refineries which produce natural gasoline

In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

(7) Premises

The term ''premises'' has the same meaning as when used for purposes of determining gross income from the property under section 613.

(8) Barrel

The term ''barrel'' means 42 United States gallons.

(9) Fractional part of barrel

In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

(b) Only 1 tax imposed with respect to any product

No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

(c) Credit where crude oil returned to pipeline

Under regulations prescribed by the Secretary, if an operator of a United States refinery—

(1) removes crude oil from a pipeline, and

(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611.

(d) Credit against portion of tax attributable to oil spill rate

There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

(1) the sum of—

(A) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, and

(B) the interest accrued on such amounts before such date, over

(2) the amount of such payments taken into account under this subsection for all prior periods.

The preceding sentence shall also apply to amounts paid by the taxpayer into the Trans-Alaska Pipeline Liability Fund to the extent of amounts transferred from such Fund into the Oil Spill Liability Trust Fund. For purposes of this subsection, all taxpayers which would be members of the same affiliated group (as defined in section 1504(a)) if section 1504(a)(2) were applied by substituting ''100 percent'' for ''80 percent'' shall be treated as 1 taxpayer.

(e) Income tax credit for unused payments into Trans-Alaska Pipeline Liability Fund

(1) In general

For purposes of section 38, the current year business credit shall include the credit determined under this subsection.

(2) Determination of credit

(A) In general

The credit determined under this subsection for any taxable year is an amount equal to the aggregate credit which would be allowed to the taxpayer under subsection (d) for amounts paid into the Trans-Alaska Pipeline Liability Fund had the Oil Spill Liability Trust Fund financing rate not ceased to apply.

(B) Limitation

(i) In general

The amount of the credit determined under this subsection for any taxable year with respect to any taxpayer shall not exceed the excess of—

(I) the amount determined under clause (ii), over

(II) the aggregate amount of the credit determined under this subsection for prior taxable years with respect to such taxpayer.

(ii) Overall limitation

The amount determined under this clause with respect to any taxpayer is the excess of—

(I) the aggregate amount of credit which would have been allowed under subsection (d) to the taxpayer for periods before the termination date specified in section 4611(f)(1), if amounts in the Trans-Alaska Pipeline Liability Fund which are actually transferred into the Oil Spill Liability Fund were tranferred[1] on January 1, 1990, and the Oil Spill Liability Trust Fund financing rate did not terminate before such termination date, over

(II) the aggregate amount of the credit allowed under subsection (d) to the taxpayer.

(3) Cost of income tax credit borne by Trust Fund

(A) In general

The Secretary shall from time to time transfer from the Oil Spill Liability Trust Fund to the general fund of the Treasury amounts equal to the credits allowed by reason of this subsection.

(B) Trust Fund balance may not be reduced below $1,000,000,000

Transfers may be made under subparagraph (A) only to the extent that the unobligated balance of the Oil Spill Liability Trust Fund exceeds $1,000,000,000. If any transfer is not made by reason of the preceding sentence, such transfer shall be made as soon as permitted under such sentence.

(4) No carryback

No portion of the unused business credit for any taxable year which is attributable to the credit determined under this subsection may be carried to a taxable year beginning on or before the date of the enactment of this paragraph.

(f) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4611.

(Added Pub. L. 96–510, title II, § 211(a), Dec. 11, 1980, 94 Stat. 2798; amended Pub. L. 99–499, title V, § 512(c), Oct. 17, 1986, 100 Stat. 1761; Pub. L. 99–509, title VIII, § 8032(b), Oct. 21, 1986, 100 Stat. 1957; Pub. L. 101–239, title VII, § 7505(c), Dec. 19, 1989, 103 Stat. 2363; Pub. L. 101–380, title IX, § 9002, Aug. 18, 1990, 104 Stat. 574; Pub. L. 102–486, title XIX, § 1922(a), Oct. 24, 1992, 106 Stat. 3028.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (e)(4), is the date of the enactment of Pub. L. 102–486, which was approved Oct. 24, 1992.

CODIFICATION

Amendments by Pub. L. 99–509, title VIII, § 8031(c), Oct. 21, 1986, 100 Stat. 1955, to subsecs. (c) and (d) of this section were not executed to text pursuant to Pub. L. 99–509, title VIII, § 8031(e)(2), which provided that the amendments made by section 8031 shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99–499, approved Oct. 17, 1986.

AMENDMENTS

1992—Subsecs. (e), (f). Pub. L. 102–486 added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsec. (d). Pub. L. 101–380 substituted at end ''For purposes of this subsection, all taxpayers which

[1] So in original. Probably should be ''transferred''.

would be members of the same affiliated group (as defined in section 1504(a)) if section 1504(a)(2) were applied by substituting '100 percent' for '80 percent' shall be treated as 1 taxpayer.'' for ''Amounts may be transferred from the Trans-Alaska Pipeline Liability Fund into the Oil Spill Liability Trust Fund only to the extent the administrators of the Trans-Alaska Pipeline Liability Fund determine that such amounts are not needed to satisfy claims against such Fund.''

1989—Subsec. (d). Pub. L. 101–239 inserted at end ''The preceding sentence shall also apply to amounts paid by the taxpayer into the Trans-Alaska Pipeline Liability Fund to the extent of amounts transferred from such Fund into the Oil Spill Liability Trust Fund. Amounts may be transferred from the Trans-Alaska Pipeline Liability Fund into the Oil Spill Liability Trust Fund only to the extent the administrators of the Trans-Alaska Pipeline Liability Fund determine that such amounts are not needed to satisfy claims against such Fund.''

1986—Subsec. (c). Pub. L. 99–499 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 99–509 added subsec. (d) and redesignated former subsec. (d) as (e).

Pub. L. 99–499 redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 99–509 redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1922(b) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 24, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 effective on commencement date as defined in section 4611(f)(2), see section 8032(d) of Pub. L. 99–509, set out as a note under section 4611 of this title.

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 512(d) of Pub. L. 99–499, set out as a note under section 4611 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

Subchapter B—Tax on Certain Chemicals

Sec.
4661. Imposition of tax.
4662. Definitions and special rules.

§ 4661. Imposition of tax

(a) General rule

There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

(b) Amount of tax

The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

In the case of:	The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting ''10.13'' for ''4.87''.

(c) Termination

No tax shall be imposed under this section during any period during which the Hazardous Substance Superfund financing rate under section 4611 does not apply.

(Added Pub. L. 96–510, title II, § 211(a), Dec. 11, 1980, 94 Stat. 2798; amended Pub. L. 99–499, title V, § 513(a), Oct. 17, 1986, 100 Stat. 1761; Pub. L. 99–509, title VIII, § 8032(c)(3), Oct. 21, 1986, 100 Stat. 1958.)

CODIFICATION

Amendment by Pub. L. 99–509, title VIII, § 8031(d)(2), Oct. 21, 1986, 100 Stat. 1956, to subsec. (c) of this section was not executed to text pursuant to Pub. L. 99–509, title VIII, § 8031(e)(2), which provided that the amendments made by section 8031 shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99–499, approved Oct. 17, 1986.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–499 inserted at end ''For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'.''

Subsec. (c). Pub. L. 99–509 substituted ''the Hazardous Substance Superfund financing rate under section 4611 does not apply'' for ''no tax is imposed under section 4611(a)''.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 effective on commencement date as defined in former section 4611(f)(2), see section 8032(d) of Pub. L. 99–509, set out as a note under section 4611 of this title.

Section 513(h) of Pub. L. 99–499, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 4662 of this title] shall take effect on January 1, 1987.

''(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

''(A) REFUND OF TAX PREVIOUSLY IMPOSED.—

''(i) IN GENERAL.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

''(ii) CONDITION TO ALLOWANCE.—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding 'has not collected'.

''(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

''(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term 'xylene' shall include any isomer of xylene whether or not separated.

''(3) INVENTORY EXCHANGES.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) [amending section 4662 of this title] shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96–510, enacting this chapter].

''(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1986.

''(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

''(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

''(4) EXPORTS OF TAXABLE SUBSTANCES.—Subclause (II) of section 4662(e)(2)(A)(ii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

''(5) SALES OF INTERMEDIATE HYDROCARBON STREAMS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) [amending section 4662 of this title] shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

''(B) PURCHASER MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

''(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

''(D) REGISTRATION REQUIREMENTS.—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986.''

EFFECTIVE DATE

Subchapter effective Apr. 1, 1981, see section 211(c) of Pub. L. 96–510, set out as a note under section 4611 of this title.

§ 4662. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Taxable chemical

Except as provided in subsection (b), the term ''taxable chemical'' means any substance—

(A) which is listed in the table under section 4661(b), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) United States

The term ''United States'' has the meaning given such term by section 4612(a)(4).

(3) Importer

The term ''importer'' means the person entering the taxable chemical for consumption, use, or warehousing.

(4) Ton

The term ''ton'' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term ''ton'' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

(5) Fractional part of ton

In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) Exceptions; other special rules

For purposes of this subchapter—

(1) Methane or butane used as a fuel

Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

(2) Substances used in the production of fertilizer

(A) In general

In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

(B) Qualified fertilizer substance

For purposes of this section, the term ''qualified fertilizer substance'' means any substance—

(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fertilizer use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(C) Qualified fertilizer use

The term ''qualified fertilizer use'' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

(D) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(3) Sulfuric acid produced as a byproduct of air pollution control

In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

(4) Substances derived from coal

For purposes of this subchapter, the term ''taxable chemical'' shall not include any substance to the extent derived from coal.

(5) Substances used in the production of motor fuel, etc.

(A) In general

In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

(B) Qualified fuel substance

For purposes of this section, the term ''qualified fuel substance'' means any substance—

(i) used in a qualified fuel use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fuel use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(C) Qualified fuel use

For purposes of this subsection, the term ''qualified fuel use'' means—

(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

(ii) any use as such a fuel.

(D) Chemicals to which paragraph applies

For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

(E) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(6) Substance having transitory presence during refining process, etc.

(A) In general

No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

(B) Chemicals to which subparagraph (A) applies

The chemicals described in this subparagraph are—

(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

(ii) any solution or mixture containing any chemical described in clause (i).

(C) Removal treated as use

Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

(7) Special rule for xylene

Except in the case of any substance imported into the United States or exported from the United States, the term ''xylene'' does not include any separated isomer of xylene.

(8) Recycled chromium, cobalt, and nickel

(A) In general

No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

(B) Exemption not to apply while corrective action uncompleted

Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

(C) Required corrective action

For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

(i) beginning on the date that the corrective action is required by the Adminis-

trator or an authorized State pursuant to—

(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

(D) Special rule for groundwater treatment

In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

(E) Solid waste

For purposes of this paragraph, the term ''solid waste'' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.

(9) Substances used in the production of animal feed

(A) In general

In the case of—

(i) nitric acid,

(ii) sulfuric acid,

(iii) ammonia, or

(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

(B) Qualified animal feed substance

For purposes of this section, the term ''qualified animal feed substance'' means any substance—

(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified animal feed use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(C) Qualified animal feed use

The term ''qualified animal feed use'' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

(D) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(10) Hydrocarbon streams containing mixtures of organic taxable chemicals

(A) In general

No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals.

(B) Removal, etc., treated as use

For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

(ii) such person shall be treated as the manufacturer of such chemical.

(C) Registration requirement

Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

(D) Organic taxable chemical

For purposes of this paragraph, the term ''organic taxable chemical'' means any taxable chemical which is an organic substance.

(c) Use and certain exchanges by manufacturer, etc.

(1) Use treated as sale

Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

(2) Special rules for inventory exchanges

(A) In general

Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

(i) such exchange shall not be treated as a sale, and

(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

(B) Registration requirement

Subparagraph (A) shall not apply to any inventory exchange unless—

(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such per-

son's registration number and the internal revenue district in which such person is registered.

(C) Inventory exchange

For purposes of this paragraph, the term ''inventory exchange'' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(a)(1).

(d) Refund or credit for certain uses

(1) In general

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any taxable chemical, and

(B) such chemical was used by any person in the manufacture or production of any other substance which is a taxable chemical,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section).

(2) Use as fertilizer

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(3) Use as qualified fuel

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(4) Use in the production of animal feed

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(e) Exemption for exports of taxable chemicals

(1) Tax-free sales

(A) In general

No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

(B) Proof of export required

Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

(2) Credit or refund where tax paid

(A) In general

Except as provided in subparagraph (B), if—

(i) tax under section 4661 was paid with respect to any taxable chemical, and

(ii)(I) such chemical was exported by any person, or

(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

(B) Condition to allowance

No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

(3) Refunds directly to exporter

The Secretary shall provide, in regulations, the circumstances under which a credit or refund (without interest) of the tax under section 4661 shall be allowed or made to the person who exported the taxable chemical or taxable substance, where—

(A) the person who paid the tax waives his claim to the amount of such credit or refund, and

(B) the person exporting the taxable chemical or taxable substance provides such information as the Secretary may require in such regulations.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(f) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.

(Added Pub. L. 96–510, title II, § 211(a), Dec. 11, 1980, 94 Stat. 2799; amended Pub. L. 98–369, div. A, title X, § 1019(a)–(c), July 18, 1984, 98 Stat. 1022–1024; Pub. L. 99–499, title V, § 513(b)–(g), Oct. 17, 1986, 100 Stat. 1762–1765; Pub. L. 100–647, title II, § 2001(a), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 106–170, title V, § 532(c)(2)(U), Dec. 17, 1999, 113 Stat. 1931.)

REFERENCES IN TEXT

Sections 3005, 3004, and 3008 of the Solid Waste Disposal Act, referred to in subsec. (b)(8)(C)(i)(I), and section 1004 of that Act, referred to in subsec. (b)(8)(E), are classified to sections 6925, 6924, 6928, and 6903, respectively, of Title 42, The Public Health and Welfare.

Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (b)(8)(C)(i)(II), is classified to section 9606 of Title 42.

AMENDMENTS

1999—Subsec. (c)(2)(C). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1988—Subsec. (b)(10)(A). Pub. L. 100–647, § 2001(a)(2), substituted ''one or more'' for ''a mixture of''.

Subsec. (e)(3), (4). Pub. L. 100–647, § 2001(a)(1), added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (b)(7). Pub. L. 99–499, § 513(c), added par. (7).

Subsec. (b)(8). Pub. L. 99–499, § 513(d), added par. (8).

Subsec. (b)(9). Pub. L. 99–499, § 513(e)(1), added par. (9).

Subsec. (b)(10). Pub. L. 99–499, § 513(g), added par. (10).

Subsec. (c). Pub. L. 99–499, § 513(f), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.''

Subsec. (d)(1). Pub. L. 99–499, § 513(b)(2), substituted ''which is a taxable chemical'' for ''the sale of which by such person would be taxable under such section'', in subpar. (B), and substituted ''imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)'' for ''imposed by such section on the other substance manufactured or produced'' in last sentence.

Subsec. (d)(4). Pub. L. 99–499, § 513(e)(2), added par. (4).

Subsecs. (e), (f). Pub. L. 99–499, § 513(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(1). Pub. L. 98–369, § 1019(a)(3), inserted ''or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel''.

Subsec. (b)(2)(A). Pub. L. 98–369, § 1019(b)(2)(A), substituted ''qualified fertilizer substance'' for ''qualified substance''.

Subsec. (b)(2)(B) to (D). Pub. L. 98–369, § 1019(b)(1), inserted ''fertilizer'' after ''qualified'' wherever appearing in subpar. (B), inserted ''fertilizer'' after ''Qualified'' in subpar. (C) heading and in text substituted ''The term 'qualified fertilizer use' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer'' for ''For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer'', and added subpar. (D).

Subsec. (b)(5), (6). Pub. L. 98–369, § 1019(a)(1), added pars. (5) and (6).

Subsec. (c). Pub. L. 98–369, § 1019(c), substituted ''Except as provided in subsection (b), if'' for ''If''.

Subsec. (d)(2)(B). Pub. L. 98–369, § 1019(b)(2)(B), inserted ''fertilizer'' after ''qualified'' and struck out '', or sells such substance for use,'' after ''such substance''.

Subsec. (d)(3). Pub. L. 98–369, § 1019(a)(2), added par. (3).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, except as otherwise provided, see section 513(h) of Pub. L. 99–499, set out as a note under section 4661 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1019(d) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 211(a) of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96–510, which enacted this section].

''(2) WAIVER OF LIMITATION.—If refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the date which for one year after the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such amendments) may, nevertheless, be made or allowed if claim therefor is filed on or before the date which for one year after the date of the enactment of this Act.''

Subchapter C—Tax on Certain Imported Substances

Sec.
4671. Imposition of tax.
4672. Definitions and special rules.

PRIOR PROVISIONS

A prior subchapter C related to tax on hazardous wastes, consisted of sections 4681 and 4682, prior to repeal by Pub. L. 99–499, title V, § 514(a)(1), Oct. 17, 1986, 100 Stat. 1767.

§ 4671. Imposition of tax

(a) General rule

There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

(b) Amount of tax

(1) In general

Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

(2) Rate where importer does not furnish information to Secretary

If the importer does not furnish to the Secretary (at such time and in such manner as

the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

(3) Authority to prescribe rate in lieu of paragraph (2) rate

The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph (2) with respect to such substance. The tax prescribed by the Secretary shall be equal to the amount of tax which would be imposed by subsection (a) with respect to the taxable substance if such substance were produced using the predominant method of production of such substance.

(c) Exemptions for substances taxed under sections 4611 and 4661

No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

(d) Tax-free sales, etc. for substances used as certain fuels or in the production of fertilizer or animal feed

Rules similar to the following rules shall apply for purposes of applying this section with respect to taxable substances used or sold for use as described in such rules:

(1) Paragraphs (2), (5), and (9) of section 4662(b) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed).

(2) Paragraphs (2), (3), and (4) of section 4662(d) (relating to refund or credit of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed).

(e) Termination

No tax shall be imposed under this section during any period during which the Hazardous Substance Superfund financing rate under section 4611 does not apply.

(Added Pub. L. 99–499, title V, § 515(a), Oct. 17, 1986, 100 Stat. 1767; amended Pub. L. 99–509, title VIII, § 8032(c)(3), Oct. 21, 1986, 100 Stat. 1958.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–509 substituted ''the Hazardous Substance Superfund financing rate under section 4611 does not apply'' for ''no tax is imposed under section 4611(a)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective on commencement date as defined in former section 4611(f)(2), see section 8032(d) of Pub. L. 99–509, set out as a note under section 4611 of this title.

EFFECTIVE DATE

Section 515(c) of Pub. L. 99–499 provided that: ''The amendments made by this section [enacting this subchapter] shall take effect on January 1, 1989.''

STUDY AND REPORT

Section 515(d) of Pub. L. 99–499 provided that:

''(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of issues relating to the implementation of—

''(A) the tax imposed by the section 4671 of the Internal Revenue Code of 1986 (as added by this section), and

''(B) the credit for exports of taxable substances under section 4661(e)(2)(A)(ii)(II) of such Code.

In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Environmental Protection Agency and the International Trade Commission.

''(2) REPORT.—The report of the study under paragraph (1) shall be submitted not later than January 1, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

§ 4672. Definitions and special rules

(a) Taxable substance

For purposes of this subchapter—

(1) In general

The term ''taxable substance'' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

(2) Determination of substances on list

A substance shall be listed under paragraph (1) if—

(A) the substance is contained in the list under paragraph (3), or

(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that taxable chemicals constitute more than 50 percent of the weight (or more than 50 percent of the value) of the materials used to produce such substance (determined on the basis of the predominant method of production).

If an importer or exporter of any substance requests that the Secretary determine whether such substance be listed as a taxable substance under paragraph (1) or be removed from such listing, the Secretary shall make such determination within 180 days after the date the request was filed.

(3) Initial list of taxable substances

Cumene	Methylene chloride
Styrene	Polypropylene
Ammonium nitrate	Propylene glycol
Nickel oxide	Formaldehyde
Isopropyl alcohol	Acetone
Ethylene glycol	Acrylonitrile
Vinyl chloride	Methanol
Polyethylene resins, total	Propylene oxide
Polybutadiene	Polypropylene resins
Styrene-butadiene, latex	Ethylene oxide
Styrene-butadiene, snpf	Ethylene dichloride
Synthetic rubber, not containing fillers	Cyclohexane
Urea	Isophthalic acid
Ferronickel	Maleic anhydride
Ferrochromium nov 3 pct	Phthalic anhydride
Ferrochrome ov 3 pct. carbon	Ethyl methyl ketone
Unwrought nickel	Chloroform
Nickel waste and scrap	Carbon tetrachloride
Wrought nickel rods and wire	Chromic acid
Nickel powders	Hydrogen peroxide

Phenolic resins	Polystyrene homopolymer resins
Polyvinylchloride resins	Melamine
Polystyrene resins and copolymers	Acrylic and methacrylic acid resins
Ethyl alcohol for nonbeverage use	Vinyl resins
Ethylbenzene	Vinyl resins, NSPF.

(4) Modifications to list

The Secretary shall add to the list under paragraph (3) substances which meet either the weight or value tests of paragraph (2)(B) and may remove from such list only substances which meet neither of such tests.

(b) Other definitions

For purposes of this subchapter—

(1) Importer

The term ''importer'' means the person entering the taxable substance for consumption, use, or warehousing.

(2) Taxable chemicals; United States

The terms ''taxable chemical'' and ''United States'' have the respective meanings given such terms by section 4662(a).

(c) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671.

(Added Pub. L. 99–499, title V, § 515(a), Oct. 17, 1986, 100 Stat. 1768; amended Pub. L. 100–647, title II, § 2001(b), Nov. 10, 1988, 102 Stat. 3594.)

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–647, § 2001(b)(2), inserted at end ''If an importer or exporter of any substance requests that the Secretary determine whether such substance be listed as a taxable substance under paragraph (1) or be removed from such listing, the Secretary shall make such determination within 180 days after the date the request was filed.''

Subsec. (a)(2)(B). Pub. L. 100–647, § 2001(b)(1), inserted ''(or more than 50 percent of the value)'' after ''weight''.

Subsec. (a)(4). Pub. L. 100–647, § 2001(b)(3), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(A) IN GENERAL.—The Secretary may add substances to or remove substances from the list under paragraph (3) (including items listed by reason of paragraph (2)) as necessary to carry out the purposes of this subchapter.

''(B) AUTHORITY TO ADD SUBSTANCES TO LIST BASED ON VALUE.—The Secretary may, to the extent necessary to carry out the purposes of this subchapter, add any substance to the list under paragraph (3) if such substance would be described in paragraph (2)(B) if 'value' were substituted for 'weight' therein.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1989, see section 515(c) of Pub. L. 99–499, set out as a note under section 4671 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Subchapter D—Ozone-Depleting Chemicals, Etc.

Sec.
4681. Imposition of tax.
4682. Definitions and special rules.

§ 4681. Imposition of tax

(a) General rule

There is hereby imposed a tax on—

(1) any ozone-depleting chemical sold or used by the manufacturer, producer, or importer thereof, and

(2) any imported taxable product sold or used by the importer thereof.

(b) Amount of tax

(1) Ozone-depleting chemicals

(A) In general

The amount of the tax imposed by subsection (a) on each pound of ozone-depleting chemical shall be an amount equal to—

(i) the base tax amount, multiplied by

(ii) the ozone-depletion factor for such chemical.

(B) Base tax amount

The base tax amount for purposes of subparagraph (A) with respect to any sale or use during any calendar year after 1995 shall be $5.35 increased by 45 cents for each year after 1995.

(2) Imported taxable product

(A) In general

The amount of the tax imposed by subsection (a) on any imported taxable product shall be the amount of tax which would have been imposed by subsection (a) on the ozone-depleting chemicals used as materials in the manufacture or production of such product if such ozone-depleting chemicals had been sold in the United States on the date of the sale of such imported taxable product.

(B) Certain rules to apply

Rules similar to the rules of paragraphs (2) and (3) of section 4671(b) shall apply.

(Added Pub. L. 101–239, title VII, § 7506(a), Dec. 19, 1989, 103 Stat. 2364; amended Pub. L. 101–508, title XI, § 11203(c), Nov. 5, 1990, 104 Stat. 1388–422; Pub. L. 102–486, title XIX, § 1931(a), Oct. 24, 1992, 106 Stat. 3029; Pub. L. 105–34, title XIV, § 1432(c)(1), Aug. 5, 1997, 111 Stat. 1050.)

PRIOR PROVISIONS

A prior section 4681, added Pub. L. 96–510, title II, § 231(a), Dec. 11, 1980, 94 Stat. 2804, was contained in subchapter C of this chapter prior to repeal by Pub. L. 99–499, title V, § 514(a)(1), (c), Oct. 17, 1986, 100 Stat. 1767, effective Oct. 1, 1983, with provision for waiver of statute of limitations on claims for overpayment.

AMENDMENTS

1997—Subsec. (b)(1)(B). Pub. L. 105–34 added subpar. (B) and struck out heading and text of former subpar.

(B). Text read as follows: ''The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1996 with respect to any ozone-depleting chemical is the amount determined under the following table for such calendar year:

"Calendar year:	Base tax amount:
1993	3.35
1994	4.35
1995	5.35.''

Subsec. (b)(1)(C). Pub. L. 105–34 struck out heading and text of subpar. (C). Text read as follows: ''The base tax amount for purposes of subparagraph (A) with respect to any sale or use of an ozone-depleting chemical during a calendar year after the last year specified in the table under subparagraph (B) applicable to such chemical shall be the base tax amount for such last year increased by 45 cents for each year after such last year.''

1992—Subsec. (b)(1)(B). Pub. L. 102–486 amended subpar. (B) generally, substituting present provisions for former provisions which provided for base tax amounts in cl. (i) of initially listed chemicals for 1990 to 1994 and in cl. (ii) of newly listed chemicals for 1991 to 1995.

1990—Subsec. (b)(1)(B). Pub. L. 101–508 amended subpar. (B) generally, designating existing provision as cl. (i), inserting ''with respect to any ozone-depleting chemical other than a newly listed chemical (as defined in section 4682(d)(3)(C))'', and adding cl. (ii).

Subsec. (b)(1)(C). Pub. L. 101–508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year after 1994 shall be the base tax amount for 1994 increased by 45 cents for each year after 1994.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1931(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section and section 4682 of this title] shall apply to taxable chemicals sold or used on or after January 1, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11203(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 4682 of this title] shall take effect on January 1, 1991.''

EFFECTIVE DATE

Section 7506(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this subchapter] shall take effect on January 1, 1990.

''(2) NO DEPOSITS REQUIRED BEFORE APRIL 1, 1990.—No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986, as added by this section, shall be required to be made before April 1, 1990.

''(3) NOTIFICATION OF CHANGES IN INTERNATIONAL AGREEMENTS.—The Secretary of the Treasury or his delegate shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of changes in the Montreal Protocol and of other international agreements to which the United States is a signatory relating to ozone-depleting chemicals.''

§ 4682. Definitions and special rules

(a) Ozone-depleting chemical

For purposes of this subchapter—

(1) In general

The term ''ozone-depleting chemical'' means any substance—

(A) which, at the time of the sale or use by the manufacturer, producer, or importer, is listed as an ozone-depleting chemical in the table contained in paragraph (2), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) Ozone-depleting chemicals

Common name:	Chemical nomenclature:
CFC–11	trichlorofluoromethane
CFC–12	dichlorodifluoromethane
CFC–113	trichlorotrifluoroethane
CFC–114	1,2-dichloro-1,1,2,2-tetrafluoroethane
CFC–115	chloropentafluoroethane
Halon-1211	bromochlorodifluoromethane
Halon-1301	bromotrifluoromethane
Halon-2402	dibromotetrafluoroethane
Carbon tetrachloride	Tetrachloromethane
Methyl chloroform	1,1,1-trichloroethane
CFC–13	CF3Cl
CFC–111	C2FCl5
CFC–112	C2F2Cl4
CFC–211	C3FCl7
CFC–212	C3F2Cl6
CFC–213	C3F3Cl5
CFC–214	C3F4Cl4
CFC–215	C3F5Cl3
CFC–216	C3F6Cl2
CFC–217	C3F7Cl.

(b) Ozone-depletion factor

For purposes of this subchapter, the term ''ozone-depletion factor'' means, with respect to an ozone-depleting chemical, the factor assigned to such chemical under the following table:

Ozone-depleting chemical:	Ozone-depletion factor:
CFC–11	1.0
CFC–12	1.0
CFC–113	0.8
CFC–114	1.0
CFC–115	0.6
Halon-1211	3.0
Halon-1301	10.0
Halon-2402	6.0
Carbon tetrachloride	1.1
Methyl chloroform	0.1
CFC–13.	1.0
CFC–111	1.0
CFC–112	1.0
CFC–211	1.0
CFC–212	1.0
CFC–213	1.0
CFC–214	1.0
CFC–215	1.0
CFC–216	1.0
CFC–217	1.0.

(c) Imported taxable product

For purposes of this subchapter—

(1) In general

The term ''imported taxable product'' means any product (other than an ozone-depleting chemical) entered into the United States for consumption, use, or warehousing if any ozone-depleting chemical was used as material in the manufacture or production of such product.

(2) De minimis exception

The term ''imported taxable product'' shall not include any product specified in regulations prescribed by the Secretary as using a de minimis amount of ozone-depleting chemicals as materials in the manufacture or production

thereof. The preceding sentence shall not apply to any product in which any ozone-depleting chemical (other than methyl chloroform) is used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

(d) Exceptions

(1) Recycling

No tax shall be imposed by section 4681 on any ozone-depleting chemical which is diverted or recovered in the United States as part of a recycling process (and not as part of the original manufacturing or production process), or on any recycled Halon-1301 or recycled Halon-2402 imported from any country which is a signatory to the Montreal Protocol on Substances that Deplete the Ozone Layer.

(2) Use in further manufacture

(A) In general

No tax shall be imposed by section 4681—

(i) on the use of any ozone-depleting chemical in the manufacture or production of any other chemical if the ozone-depleting chemical is entirely consumed in such use,

(ii) on the sale by the manufacturer, producer, or importer of any ozone-depleting chemical—

(I) for a use by the purchaser which meets the requirements of clause (i), or

(II) for resale by the purchaser to a second purchaser for a use by the second purchaser which meets the requirements of clause (i).

Clause (ii) shall apply only if the manufacturer, producer, and importer, and the 1st and 2d purchasers (if any), meet such registration requirements as may be prescribed by the Secretary.

(B) Credit or refund

Under regulations prescribed by the Secretary, if—

(i) a tax under this subchapter was paid with respect to any ozone-depleting chemical, and

(ii) such chemical was used (and entirely consumed) by any person in the manufacture or production of any other chemical,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4681.

(3) Exports

(A) In general

Except as provided in subparagraph (B), rules similar to the rules of section 4662(e) (other than section 4662(e)(2)(A)(ii)(II)) shall apply for purposes of this subchapter.

(B) Limit on benefit

(i) In general

The aggregate tax benefit allowable under subparagraph (A) with respect to ozone-depleting chemicals manufactured, produced, or imported by any person during a calendar year shall not exceed the sum of—

(I) the amount equal to the 1986 export percentage of the aggregate tax which would (but for this subsection and subsection (g)) be imposed by this subchapter with respect to the maximum quantity of ozone-depleting chemicals permitted to be manufactured or produced by such person during such calendar year under regulations prescribed by the Environmental Protection Agency (other than chemicals with respect to which subclause (II) applies),

(II) the aggregate tax which would (but for this subsection and subsection (g)) be imposed by this subchapter with respect to any additional production allowance granted to such person with respect to ozone-depleting chemicals manufactured or produced by such person during such calendar year by the Environmental Protection Agency under 40 CFR Part 82 (as in effect on September 14, 1989), and

(III) the aggregate tax which was imposed by this subchapter with respect to ozone-depleting chemicals imported by such person during the calendar year.

(ii) 1986 export percentage

A person's 1986 export percentage is the percentage equal to the ozone-depletion factor adjusted pounds of ozone-depleting chemicals manufactured or produced by such person during 1986 which were exported during 1986, divided by the ozone-depletion factor adjusted pounds of all ozone-depleting chemicals manufactured or produced by such person during 1986. The percentage determined under the preceding sentence shall be computed by taking into account the sum of such person's direct 1986 exports (as determined by the Environmental Protection Agency) and such person's indirect 1986 exports (as allocated to such person by such Agency in determining such person's consumption and production rights for ozone-depleting chemicals).

(C) Separate application of limit for newly listed chemicals

(i) In general

Subparagraph (B) shall be applied separately with respect to newly listed chemicals and other chemicals.

(ii) Application to newly listed chemicals

In applying subparagraph (B) to newly listed chemicals—

(I) subparagraph (B) shall be applied by substituting ''1989'' for ''1986'' each place it appears, and

(II) clause (i)(II) thereof shall be applied by substituting for the regulations referred to therein any regulations (whether or not prescribed by the Secretary) which the Secretary determines are comparable to the regulations referred to in such clause with respect to newly listed chemicals.

(iii) Newly listed chemical

For purposes of this subparagraph, the term ''newly listed chemical'' means any substance which appears in the table contained in subsection (a)(2) below Halon-2402.

(e) Other definitions

For purposes of this subchapter—

(1) Importer

The term ''importer'' means the person entering the article for consumption, use, or warehousing.

(2) United States

The term ''United States'' has the meaning given such term by section 4612(a)(4).

(f) Special rules

(1) Fractional parts of a pound

In the case of a fraction of a pound, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole pound.

(2) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter.

(g) Chemicals used as propellants in metered-dose inhalers

(1) Exemption from tax

(A) In general

No tax shall be imposed by section 4681 on—

(i) any use of any substance as a propellant in metered-dose inhalers, or

(ii) any qualified sale by the manufacturer, producer, or importer of any substance.

(B) Qualified sale

For purposes of subparagraph (A), the term ''qualified sale'' means any sale by the manufacturer, producer, or importer of any substance—

(i) for use by the purchaser as a propellant in metered dose inhalers, or

(ii) for resale by the purchaser to a 2d purchaser for such use by the 2d purchaser.

The preceding sentence shall apply only if the manufacturer, producer, and importer, and the 1st and 2d purchasers (if any) meet such registration requirements as may be prescribed by the Secretary.

(2) Overpayments

If any substance on which tax was paid under this subchapter is used by any person as a propellant in metered-dose inhalers, credit or refund without interest shall be allowed to such person in an amount equal to the tax so paid. Amounts payable under the preceding sentence with respect to uses during the taxable year shall be treated as described in section 34(a) for such year unless claim thereof has been timely filed under this paragraph.

(h) Imposition of floor stocks taxes

(1) January 1, 1990, tax

On any ozone-depleting chemical which on January 1, 1990, is held by any person (other than the manufacturer, producer, or importer thereof) for sale or for use in further manufacture, there is hereby imposed a floor stocks tax in an amount equal to the tax which would be imposed by section 4681 on such chemical if the sale of such chemical by the manufacturer, producer, or importer thereof had occurred during 1990.

(2) Other tax-increase dates

(A) In general

If, on any tax-increase date, any ozone-depleting chemical is held by any person (other than the manufacturer, producer, or importer thereof) for sale or for use in further manufacture, there is hereby imposed a floor stocks tax.

(B) Amount of tax

The amount of the tax imposed by subparagraph (A) shall be the excess (if any) of—

(i) the tax which would be imposed under section 4681 on such substance if the sale of such chemical by the manufacturer, producer, or importer thereof had occurred on the tax-increase date, over

(ii) the prior tax (if any) imposed by this subchapter on such substance.

(C) Tax-increase date

For purposes of this paragraph, the term ''tax-increase date'' means January 1 of any calendar year after 1991.

(3) Due date

The taxes imposed by this subsection on January 1 of any calendar year shall be paid on or before June 30 of such year.

(4) Application of other laws

All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4681 shall apply to the floor stocks taxes imposed by this subsection.

(Added Pub. L. 101–239, title VII, § 7506(a), Dec. 19, 1989, 103 Stat. 2365; amended Pub. L. 101–508, title XI, §§ 11203(a), (b), (d), 11701(g), Nov. 5, 1990, 104 Stat. 1388–421, 1388–422, 1388–508; Pub. L. 102–486, title XIX, §§ 1931(b), (c), 1932(a)–(c), Oct. 24, 1992, 106 Stat. 3029–3031; Pub. L. 104–188, title I, § 1803(a)(1), (b), Aug. 20, 1996, 110 Stat. 1892, 1893; Pub. L. 105–34, title IX, § 903(a), title XIV, § 1432(c)(2), Aug. 5, 1997, 111 Stat. 873, 1051.)

PRIOR PROVISIONS

A prior section 4682, added Pub. L. 96–510, title II, § 231(a), Dec. 11, 1980, 94 Stat. 2804, was contained in subchapter C of this chapter, prior to repeal by Pub. L. 99–499, title V, § 514(a)(1), (c), Oct. 17, 1986, 100 Stat. 1767, effective Oct. 1, 1983, with provision for waiver of statute of limitations on claims for overpayment.

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–34, § 903(a), substituted ''recycled Halon-1301 or recycled Halon-2402'' for ''recycled halon''.

Subsec. (g). Pub. L. 105–34, § 1432(c)(2), amended subsec. (g) generally. Prior to amendment, subsec. (g) consisted of pars. (1) to (5) relating to taxes imposed during 1990 to 1993 on halons, chemicals used in rigid foam insulation, and methyl chloroform and taxes imposed on chemicals used as propellants in metered-dose inhalers.

1996—Subsec. (d)(1). Pub. L. 104–188, § 1803(a)(1), inserted before period at end '', or on any recycled halon

imported from any country which is a signatory to the Montreal Protocol on Substances that Deplete the Ozone Layer''.

Subsec. (g)(4). Pub. L. 104–188, § 1803(b), amended par. (4) generally, substituting provisions relating to chemicals used as propellants in metered-dose inhalers for provisions relating to chemicals used for sterilizing medical instruments and as propellants in metered-dose inhalers, including provisions relating to rate of tax, overpayments, and applicable period.

1992—Subsec. (g)(2)(A). Pub. L. 102–486, § 1932(a), in table, for sales or use during 1993, decreased applicable percentages from 3.3, 1.0, and 1.6 to 2.49, 0.75, and 1.24 in the case of Halon-1211, Halon-1301, and Halon-2402, respectively, and struck out applicable percentages for sales or use during 1991 and 1992.

Subsec. (g)(2)(B). Pub. L. 102–486, § 1931(b), in table decreased applicable percentage in the case of sales or use in 1993 from 10 to 7.46.

Subsec. (g)(4), (5). Pub. L. 102–486, § 1932(b), (c), added pars. (4) and (5).

Subsec. (h)(2)(C). Pub. L. 102–486, § 1931(c), substituted ''any calendar year after 1991'' for ''1991, 1992, 1993, and 1994''.

1990—Subsecs. (a)(2), (b). Pub. L. 101–508, § 11203(a), inserted items for ''Carbon tetrachloride'' through ''CFC–217'' in tables.

Subsec. (c)(2). Pub. L. 101–508, § 11203(d)(1), inserted ''(other than methyl chloroform)''.

Subsec. (d)(3)(B)(i). Pub. L. 101–508, § 11701(g)(1), substituted '', produced, or imported'' for ''or produced'' in introductory provisions.

Subsec. (d)(3)(B)(i)(I). Pub. L. 101–508, § 11701(g)(2), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount equal to the 1986 export percentage of the aggregate tax imposed by this subchapter with respect to ozone-depleting chemicals manufactured or produced by such person during such calendar year (other than chemicals with respect to which subclause (II) applies), and''.

Subsec. (d)(3)(B)(i)(II). Pub. L. 101–508, § 11701(g)(3), substituted ''tax which would (but for this subsection and subsection (g)) be imposed'' for ''tax imposed''.

Subsec. (d)(3)(B)(i)(III). Pub. L. 101–508, § 11701(g)(4), added subcl. (III).

Subsec. (d)(3)(B)(ii). Pub. L. 101–508, § 11701(g)(5), substituted last sentence for former last sentence which read as follows: ''The percentage determined under the preceding sentence shall be based on data published by the Environmental Protection Agency.''

Subsec. (d)(3)(C). Pub. L. 101–508, § 11203(b), added subpar. (C).

Subsec. (h)(3). Pub. L. 101–508, § 11203(d)(2), substituted ''June 30'' for ''April 1''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 903(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1803(c) of Pub. L. 104–188 provided that:

''(1) RECYCLED HALON.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a)(1) [amending this section] shall take effect on January 1, 1997.

''(B) HALON-1211.—In the case of Halon-1211, the amendment made by subsection (a)(1) shall take effect on January 1, 1998.

''(2) METERED-DOSE INHALERS.—The amendment made by subsection (b) [amending this section] shall take effect on the 7th day after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1931(b), (c) of Pub. L. 102–486 applicable to taxable chemicals sold or used on or after Jan. 1, 1993, see section 1931(d) of Pub. L. 102–486, set out as a note under section 4681 of this title.

Section 1932(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section] shall apply to sales and uses on or after January 1, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11203(a), (b), and (d) of Pub. L. 101–508 effective Jan. 1, 1991, see section 11203(e) of Pub. L. 101–508, set out as a note under section 4681 of this title.

Amendment by section 11701(g) of Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

CERTIFICATION SYSTEM

Section 1803(a)(2) of Pub. L. 104–188 provided that: ''The Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall develop a certification system to ensure compliance with the recycling requirement for imported halon under section 4682(d)(1) of the Internal Revenue Code of 1986, as amended by paragraph (1).''

DEPOSITS FOR FIRST QUARTER OF 1991

Section 11203(f) of Pub. L. 101–508 provided that: ''No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986 on any substance treated as an ozone-depleting chemical by reason of the amendment made by subsection (a)(1) [amending this section] shall be required to be made before April 1, 1991.''

CHAPTER 39—REGISTRATION-REQUIRED OBLIGATIONS

Sec.
4701. Tax on issuer of registration-required obligation not in registered form.

PRIOR PROVISIONS

The provisions of a prior chapter 39, Regulatory Taxes, were set out as:

Subchapter A, Narcotic Drugs and Marihuana, comprising sections 4701 to 4707, 4711 to 4716, 4721 to 4726, 4731 to 4736, 4741 to 4746, 4751 to 4757, 4761, 4762, and 4771 to 4776.

Subchapter B, White phosphorus matches, comprising sections 4801 to 4806.

Subchapter C, Adulterated butter and filled cheese, comprising sections 4811 to 4819, 4821, 4822, 4826, 4831 to 4836, 4841, 4842, and 4846.

Subchapter D, Cotton futures, comprising sections 4851 to 4854, 4861 to 4865, and 4871 to 4877.

Subchapter E, Circulation other than of national banks, comprising sections 4881 to 4886.

Subchapter F, Silver bullion, comprising sections 4891 to 4897.

Prior sections 4701 to 4897 were based on act Aug. 16, 1954, ch. 736, 68A Stat. 549–592, as amended.

Sections 4701–4776 were repealed by Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292. See section 801 et seq. of Title 21, Food and Drugs.

Sections 4801–4826, 4851–4873, and 4875–4886 were repealed by Pub. L. 94–455, title XIX, §§ 1904(a)(16)–(18), 1952(b), Oct. 4, 1976, 90 Stat. 1814, 1841.

Sections 4831–4834 and 4836–4846 were repealed by Pub. L. 93–490, § 3(a)(1), Oct. 26, 1974, 88 Stat. 1466.

Section 4835 was repealed by Pub. L. 85–881, § 1(b)(1), Sept. 2, 1958, 72 Stat. 1704.

Section 4874 was repealed by Pub. L. 91–452, title II, § 231(a), Oct. 15, 1970, 84 Stat. 930.

Sections 4891–4897 were repealed by Pub. L. 88–36, title II, § 201(a), June 4, 1963, 77 Stat. 54.

AMENDMENTS

1982—Pub. L. 97–248, title III, § 310(b)(4)(A), Sept. 3, 1982, 96 Stat. 597, added chapter heading and section analysis.

§ 4701. Tax on issuer of registration-required obligation not in registered form

(a) Imposition of tax

In the case of any person who issues a registration-required obligation which is not in registered form, there is hereby imposed on such person on the issuance of such obligation a tax in an amount equal to the product of—

(1) 1 percent of the principal amount of such obligation, multiplied by

(2) the number of calendar years (or portions thereof) during the period beginning on the date of issuance of such obligation and ending on the date of maturity.

(b) Definitions

For purposes of this section—

(1) Registration-required obligation

The term ''registration-required obligation'' has the same meaning as when used in section 163(f), except that such term shall not include any obligation required to be registered under section 149(a).

(2) Registered form

The term ''registered form'' has the same meaning as when used in section 163(f).

(Added Pub. L. 97–248, title III, § 310(b)(4)(A), Sept. 3, 1982, 96 Stat. 598; amended Pub. L. 99–514, title XIII, § 1301(j)(5), Oct. 22, 1986, 100 Stat. 2657; Pub. L. 111–147, title V, § 502(e), Mar. 18, 2010, 124 Stat. 108.)

AMENDMENT OF SUBSECTION (b)(1)

Pub. L. 111–147, title V, § 502(e), (f), Mar. 18, 2010, 124 Stat. 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (b)(1) of this section is amended to read as follows:

(1) Registration-required obligation

(A) In general

The term ''registration-required obligation'' has the same meaning as when used in section 163(f), except that such term shall not include any obligation which—

(i) is required to be registered under section 149(a), or

(ii) is described in subparagraph (B).

(B) Certain obligations not included

An obligation is described in this subparagraph if—

(i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person,

(ii) interest on such obligation is payable only outside the United States and its possessions, and

(iii) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99–514 substituted ''section 149(a)'' for ''section 103(j)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE

Section applicable to obligations issued after Dec. 31, 1982, with an exception for certain warrants, see section 310(d)(1), (3) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendment note under section 103 of this title.

CHAPTER 40—GENERAL PROVISIONS RELATING TO OCCUPATIONAL TAXES

Sec.
4901. Payment of tax.
4902. Liability of partners.
4903. Liability in case of business in more than one location.
4904. Liability in case of different businesses of same ownership and location.
4905. Liability in case of death or change of location.
4906. Application of State laws.
4907. Federal agencies or instrumentalities.

§ 4901. Payment of tax

(a) Condition precedent to carrying on certain business

No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering) until he has paid the special tax therefor.

(b) Computation

All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(Aug. 16, 1954, ch. 736, 68A Stat. 593; Pub. L. 89–44, title IV, § 405(b), June 21, 1965, 79 Stat. 149; Pub. L. 91–513, title III, § 1102(a), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 94–455, title XIX, § 1904(a)(19), Oct. 4, 1976, 90 Stat. 1814; Pub. L. 95–600, title V, § 521(c)(2), Nov. 6, 1978, 92 Stat. 2884.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–600 struck out ''or 4461(a)(1) (coin-operated gaming devices)'' after ''(wagering)''.

1976—Subsec. (c). Pub. L. 94–455 struck out subsec. (c) which provided that all special taxes should be paid by stamp and made reference to subtitle F for authority of the Secretary to make assessments where special taxes have not been duly paid by stamp.

1970—Subsec. (a). Pub. L. 91–513 struck out references to tax imposed by sections 4721 (narcotic drugs) and 4751 (marihuana).

1965—Subsec. (a). Pub. L. 89–44 substituted ''4461(a)(1)'' for ''4461(2)''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to years beginning after June 30, 1980, see section 521(d)(2) of Pub. L. 95–600, set out as a note under section 4402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as a note under section 4402 of this title.

SAVINGS PROVISION

Prosecution for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

PERSONS ENGAGED IN ACTIVITIES ON DECEMBER 1, 1974, REQUIRING PAYMENT OF WAGERING TAX

Person on Dec. 1, 1974, engaging in an activity making him liable for payment of tax imposed by section 4411 of this title (as in effect on such date) to be treated as commencing such activity on such date for purposes of this section and section 4411 of this title, see section 3(d)(2) of Pub. L. 93–499, set out as a note under section 4411 of this title.

§ 4902. Liability of partners

Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 593.)

§ 4903. Liability in case of business in more than one location

The payment of the special tax imposed, other than the tax imposed by section 4411, shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this subtitle, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

(Aug. 16, 1954, ch. 736, 68A Stat. 593.)

§ 4904. Liability in case of different businesses of same ownership and location

Whenever more than one of the pursuits or occupations described in this subtitle are carried on in the same place by the same person at the same time, except as otherwise provided in this subtitle, the tax shall be paid for each according to the rates severally prescribed.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

§ 4905. Liability in case of death or change of location

(a) Requirements

When any person who has paid the special tax for any trade or business dies, his spouse or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. When any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the register kept in the office of the official in charge of the internal revenue district at the place to which he removes, without the payment of any additional tax: *Provided*, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the Secretary, under regulations to be prescribed by the Secretary.

(b) Registration

For registration in case of wagering, see section 4412.

(Aug. 16, 1954, ch. 736, 68A Stat. 594; Pub. L. 89–44, title IV, § 405(c), June 21, 1965, 79 Stat. 149; Pub. L. 91–513, title III, § 1102(b), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 94–455, title XIX, §§ 1904(a)(20), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1814, 1816, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §§ 1904(a)(20), 1906(b)(13)(A), substituted ''spouse or child'' for ''wife or child'' and struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (b). Pub. L. 94–455, § 1904(b)(8)(A), among other changes, struck out reference to section 4804(d) for registration in case of white phosphorous matches and references to subtitle F for other provisions relating to registration.

1970—Subsec. (b)(1). Pub. L. 91–513 struck out references to narcotics and marihuana and to sections 4722 and 4753.

1965—Subsec. (b)(1). Pub. L. 89–44 struck out ''playing cards,'' after ''wagering,'' and ''4455,'' after ''4412,''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(c)(2) of Pub. L. 89–44 provided in part that: ''The amendments made by section 402 [repealing

sections 4451 to 4457 of this title] (relating to playing cards) and by subsections (c) of section 405 [amending this section] shall apply on and after the day after the date of the enactment of this Act [June 21, 1965].''

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§ 4906. Application of State laws

The payment of any special tax imposed by this subtitle for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

§ 4907. Federal agencies or instrumentalities

Any special tax imposed by this subtitle, except the tax imposed by section 4411, shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

CHAPTER 41—PUBLIC CHARITIES

Sec.
4911. Tax on excess expenditures to influence legislation.
4912. Tax on disqualifying lobbying expenditures of certain organizations.

AMENDMENTS

1987—Pub. L. 100–203, title X, § 10714(d), Dec. 22, 1987, 101 Stat. 1330–471, added item 4912.

PRIOR PROVISIONS

The provisions of a prior chapter 41, Interest Equalization Tax, were set out as follows:

Subchapter A, Acquisitions of foreign stock and debt obligations, comprising sections 4911 to 4920.

Subchapter B, Acquisition by commercial banks, comprising section 4931.

Prior sections 4911 to 4922 and 4931 were repealed by Pub. L. 94–455, § 1904(a)(21)(A), Oct. 4, 1976, 90 Stat. 1814, effective with respect to acquisitions of stock and debt obligations made after June 30, 1974. See section 1904(a)(21)(B), set out as an Effective Date of Repeal of Prior Provisions note below.

The subject matter of the prior provisions is as follows:

Section 4911, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 809; amended Pub. L. 89–243, §§ 2, 3(a)(1), (b), Oct. 9, 1965, 79 Stat. 954; Pub. L. 90–59, §§ 2, 3(a), July 31, 1967, 81 Stat. 145; Pub. L. 91–50, Aug. 2, 1969, 83 Stat. 86; Pub. L. 91–65, § 2, Aug. 25, 1969, 83 Stat. 105; Pub. L. 91–128, §§ 2, 3, Nov. 26, 1969, 83 Stat. 261, 262; Pub. L. 92–9, § 2, Apr. 1, 1971, 85 Stat. 13; Pub. L. 93–17, § 2, Apr. 10, 1973, 87 Stat. 12, imposed a tax on each acquisition by a United States person of stock of a foreign issuer or a debt obligation of a foreign obligor, if such obligation had a period remaining to maturity of 1 year or more and provided for modification of tax rate by executive order, rate tables, rates during interim period, rules and regulations, persons liable for tax, and termination date, that no tax shall be imposed on any acquisition made after June 30, 1974.

Section 4912, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 810; amended Pub. L. 89–243, § 4(m)(3), Oct. 9, 1965, 79 Stat. 963; Pub. L. 90–59, § 5(a)(1), July 31, 1967, 81 Stat. 157; Pub. L. 91–128, § 4(a)(1), Nov. 26, 1969, 83 Stat. 263; Pub. L. 92–9, § 3(a)(1), Apr. 1, 1971, 85 Stat. 14; Pub. L. 93–17, § 3(e), Apr. 10, 1973, 87 Stat. 17, defined term ''acquisition'' and provided special rules to be applied to certain transfers to foreign trusts, foreign corporations and partnerships, foreign branches, acquisitions from domestic corporations or partnerships formed or availed of to obtain funds for foreign issuer or obligor, and reorganization exchanges.

Section 4913, added Pub. L. 88–563, § 2(a), Sept. 12, 1964, 78 Stat. 812, imposed general and special limitations on tax on certain acquisitions relating to stock or debt obligations acquired by surrender, extensions, renewals, and exercises, transfers which are deemed acquisitions and acquisitions by certain domestic corporations and partnerships.

Section 4914, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 813; amended Pub. L. 89–44, title IV, § 405(d), June 21, 1965, 79 Stat. 149; Pub. L. 89–243, §§ 3(a)(2), (3), 4(a)(1)–(3), (b)–(f)(2), (g), (h)(1), Oct. 9, 1965, 79 Stat. 954, 956–960; Pub. L. 89–809, title II, §§ 213(a), (b)(1), 214(a), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90–59, § 5(b)(1), (c)(1), (2), (d)(1), (e)(1), (f)(1), July 31, 1967, 81 Stat. 157, 158; Pub. L. 91–128, § 4(b)(1), (c)(1), (2), (i)(1), (2), Nov. 26, 1969, 83 Stat. 263, 264, 268; Pub. L. 92–9, § 3(b)(1), (2), (c)(1), (d)(1), (2), Apr. 1, 1971, 85 Stat. 15–17; Pub. L. 93–17, § 3(f), Apr. 10, 1973, 87 Stat. 17, provided exclusions for certain acquisitions including: transactions not considered acquisitions; export credit, etc., transactions; loans to assure raw materials sources; acquisitions by insurance companies doing business in foreign countries; acquisitions by certain tax-exempt organizations such as labor, fraternal, and similar organizations having foreign branches or chapters; sale or liquidation of foreign subsidiary or sale of foreign branch; certain debt obligations secured by United States mortgages, etc.; acquisitions of stock of foreign issuers investing exclusively in the United States, and loss of entitlement to exclusion in case of certain subsequent transfers or acquisitions of stock or debt obligations in connection with nationalization, expropriation, etc.

Section 4915, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 824; amended Pub. L. 90–59, § 5(h)(3), July 31, 1967, 81 Stat. 163; Pub. L. 91–128, § 4(e)(3), Nov. 26, 1969, 83 Stat. 267; Pub. L. 92–9, § 3(e)(1), Apr. 1, 1971, 85 Stat. 17; Pub. L. 93–17, § 3(g)(1), Apr. 10, 1973, 87 Stat. 18, related to exclusions for direct investments and provided for excluded acquisitions, overpayment with respect to certain taxable acquisitions, special rule for government-controlled enterprises, exception for foreign corporations or partnerships formed or availed of for tax avoidance, exception for acquisitions made with intent to sell to United States persons, and special rule for investments in certain lending and financial corporations.

Section 4916, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 827; amended Pub. L. 89–243, § 4(i), Oct 9, 1965, 79 Stat. 960; Pub. L. 90–59, § 5(g)(1), July 31, 1967, 81 Stat. 159; Pub. L. 92–9, § 3(b)(3), Apr. 1, 1971, 85 Stat. 16; Pub. L. 93–17, § 3(b), Apr. 10, 1973, 87 Stat. 13, related to exclusion for investment in less developed countries, provided special rules applicable to such investments, subsequent tax liability in certain cases, the repeal of exclusion for issues after Jan. 29, 1973, in the case of less developed country shipping companies, and defined term ''less developed country''.

Section 4917, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 830; amended Pub. L. 89–243, § 4(j), (k), Oct. 9, 1965, 79 Stat. 960; Pub. L. 90–59, § 5(h)(1), July 31, 1967, 81

Stat. 159, related to exclusion for original or new issues where required for international monetary stability.

Section 4918, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 831; amended Pub. L. 89–809, title II, § 213(b)(2), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90–59, § 4(a), July 31, 1967, 81 Stat. 148; Pub. L. 90–73, § 2(a)–(c), Aug. 29, 1967, 81 Stat. 175, 176; Pub. L. 93–17, § 3(h)(1), Apr. 10, 1973, 87 Stat. 18, related to exemption for prior American ownership and compliance, proof of such ownership or compliance, issuance of IET clean confirmation by participating firm, sales effected by participating firms in connection with exempt acquisitions, filing of transition inventory, transfer of custody certificate, certain debt obligations arising out of loans to assure raw material sources, regulations, and definitions of ''participating firm,'' and ''participating custodian''.

Section 4919, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 833; amended Pub. L. 89–243, § 4(1), Oct. 9, 1965, 79 Stat. 961; Pub. L. 90–59, § 5(i)(1), (2), July 31, 1967, 81 Stat. 159, 160; Pub. L. 91–128, § 4(d)(1), Nov. 26, 1969, 83 Stat. 264; Pub. L. 92–9, § 3(f)(1), (2), Apr. 1, 1971, 85 Stat. 20; Pub. L. 93–17, § 3(i)(1), Apr. 10, 1973, 87 Stat. 19, related to credit or refund on sales by underwriters and dealers to foreign persons, evidence needed to support such credit or refund, and defined terms ''underwriter'', ''dealer'', and ''persons other than United States persons''.

Section 4920, added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 835; amended Pub. L. 89–243, §§ 3(a)(4), 4(m)(1), (2)(A), (n), Oct. 9, 1965, 79 Stat. 954, 961–963; Pub. L. 90–59, §§ 4(f), 5(j)–(k)(2), July 31, 1967, 81 Stat. 156, 160–163; Pub. L. 91–128, § 4(e)(1), (2), (i)(3), Nov. 26, 1969, 83 Stat. 264, 269; Pub. L. 92–9, § 3(e)(2), (3), (g)(1), (h)(1), Apr. 1, 1971, 85 Stat. 18, 20, 21; Pub. L. 93–17, § 3(g)(2)(j), Apr. 10, 1973, 87 Stat. 18, 19, related to definitions and special rules.

Section 4921, added Pub. L. 92–9, § 3(i)(1), Apr. 1, 1971, 85 Stat. 21, related to standby authority of the President to impose tax on debt obligations of foreign obligors having a period remaining to maturity of less than 1 year and provided that such authority may be extended by Executive order.

Section 4922, added Pub. L. 93–17, § 3(d)(1), Apr. 10, 1973, 87 Stat. 15, related to exclusion for certain issues to finance new or additional direct investment in the United States, qualification for exclusion, and loss of entitlement to exclusion by subsequent noncompliance.

Section 4931, added Pub. L 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 839; amended Pub. L. 89–243, §§ 3(e)(1), 4(a)(4), (*o*), Oct. 9, 1965, 79 Stat. 955, 956, 964; Pub. L. 89–809, title II, § 215(a), Nov. 13, 1966, 80 Stat. 1587, Pub. L. 90–59, § 3(b)(1), July 31, 1967, 81 Stat. 145, related to the standby authority of the President to impose, by Executive order, tax on acquisitions by commercial banks of debt obligations of foreign obligors, made provision for exclusions concerning export loans, foreign currency loans by foreign branches, preexisting commitments, and provided for prescription of regulations by the Secretary.

EFFECTIVE DATE OF REPEAL OF PRIOR PROVISIONS

Section 1904(a)(21)(B) of Pub. L. 94–455 provided that: ''The repeal made by subparagraph (A) [repealing sections 4911 through 4922 and section 4931 of this title] shall apply with respect to acquisitions of stock and debt obligations made after June 30, 1974.''

§ 4911. Tax on excess expenditures to influence legislation

(a) Tax imposed

(1) In general

There is hereby imposed on the excess lobbying expenditures of any organization to which this section applies a tax equal to 25 percent of the amount of the excess lobbying expenditures for the taxable year.

(2) Organizations to which this section applies

This section applies to any organization with respect to which an election under section 501(h) (relating to lobbying expenditures by public charities) is in effect for the taxable year.

(b) Excess lobbying expenditures

For purposes of this section, the term ''excess lobbying expenditures'' means, for a taxable year, the greater of—

(1) the amount by which the lobbying expenditures made by the organization during the taxable year exceed the lobbying nontaxable amount for such organization for such taxable year, or

(2) the amount by which the grass roots expenditures made by the organization during the taxable year exceed the grass roots nontaxable amount for such organization for such taxable year.

(c) Definitions

For purposes of this section—

(1) Lobbying expenditures

The term ''lobbying expenditures'' means expenditures for the purpose of influencing legislation (as defined in subsection (d)).

(2) Lobbying nontaxable amount

The lobbying nontaxable amount for any organization for any taxable year is the lesser of (A) $1,000,000 or (B) the amount determined under the following table:

If the exempt purpose expenditures are—	The lobbying nontaxable amount is—
Not over $500,000	20 percent of the exempt purpose expenditures.
Over $500,000 but not over $1,000,000.	$100,000, plus 15 percent of the excess of the exempt purpose expenditures over $500,000.
Over $1,000,000 but not over $1,500,000.	$175,000 plus 10 percent of the excess of the exempt purpose expenditures over $1,000,000.
Over $1,500,000	$225,000 plus 5 percent of the excess of the exempt purpose expenditures over $1,500,000.

(3) Grass roots expenditures

The term ''grass roots expenditures'' means expenditures for the purpose of influencing legislation (as defined in subsection (d) without regard to paragraph (1)(B) thereof).

(4) Grass roots nontaxable amount

The grass roots nontaxable amount for any organization for any taxable year is 25 percent of the lobbying nontaxable amount (determined under paragraph (2)) for such organization for such taxable year.

(d) Influencing legislation

(1) General rule

Except as otherwise provided in paragraph (2), for purposes of this section, the term ''influencing legislation'' means—

(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or

with any government official or employee who may participate in the formulation of the legislation.

(2) Exceptions

For purposes of this section, the term ''influencing legislation'', with respect to an organization, does not include—

(A) making available the results of nonpartisan analysis, study, or research;

(B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications described in paragraph (3); and

(E) any communication with a governmental official or employee, other than—

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.

(3) Communications with members

(A) A communication between an organization and any bona fide member of such organization to directly encourage such member to communicate as provided in paragraph (1)(B) shall be treated as a communication described in paragraph (1)(B).

(B) A communication between an organization and any bona fide member of such organization to directly encourage such member to urge persons other than members to communicate as provided in either subparagraph (A) or subparagraph (B) of paragraph (1) shall be treated as a communication described in paragraph (1)(A).

(e) Other definitions and special rules

For purposes of this section—

(1) Exempt purpose expenditures

(A) In general

The term ''exempt purpose expenditures'' means, with respect to any organization for any taxable year, the total of the amounts paid or incurred by such organization to accomplish purposes described in section 170(c)(2)(B) (relating to religious, charitable, educational, etc., purposes).

(B) Certain amounts included

The term ''exempt purpose expenditures'' includes—

(i) administrative expenses paid or incurred for purposes described in section 170(c)(2)(B), and

(ii) amounts paid or incurred for the purpose of influencing legislation (whether or not for purposes described in section 170(c)(2)(B)).

(C) Certain amounts excluded

The term ''exempt purpose expenditures'' does not include amounts paid or incurred to or for—

(i) a separate fundraising unit of such organization, or

(ii) one or more other organizations, if such amounts are paid or incurred primarily for fundraising.

(2) Legislation

The term ''legislation'' includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

(3) Action

The term ''action'' is limited to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.

(4) Depreciation, etc., treated as expenditures

In computing expenditures paid or incurred for the purpose of influencing legislation (within the meaning of subsection (b)(1) or (b)(2)) or exempt purpose expenditures (as defined in paragraph (1)), amounts properly chargeable to capital account shall not be taken into account. There shall be taken into account a reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization. Such allowance shall be computed only on the basis of the straight-line method of depreciation. For purposes of this section, a determination of whether an amount is properly chargeable to capital account shall be made on the basis of the principles that apply under subtitle A to amounts which are paid or incurred in a trade or business.

(f) Affiliated organizations

(1) In general

Except as otherwise provided in paragraph (4), if for a taxable year two or more organizations described in section 501(c)(3) are members of an affiliated group of organizations as defined in paragraph (2), and an election under section 501(h) is effective for at least one such organization for such year, then—

(A) the determination as to whether excess lobbying expenditures have been made and the determination as to whether the expenditure limits of section 501(h)(1) have been exceeded shall be made as though such affiliated group is one organization,

(B) if such group has excess lobbying expenditures, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which has excess lobbying expenditures in an amount which equals such organization's proportionate share of such group's excess lobbying expenditures,

(C) if the expenditure limits of section 501(h)(1) are exceeded, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which is not described in section 501(c)(3) by reason of the application of 501(h), and

(D) subparagraphs (C) and (D) of subsection (d)(2), paragraph (3) or subsection (d), and clause (i) of subsection (e)(1)(C) shall be applied as if such affiliated group were one organization.

(2) Definition of affiliation

For purposes of paragraph (1), two organizations are members of an affiliated group of organizations but only if—

(A) the governing instrument of one such organization requires it to be bound by decisions of the other organization on legislative issues, or

(B) the governing board of one such organization includes persons who—

(i) are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and

(ii) by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

(3) Different taxable years

If members of an affiliated group of organizations have different taxable years, their expenditures shall be computed for purposes of this section in a manner to be prescribed by regulations promulgated by the Secretary.

(4) Limited control

If two or more organizations are members of an affiliated group of organizations (as defined in paragraph (2) without regard to subparagraph (B) thereof), no two members of such affiliated group are affiliated (as defined in paragraph (2) without regard to subparagraph (A) thereof), and the governing instrument of no such organization requires it to be bound by decisions of any of the other such organizations on legislative issues other than as to action with respect to Acts, bills, resolutions, or similar items by the Congress, then—

(A) in the case of any organization whose decisions bind one or more members of such affiliated group, directly or indirectly, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization has paid or incurred those amounts paid or incurred by such members of such affiliated group to influence legislation with respect to Acts, bills, resolutions, or similar items by the Congress, and

(B) in the case of any organization to which subparagraph (A) does not apply, but which is a member of such affiliated group, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization is not a member of such affiliated group.

(Added Pub. L. 94–455, title XIII, § 1307(b), Oct. 4, 1976, 90 Stat. 1723; amended Pub. L. 95–600, title VII, § 703(g)(1), Nov. 6, 1978, 92 Stat. 2940.)

AMENDMENTS

1978—Subsec. (c)(2). Pub. L. 95–600 substituted ''exempt purpose expenditures'' for ''proposed expenditures'' in heading of table.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

§ 4912. Tax on disqualifying lobbying expenditures of certain organizations

(a) Tax on organization

If an organization to which this section applies is not described in section 501(c)(3) for any taxable year by reason of making lobbying expenditures, there is hereby imposed a tax on the lobbying expenditures of such organization for such taxable year equal to 5 percent of the amount of such expenditures. The tax imposed by this subsection shall be paid by the organization.

(b) On management

If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures are likely to result in the organization not being described in section 501(c)(3), a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

(c) Organizations to which section applies

(1) In general

Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3).

(2) Exceptions

This section shall not apply to any organization—

(A) to which an election under section 501(h) applies,

(B) which is a disqualified organization (within the meaning of section 501(h)(5)), or

(C) which is a private foundation.

(d) Definitions

(1) Lobbying expenditures

The term ''lobbying expenditure'' means any amount paid or incurred by the organization in carrying on propaganda, or otherwise attempting to influence legislation.

(2) Organization manager

The term ''organization manager'' has the meaning given to such term by section 4955(f)(2).

(3) Joint and several liability

If more than 1 person is liable under subsection (b), all such persons shall be jointly and severally liable under such subsection.

(Added Pub. L. 100–203, title X, § 10714(a), Dec. 22, 1987, 101 Stat. 1330–470.)

EFFECTIVE DATE

Section 10714(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section and amending sections 6501 and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987].''

CHAPTER 42—PRIVATE FOUNDATIONS; AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

Subchapter		Sec.[1]
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AMENDMENTS

2006—Pub. L. 109–280, title XII, § 1231(b)(2), Aug. 17, 2006, 120 Stat. 1098, which directed the addition of item for subchapter G to the analysis for chapter 42 without specifying the act to be amended, was executed by adding the item to this analysis, which is for chapter 42 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Pub. L. 109–222, title V, § 516(a)(2), May 17, 2006, 120 Stat. 371, added item for subchapter F.

1996—Pub. L. 104–168, title XIII, § 1311(c)(6), July 30, 1996, 110 Stat. 1478, struck out item for subchapter D ''Abatement of first and second-tier taxes in certain cases'' and added items for subchapters D and E.

1987—Pub. L. 100–203, title X, § 10712(c)(7), (9), Dec. 22, 1987, 101 Stat. 1330–467, substituted in chapter heading ''AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS'' for ''BLACK LUNG BENEFIT TRUSTS'', struck out item for subchapter C ''Abatement of first and second tier taxes in certain cases'', and added items for subchapters C and D.

1984—Pub. L. 98–369, div. A, title III, § 305(b)(3), July 18, 1984, 98 Stat. 784, 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 item for subchapter C.

1980—Pub. L. 96–596, § 2(c)(3), Dec. 24, 1980, 94 Stat. 3474, added item for subchapter C.

1978—Pub. L. 95–227, § 4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, in chapter heading inserted ''; BLACK LUNG BENEFIT TRUSTS'' after ''FOUNDATIONS'', and added items for subchapters A and B.

1969—Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 498, added chapter heading ''PRIVATE FOUNDATIONS''.

Subchapter A—Private Foundations

Sec.
4940. Excise tax based on investment income.
4941. Taxes on self-dealing.
4942. Taxes on failure to distribute income.
4943. Taxes on excess business holdings.
4944. Taxes on investments which jeopardize charitable purpose.
4945. Taxes on taxable expenditures.
4946. Definitions and special rules.
4947. Application of taxes to certain nonexempt trusts.
4948. Application of taxes and denial of exemption with respect to certain foreign organizations.

AMENDMENTS

1978—Pub. L. 95–227, § 4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, added subchapter A heading and designated sections 4940 to 4948 as subchapter A.

1969—Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 498, added analysis of sections.

§ 4940. Excise tax based on investment income

(a) Tax-exempt foundations

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

(b) Taxable foundations

There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

(1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

(c) Net investment income defined

(1) In general

For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

(2) Gross investment income

For purposes of paragraph (1), the term ''gross investment income'' means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also include income from sources similar to those in the preceding sentence.

(3) Deductions

(A) In general

For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held

[1] Section numbers editorially supplied.

for the production of such income, determined with the modifications set forth in subparagraph (B).

(B) Modifications

For purposes of subparagraph (A)—

(i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.

(ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

(4) Capital gains and losses

For purposes of paragraph (1) in determining capital gain net income—

(A) There shall not be taken into account any gain or loss from the sale or other disposition of property to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511.

(B) The basis for determining gain in the case of property held by the private foundation on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the extent of gains from such sales or other dispositions, and there shall be no capital loss carryovers or carrybacks.

(D) Except to the extent provided by regulation, under rules similar to the rules of section 1031 (including the exception under subsection (a)(2) thereof), no gain or loss shall be taken into account with respect to any portion of property used for a period of not less than 1 year for a purpose or function constituting the basis of the private foundation's exemption if the entire property is exchanged immediately following such period solely for property of like kind which is to be used primarily for a purpose or function constituting the basis for such foundation's exemption.

(5) Tax-exempt income

For purposes of this section, net investment income shall be determined by applying section 103 (relating to State and local bonds) and section 265 (relating to expenses and interest relating to tax-exempt income).

(d) Exemption for certain operating foundations

(1) In general

No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

(2) Exempt operating foundation

For purposes of this subsection, the term ''exempt operating foundation'' means, with respect to any taxable year, any private foundation if—

(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

(B) such foundation has been publicly supported for at least 10 taxable years,

(C) at all times during the taxable year, the governing body of such foundation—

(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

(ii) is broadly representative of the general public, and

(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

(3) Definitions

For purposes of this subsection—

(A) Publicly supported

A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

(B) Disqualified individual

The term ''disqualified individual'' means, with respect to any private foundation, an individual who is—

(i) a substantial contributor to the foundation,

(ii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation, or

(iii) a member of the family of any individual described in clause (i) or (ii).

(C) Substantial contributor

The term ''substantial contributor'' means a person who is described in section 507(d)(2).

(D) Family

The term ''family'' has the meaning given to such term by section 4946(d).

(E) Constructive ownership

The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph (B)(ii).

(e) Reduction in tax where private foundation meets certain distribution requirements

(1) In general

In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting ''1 percent'' for ''2 percent''.

(2) Requirements

A private foundation meets the requirements of this paragraph for any taxable year if—

(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

(ii) 1 percent of the net investment income of such foundation for such taxable year, and

(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

(3) Average percentage payout for base period

For purposes of this subsection—

(A) In general

The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

(B) Percentage payout

The term ''percentage payout'' means, with respect to any taxable year, the percentage determined by dividing—

(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

(ii) the assets of the private foundation for the taxable year.

(C) Special rule where tax reduced under this subsection

For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

(4) Base period

For purposes of this subsection—

(A) In general

The term ''base period'' means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

(B) New private foundations, etc.

If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

(5) Other definitions

For purposes of this subsection—

(A) Qualifying distribution

The term ''qualifying distribution'' has the meaning given such term by section 4942(g).

(B) Assets

The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

(6) Treatment of successor organizations, etc.

In the case of—

(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 498; amended Pub. L. 94–455, title XIX, § 1901(b)(33)(N), Oct. 4, 1976, 90 Stat. 1802; Pub. L. 95–345, § 2(a)(4), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title V, § 520(a), Nov. 6, 1978, 92 Stat. 2884; Pub. L. 98–369, div. A, title III, §§ 302(a), 303(a), July 18, 1984, 98 Stat. 779, 781; Pub. L. 99–514, title XIII, § 1301(j)(6), title XVIII, § 1832, Oct. 22, 1986, 100 Stat. 2658, 2851; Pub. L. 109–280, title XII, § 1221(a)(1), (b), Aug. 17, 2006, 120 Stat. 1089; Pub. L. 110–172, § 3(f), Dec. 29, 2007, 121 Stat. 2475.)

CODIFICATION

Section 1221(a)(1), (b) of Pub. L. 109–280, which directed the amendment of section 4940 without specifying the act to be amended, was executed to this section, which is section 4940 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2007—Subsec. (c)(4)(A). Pub. L. 110–172 amended text generally. Prior to amendment, text read as follows: ''There shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties, and property used for the production of income included in computing the tax imposed by section 511 (except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax).''

2006—Subsec. (c)(2). Pub. L. 109–280, § 1221(a)(1), inserted at end ''Such term shall also include income from sources similar to those in the preceding sentence.'' See Codification note above.

Subsec. (c)(4)(A). Pub. L. 109–280, § 1221(b)(1), substituted ''gross investment income (as defined in paragraph (2))'' for ''interest, dividends, rents, and royalties''. See Codification note above.

Subsec. (c)(4)(C). Pub. L. 109–280, § 1221(b)(2), inserted ''or carrybacks'' after ''carryovers''. See Codification note above.

Subsec. (c)(4)(D). Pub. L. 109–280, § 1221(b)(3), added subpar. (D). See Codification note above.

1986—Subsec. (c)(5). Pub. L. 99–514, § 1301(j), substituted ''(relating to State and local bonds)'' for ''(relating to interest on certain governmental obligations)''.

Subsec. (e)(2). Pub. L. 99–514, § 1832, added subpar. (B) and struck out former subpar. (B) and concluding provision which read as follows:

''(B) the average percentage payout for the base period equals or exceeds 5 percent.

In the case of an operating foundation (as defined in section 4942(j)(3)), subparagraph (B) shall be applied by substituting '3⅓ percent' for '5 percent'.''

1984—Subsec. (d). Pub. L. 98–369, § 302(a), added subsec. (d).

Subsec. (e). Pub. L. 98–369, § 303(a), added subsec. (e).

1978—Subsec. (a). Pub. L. 95–600 substituted ''2 percent'' for ''4 percent''.

Subsec. (c)(2). Pub. L. 95–345 inserted provision relating to payments with respect to securities loans.

1976—Subsec. (c). Pub. L. 94–455 substituted ''capital gain net income'' for ''net capital gain'' in par. (1) after ''investment income and the'', and in par. (4) after ''par. (1) in determining''.

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 Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, see section 1221(c) of

Pub. L. 109–280, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(j)(6) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1832 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 302(c)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Section 303(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 520(b) of Pub. L. 95–600 provided that: ''The amendment made by the first section of this Act [probably meaning section 520(a), which amended this section] shall apply to taxable years beginning after September 30, 1977.''

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE

Section 101(k) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (*l*) [set out as a note below] the amendments made by this section [enacting this section and sections 507 to 509, 4941 to 4848, 6056, 6684, and 6685 of this title, amending sections 101, 170, 501, 503, 542, 663, 681, 878, 884, 1443, 2039, 2517, 4057, 4221, 4253, 4294, 5214, 6033, 6034, 6043, 6104, 6161, 6201, 6211 to 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 7207, 7422, and 7454 of this title, repealing section 504 of this title, and enacting provisions set out as notes under this section and section 1 of this title] shall take effect on January 1, 1970.

''(2) PROVISIONS EFFECTIVE FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1969.—The following provisions shall apply to taxable years beginning after December 31, 1969:

''(A) Sections 4940, 4942, 4943, and 4948 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), and

''(B) The amendments made by subsection (d) [enacting section 6056 of this title, and amending sections 6033 and 6652 of this title] and paragraphs (3), (15), (16), (20), (21), (30), (31), (32), (33), (34), (35), and (61) of subsection (j) [amending sections 501, 542, 878, 884, 6033, 6034, and 6043 of this title and repealing section 504 of this title].

''(3) SECTIONS 508(a), (b), AND (c).—Sections 508 (a),(b), and (c) of the Internal Revenue Code of 1986 (as added by this section) shall take effect on October 9, 1969.''

SAVINGS PROVISION

Section 101(*l*) of Pub. L. 91–172, as amended by Pub. L. 93–490, §4(a), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94–455, title XIII, §§1301(a), 1309(a), Oct. 4, 1976, 90 Stat. 1713, 1729; Pub. L. 95–600, title VII, §703(f), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title III, §314(b)(1), July 18, 1984, 98 Stat. 787; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) REFERENCES TO INTERNAL REVENUE CODE PROVISIONS.—Except as otherwise expressly provided, references in the following paragraphs of this subsection are to sections of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as amended by this section.

''(2) SECTION 4941.—Section 4941 shall not apply to—

''(A) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946), pursuant to the terms of securities of such corporation in existence at the time acquired by the foundation, if such securities were acquired by the foundation before May 27, 1969;

''(B) the sale, exchange, or other disposition of property which is owned by a private foundation on May 26, 1969 (or which is acquired by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter), to a disqualified person, if such foundation is required to dispose of such property in order not to be liable for tax under section 4943 (relating to taxes on excess business holdings) applied, in the case of a disposition before January 1, 1977, without taking section 4943(c)(4) into account and it receives in return an amount which equals or exceeds the fair market value of such property at the time of such disposition or at the time a contract for such disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

''(C) the leasing of property or the lending of money or other extension of credit between a disqualified person and a private foundation pursuant to a binding contract in effect on October 9, 1969 (or pursuant to renewals of such a contract), until taxable years beginning after December 31, 1979, if such leasing or lending (or other extension of credit) remains at least as favorable as an arm's-length transaction with an unrelated party and if the execution of such contract was not at the time of such execution a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

''(D) the use of goods, services, or facilities which are shared by a private foundation and a disqualified person until taxable years beginning after December 31, 1979, if such use is pursuant to an arrangement in effect before October 9, 1969, and such arrangement was not a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law) at the time it was made and would not be a prohibited transaction if such section continued to apply;

''(E) the use of property in which a private foundation and a disqualified person have a joint or common interest, if the interests of both in such property were acquired before October 9, 1969; and

''(F) the sale, exchange, or other disposition (other than by lease) of property which is owned by a private foundation to a disqualified person if—

''(i) such foundation is leasing substantially all of such property under a lease to which subparagraph (C) applies,

''(ii) the disposition to such disqualified person occurs before January 1, 1978, and

''(iii) such foundation receives in return for the disposition to such disqualified person an amount which equals or exceeds the fair market value of such property at the time of the disposition or at the time (after June 30, 1976) a contract for the disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law).

''(3) SECTION 4942.—In the case of organizations organized before May 27, 1969, section 4942 shall—

''(A) for all purposes other than the determination of the minimum investment return under section

4942(j)(3)(B)(ii), for taxable years beginning before January 1, 1972, apply without regard to section 4942(e) (relating to minimum investment return), and for taxable years beginning in 1972, 1973, and 1974, apply with an applicable percentage (as prescribed in section 4942(e)(3)) which does not exceed 4½ percent, 5 percent, and 5½ percent, respectively;

''(B) not apply to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on May 26, 1969, and at all times thereafter) of an instrument executed before May 27, 1969, with respect to the transfer of income producing property to such organization, except that section 4942 shall apply to such organization if the organization would have been denied exemption if section 504(a) had not been repealed by this Act, or would have had its deductions under section 642(c) limited if section 681(c) had not been repealed by this Act. In applying the preceding sentence, in addition to the limitations contained in section 504(a) or 681(c) before its repeal, section 504(a)(1) or 681(c)(1) shall be treated as not applying to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on January 1, 1951, and at all times thereafter) of an instrument executed before January 1, 1951, with respect to the transfer of income producing property to such organization before such date, if such transfer was irrevocable on such date;

''(C) apply to a grant to a private foundation described in section 4942(g)(1)(A)(ii) which is not described in section 4942(g)(1)(A)(i), pursuant to a written commitment which was binding on May 26, 1969, and at all times thereafter, as if such grant is a grant to an operating foundation (as defined in section 4942(j)(3)), if such grant is made for one or more of the purposes described in section 170(c)(2)(B) and is to be paid out to such private foundation on or before December 31, 1974;

''(D) apply, for purposes of section 4942(f), in such a manner as to treat any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise as not essentially equivalent to a dividend under section 302(b)(1) if such redemption is described in paragraph (2)(B) of this subsection;

''(E) not apply to an organization which is prohibited by its governing instrument or other instrument from distributing capital or corpus to the extent the requirements of section 4942 are inconsistent with such prohibition; and

''(F) apply, in the case of an organization described in paragraph (4)(A) of this subsection,

''(i) by applying section 4942(e) without regard to the stock to which paragraph (4)(A)(ii) of this subsection applies,

''(ii) by applying section 4942(f) without regard to dividend income for such stock, and

''(iii) by defining the distributable amount as the sum of the amount determined under section 4942(d) (after the application of clauses (i) and (ii)), and the amount of the dividend income from such stock.

With respect to taxable years beginning after December 31, 1971, subparagraphs (B) and (E) shall apply only during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to comply with the provisions of section 4942, and in the case of subparagraph (B) for all periods after the termination of such judicial proceeding during which the governing instrument or any other instrument does not permit compliance with such provisions.

''(4) SECTION 4943.—

''(A) In the case of a private foundation—

''(i) which was incorporated before January 1, 1951;

''(ii) substantially all of the assets of which on May 26, 1969, consist of more than 90 percent of the stock of an incorporated business enterprise which is licensed and regulated, the sales or contracts of which are regulated, and the professional representatives of which are licensed, by State regulatory agencies in at least 10 States; and

''(iii) which acquired such stock solely by gift, devise, or bequest, section 4943(c)(4)(A)(i) shall be applied with respect to the holdings of such foundation in such incorporated business enterprise as if it did not contain the phrase ', but in no event shall the percentage so substituted be more than 50 percent', and section 4943(c)(4)(D) shall not apply with respect to such holdings. For purposes of the preceding sentence, stock of such enterprise in a trust created before May 27, 1969, of which the foundation is the remainder beneficiary shall be deemed to be held by such foundation on May 26, 1969, if such foundation held (without regard to such trust) more than 20 percent of the stock of such enterprise on May 26, 1969.

''(B) Subparagraph (A) shall apply to a private foundation only if—

''(i) the foundation does not purchase any stock or other interest in the enterprise described in subparagraph (A) after May 26, 1969, and does not acquire any stock or other interest in any other business enterprise which constitutes excess business holdings under section 4943; and

''(ii) in the last 5 taxable years ending on or before December 31, 1970, the foundation expends substantially all of its adjusted net income (as defined in section 4942(f)) for the purpose or function for which it is organized and operated.

''(C) For purposes of section 4943(c)(6), the term 'purchase' does not include an exchange which is described in paragraph (2)(B) of this subsection and which is pursuant to a plan for disposition of excess business holdings.

''(5) SECTION 4945.—Section 4945(d)(4) and (h) shall not apply to a grant which is described in paragraph (3)(C) of this subsection.

''(6) SECTION 508(e).—Section 508(e) shall not apply to require inclusion in governing instruments of any provisions inconsistent with this subsection.

''(7) SECTION 509(a).—In the case of any trust created under the terms of a will or a codicil to a will executed on or before March 30, 1924, by which the testator bequeathed all of the outstanding common stock of a corporation in trust, the income of which trust is to be used principally for the benefit of those from time to time employed by the corporation and their families, the trustees of which trust are elected or selected from among the employees of such corporation, and which trust does not own directly any stock in any other corporation, if the trust makes an irrevocable election under this paragraph within one year after the date of the enactment of this Act [Dec. 30, 1969], such trust shall be treated as not being a private foundation for purposes of the Internal Revenue Code of 1986 but shall be treated for purposes of such Code as if it were not exempt from tax under section 501(a) for any taxable year beginning after the date of the enactment of this Act [Dec. 30, 1969] and before the date (if any) on which such trust has complied with the requirements of section 507 for termination of the status of an organization as a private foundation.

''(8) CERTAIN REDEMPTIONS.—For purposes of applying section 302(b)(1) to the determination of the amount of gross investment income under sections 4940 and 4948(a), any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise shall be treated as not essentially equivalent to a dividend, if such redemption is described in paragraph (2)(B) of this subsection.''

[Section 314(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending section 101(4)(A)(iii) of Pub. L. 91–172, set out above] shall apply as if included in section 101(*l*)(4) of the Tax Reform Act of 1969 [Pub. L. 91–172].'']

[Section 1301(b) of Pub. L. 94–455 provided that: ''The amendments made by subsection (a) [enacting subpar.

(F) of section 101(2) of Pub. L. 91–172, set out above] shall apply to dispositions after the date of the enactment of this Act [Oct. 4, 1976] in taxable years ending after such date.'']

[Section 1309(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending section 101(2)(B) of Pub. L. 91–172, set out above] shall apply to dispositions made after the date of enactment of this Act [Oct. 4, 1976].'']

[Section 4(b) of Pub. L. 93–490 provided that: ''The amendment made by this section [enacting subpar. (F) of section 101(3) of Pub. L. 91–172, set out above] shall apply to taxable years beginning after December 31, 1971.'']

DETERMINATION OF OPERATING FOUNDATION STATUS FOR CERTAIN PURPOSES

Pub. L. 100–647, title VI, § 6204, Nov. 10, 1988, 102 Stat. 3730, provided that: ''For purposes of section 302(c)(3) of the Deficit Reduction Act of 1984 [Pub. L. 98–369, set out below], a private foundation which constituted an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1986) for its last taxable year ending before January 1, 1983, shall be treated as constituting an operating foundation as of January 1, 1983.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PUBLIC SUPPORT REQUIREMENT NOT APPLICABLE TO CERTAIN EXISTING FOUNDATIONS

Section 302(c)(3) of Pub. L. 98–369 provided that: ''A foundation which was an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1954) as of January 1, 1983, shall be treated as meeting the requirements of section 4940(d)(2)(B) of such Code (as added by subsection (a)).''

§ 4941. Taxes on self-dealing

(a) Initial taxes

(1) On self-dealer

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) On foundation manager

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

(b) Additional taxes

(1) On self-dealer

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participated in the act of self-dealing.

(2) On foundation manager

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(2) $20,000 limit for management

With respect to any one act of self-dealing, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $20,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $20,000.

(d) Self-dealing

(1) In general

For purposes of this section, the term ''self-dealing'' means any direct or indirect—

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;

(B) lending of money or other extension of credit between a private foundation and a disqualified person;

(C) furnishing of goods, services, or facilities between a private foundation and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and

(F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if

such individual is terminating his government service within a 90-day period.

(2) Special rules

For purposes of paragraph (1)—

(A) the transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the foundation assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer;

(B) the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge (determined without regard to section 7872) and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3);

(C) the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in section 501(c)(3);

(D) the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public;

(E) except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive;

(F) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value;

(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—

(i) prizes and awards which are subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipients of such prizes and awards are selected from the general public,

(ii) scholarships and fellowship grants which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(iii) any annuity or other payment (forming part of a stock-bonus, pension, or profit-sharing plan) by a trust which is a qualified trust under section 401,

(iv) any annuity or other payment under a plan which meets the requirements of section 404(a)(2),

(v) any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any such individual, if the aggregate value of such contributions, gifts, services, and facilities to, or made available to, such individual during any calendar year does not exceed $25,

(vi) any payment made under chapter 41 of title 5, United States Code, or

(vii) any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702 of title 5, United States Code, for like travel by employees of the United States; and

(H) the leasing by a disqualified person to a private foundation of office space for use by the foundation in a building with other tenants who are not disqualified persons shall not be treated as an act of self-dealing if—

(i) such leasing of office space is pursuant to a binding lease which was in effect on October 9, 1969, or pursuant to renewals of such a lease;

(ii) the execution of such lease was not a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law) at the time of such execution; and

(iii) the terms of the lease (or any renewal) reflect an arm's-length transaction.

(e) Other definitions

For purposes of this section—

(1) Taxable period

The term ''taxable period'' means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which correction of the act of self-dealing is completed.

(2) Amount involved

The term ''amount involved'' means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subsection (d)(2)(E), the amount involved shall be only

the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of the taxes imposed by subsection (b), shall be the highest fair market value during the taxable period.

(3) Correction

The terms ''correction'' and ''correct'' mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 499; amended Pub. L. 94–455, title XIX, §§ 1901(b)(8)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1795, 1834; Pub. L. 96–596, § 2(a)(1)(A), (B), (2)(A), (3)(A), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 96–608, § 5, Dec. 28, 1980, 94 Stat. 3553; Pub. L. 99–234, title I, § 107(c), Jan. 2, 1986, 99 Stat. 1759; Pub. L. 99–514, title I, § 122(a)(2)(A), title XVIII, § 1812(b)(1), Oct. 22, 1986, 100 Stat. 2110, 2833; Pub. L. 100–647, title I, § 1001(d)(1)(A), Nov. 10, 1988, 102 Stat. 3350; Pub. L. 109–280, title XII, § 1212(a)(1), (2), Aug. 17, 2006, 120 Stat. 1074.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(G)(ii), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Section 1212(a)(1), (2) of Pub. L. 109–280, which directed the amendment of section 4941 without specifying the act to be amended, was executed to this section, which is section 4941 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, § 1212(a)(1)(A), substituted ''10 percent'' for ''5 percent''. See Codification note above.

Subsec. (a)(2). Pub. L. 109–280, § 1212(a)(1)(B), substituted ''5 percent'' for ''2½ percent''. See Codification note above.

Subsec. (c)(2). Pub. L. 109–280, § 1212(a)(2), substituted ''$20,000'' for ''$10,000'' wherever appearing in heading and text. See Codification note above.

1988—Subsec. (d)(2)(G)(ii). Pub. L. 100–647 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''scholarships and fellowship grants which are subject to the provisions of section 117(a) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),''.

1986—Subsec. (d)(2)(B). Pub. L. 99–514, § 1812(b)(1), inserted ''(determined without regard to section 7872)'' after ''without interest or other charge''.

Subsec. (d)(2)(G)(i). Pub. L. 99–514, § 122(a)(2)(A), inserted ''(without regard to paragraph (3) thereof)'' after ''section 74(b)''.

Subsec. (d)(2)(G)(vii). Pub. L. 99–234 substituted ''5702'' for ''5702(a)''.

1980—Subsec. (b)(1). Pub. L. 96–596, § 2(a)(1)(A), substituted ''taxable period'' for ''correction period''.

Subsec. (d)(2)(H). Pub. L. 96–608 added subpar. (H).

Subsec. (e)(1)(B), (C). Pub. L. 96–596, § 2(a)(2)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(2)(B). Pub. L. 96–596, § 2(a)(1)(B), substituted ''taxable period'' for ''correction period''.

Subsec. (e)(4). Pub. L. 96–596, § 2(a)(3)(A), struck out par. (4) which defined correction period, with respect to any act of self-dealing, as the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

1976—Subsec. (d)(2)(G)(ii). Pub. L. 94–455, § 1901(b)(8)(H), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution described in section 151(e)(4)'' after ''study at an''.

Subsec. (e)(4). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, § 1212(f), Aug. 17, 2006, 120 Stat. 1075, provided that: ''The amendments made by this section [amending this section and sections 4942 to 4945 and 4958 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(a)(2)(A) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1812(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

SAVINGS PROVISION

Exceptions to applicability of section, see section 101(*l*)(2) of Pub. L. 91–172, set out as a note under section 4940 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TAX ON SELF-DEALING NOT TO APPLY TO CERTAIN STOCK PURCHASES

Pub. L. 98–369, div. A, title III, § 312, July 18, 1984, 98 Stat. 786, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Section 4941 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to taxes on self-dealing) shall not apply to the purchase during 1978 of stock from a private foundation (and to any note issued in connection with such purchase) if—

''(1) consideration for such purchase equaled or exceeded the fair market value of such stock,

''(2) the purchaser of such stock did not make any contribution to such foundation at any time during the 5-year period ending on the date of such purchase,

''(3) the aggregate contributions to such foundation by the purchaser before such date were less than $10,000 and less than 2 percent of the total contributions received by the foundation as of such date, and

''(4) such purchase was pursuant to the settlement of litigation involving the purchaser.

''(b) STATUTE OF LIMITATIONS.—If credit or refund of any overpayment of tax resulting from subsection (a) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.''

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Determination of status as substantial contributor within section 507(d)(2) of this title for purposes of applying this section, see section 3 of Pub. L. 95–170, set out as a note under section 507 of this title.

§ 4942. Taxes on failure to distribute income

(a) Initial tax

There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) for any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) to the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) the failure to value the assets properly was not willful and was due to reasonable cause,

(B) such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(2)),

(C) the foundation notifies the Secretary that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and

(D) such distribution is treated under subsection (h)(2) as made out of the undistributed income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

(b) Additional tax

In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

(c) Undistributed income

For purposes of this section, the term ''undistributed income'' means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) the distributable amount for such taxable year, exceeds

(2) the qualifying distributions made before such time out of such distributable amount.

(d) Distributable amount

For purposes of this section, the term ''distributable amount'' means, with respect to any foundation for any taxable year, an amount equal to—

(1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by

(2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

(e) Minimum investment return

(1) In general

For purposes of subsection (d), the minimum investment return for any private foundation for any taxable year is 5 percent of the excess of—

(A) the aggregate fair market value of all assets of the foundation other than those which are used (or held for use) directly in carrying out the foundation's exempt purpose, over

(B) the acquisition indebtedness with respect to such assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred).

(2) Valuation

(A) In general

For purposes of paragraph (1)(A), the fair market value of securities for which market quotations are readily available shall be determined on a monthly basis. For all other assets, the fair market value shall be determined at such times and in such manner as the Secretary shall by regulations prescribe.

(B) Reductions in value for blockage or similar factors

In determining the value of any securities under this paragraph, the fair market value of such securities (determined without regard to any reduction in value) shall not be reduced unless, and only to the extent that, the private foundation establishes that as a result of—

(i) the size of the block of such securities,

(ii) the fact that the securities held are securities in a closely held corporation, or

(iii) the fact that the sale of such securities would result in a forced or distress sale,

the securities could not be liquidated within a reasonable period of time except at a price less than such fair market value. Any reduction in value allowable under this subparagraph shall not exceed 10 percent of such fair market value.

(f) Adjusted net income

(1) Defined

For purposes of subsection (j), the term ''adjusted net income'' means the excess (if any) of—

(A) the gross income for the taxable year (determined with the income modifications provided by paragraph (2)), over

(B) the sum of the deductions (determined with the deduction modifications provided by paragraph (3)) which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

(2) Income modifications

The income modifications referred to in paragraph (1)(A) are as follows:

(A) section 103 (relating to State and local bonds) shall not apply,

(B) capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain for the taxable year;

(C) there shall be taken into account—

(i) amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of subsection (g)(1)(A) for any taxable year;

(ii) notwithstanding subparagraph (B), amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of subsection (g)(1)(B)) for any taxable year; and

(iii) any amount set aside under subsection (g)(2) to the extent it is determined that such amount is not necessary for the purposes for which it was set aside; and

(D) section 483 (relating to imputed interest) shall not apply in the case of a binding contract made in a taxable year beginning before January 1, 1970.

(3) Deduction modifications

The deduction modifications referred to in paragraph (1)(B) are as follows:

(A) no deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held for the production of such income and the allowances for depreciation and depletion determined under section 4940(c)(3)(B), and

(B) section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

(4) Transitional rule

For purposes of paragraph (2)(B), the basis (for purposes of determining gain) of property held by a private foundation on December 31, 1969, and continuously thereafter to the date of its disposition, shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(g) Qualifying distributions defined

(1) In general

For purposes of this section, the term ''qualifying distribution'' means—

(A) any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or

(B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

(2) Certain set-asides

(A) In general

For all taxable years beginning on or after January 1, 1975, subject to such terms and conditions as may be prescribed by the Secretary, an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution if it meets the requirements of subparagraph (B).

(B) Requirements

An amount set aside for a specific project shall meet the requirements of this subparagraph if at the time of the set-aside the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within 5 years, and either—

(i) at the time of the set-aside the private foundation establishes to the satisfaction of the Secretary that the project is one which can better be accomplished by such set-aside than by immediate payment of funds, or

(ii)(I) the project will not be completed before the end of the taxable year of the foundation in which the set-aside is made,

(II) the private foundation in each taxable year beginning after December 31, 1975 (or after the end of the fourth taxable year following the year of its creation, whichever is later), distributes amounts, in cash or its equivalent, equal to not less than the distributable amount determined under subsection (d) (without regard to subsection (i)) for purposes described in

section 170(c)(2)(B) (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in one or more prior years), and

(III) the private foundation has distributed (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in one or more prior years) during the four taxable years immediately preceding its first taxable year beginning after December 31, 1975, or the fifth taxable year following the year of its creation, whichever is later, an aggregate amount, in cash or its equivalent, of not less than the sum of the following: 80 percent of the first preceding taxable year's distributable amount; 60 percent of the second preceding taxable year's distributable amount; 40 percent of the third preceding taxable year's distributable amount; and 20 percent of the fourth preceding taxable year's distributable amount.

(C) Certain failures to distribute

If, for any taxable year to which clause (ii)(II) of subparagraph (B) applies, the private foundation fails to distribute in cash or its equivalent amounts not less than those required by such clause and—

(i) the failure to distribute such amounts was not willful and was due to reasonable cause, and

(ii) the foundation distributes an amount in cash or its equivalent which is not less than the difference between the amounts required to be distributed under clause (ii)(II) of subparagraph (B) and the amounts actually distributed in cash or its equivalent during that taxable year within the correction period (as defined in section 4963(e)),

such distribution in cash or its equivalent shall be treated for the purposes of this subparagraph as made during such year.

(D) Reduction in distribution amount

If, during the taxable years in the adjustment period for which the organization is a private foundation, the foundation distributes amounts in cash or its equivalent which exceed the amount required to be distributed under clause (ii)(II) of subparagraph (B) (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in prior years), then for purposes of this subsection the distribution required under clause (ii)(II) of subparagraph (B) for the taxable year shall be reduced by an amount equal to such excess.

(E) Adjustment period

For purposes of subparagraph (D), with respect to any taxable year of a private foundation, the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after December 31, 1975, and immediately preceding the taxable year.

In the case of a set-aside which satisfies the requirements of clause (i) of subparagraph (B), for good cause shown, the period for paying the amount set aside may be extended by the Secretary.

(3) Certain contributions to section 501(c)(3) organizations

For purposes of this section, the term ''qualifying distribution'' includes a contribution to a section 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) if—

(A) not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), and

(B) the private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

(4) Limitation on distributions by nonoperating private foundations to supporting organizations

(A) In general

For purposes of this section, the term ''qualifying distribution'' shall not include any amount paid by a private foundation which is not an operating foundation to—

(i) any type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(ii) any organization which is described in subparagraph (B) or (C) if—

(I) a disqualified person of the private foundation directly or indirectly controls such organization or a supported organization (as defined in section 509(f)(3)) of such organization, or

(II) the Secretary determines by regulations that a distribution to such organization otherwise is inappropriate.

(B) Type I and type II supporting organizations

An organization is described in this subparagraph if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

(ii) supervised or controlled in connection with one or more such organizations.

(C) Functionally integrated type III supporting organizations

An organization is described in this subparagraph if the organization is a functionally integrated type III supporting organization (as defined under section 4943(f)(5)(B)).

(h) Treatment of qualifying distributions

(1) In general

Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

(A) first out of the undistributed income of the immediately preceding taxable year (if the private foundation was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof,

(B) second out of the undistributed income for the taxable year to the extent thereof, and

(C) then out of corpus.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

(2) Correction of deficient distributions for prior taxable years, etc.

In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. The election shall be made by the foundation at such time and in such manner as the Secretary shall by regulations prescribe.

(i) Adjustment of distributable amount where distributions during prior years have exceeded income

(1) In general

If, for the taxable years in the adjustment period for which an organization is a private foundation—

(A) the aggregate qualifying distributions treated (under subsection (h)) as made out of the undistributed income for such taxable year or as made out of corpus (except to the extent subsection (g)(3) with respect to the recipient private foundation or section 170(b)(1)(F)(ii) applies) during such taxable years, exceed

(B) the distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (h)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

(2) Taxable years in adjustment period

For purposes of paragraph (1), with respect to any taxable year of a private foundation the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after December 31, 1969, and immediately preceding the taxable year.

(j) Other definitions

For purposes of this section—

(1) Taxable period

The term ''taxable period'' means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

(B) the date on which the tax imposed by subsection (a) is assessed.

(2) Allowable distribution period

The term ''allowable distribution period'' means, with respect to any private foundation, the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation (described in subsection (a)(2)) occurred and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (a)) under section 6212 extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to permit a distribution of undistributed income under this section.

(3) Operating foundation

For purposes of this section, the term ''operating foundation'' means any organization—

(A) which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of—

(i) its adjusted net income (as defined in subsection (f)), or

(ii) its minimum investment return; and

(B)(i) substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (4)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted.

(ii) which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or

(iii) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in section 4946(a)(1)(H) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which is normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investment income.

Notwithstanding the provisions of subparagraph (A), if the qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) of an organization for the taxable year exceed the minimum investment re-

turn for the taxable year, clause (ii) of subparagraph (A) shall not apply unless substantially all of such qualifying distributions are made directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

(4) Functionally related business

The term ''functionally related business'' means—

(A) a trade or business which is not an unrelated trade or business (as defined in section 513), or

(B) an activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

(5) Certain elderly care facilities

For purposes of this section (but no other provisions of this title), the term ''operating foundation'' includes any organization which, on May 26, 1969, and at all times thereafter before the close of the taxable year, operated and maintained as its principal functional purpose facilities for the long-term care, comfort, maintenance, or education of permanently and totally disabled persons, elderly persons, needy widows, or children but only if such organization meets the requirements of paragraph (3)(B)(ii).

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 502; amended Pub. L. 94–455, title XIII, §§ 1302(a), 1303(a), 1310(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1713, 1715, 1729, 1834; Pub. L. 95–600, title V, § 522(a), Nov. 6, 1978, 92 Stat. 2885; Pub. L. 96–596, § 2(a)(1)(C), (2)(B), (3)(B), (4)(A), Dec. 24, 1980, 94 Stat. 3469–3472; Pub. L. 97–34, title VIII, § 823(a), Aug. 13, 1981, 95 Stat. 351; Pub. L. 97–448, title I, § 108(b), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–369, div. A, title III, §§ 304(a), (b), 305(b)(4), 314(a)(1), (2), July 18, 1984, 98 Stat. 782–784, 787; Pub. L. 99–514, title XIII, § 1301(j)(6), Oct. 22, 1986, 100 Stat. 2658; Pub. L. 109–280, title XII, §§ 1212(b), 1244(a), Aug. 17, 2006, 120 Stat. 1074, 1107; Pub. L. 110–172, § 11(a)(14)(D), Dec. 29, 2007, 121 Stat. 2485.)

CODIFICATION

Sections 1212(b) and 1244(a) of Pub. L. 109–280, which directed the amendment of section 4942 without specifying the act to be amended, were executed to this section, which is section 4942 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2007—Subsec. (i)(1)(A). Pub. L. 110–172 substituted ''section 170(b)(1)(F)(ii)'' for ''section 170(b)(1)(E)(ii)''.

2006—Subsec. (a). Pub. L. 109–280, § 1212(b), substituted ''30 percent'' for ''15 percent'' in introductory provisions. See Codification note above.

Subsec. (g)(4). Pub. L. 109–280, § 1244(a), amended heading and text of par. (4) generally, substituting provisions relating to limitation on distributions by nonoperating private foundations to supporting organizations for provisions relating to limitation on administrative expenses allocable to making of contributions, gifts, and grants. See Codification note above.

1986—Subsec. (f)(2)(A). Pub. L. 99–514 substituted ''(relating to State and local bonds)'' for ''(relating to interest on certain governmental obligations)''.

1984—Subsec. (a)(2)(B). Pub. L. 98–369, § 314(a)(1), substituted ''subsection (j)(2)'' for ''subsection (j)(4)''.

Subsec. (d)(1). Pub. L. 98–369, § 304(b), substituted ''the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by'' for ''the minimum investment return reduced by''.

Subsec. (f)(1). Pub. L. 98–369, § 314(a)(2), substituted ''subsection (j)'' for ''subsection (d)''.

Subsec. (g)(1)(A). Pub. L. 98–369, § 304(a)(2), substituted ''including that portion of reasonable and necessary administrative expenses'' for ''including administrative expenses''.

Subsec. (g)(2)(C)(ii). Pub. L. 98–369, § 305(b)(4), substituted ''section 4963(e)'' for ''section 4962(e)''.

Subsec. (g)(4). Pub. L. 98–369, § 304(a)(1), added par. (4).

1983—Subsec. (j)(3)(A)(i). Pub. L. 97–448 substituted ''or'' for ''and'' at the end.

1981—Subsec. (d)(1). Pub. L. 97–34, § 823(a)(1), struck out ''or the adjusted net income (whichever is higher)'' after ''return''.

Subsec. (j)(3). Pub. L. 97–34, § 823(a)(2), (3), inserted in subpar. (A) ''the lesser of'' after ''substantially all of'', designated existing provisions as cl. (i), added cl. (ii), and inserted provision respecting applicability of subpar. (A)(ii).

1980—Subsec. (b). Pub. L. 96–596, § 2(a)(1)(C), substituted ''taxable period'' for ''correction period''.

Subsec. (g)(2)(C)(ii). Pub. L. 96–596, § 2(a)(4)(A), substituted ''the correction period (as defined in section 4962(e))'' for ''the initial correction period provided in subsection (j)(2)''.

Subsec. (j)(1). Pub. L. 96–596, § 2(a)(2)(B), substituted provision ending the taxable period on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a) of this section is assessed for provision ending the taxable period on the date of mailing the notice of deficiency with respect to a tax imposed by subsec. (a) of this section under section 6212 of this title.

Subsec. (j)(2). Pub. L. 96–596, § 2(a)(3)(B)(i), (iii), redesignated par. (4) as (2) and struck out former par. (2), which defined correction period, with respect to any private foundation for any taxable year, as the period beginning with the first day of the taxable year and ending 90 days after the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to permit a distribution of undistributed income.

Subsec. (j)(3)(B)(i). Pub. L. 96–596, § 2(a)(3)(B)(ii), substituted ''paragraph (4)'' for ''paragraph (5)''.

Subsec. (j)(4) to (6). Pub. L. 96–596, § 2(a)(3)(B)(iii), (iv), redesignated pars. (5) and (6) as (4) and (5), respectively.

1978—Subsec. (j)(6). Pub. L. 95–600 added par. (6).

1976—Subsec. (a)(2)(C). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e). Pub. L. 94–455, § 1303(a), among other changes, substituted provisions establishing a fixed percentage rate to be used in computing the minimum investment return for any private foundation for provisions establishing a variable applicable percentage rate of 7 percent in 1970 and an applicable rate to be determined by the Secretary after 1970, for use in computing the minimum investment return for any private foundation and inserted provisions relating to reduction in value for blockage or similar factors.

Subsec. (f)(2)(D). Pub. L. 94–455, § 1310(a), added subpar. (D).

Subsec. (g)(2). Pub. L. 94–455, § 1302(a), among other changes, inserted reference to all taxable years beginning on or after Jan. 1, 1975, requirement that the project will not be completed before the end of the taxable year of the foundation in which the set-aside is made, and subpars. (C) to (E).

Subsecs. (h)(2), (j)(2)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(b) 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, §1244(c), Aug. 17, 2006, 120 Stat. 1108, provided that: ''The amendments made by this section [amending this section and section 4945 of this title] shall apply to distributions and expenditures after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 304(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Amendment by section 305(b)(4) of Pub. L. 98–369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98–369, set out as an Effective Date note under section 4962 of this title.

Section 314(a)(4) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section and section 6501 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 823(b) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 522(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1302(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 6501 of this title] shall apply to taxable years beginning after December 31, 1974.''

Section 1303(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1975.''

Section 1310(b) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].''

SAVINGS PROVISION

Applicability of section to organizations organized before May 27, 1969, see section 101(*l*)(3) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§ 4943. Taxes on excess business holdings

(a) Initial tax

(1) Imposition

There is hereby imposed on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to 10 percent of the value of such holdings.

(2) Special rules

The tax imposed by paragraph (1)—

(A) shall be imposed on the last day of the taxable year, but

(B) with respect to the private foundation's holdings in any business enterprise, shall be determined as of that day during the taxable year when the foundation's excess holdings in such enterprise were the greatest.

(b) Additional tax

In any case in which an initial tax is imposed under subsection (a) with respect to the holdings of a private foundation in any business enterprise, if, at the close of the taxable period with respect to such holdings, the foundation still has excess business holdings in such enterprise, there is hereby imposed a tax equal to 200 percent of such excess business holdings.

(c) Excess business holdings

For purposes of this section—

(1) In general

The term ''excess business holdings'' means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

(2) Permitted holdings in a corporation

(A) In general

The permitted holdings of any private foundation in an incorporated business enterprise are—

(i) 20 percent of the voting stock, reduced by

(ii) the percentage of the voting stock owned by all disqualified persons.

In any case in which all disqualified persons together do not own more than 20 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings.

(B) 35 percent rule where third person has effective control of enterprise

If—

(i) the private foundation and all disqualified persons together do not own more than 35 percent of the voting stock of an incorporated business enterprise, and

(ii) it is established to the satisfaction of the Secretary that effective control of the corporation is in one or more persons who

are not disqualified persons with respect to the foundation,

then subparagraph (A) shall be applied by substituting 35 percent for 20 percent.

(C) 2 percent de minimis rule

A private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

(3) Permitted holdings in partnerships, etc.

The permitted holdings of a private foundation in any business enterprise which is not incorporated shall be determined under regulations prescribed by the Secretary. Such regulations shall be consistent in principle with paragraphs (2) and (4), except that—

(A) in the case of a partnership or joint venture, ''profits interest'' shall be substituted for ''voting stock'', and ''capital interest'' shall be substituted for ''nonvoting stock'',

(B) in the case of a proprietorship, there shall be no permitted holdings, and

(C) in any other case, ''beneficial interest'' shall be substituted for ''voting stock''.

(4) Present holdings

(A)(i) In applying this section with respect to the holdings of any private foundation in a business enterprise, if such foundation and all disqualified persons together have holdings in such enterprise in excess of 20 percent of the voting stock on May 26, 1969, the percentage of such holdings shall be substituted for ''20 percent,'' and for ''35 percent'' (if the percentage of such holdings is greater than 35 percent), wherever it appears in paragraph (2), but in no event shall the percentage so substituted be more than 50 percent.

(ii) If the percentage of the holdings of any private foundation and all disqualified persons together in a business enterprise (or if the percentage of the holdings of the private foundation in such enterprise) decreases for any reason, clause (i) and subparagraph (D) shall, except as provided in the next sentence, be applied for all periods after such decrease by substituting such decreased percentage for the percentage held on May 26, 1969, but in no event shall the percentage substituted be less than 20 percent. For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as—

(I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and

(II) the number of shares held by the foundation is not affected by any such issuance or redemption.

(iii) The percentage substituted under clause (i), and any percentage substituted under subparagraph (D), shall be applied both with respect to the voting stock and, separately, with respect to the value of all outstanding shares of all classes of stock.

(iv) In the case of any merger, recapitalization, or other reorganization involving one or more business enterprises, the application of clauses (i), (ii), and (iii) shall be determined under regulations prescribed by the Secretary.

(B) Any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holdings, shall (while held by the foundation) be treated as held by a disqualified person (rather than by the private foundation)—

(i) during the 20-year period beginning on such date, if the private foundation and all disqualified persons have more than a 95 percent voting stock interest on such date,

(ii) except as provided in clause (i), during the 15-year period beginning on such date, if the foundation and all disqualified persons have more than a 75 percent voting stock interest (or more than a 75 percent profits or beneficial interest in the case of any unincorporated enterprise) on such date or more than a 75 percent interest in the value of all outstanding shares of all classes of stock (or more than a 75 percent capital interest in the case of a partnership or joint venture) on such date, or

(iii) during the 10–year period beginning on such date, in any other case.

(C) The 20-year, 15-year, and 10-year periods described in subparagraph (B) for the disposition of excess business holdings shall be suspended during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to allow disposition of such holdings.

(D)(i) If, at any time during the second phase, all disqualified persons together have holdings in a business enterprise in excess of 2 percent of the voting stock of such enterprise, then subparagraph (A)(i) shall be applied by substituting for ''50 percent'' the following: ''50 percent, of which not more than 25 percent shall be voting stock held by the private foundation''.

(ii) If, immediately before the close of the second phase, clause (i) of this subparagraph did not apply with respect to a business enterprise, then for all periods after the close of the second phase subparagraph (A)(i) shall be applied by substituting for ''50 percent'' the following: ''35 percent, or if at any time after the close of the second phase all disqualified persons together have had holdings in such enterprise which exceed 2 percent of the voting stock, 35 percent, of which not more than 25 percent shall be voting stock held by the private foundation''.

(iii) For purposes of this subparagraph, the term ''second phase'' means the 15-year period immediately following the 20-year, 15-year, or 10-year period described in subparagraph (B), whichever applies, as modified by subparagraph (C).

(E) Clause (ii) of subparagraph (B) shall not apply with respect to any business enterprise

if before January 1, 1971, one or more individuals who are substantial contributors (or members of the family (within the meaning of section 4946(d)) of one or more substantial contributors) to the private foundation and who on May 26, 1969, held more than 15 percent of the voting stock of the enterprise elect, in such manner as the Secretary may by regulations prescribe, not to have such clause (ii) apply with respect to such enterprise.

(5) Holdings acquired by trust or will

Paragraph (4) (other than subparagraph (B)(i)) shall apply to any interest in a business enterprise which a private foundation acquires under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter, as if such interest were held on May 26, 1969, except that the 15-year and 10-year periods prescribed in clauses (ii) and (iii) of paragraph (4)(B) shall commence with respect to such interest on the date of distribution under the trust or will in lieu of May 26, 1969.

(6) 5-year period to dispose of gifts, bequests, etc.

Except as provided in paragraph (5), if, after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have—

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase ''or by a disqualified person'' in the material preceding subparagraph (A).

(7) 5-year extension of period to dispose of certain large gifts and bequests

The Secretary may extend for an additional 5-year period the period under paragraph (6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if—

(A) the foundation establishes that—

(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and

(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings,

(B) before the close of the initial 5-year period—

(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

(ii) the private foundation submits the plan described in clause (i) to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

(d) Definitions; special rules

For purposes of this section—

(1) Business holdings

In computing the holdings of a private foundation, or a disqualified person (as defined in section 4946) with respect thereto, in any business enterprise, any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. The preceding sentence shall not apply with respect to an income or remainder interest of a private foundation in a trust described in section 4947(a)(2), but only if, in the case of property transferred in trust after May 26, 1969, such foundation holds only an income interest or only a remainder interest in such trust.

(2) Taxable period

The term ''taxable period'' means, with respect to any excess business holdings of a private foundation in a business enterprise, the period beginning on the first day on which there are excess holdings and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212 in respect of such holdings, or

(B) the date on which the tax imposed by subsection (a) in respect of such holdings is assessed.

(3) Business enterprise

The term ''business enterprise'' does not include—

(A) a functionally related business (as defined in section 4942(j)(4)), or

(B) a trade or business at least 95 percent of the gross income of which is derived from passive sources.

For purposes of subparagraph (B), gross income from passive sources includes the items excluded by section 512(b)(1), (2), (3), and (5), and income from the sale of goods (including charges or costs passed on at cost to purchasers of such goods or income received in settlement of a dispute concerning or in lieu of the exercise of the right to sell such goods) if the seller does not manufacture, produce, physically receive or deliver, negotiate sales of, or maintain inventories in such goods.

(4) Disqualified person

The term ''disqualified person'' (as defined in section 4946(a)) does not include a plan described in section 4975(e)(7) with respect to the holdings of a private foundation described in paragraphs (4) and (5) of subsection (c).

(e) Application of tax to donor advised funds

(1) In general

For purposes of this section, a donor advised fund (as defined in section 4966(d)(2)) shall be treated as a private foundation.

(2) Disqualified person

In applying this section to any donor advised fund (as so defined), the term ''disqualified person'' means, with respect to the donor advised fund, any person who is—

(A) described in section 4966(d)(2)(A)(iii),

(B) a member of the family of an individual described in subparagraph (A), or

(C) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting ''persons described in subparagraph (A) or (B) of section 4943(e)(2)'' for ''persons described in subparagraph (A) or (B) of paragraph (1)'' in subparagraph (A)(i) thereof).

(3) Present holdings

For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to donor advised funds (as so defined), except that—

(A) ''the date of the enactment of this subsection'' shall be substituted for ''May 26, 1969'' each place it appears in paragraphs (4), (5), and (6), and

(B) ''January 1, 2007'' shall be substituted for ''January 1, 1970'' in paragraph (4)(E).

(f) Application of tax to supporting organizations

(1) In general

For purposes of this section, an organization which is described in paragraph (3) shall be treated as a private foundation.

(2) Exception

The Secretary may exempt the excess business holdings of any organization from the application of this subsection if the Secretary determines that such holdings are consistent with the purpose or function constituting the basis for its exemption under section 501.

(3) Organizations described

An organization is described in this paragraph if such organization is—

(A) a type III supporting organization (other than a functionally integrated type III supporting organization), or

(B) an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is supervised or controlled in connection with one or more organizations described in paragraph (1) or (2) of section 509(a), but only if such organization accepts any gift or contribution from any person described in section 509(f)(2)(B).

(4) Disqualified person

(A) In general

In applying this section to any organization described in paragraph (3), the term ''disqualified person'' means, with respect to the organization—

(i) any person who was, at any time during the 5-year period ending on the date described in subsection (a)(2)(A), in a position to exercise substantial influence over the affairs of the organization,

(ii) any member of the family (determined under section 4958(f)(4)) of an individual described in clause (i),

(iii) any 35-percent controlled entity (as defined in section 4958(f)(3) by substituting ''persons described in clause (i) or (ii) of section 4943(f)(4)(A)'' for ''persons described in subparagraph (A) or (B) of paragraph (1)'' in subparagraph (A)(i) thereof),

(iv) any person described in section 4958(c)(3)(B), and

(v) any organization—

(I) which is effectively controlled (directly or indirectly) by the same person or persons who control the organization in question, or

(II) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (B) or a member of the family (within the meaning of section 4946(d)) of such a person.

(B) Persons described

A person is described in this subparagraph if such person is—

(i) a substantial contributor to the organization (as defined in section 4958(c)(3)(C)),

(ii) an officer, director, or trustee of the organization (or an individual having powers or responsibilities similar to those of the officers, directors, or trustees of the organization), or

(iii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor (as so defined) to the organization.

(5) Type III supporting organization; functionally integrated type III supporting organization

For purposes of this subsection—

(A) Type III supporting organization

The term ''type III supporting organization'' means an organization which meets the requirements of subparagraphs (A) and

(C) of section 509(a)(3) and which is operated in connection with one or more organizations described in paragraph (1) or (2) of section 509(a).

(B) Functionally integrated type III supporting organization

The term ''functionally integrated type III supporting organization'' means a type III supporting organization which is not required under regulations established by the Secretary to make payments to supported organizations (as defined under section 509(f)(3)) due to the activities of the organization related to performing the functions of, or carrying out the purposes of, such supported organizations.

(6) Special rule for certain holdings of type III supporting organizations

For purposes of this subsection, the term ''excess business holdings'' shall not include any holdings of a type III supporting organization in any business enterprise if, as of November 18, 2005, the holdings were held (and at all times thereafter, are held) for the benefit of the community pursuant to the direction of a State attorney general or a State official with jurisdiction over such organization.

(7) Present holdings

For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to organizations described in section 509(a)(3), except that—

(A) ''the date of the enactment of this subsection'' shall be substituted for ''May 26, 1969'' each place it appears in paragraphs (4), (5), and (6), and

(B) ''January 1, 2007'' shall be substituted for ''January 1, 1970'' in paragraph (4)(E).

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 507; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–596, § 2(a)(1)(D), (2)(C), (3)(C), (4)(B), Dec. 24, 1980, 94 Stat. 3469–3472; Pub. L. 98–369, div. A, title III, §§ 307(a), 308(a), 309(a), 310(a), 314(c)(1), July 18, 1984, 98 Stat. 784, 785, 787; Pub. L. 109–280, title XII, §§ 1212(c), 1233(a), 1243(a), Aug. 17, 2006, 120 Stat. 1074, 1099, 1105.)

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsecs. (e)(3)(A) and (f)(7)(A), probably means the date of enactment of subsecs. (e) and (f) which were enacted by Pub. L. 109–280, which was approved Aug. 17, 2006.

CODIFICATION

Sections 1212(c), 1233(a), and 1243(a) of Pub. L. 109–280, which directed the amendment of section 4943 without specifying the act to be amended, were executed to this section, which is section 4943 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, § 1212(c), substituted ''10 percent'' for ''5 percent''. See Codification note above.

Subsec. (e). Pub. L. 109–280, § 1233(a), added subsec. (e). See Codification note above.

Subsec. (f). Pub. L. 109–280, § 1243(a), added subsec. (f). See Codification note above.

1984—Subsec. (c)(4)(A)(ii). Pub. L. 98–369, § 308(a), substituted ''For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as (I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and (II) the number of shares held by the foundation is not affected by any such issuance or redemption'' for ''For purposes of this clause, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be determined only as of the close of each taxable year of the private foundation unless the aggregate of the percentage decreases attributable to the issuances of stock (or such issuances and redemptions) during such taxable year equals or exceeds 1 percent''.

Subsec. (c)(4)(B)(i). Pub. L. 98–369, § 309(a), substituted ''the private foundation and all disqualified persons have'' for ''the private foundation has''.

Subsec. (c)(6). Pub. L. 98–369, § 310(a), inserted following subpar. (B) ''In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase 'or by a disqualified person' in the material preceding subparagraph (A).''

Subsec. (c)(7). Pub. L. 98–369, § 307(a), added par. (7).

Subsec. (d)(4). Pub. L. 98–369, § 314(c)(1), added par. (4).

1980—Subsec. (b). Pub. L. 96–596, § 2(a)(1)(D), substituted ''taxable period'' for ''correction period''.

Subsec. (d)(2). Pub. L. 96–596, § 2(a)(2)(C), substituted provision ending the taxable period on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section under section 6212 of this title in respect to such holdings or the date on which the tax imposed by subsec. (a) of this section in respect to such holdings is assessed for provision ending the taxable period on the date of mailing the notice of deficiency with respect to a tax imposed by subsec. (a) of this section under section 6212 of this title in respect to such holdings.

Subsec. (d)(3), (4). Pub. L. 96–596, § 2(a)(3)(C), (4)(B), redesignated par. (4) as (3), and in subpar. (A) of par. (3) as so redesignated, substituted ''section 4942(j)(4)'' for ''section 4942(j)(5)'', and struck out par. (3), which defined correction period, with respect to excess business holdings of a private foundation in a business enterprise, as the period ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to permit orderly disposition of such excess business holdings.

1976—Subsecs. (c), (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(c) 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, § 1233(b), Aug. 17, 2006, 120 Stat. 1100, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, § 1243(b), Aug. 17, 2006, 120 Stat. 1107, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to business holdings with respect to which the 5-year period described in section 4943(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends on or after November 1, 1983.

''(2) TRANSITIONAL RULE.—Any plan submitted to the Secretary of the Treasury or his delegate on or before the 60th day after the date of the enactment of this Act [July 18, 1984] shall be treated as submitted before the close of the initial 5-year period referred to in section 4943(c)(7)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)).''

Section 308(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to increases and decreases occurring after the date of the enactment of this Act [July 18, 1984].''

Section 309(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 101(b) of the Tax Reform Act of 1969 [section 101(b) of Pub. L. 91–172 which enacted this section].''

Section 310(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [July 18, 1984].''

Section 314(c)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

SAVINGS PROVISION

Applicability of section to private foundations, see section 101(*l*)(4) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§ 4944. Taxes on investments which jeopardize charitable purpose

(a) Initial taxes

(1) On the private foundation

If a private foundation invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes, there is hereby imposed on the making of such investment a tax equal to 10 percent of the amount so invested for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in the making of the investment, knowing that it is jeopardizing the carrying out of any of the foundation's exempt purposes, a tax equal to 10 percent of the amount so invested for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the making of the investment.

(b) Additional taxes

(1) On the foundation

In any case in which an initial tax is imposed by subsection (a)(1) on the making of an investment and such investment is not removed from jeopardy within the taxable period, there is hereby imposed a tax equal to 25 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the removal from jeopardy, there is hereby imposed a tax equal to 5 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the removal from jeopardy.

(c) Exception for program-related investments

For purposes of this section, investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of exempt purposes.

(d) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than one person is liable under subsection (a)(2) or (b)(2) with respect to any one investment, all such persons shall be jointly and severally liable under such paragraph with respect to such investment.

(2) Limit for management

With respect to any one investment, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $20,000.

(e) Definitions

For purposes of this section—

(1) Taxable period

The term ''taxable period'' means, with respect to any investment which jeopardizes the carrying out of exempt purposes, the period beginning with the date on which the amount is so invested and ending on the earliest of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which the amount so invested is removed from jeopardy.

(2) Removal from jeopardy

An investment which jeopardizes the carrying out of exempt purposes shall be considered to be removed from jeopardy when such investment is sold or otherwise disposed of, and the proceeds of such sale or other disposition are not investments which jeopardize the carrying out of exempt purposes.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 511; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–596, § 2(a)(1)(E), (2)(D), (3)(D), Dec. 24, 1980, 94 Stat. 3469–3471; Pub. L. 109–280, title XII, § 1212(d), Aug. 17, 2006, 120 Stat. 1074.)

CODIFICATION

Section 1212(d) of Pub. L. 109–280, which directed the amendment of section 4944 without specifying the act to be amended, was executed to this section, which is section 4944 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–280, § 1212(d)(1), substituted ''10 percent'' for ''5 percent'' in pars. (1) and (2). See Codification note above.

Subsec. (d)(2). Pub. L. 109–280, § 1212(d)(2), substituted ''$10,000,'' for ''$5,000,'' and ''$20,000.'' for ''$10,000.'' See Codification note above.

1980—Subsec. (b)(1). Pub. L. 96–596, § 2(a)(1)(E), substituted ''taxable period'' for ''correction period''.

Subsec. (e)(1)(B), (C). Pub. L. 96–596, § 2(a)(2)(D), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(3). Pub. L. 96–596, § 2(a)(3)(D), struck out par. (3), which defined correction period, with respect to any investment which jeopardizes the carrying out of exempt purposes, as the period beginning with the date on which such investment is entered into and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about removal from jeopardy.

1976—Subsec. (e)(3)(B). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

§ 4945. Taxes on taxable expenditures

(a) Initial taxes

(1) On the foundation

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

There is hereby imposed on the agreement of any foundation manager to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 5 percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the foundation

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(2) Limit for management

With respect to any one taxable expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $20,000.

(d) Taxable expenditure

For purposes of this section, the term ''taxable expenditure'' means any amount paid or incurred by a private foundation—

(1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),

(2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,

(3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),

(4) as a grant to an organization unless—

(A) such organization—

(i) is described in paragraph (1) or (2) of section 509(a),

(ii) is an organization described in section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or

(iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or

(5) for any purpose other than one specified in section 170(c)(2)(B).

(e) Activities within subsection (d)(1)

For purposes of subsection (d)(1), the term ''taxable expenditure'' means any amount paid or incurred by a private foundation for—

(1) any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and

(2) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be),

other than through making available the results of nonpartisan analysis, study, or research. Paragraph (2) of this subsection shall not apply to any amount paid or incurred in connection with an appearance before, or communication to, any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

(f) Nonpartisan activities carried on by certain organizations

Subsection (d)(2) shall not apply to any amount paid or incurred by any organization—

(1) which is described in section 501(c)(3) and exempt from taxation under section 501(a),

(2) the activities of which are nonpartisan, are not confined to one specific election period, and are carried on in 5 or more States,

(3) substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,

(4) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; not more than 25 percent of such support is received from any one exempt organization (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income, and

(5) contributions to which for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period.

In determining whether the organization meets the requirements of paragraph (4) for any taxable year of such organization, there shall be taken into account the support received by such organization during such taxable year and during the immediately preceding 4 taxable years of such organization (excluding therefrom any preceding taxable year which begins before January 1, 1970). Subsection (d)(4) shall not apply to any grant to an organization which meets the requirements of this subsection.

(g) Individual grants

Subsection (d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that—

(1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(2) the grant constitutes a prize or award which is subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipient of such prize or award is selected from the general public, or

(3) the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

(h) Expenditure responsibility

The expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures—

(1) to see that the grant is spent solely for the purpose for which made,

(2) to obtain full and complete reports from the grantee on how the funds are spent, and

(3) to make full and detailed reports with respect to such expenditures to the Secretary.

(i) Other definitions

For purposes of this section—

(1) Correction

The terms ''correction'' and ''correct'' means, with respect to any taxable expenditure, (A) recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible such additional corrective action as is prescribed by the Secretary by regulations, or (B) in the case of a failure to comply with subsection (h)(2) or (h)(3), obtaining or making the report in question.

(2) Taxable period

The term ''taxable period'' means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

(B) the date on which the tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 512; amended Pub. L. 94–455, title XIX, §§ 1901(b)(8)(H), 1906(b)(13(A), Oct. 4, 1976, 90 Stat. 1795, 1834; Pub. L. 96–596, § 2(a)(1)(F), (2)(E), Dec. 24, 1980, 94 Stat. 3469, 3470; Pub. L. 98–369, div. A, title III, § 302(b), July 18, 1984, 98 Stat. 780; Pub. L. 99–514, title I, § 122(a)(2)(B), Oct. 22, 1986, 100 Stat. 2110; Pub. L. 100–647, title I, § 1001(d)(1)(B), Nov. 10, 1988, 102 Stat. 3350; Pub. L. 109–280, title XII, §§ 1212(e), 1244(b), Aug. 17, 2006, 120 Stat. 1074, 1107.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Sections 1212(e) and 1244(b) of Pub. L. 109–280, which directed the amendment of section 4945 without specifying the act to be amended, were executed to this section, which is section 4945 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, § 1212(e)(1)(A), substituted ''20 percent'' for ''10 percent''. See Codification note above.

Subsec. (a)(2). Pub. L. 109–280, § 1212(e)(1)(B), substituted ''5 percent'' for ''2½ percent''. See Codification note above.

Subsec. (c)(2). Pub. L. 109–280, § 1212(e)(2), substituted ''$10,000,'' for ''$5,000,'' and ''$20,000.'' for ''$10,000.'' See Codification note above.

Subsec. (d)(4)(A). Pub. L. 109–280, § 1244(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or''. See Codification note above.

1988—Subsec. (g)(1). Pub. L. 100–647 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),''.

1986—Subsec. (g)(2). Pub. L. 99–514 inserted ''(without regard to paragraph (3) thereof)'' after ''section 74(b)''.

1984—Subsec. (d)(4). Pub. L. 98–369, in amending par. (4) generally, divided existing provisions into subpars. (A) and (B) and inserted reference in subpar. (A) to exempt foundations (as defined in section 4940(d)(2)).

1980—Subsec. (b)(1). Pub. L. 96–596, § 2(a)(1)(F), substituted ''taxable period'' for ''correction period''.

Subsec. (i)(2). Pub. L. 96–596, § 2(a)(2)(E), substituted provision defining taxable period as the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (a)(1) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a)(1) of this section is assessed for provision defining correction period as the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines to be reasonable and necessary, except that such determination not be made with respect to any taxable expenditure within the meaning of pars. (1), (2), (3), or (4) of subsec. (d) of this section because of any action by an appropriate State officer.

1976—Subsec. (g). Pub. L. 94–455, §§ 1901(b)(8)(H), 1906(b)(13)(A), struck out in provisions preceding par. (1) ''or his delegate'' after ''Secretary'' and substituted in par. (1) ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution described in section 151(e)(4)''.

Subsecs. (h), (i). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(e) 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.

Amendment by section 1244(b) of Pub. L. 109–280 applicable to distributions and expenditures after Aug. 17, 2006, see section 1244(c) of Pub. L. 109–280, set out as a note under section 4942 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 302(c)(2) of Pub. L. 98–369 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to grants made after December 31, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

SAVINGS PROVISION

Applicability of subsecs. (d)(4) and (h) of this section to grants to private foundations described in section 101(*l*)(C)(3) of Pub. L. 91–172, see section 101(*l*)(5) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§ 4946. Definitions and special rules

(a) Disqualified person

(1) In general

For purposes of this subchapter, the term ''disqualified person'' means, with respect to a private foundation, a person who is—

(A) a substantial contributor to the foundation,

(B) a foundation manager (within the meaning of subsection (b)(1)),

(C) an owner of more than 20 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941, a government official (as defined in subsection (c)).

(2) Substantial contributors

For purposes of paragraph (1), the term ''substantial contributor'' means a person who is described in section 507(d)(2).

(3) Stockholdings

For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(4) Partnerships; trusts

For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(b) Foundation manager

For purposes of this subchapter, the term ''foundation manager'' means, with respect to any private foundation—

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

(c) Government official

For purposes of subsection (a)(1)(I) and section 4941, the term ''government official'' means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a ''special Government employee'', as defined in section 202(a) of title 18, United States Code):

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the lowest rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of $15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of $20,000 or more,

(6) a position as personal or executive assistant or secretary to any of the foregoing, or

(7) a member of the Internal Revenue Service Oversight Board.

(d) Members of family

For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 515; amended Pub. L. 95–227, §4(c)(2)(B), Feb. 10, 1978, 92 Stat. 22; Pub. L. 98–369, div. A, title III, §306(a), July 18, 1984, 98 Stat. 784; Pub. L. 99–514, title XVI, §1606(a), Oct. 22, 1986, 100 Stat. 2771; Pub. L. 105–206, title I, §1101(c)(1), July 22, 1998, 112 Stat. 696; Pub. L. 106–554, §1(a)(7) [title III, §319(16)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647.)

AMENDMENTS

2000—Subsec. (c)(3)(B). Pub. L. 106–554 substituted ''the lowest rate of basic pay for the Senior Executive Service under section 5382'' for ''the lowest rate of compensation prescribed for GS–16 of the General Schedule under section 5332''.

1998—Subsec. (c)(7). Pub. L. 105–206 added par. (7).

1986—Subsec. (c)(5). Pub. L. 99–514 substituted ''$20,000'' for ''$15,000''.

1984—Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting references to children, grandchildren, and great grandchildren for references to lineal descendants in two places.

1978—Subsecs. (a)(1), (b). Pub. L. 95–227 substituted ''subchapter'' for ''chapter''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1606(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to compensation received after December 31, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 306(c) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [probably should be ''section'', amending this section and section 6104 of this title] shall take effect on January 1, 1985.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after

Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

§ 4947. Application of taxes to certain nonexempt trusts

(a) Application of tax

(1) Charitable trusts

For purposes of part II of subchapter F of chapter 1 (other than section 508(a), (b), and (c)) and for purposes of this chapter, a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in section 501(c)(3). For purposes of section 509(a)(3)(A), such a trust shall be treated as if organized on the day on which it first becomes subject to this paragraph.

(2) Split-interest trusts

In the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purpose) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to—

(A) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B),

(B) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable, or

(C) any amounts transferred in trust before May 27, 1969.

(3) Segregated amounts

For purposes of paragraph (2)(B), a trust with respect to which amounts are segregated shall separately account for the various income, deduction, and other items properly attributable to each of such segregated amounts.

(b) Special rules

(1) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(2) Limit to segregated amounts

If any amounts in the trust are segregated within the meaning of subsection (a)(2)(B) of this section, the value of the net assets for purposes of subsections (c)(2) and (g) of section 507 shall be limited to such segregated amounts.

(3) Sections 4943 and 4944

Sections 4943 and 4944 shall not apply to a trust which is described in subsection (a)(2) if—

(A) all the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trusts, or

(B) a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(4) Section 507

The provisions of section 507(a) shall not apply to a trust which is described in subsection (a)(2) by reason of a distribution of qualified employer securities (as defined in section 664(g)(4)) to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by section 664(g)).

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 517; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XV, § 1530(c)(9), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 107–16, title V, § 542(e)(4), June 7, 2001, 115 Stat. 85; Pub. L. 108–357, title IV, § 413(c)(30), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2010—Subsec. (a)(2)(A). Pub. L. 111–312, §§ 301(a), 304, temporarily amended subsec. (a)(2)(A) to read as if amendment by Pub. L. 107–16, § 542(e)(4), had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below.

2004—Subsecs. (a)(1), (2), (b)(3). Pub. L. 108–357 struck out ''556(b)(2),'' after ''545(b)(2),'' wherever appearing.

2001—Subsec. (a)(2)(A). Pub. L. 107–16, §§ 542(e)(4), 901, temporarily inserted ''642(c),'' after ''170(f)(2)(B),''. See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (b)(4). Pub. L. 105–34 added par. (4).

1976—Subsec. (b)(1). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31,

2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to deductions for taxable years beginning after Dec. 31, 2009, see section 542(f)(3) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

§ 4948. Application of taxes and denial of exemption with respect to certain foreign organizations

(a) Tax on income of certain foreign organizations

In lieu of the tax imposed by section 4940, there is hereby imposed for each taxable year on the gross investment income (within the meaning of section 4940(c)(2)) derived from sources within the United States (within the meaning of section 861) by every foreign organization which is a private foundation for the taxable year a tax equal to 4 percent of such income.

(b) Certain sections inapplicable

Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and this chapter (other than this section) shall not apply to any foreign organization which has received substantially all of its support (other than gross investment income) from sources outside the United States.

(c) Denial of exemption to foreign organizations engaged in prohibited transactions

(1) General rule

A foreign organization described in subsection (b) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) Prohibited transactions

For purposes of this subsection, the term ''prohibited transaction'' means any act or failure to act (other than with respect to section 4942(e)) which would subject a foreign organization described in subsection (b), or a disqualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 or a tax under section 507 if such foreign organization were a domestic organization.

(3) Taxable years affected

(A) Except as provided in subparagraph (B), a foreign organization described in subsection (b) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) for all taxable years beginning with the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction. The Secretary shall publish such notice in the Federal Register on the day on which he so notifies such foreign organization.

(B) Under regulations prescribed by the Secretary any foreign organization described in subsection (b) which is denied exemption from taxation under section 501(a) by reason of paragraph (1) may, with respect to the second taxable year following the taxable year in which notice is given under subparagraph (A) (or any taxable year thereafter), file claim for exemption from taxation under section 501(a). If the Secretary is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall not, with respect to taxable years beginning with the taxable year with respect to which such claim is filed, be denied exemption from taxation under section 501(a) by reason of any prohibited transaction which was engaged in before the date on which such notice was given under subparagraph (A).

(4) Disallowance of certain charitable deductions

No gift or bequest shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made—

(A) to a foreign organization described in subsection (b) after the date on which the Secretary publishes notice under paragraph (3)(A) that he has notified such organization that it has engaged in a prohibited transaction, and

(B) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (1).

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 518; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title IV, § 413(c)(30), Oct. 22, 2004, 118 Stat. 1509.)

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–357 struck out ''556(b)(2),'' after ''545(b)(2),'' in introductory provisions.

1976—Subsec. (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357,

set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Subchapter B—Black Lung Benefit Trusts

Sec.
4951. Taxes on self-dealing.
4952. Taxes on taxable expenditures.
4953. Tax on excess contributions to black lung benefit trusts.

§ 4951. Taxes on self-dealing

(a) Initial taxes

(1) On self-dealer

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a trust described in section 501(c)(21). The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of the trust) who participates in the act of self-dealing.

(2) On trustee

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any trustee of such a trust in an act of self-dealing between a disqualified person and the trust, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any such trustee who participated in the act of self-dealing.

(b) Additional taxes

(1) On self-dealer

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a trust described in section 501(c)(21) and in which the act is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of such a trust) who participated in the act of self-dealing.

(2) On trustee

In any case in which an additional tax is imposed by paragraph (1), if a trustee of such a trust refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any such trustee who refused to agree to part or all of the correction.

(c) Joint and several liability

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(d) Self-dealing

(1) In general

For purposes of this section, the term ''self-dealing'' means any direct or indirect—

(A) sale, exchange, or leasing of real or personal property between a trust described in section 501(c)(21) and a disqualified person;

(B) lending of money or other extension of credit between such a trust and a disqualified person;

(C) furnishing of goods, services, or facilities between such a trust and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by such a trust to a disqualified person; and

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of such a trust.

(2) Special rules

For purposes of paragraph (1)—

(A) the transfer of personal property by a disqualified person to such a trust shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien;

(B) the furnishing of goods, services, or facilities by a disqualified person to such a trust shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for the purposes specified in section 501(c)(21)(A); and

(C) the payment of compensation (and the payment or reimbursement of expenses) by such a trust to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the trust shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

(e) Definitions

For purposes of this section—

(1) Taxable period

The term ''taxable period'' means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which correction of the act of self-dealing is completed.

(2) Amount involved

The term ''amount involved'' means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that in the case of services described in subsection (d)(2)(C), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the

date on which the act of self-dealing occurs; and

(B) in the case of taxes imposed by subsection (b), shall be the highest fair market value during the taxable period.

(3) Correction

The terms ''correction'' and ''correct'' mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the trust in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(4) Disqualified person

The term ''disqualified person'' means, with respect to a trust described in section 501(c)(21), a person who is—

(A) a contributor to the trust,

(B) a trustee of the trust,

(C) an owner of more than 10 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a contributor to the trust,

(D) an officer, director, or employee of a person who is a contributor to the trust,

(E) the spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subparagraph (A), (B), (C), or (D),

(F) a corporation of which persons described in subparagraph (A), (B), (C), (D), or (E) own more than 35 percent of the total combined voting power,

(G) a partnership in which persons described in subparagraph (A), (B), (C), (D), or (E), own more than 35 percent of the profits interest, or

(H) a trust or estate in which persons described in subparagraph (A), (B), (C), (D), or (E), hold more than 35 percent of the beneficial interest.

For purposes of subparagraphs (C)(i) and (F), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph. For purposes of subparagraphs (C) (ii) and (iii), (G), and (H), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph.

(f) Payments of benefits

For purposes of this section, a payment, out of assets or income of a trust described in section 501(c)(21), for the purposes described in subclause (I) or (IV) of section 501(c)(21)(A)(i) shall not be considered an act of self-dealing.

(Added Pub. L. 95–227, § 4(c)(1), Feb. 10, 1978, 92 Stat. 18; amended Pub. L. 96–596, § 2(a)(1)(G), (H), (2)(F), (3)(E), Dec. 24, 1980, 94 Stat. 3469–3471; Pub. L. 102–486, title XIX, § 1940(b), Oct. 24, 1992, 106 Stat. 3035.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–486 substituted ''subclause (I) or (IV) of section 501(c)(21)(A)(i)'' for ''clause (i) of section 501(c)(21)(A)''.

1980—Subsec. (b)(1). Pub. L. 96–596, § 2(a)(1)(G), substituted ''taxable period'' for ''correction period''.

Subsec. (e)(1)(B), (C). Pub. L. 96–596, § 2(a)(2)(F), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(2)(B). Pub. L. 96–596, § 2(a)(1)(H), substituted ''taxable period'' for ''correction period''.

Subsec. (e)(4), (5). Pub. L. 96–596, § 2(a)(3)(E), redesignated par. (5) as (4) and struck out former par. (4) which defined correction period, with respect to any act of self-dealing, as the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b)(1) of this section, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1991, see section 1940(d) of Pub. L. 102–486, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

EFFECTIVE DATE

Subchapter effective with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as a note under section 192 of this title.

§ 4952. Taxes on taxable expenditures

(a) Tax imposed

(1) On the fund

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) from the assets or income of a trust described in section 501(c)(21) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

(2) On the trustee

There is hereby imposed on the agreement of any trustee of such a trust to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by the trustee who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the fund

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expend-

iture and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

(2) On the trustee

In any case in which an additional tax is imposed by paragraph (1), if a trustee refused to agree to a part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any trustee who refused to agree to part or all of the correction.

(c) Joint and several liability

For purposes of subsections (a) and (b), if more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(d) Taxable expenditure

For purposes of this section, the term ''taxable expenditure'' means any amount paid or incurred by a trust described in section 501(c)(21) other than for a purpose specified in such section.

(e) Definitions

(1) Correction

The terms ''correction'' and ''correct'' mean, with respect to any taxable expenditure, recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible, contributions by the person or persons whose liabilities for black lung benefit claims (as defined in section 192(e)) are to be paid out of the trust to the extent necessary to place the trust in a financial position not worse than that in which it would be if the taxable expenditure had not been made.

(2) Taxable period

The term ''taxable period'' means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

(B) the date on which the tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 95–227, § 4(c)(1), Feb. 10, 1978, 92 Stat. 21; amended Pub. L. 96–596, § 2(a)(1)(I), (2)(G), Dec. 24, 1980, 94 Stat. 3469, 3471.)

AMENDMENTS

1980—Subsec. (b)(1). Pub. L. 96–596, § 2(a)(1)(I), substituted ''taxable period'' for ''correction period''.

Subsec. (e)(2). Pub. L. 96–596, § 2(a)(2)(G), substituted provision defining taxable period as the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (a)(1) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a)(1) of this section is assessed for provision defining correction period as the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b)(1) of this section, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines reasonable and necessary to bring about the correction of the taxable expenditure.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

§ 4953. Tax on excess contributions to black lung benefit trusts

(a) Tax imposed

There is hereby imposed for each taxable year a tax in an amount equal to 5 percent of the amount of the excess contributions made by a person to or under a trust or trusts described in section 501(c)(21). The tax imposed by this subsection shall be paid by the person making the excess contribution.

(b) Excess contribution

For purposes of this section, the term ''excess contribution'' means the sum of—

(1) the amount by which the amount contributed for the taxable year to a trust or trusts described in section 501(c)(21) exceeds the amount of the deduction allowable to such person for such contributions for the taxable year under section 192, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the excess of the maximum amount allowable as a deduction under section 192 for the taxable year over the amount contributed to the trust or trusts for the taxable year, and

(B) amounts distributed from the trust to the contributor which were excess contributions for the preceding taxable year.

(c) Treatment of withdrawal of excess contributions

Amounts distributed during the taxable year from a trust described in section 501(c)(21) to the contributor thereof the sum of which does not exceed the amount of the excess contribution made by the contributor shall not be treated as—

(1) an act of self-dealing (within the meaning of section 4951),

(2) a taxable expenditure (within the meaning of section 4952), or

(3) an act contrary to the purposes for which the trust is exempt from taxation under section 501(a).

(Added Pub. L. 95–227, § 4(c)(1), Feb. 10, 1978, 92 Stat. 22.)

Subchapter C—Political Expenditures of Section 501(c)(3) Organizations

Sec.
4955. Taxes on political expenditures of section 501(c)(3) organizations.

Sec.

PRIOR PROVISIONS

A prior subchapter C, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

§ 4955. Taxes on political expenditures of section 501(c)(3) organizations

(a) Initial taxes

(1) On the organization

There is hereby imposed on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the organization.

(2) On the management

There is hereby imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the organization

In any case in which an initial tax is imposed by subsection (a)(1) on a political expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the organization.

(2) On the management

In any case in which an additional tax is imposed by paragraph (1), if an organization manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the political expenditure. The tax imposed by this paragraph shall be paid by any organization manager who refused to agree to part or all of the correction.

(c) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than 1 person is liable under subsection (a)(2) or (b)(2) with respect to the making of a political expenditure, all such persons shall be jointly and severally liable under such subsection with respect to such expenditure.

(2) Limit for management

With respect to any 1 political expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

(d) Political expenditure

For purposes of this section—

(1) In general

The term ''political expenditure'' means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(2) Certain other expenditures included

In the case of an organization which is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office (or which is effectively controlled by a candidate or prospective candidate and which is availed of primarily for such purposes), the term ''political expenditure'' includes any of the following amounts paid or incurred by the organization:

(A) Amounts paid or incurred to such individual for speeches or other services.

(B) Travel expenses of such individual.

(C) Expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual.

(D) Expenses of advertising, publicity, and fundraising for such individual.

(E) Any other expense which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

(e) Coordination with sections 4945 and 4958

If tax is imposed under this section with respect to any political expenditure, such expenditure shall not be treated as a taxable expenditure for purposes of section 4945 or an excess benefit for purposes of section 4958.

(f) Other definitions

For purposes of this section—

(1) Section 501(c)(3) organization

The term ''section 501(c)(3) organization'' means any organization which (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a).

(2) Organization manager

The term ''organization manager'' means—

(A) any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization), and

(B) with respect to any expenditure, any employee of the organization having authority or responsibility with respect to such expenditure.

(3) Correction

The terms ''correction'' and ''correct'' mean, with respect to any political expenditure, recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures, and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

(4) Taxable period

The term ''taxable period'' means, with respect to any political expenditure, the period beginning with the date on which the political expenditure occurs and ending on the earlier of—

(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

(B) the date on which tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 100–203, title X, § 10712(a), Dec. 22, 1987, 101 Stat. 1330–465; amended Pub. L. 104–168, title XIII, § 1311(c)(1), July 30, 1996, 110 Stat. 1478.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–168 substituted ''sections 4945 and 4958'' for ''section 4945'' in heading and inserted ''or an excess benefit for purposes of section 4958'' before period at end of text.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1311(d)(1), (2) of Pub. L. 104–168 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 4958 of this title and amending this section and sections 4963, 6213, 7422, and 7454 of this title] (other than subsection (b)) [amending section 501 of this title] shall apply to excess benefit transactions occurring on or after September 14, 1995.

''(2) BINDING CONTRACTS.—The amendments referred to in paragraph (1) shall not apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.''

EFFECTIVE DATE

Section 10712(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section and amending sections 4962, 4963, 6213, 6501, 6503, 6684, 7422, and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987].''

Subchapter D—Failure by Certain Charitable Organizations To Meet Certain Qualification Requirements

Sec.
4958. Taxes on excess benefit transactions.
4959. Taxes on failures by hospital organizations.

PRIOR PROVISIONS

A prior subchapter D, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

AMENDMENTS

2010—Pub. L. 111–148, title IX, § 9007(b)(2), Mar. 23, 2010, 124 Stat. 857, added item 4959.

§ 4958. Taxes on excess benefit transactions

(a) Initial taxes

(1) On the disqualified person

There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

(b) Additional tax on the disqualified person

In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(c) Excess benefit transaction; excess benefit

For purposes of this section—

(1) Excess benefit transaction

(A) In general

The term ''excess benefit transaction'' means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

(B) Excess benefit

The term ''excess benefit'' means the excess referred to in subparagraph (A).

(2) Special rules for donor advised funds

In the case of any donor advised fund (as defined in section 4966(d)(2))—

(A) the term ''excess benefit transaction'' includes any grant, loan, compensation, or other similar payment from such fund to a person described in subsection (f)(7) with respect to such fund, and

(B) the term ''excess benefit'' includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other similar payment.

(3) Special rules for supporting organizations

(A) In general

In the case of any organization described in section 509(a)(3)—

(i) the term ''excess benefit transaction'' includes—

(I) any grant, loan, compensation, or other similar payment provided by such organization to a person described in subparagraph (B), and

(II) any loan provided by such organization to a disqualified person (other than an organization described in subparagraph (C)(ii)), and

(ii) the term ''excess benefit'' includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other similar payment.

(B) Person described

A person is described in this subparagraph if such person is—

(i) a substantial contributor to such organization,

(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting ''persons described in clause (i) or (ii) of section 4958(c)(3)(B)'' for ''persons described in subparagraph (A) or (B) of paragraph (1)'' in subparagraph (A)(i) thereof).

(C) Substantial contributor

For purposes of this paragraph—

(i) In general

The term ''substantial contributor'' means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, such term also means the creator of the trust. Rules similar to the rules of subparagraphs (B) and (C) of section 507(d)(2) shall apply for purposes of this subparagraph.

(ii) Exception

Such term shall not include—

(I) any organization described in paragraph (1), (2), or (4) of section 509(a), and

(II) any organization which is treated as described in such paragraph (2) by reason of the last sentence of section 509(a) and which is a supported organization (as defined in section 509(f)(3)) of the organization to which subparagraph (A) applies.

(4) Authority to include certain other private inurement

To the extent provided in regulations prescribed by the Secretary, the term ''excess benefit transaction'' includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

(d) Special rules

For purposes of this section—

(1) Joint and several liability

If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

(2) Limit for management

With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $20,000.

(e) Applicable tax-exempt organization

For purposes of this subchapter, the term ''applicable tax-exempt organization'' means—

(1) any organization which (without regard to any excess benefit) would be described in paragraph (3), (4), or (29) of section 501(c) and exempt from tax under section 501(a), and

(2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

(f) Other definitions

For purposes of this section—

(1) Disqualified person

The term ''disqualified person'' means, with respect to any transaction—

(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,

(B) a member of the family of an individual described in subparagraph (A),

(C) a 35-percent controlled entity,

(D) any person who is described in subparagraph (A), (B), or (C) with respect to an organization described in section 509(a)(3) and organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the applicable tax-exempt organization.[1]

(E) which involves a donor advised fund (as defined in section 4966(d)(2)), any person who is described in paragraph (7) with respect to such donor advised fund (as so defined), and

(F) which involves a sponsoring organization (as defined in section 4966(d)(1)), any person who is described in paragraph (8) with respect to such sponsoring organization (as so defined).

(2) Organization manager

The term ''organization manager'' means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

(3) 35-percent controlled entity

(A) In general

The term ''35-percent controlled entity'' means—

(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

(B) Constructive ownership rules

Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

[1] So in original. The period probably should be a comma.

(4) Family members

The members of an individual's family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

(5) Taxable period

The term ''taxable period'' means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

(B) the date on which the tax imposed by subsection (a)(1) is assessed.

(6) Correction

The terms ''correction'' and ''correct'' mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards, 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.

(7) Donors and donor advisors

For purposes of paragraph (1)(E), a person is described in this paragraph if such person—

(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.)

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

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.

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 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 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. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in heading.

1986—Subsec. (c)(1). Pub. L. 99–514 substituted ''United States Claims Court'' for ''Court of Claims'' in heading.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note

under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section 2(d) of Pub. L. 96–596, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) FIRST TIER TAXES.—The amendments made by this section [enacting this section and section 4962 of this title and amending sections 4941 to 4945, 4951, 4952, 4971, 4975, 6213, 6214, 6503, and 7422 of this title] with respect to any first tier tax shall take effect as if included in the Internal Revenue Code of 1986 [formerly I.R.C. 1954] when such tax was first imposed.

''(2) SECOND TIER TAXES.—The amendments made by this section with respect to any second tier tax shall apply only with respect to taxes assessed after the date of the enactment of this Act [Dec. 24, 1980]. Nothing in the preceding sentence shall be construed to permit the assessment of a tax in a case to which, on the date of the enactment of this Act, the doctrine of res judicata applies.

''(3) FIRST AND SECOND TIER TAX.—For purposes of this subsection, the terms 'first tier tax' and 'second tier tax' have the respective meanings given to such terms by section 4962 of the Internal Revenue Code of 1986.''

§ 4962. Abatement of first tier taxes in certain cases

(a) General rule

If it is established to the satisfaction of the Secretary that—

(1) a taxable event was due to reasonable cause and not to willful neglect, and

(2) such event was corrected within the correction period for such event,

then any qualified first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment.

(b) Qualified first tier tax

For purposes of this section, the term ''qualified first tier tax'' means any first tier tax imposed by subchapter A, C, D, or G of this chapter, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).

(c) Special rule for tax on political expenditures of section 501(c)(3) organizations

In the case of the tax imposed by section 4955(a), subsection (a)(1) shall be applied by substituting ''not willful and flagrant'' for ''due to reasonable cause and not to willful neglect''.

(Added 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)(1), (2), (4), Dec. 22, 1987, 101 Stat. 1330–467; Pub. L. 105–34, title XVI, § 1603(a), Aug. 5, 1997, 111 Stat. 1096; Pub. L. 110–172, § 3(h), Dec. 29, 2007, 121 Stat. 2475.)

PRIOR PROVISIONS

A prior section 4962 was renumbered section 4963 of this title.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–172 substituted ''D, or G'' for ''or D''.

1997—Subsec. (b). Pub. L. 105–34 substituted ''subchapter A, C, or D'' for ''subchapter A or C''.

1987—Pub. L. 100–203, § 10712(b)(4), struck out ''private foundation'' before ''first tier taxes'' in section catchline.

Subsec. (a). Pub. L. 100–203, § 10712(b)(2), substituted ''any qualified first tier tax'' for ''any private foundation first tier tax'' in closing provisions.

Subsec. (b). Pub. L. 100–203, § 10712(b)(1), added subsec. (b) and struck out former subsec. (b) ''Private foundation first tier tax'' which read as follows: ''For purposes of this section, the term 'private foundation first tier tax' means any first tier tax imposed by subchapter A of chapter 42, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).''

Subsec. (c). Pub. L. 100–203, § 10712(b)(1), added subsec. (c).

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 1997 AMENDMENT

Section 1603(c) of Pub. L. 105–34 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

Section 305(c) of Pub. L. 98–369 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 transaction 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), or

(7) an arrangement described in section 4973(a).

(d) Entity manager

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

(1) in the case of an entity described in paragraph (1), (2), or (3) of subsection (c)—

(A) the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and

(B) with respect to any act, the person having authority or responsibility with respect to such act, and

(2) in the case of an entity described in paragraph (4), (5), (6), or (7) of subsection (c), the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

(e) Prohibited tax shelter transaction; subsequently listed transaction

For purposes of this section—

(1) Prohibited tax shelter transaction

(A) In general

The term ''prohibited tax shelter transaction'' means—

(i) any listed transaction, and

(ii) any prohibited reportable transaction.

(B) Listed transaction

The term ''listed transaction'' has the meaning given such term by section 6707A(c)(2).

(C) Prohibited reportable transaction

The term ''prohibited reportable transaction'' means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).

(2) Subsequently listed transaction

The term ''subsequently listed transaction'' means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has become a party to the transaction. Such term shall not include a transaction which is a prohibited reportable transaction at the time the entity became a party to the transaction.

(f) Regulatory authority

The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income or proceeds of a tax-exempt entity attributable to a transaction to various periods, in-

cluding before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.

(g) Coordination with other taxes and penalties

The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.

(Added Pub. L. 109–222, title V, § 516(a)(1), May 17, 2006, 120 Stat. 368; amended Pub. L. 110–172, § 11(a)(30), Dec. 29, 2007, 121 Stat. 2487.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(1)(B) and (f), is the date of enactment of Pub. L. 109–222, which was approved May 17, 2006.

AMENDMENTS

2007—Subsec. (c)(6). Pub. L. 110–172 substituted ''section 457(e)(1)(A)'' for ''section 4457(e)(1)(A)''.

EFFECTIVE DATE

Pub. L. 109–222, title V, § 516(d), May 17, 2006, 120 Stat. 372, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 6011, 6033, and 6652 of this title] shall apply to taxable years ending after the date of the enactment of this Act [May 17, 2006], with respect to transactions before, on, or after such date, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.

''(2) DISCLOSURE.—The amendments made by subsections (b) and (c) [amending sections 6011, 6033, and 6652 of this title] shall apply to disclosures the due date for which are after the date of the enactment of this Act.''

Subchapter G—Donor Advised Funds

Sec.
4966. Taxes on taxable distributions.
4967. Taxes on prohibited benefits.

CODIFICATION

Pub. L. 109–280, title XII, § 1231(a), Aug. 17, 2006, 120 Stat. 1094, which directed the addition of subchapter G at the end of chapter 42, without specifying the act to be amended, was executed by adding subchapter G at the end of chapter 42 of this title, which consists of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

§ 4966. Taxes on taxable distributions

(a) Imposition of taxes

(1) On the sponsoring organization

There is hereby imposed on each taxable distribution a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the sponsoring organization with respect to the donor advised fund.

(2) On the fund management

There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that it is a taxable distribution, a tax equal to 5 percent of the amount thereof. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

(b) Special rules

For purposes of subsection (a)—

(1) Joint and several liability

If more than one person is liable under subsection (a)(2) with respect to the making of a taxable distribution, all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

(2) Limit for management

With respect to any one taxable distribution, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000.

(c) Taxable distribution

For purposes of this section—

(1) In general

The term ''taxable distribution'' means any distribution from a donor advised fund—

(A) to any natural person, or

(B) to any other person if—

(i) such distribution is for any purpose other than one specified in section 170(c)(2)(B), or

(ii) the sponsoring organization does not exercise expenditure responsibility with respect to such distribution in accordance with section 4945(h).

(2) Exceptions

Such term shall not include any distribution from a donor advised fund—

(A) to any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization),

(B) to the sponsoring organization of such donor advised fund, or

(C) to any other donor advised fund.

(d) Definitions

For purposes of this subchapter—

(1) Sponsoring organization

The term ''sponsoring organization'' means any organization which—

(A) is described in section 170(c) (other than in paragraph (1) thereof, and without regard to paragraph (2)(A) thereof),

(B) is not a private foundation (as defined in section 509(a)), and

(C) maintains 1 or more donor advised funds.

(2) Donor advised fund

(A) In general

Except as provided in subparagraph (B) or (C), the term ''donor advised fund'' means a fund or account—

(i) which is separately identified by reference to contributions of a donor or donors,

(ii) which is owned and controlled by a sponsoring organization, and

(iii) with respect to which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor.

(B) Exceptions

The term ''donor advised fund'' shall not include any fund or account—

(i) which makes distributions only to a single identified organization or governmental entity, or

(ii) with respect to which a person described in subparagraph (A)(iii) advises as to which individuals receive grants for travel, study, or other similar purposes, if—

(I) such person's advisory privileges are performed exclusively by such person in the person's capacity as a member of a committee all of the members of which are appointed by the sponsoring organization,

(II) no combination of persons described in subparagraph (A)(iii) (or persons related to such persons) control, directly or indirectly, such committee, and

(III) all grants from such fund or account are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the board of directors of the sponsoring organization, and such procedure is designed to ensure that all such grants meet the requirements of paragraph (1), (2), or (3) of section 4945(g).

(C) Secretarial authority

The Secretary may exempt a fund or account not described in subparagraph (B) from treatment as a donor advised fund—

(i) if such fund or account is advised by a committee not directly or indirectly controlled by the donor or any person appointed or designated by the donor for the purpose of advising with respect to distributions from such fund (and any related parties), or

(ii) if such fund benefits a single identified charitable purpose.

(3) Fund manager

The term ''fund manager'' means, with respect to any sponsoring organization—

(A) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and

(B) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to such act (or failure to act).

(4) Disqualified supporting organization

(A) In general

The term ''disqualified supporting organization'' means, with respect to any distribution—

(i) any type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(ii) any organization which is described in subparagraph (B) or (C) if—

(I) the donor or any person designated by the donor for the purpose of advising with respect to distributions from a donor advised fund (and any related parties) directly or indirectly controls a supported organization (as defined in section 509(f)(3)) of such organization, or

(II) the Secretary determines by regulations that a distribution to such organization otherwise is inappropriate.

(B) Type I and type II supporting organizations

An organization is described in this subparagraph if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

(ii) supervised or controlled in connection with one or more such organizations.

(C) Functionally integrated type III supporting organizations

An organization is described in this subparagraph if the organization is a functionally integrated type III supporting organization (as defined under section 4943(f)(5)(B)).

(Added Pub. L. 109–280, title XII, § 1231(a), Aug. 17, 2006, 120 Stat. 1095.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

§ 4967. Taxes on prohibited benefits

(a) Imposition of taxes

(1) On the donor, donor advisor, or related person

There is hereby imposed on the advice of any person described in subsection (d) to have a sponsoring organization make a distribution from a donor advised fund which results in such person or any other person described in subsection (d) receiving, directly or indirectly, a more than incidental benefit as a result of such distribution, a tax equal to 125 percent of such benefit. The tax imposed by this paragraph shall be paid by any person described in subsection (d) who advises as to the distribution or who receives such a benefit as a result of the distribution.

(2) On the fund management

There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that such distribution would confer a benefit described in paragraph (1), a tax equal to 10 percent of the amount of such benefit. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

(b) Exception

No tax shall be imposed under this section with respect to any distribution if a tax has been imposed with respect to such distribution under section 4958.

(c) Special rules

For purposes of subsection (a)—

(1) Joint and several liability

If more than one person is liable under paragraph (1) or (2) of subsection (a) with respect

to a distribution described in subsection (a), all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

(2) Limit for management

With respect to any one distribution described in subsection (a), the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000.

(d) Person described

A person is described in this subsection if such person is described in section 4958(f)(7) with respect to a donor advised fund.

(Added Pub. L. 109–280, title XII, § 1231(a), Aug. 17, 2006, 120 Stat. 1097.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

Sec.
4971. Taxes on failure to meet minimum funding standards.
4972. Tax on nondeductible contributions to qualified employer plans.
4973. Tax on excess contributions to certain tax-favored accounts and annuities.
4974. Excise tax on certain accumulations in qualified retirement plans.
4975. Tax on prohibited transactions.
4976. Taxes with respect to funded welfare benefit plans.
4977. Tax on certain fringe benefits provided by an employer.
4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives.
[4978A, 4978B. Repealed.]
4979. Tax on certain excess contributions.
4979A. Tax on certain prohibited allocations of qualified securities.
4980. Tax on reversion of qualified plan assets to employer.
4980A. Tax on excess distributions from qualified retirement plans.[1]
4980B. Failure to satisfy continuation coverage requirements of group health plans.
4980C. Requirements for issuers of qualified long-term care insurance contracts.
4980D. Failure to meet certain group health plan requirements.
4980E. Failure of employer to make comparable Archer MSA contributions.
4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements.
4980G. Failure of employer to make comparable health savings account contributions.
4980H. Shared responsibility for employers regarding health coverage.
4980I. Excise tax on high cost employer-sponsored health coverage.

AMENDMENTS

2010—Pub. L. 111–148, title I, § 1513(b), title IX, § 9001(b), Mar. 23, 2010, 124 Stat. 256, 853, added items 4980H and 4980I.

2003—Pub. L. 108–173, title XII, § 1201(d)(4)(B), Dec. 8, 2003, 117 Stat. 2478, added item 4980G.

2002—Pub. L. 107–147, title IV, § 417(17)(B), Mar. 9, 2002, 116 Stat. 56, substituted ''Archer MSA contributions'' for ''medical savings account contributions'' in item 4980E.

2001—Pub. L. 107–16, title VI, § 659(a)(2), June 7, 2001, 115 Stat. 139, added item 4980F.

1998—Pub. L. 105–206, title VI, § 6023(18)(B), July 22, 1998, 112 Stat. 825, substituted ''certain tax-favored accounts and annuities'' for ''individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities'' in item 4973.

1996—Pub. L. 104–191, title III, §§ 301(c)(4)(B), 326(b), title IV, § 402(b), Aug. 21, 1996, 110 Stat. 2050, 2066, 2087, added items 4980C, 4980D, and 4980E.

Pub. L. 104–188, title I, § 1602(b)(5)(B), Aug. 20, 1996, 110 Stat. 1834, struck out item 4978B ''Tax on disposition of employer securities to which section 133 applied''.

1989—Pub. L. 101–239, title VII, §§ 7301(d)(2), 7304(a)(2)(C)(iii), Dec. 19, 1989, 103 Stat. 2348, 2353, struck out item 4978A ''Tax on certain dispositions of employer securities to which section 2057 applied'' and added item 4978B.

1988—Pub. L. 100–647, title I, § 1011A(g)(1)(B), title III, § 3011(c), Nov. 10, 1988, 102 Stat. 3479, 3625, redesignated item 4981A as 4980A and added item 4980B.

1987—Pub. L. 100–203, title X, § 10413(b)(2), Dec. 22, 1987, 101 Stat. 1330–438, added item 4978A.

1986—Pub. L. 99–514, title XI, §§ 1117(b)(2), 1121(a)(2), 1131(c)(2), 1132(b), 1133(b), title XVIII, §§ 1854(a)(9)(C), 1899A(75), Oct. 22, 1986, 100 Stat. 2462, 2465, 2478, 2480, 2483, 2877, 2963, added item 4972, inserted ''section'' in item 4973, substituted ''Excise tax on certain accumulations in qualified retirement plans'' for ''Tax on certain accumulations in individual retirement accounts'' in item 4974, struck out ''and allocations'' after ''certain dispositions'' in item 4978, and added items 4979, 4979A, 4980, and 4981A.

1984—Pub. L. 98–369, div. A, title IV, § 491(d)(56), title V, §§ 511(c)(2), 531(e)(2), 545(b), July 18, 1984, 98 Stat. 852, 862, 886, 896, substituted ''and certain individual retirement annuities'' for ''certain individual retirement annuities, and certain retirement bonds'' in item 4973 and added items 4976 to 4978.

1982—Pub. L. 97–248, title II, § 237(c)(2), Sept. 3, 1982, 96 Stat. 511, struck out item 4972 ''Tax on excess contributions for self-employed individuals''.

1974—Pub. L. 93–406, title II, §§ 1013(b), 2001(f)(2), 2002(h)(3), Sept. 2, 1974, 88 Stat. 920, 957, 970, added chapter heading and analysis of sections 4971 to 4975.

§ 4971. Taxes on failure to meet minimum funding standards

(a) Initial tax

If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—

(1) in the case of a single-employer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and

(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

(b) Additional tax

If—

(1) a tax is imposed under subsection (a)(1) on any unpaid minimum required contribution and such amount remains unpaid as of the close of the taxable period, or

(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and

[1] Section repealed by Pub. L. 105–34 without corresponding amendment of chapter analysis.

the accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution or accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.

(c) Definitions

For purposes of this section—

(1) Accumulated funding deficiency

The term ''accumulated funding deficiency'' has the meaning given to such term by section 431.

(2) Correct

The term ''correct'' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

(3) Taxable period

The term ''taxable period'' means, with respect to an accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable, the period beginning with the end of the plan year in which there is an accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable[1] and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a), or

(B) the date on which the tax imposed by subsection (a) is assessed.

(4) Unpaid minimum required contribution

(A) In general

The term ''unpaid minimum required contribution'' means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

(B) Ordering rule

Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.

(d) Notification of the Secretary of Labor

Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable, or

(2) to comment on the imposition of such tax.

In the case of a multiemployer plan which is in reorganization under section 418, the same notice and opportunity shall be provided to the Pension Benefit Guaranty Corporation.

(e) Liability for tax

(1) In general

Except as provided in paragraph (2), the tax imposed by subsection (a), (b), or (f) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(a)(2).

(2) Joint and several liability where employer member of controlled group

(A) In general

If an employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a), (b), (f), or (g).

(B) Controlled group

For purposes of subparagraph (A), the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414.

(f) Failure to pay liquidity shortfall

(1) In general

In the case of a plan to which section 430(j)(4) applies, there is hereby imposed a tax of 10 percent of the excess (if any) of—

(A) the amount of the liquidity shortfall for any quarter, over

(B) the amount of such shortfall which is paid by the required installment under section 430(j) for such quarter (but only if such installment is paid on or before the due date for such installment).

(2) Additional tax

If the plan has a liquidity shortfall as of the close of any quarter and as of the close of each of the following 4 quarters, there is hereby imposed a tax equal to 100 percent of the amount on which tax was imposed by paragraph (1) for such first quarter.

(3) Definitions and special rule

(A) Liquidity shortfall; quarter

For purposes of this subsection, the terms ''liquidity shortfall'' and ''quarter'' have the respective meanings given such terms by section 412(m)(5).[2]

(B) Special rule

If the tax imposed by paragraph (2) is paid with respect to any liquidity shortfall for any quarter, no further tax shall be imposed by this subsection on such shortfall for such quarter.

(4) Waiver by Secretary

If the taxpayer establishes to the satisfaction of the Secretary that—

(A) the liquidity shortfall described in paragraph (1) was due to reasonable cause and not willful neglect, and

(B) reasonable steps have been taken to remedy such liquidity shortfall,

[1] So in original. Probably should be followed by a comma.

[2] See References in Text note below.

the Secretary may waive all or part of the tax imposed by this subsection.

(g) Multiemployer plans in endangered or critical status

(1) In general

Except as provided in this subsection—

(A) no tax shall be imposed under this section for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 432, and

(B) any tax imposed under this subsection for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in endangered status pursuant to section 432 shall be in addition to any other tax imposed by this section.

(2) Failure to comply with funding improvement or rehabilitation plan

(A) In general

If any funding improvement plan or rehabilitation plan in effect under section 432 with respect to a multiemployer plan requires an employer to make a contribution to the plan, there is hereby imposed a tax on each failure of the employer to make the required contribution within the time required under such plan.

(B) Amount of tax

The amount of the tax imposed by subparagraph (A) shall be equal to the amount of the required contribution the employer failed to make in a timely manner.

(C) Liability for tax

The tax imposed by subparagraph (A) shall be paid by the employer responsible for contributing to or under the rehabilitation plan which fails to make the contribution.

(3) Failure to meet requirements for plans in endangered or critical status

If—

(A) a plan which is in seriously endangered status fails to meet the applicable benchmarks by the end of the funding improvement period, or

(B) a plan which is in critical status either—

(i) fails to meet the requirements of section 432(e) by the end of the rehabilitation period, or

(ii) has received a certification under section 432(b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of this section for the last plan year in such funding improvement, rehabilitation, or 3-consecutive year period (and each succeeding plan year until such benchmarks or requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such benchmarks or requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

(4) Failure to adopt rehabilitation plan

(A) In general

In the case of a multiemployer plan which is in critical status, there is hereby imposed a tax on the failure of such plan to adopt a rehabilitation plan within the time prescribed under section 432.

(B) Amount of tax

The amount of the tax imposed under subparagraph (A) with respect to any plan sponsor for any taxable year shall be the greater of—

(i) the amount of tax imposed under subsection (a) for the taxable year (determined without regard to this subsection), or

(ii) the amount equal to $1,100 multiplied by the number of days during the taxable year which are included in the period beginning on the day following the close of the 240-day period described in section 432(e)(1)(A) and ending on the day on which the rehabilitation plan is adopted.

(C) Liability for tax

(i) In general

The tax imposed by subparagraph (A) shall be paid by each plan sponsor.

(ii) Plan sponsor

For purposes of clause (i), the term ''plan sponsor'' has the meaning given such term by section 432(i)(9).

(5) Waiver

In the case of a failure described in paragraph (2) or (3) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by this subsection. For purposes of this paragraph, reasonable cause includes unanticipated and material market fluctuations, the loss of a significant contributing employer, or other factors to the extent that the payment of tax under this subsection with respect to the failure would be excessive or otherwise inequitable relative to the failure involved.

(6) Terms used in section 432

For purposes of this subsection, any term used in this subsection which is also used in section 432 shall have the meaning given such term by section 432.

(h) Cross references

For disallowance of deduction for taxes paid under this section, see section 275.

For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).

For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, § 1013(b), Sept. 2, 1974, 88 Stat. 920; amended Pub. L. 94–455, title

XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–364, title II, § 204, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 96–596, § 2(a)(1)(J), (2)(H), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 100–203, title IX, §§ 9304(c)(1), 9305(a), Dec. 22, 1987, 101 Stat. 1330–348, 1330–351; Pub. L. 103–465, title VII, § 751(a)(9)(B), Dec. 8, 1994, 108 Stat. 5020; Pub. L. 104–188, title I, § 1464(a), Aug. 20, 1996, 110 Stat. 1824; Pub. L. 109–280, title I, § 114(e)(1)–(4), title II, § 212(b), Aug. 17, 2006, 120 Stat. 854, 855, 915; Pub. L. 110–458, title I, §§ 101(d)(2)(F), 102(b)(2)(I), (3)(A), Dec. 23, 2008, 122 Stat. 5099, 5103.)

AMENDMENT OF SECTION

For termination of amendment by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note below.

REFERENCES IN TEXT

Section 412, referred to in subsec. (f)(3)(A), was amended generally by Pub. L. 109–280, title I, § 111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, no longer contains a subsec. (m)(5).

Section 3002(b) of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (h), is classified to section 1202(b) of Title 29, Labor.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–458, § 101(d)(2)(F)(i), substituted ''minimum required'' for ''required minimum''.

Subsec. (c)(3). Pub. L. 110–458, § 101(d)(2)(F)(ii), inserted ''or unpaid minimum required contribution, whichever is applicable'' after ''accumulated funding deficiency'' in two places in introductory provisions.

Subsec. (d)(1). Pub. L. 110–458, § 101(d)(2)(F)(ii), inserted ''or unpaid minimum required contribution, whichever is applicable'' after ''accumulated funding deficiency''.

Subsec. (e)(1). Pub. L. 110–458, § 101(d)(2)(F)(iii), substituted ''section 412(a)(2)'' for ''section 412(a)(1)(A)''.

Subsec. (e)(2)(A). Pub. L. 110–458, § 102(b)(3)(A), amended directory language of Pub. L. 109–280, § 212(b)(2). See 2006 Amendment note below.

Subsec. (g)(4)(B)(ii). Pub. L. 110–458, § 102(b)(2)(I)(i), substituted ''day following the close of'' for ''first day of''.

Subsec. (g)(4)(C)(ii). Pub. L. 110–458, § 102(b)(2)(I)(ii), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: ''For purposes of clause (i), the term 'plan sponsor' in the case of a multiemployer plan means the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.''

2006—Subsecs. (a), (b). Pub. L. 109–280, § 114(e)(1), amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 10 percent (5 percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year.

''(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected.''

Subsec. (c)(1). Pub. L. 109–280, § 114(e)(2)(A), substituted ''section 431'' for ''the last two sentences of section 412(a)''.

Subsec. (c)(4). Pub. L. 109–280, § 114(e)(2)(B), added par. (4).

Subsec. (e)(1). Pub. L. 109–280, § 114(e)(3), substituted ''section 412(a)(1)(A)'' for ''section 412(b)(3)(A)''.

Subsec. (e)(2)(A). Pub. L. 109–280, §§ 212(b)(2), 221(c), as amended by Pub. L. 110–458, § 102(b)(3)(A), temporarily substituted ''If an'' for ''In the case of a plan other than a multiemployer plan, if the'' and ''(f), or (g)'' for ''or (f)''. See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (f)(1). Pub. L. 109–280, § 114(e)(4), substituted ''section 430(j)(4)'' for ''section 412(m)(5)'' in introductory provisions and ''section 430(j)'' for ''section 412(m)'' in subpar. (B).

Subsecs. (g), (h). Pub. L. 109–280, §§ 212(b)(1), 221(c), temporarily added subsec. (g) and redesignated former subsec. (g) as (h). See Effective and Termination Dates of 2006 Amendment note below.

1996—Subsec. (f)(4). Pub. L. 104–188 added par. (4).

1994—Subsec. (e)(1), (2)(A). Pub. L. 103–465, § 751(a)(9)(B)(i), substituted ''(a), (b), or (f)'' for ''(a) or (b)''.

Subsecs. (f), (g). Pub. L. 103–465, § 751(a)(9)(B)(ii), added subsec. (f) and redesignated former subsec. (f) as (g).

1987—Subsec. (a). Pub. L. 100–203, § 9305(a)(2)(A), struck out at end ''The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).''

Pub. L. 100–203, § 9304(c)(1), substituted ''10 percent (5 percent in the case of a multiemployer plan)'' for ''5 percent''.

Subsec. (b). Pub. L. 100–203, § 9305(a)(2)(B), struck out at end ''The tax imposed by this subsection shall be paid by the employer described in subsection (a).''

Subsecs. (e), (f). Pub. L. 100–203, § 9305(a)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (b). Pub. L. 96–596, § 2(a)(1)(J), substituted ''taxable period'' for ''correction period''.

Subsec. (c)(1). Pub. L. 96–364, § 204(1), substituted ''last two sentences'' for ''last sentence''.

Subsec. (c)(3). Pub. L. 96–596, § 2(a)(2)(H), substituted provision defining taxable period as the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section or the date on which the tax imposed by subsec. (a) of this section is assessed for provision defining correction period as the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b) of this section, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and by any other period which the Secretary determines reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero.

Subsec. (d). Pub. L. 96–364, § 204(2), inserted provisions relating to a multiemployer plan in reorganization.

1976—Subsecs. (c), (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Amendment by section 114(e)(1)–(4) of Pub. L. 109–280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as an Effective Date of 2006 Amendment note under section 401 of this title.

Amendment by section 212(b) of Pub. L. 109–280 applicable with respect to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within such taxable year, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109–280, set out as a note under section 412 of this title.

Amendment by section 212(b) of Pub. L. 109–280 inapplicable to plan years beginning after Dec. 31, 2014, with exception for certain funding improvement and rehabilitation plans, see section 221(c) of Pub. L. 109–280, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1464(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by clause (ii) of section 751(a)(9)(B) of the Retirement Protection Act of 1994 [Pub. L. 103–465] (108 Stat. 5020).''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years beginning after Dec. 31, 1994, see section 751(b)(1) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9304(c)(2) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section] shall apply to plan years beginning after 1988.''

Amendment by section 9305(a) of Pub. L. 100–203 applicable with respect to plan years beginning after December 31, 1987, see section 9305(d) of Pub. L. 100–203, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–108) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of amendment by section 212(b) of Pub. L. 109–280 to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

EXEMPTION FROM EXCISE TAXES FOR CERTAIN MULTIEMPLOYER PENSION PLANS

Pub. L. 109–280, title II, § 214, Aug. 17, 2006, 120 Stat. 918, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, no tax shall be imposed under subsection (a) or (b) of section 4971 of the Internal Revenue Code of 1986 with respect to any accumulated funding deficiency of a plan described in subsection (b) of this section for any taxable year beginning before the earlier of—

''(1) the taxable year in which the plan sponsor adopts a rehabilitation plan under section 305(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(e)] and section 432(e) of such Code (as added by this Act); or

''(2) the taxable year that contains January 1, 2009.

''(b) PLAN DESCRIBED.—A plan described under this subsection is a multiemployer pension plan—

''(1) with less than 100 participants;

''(2) with respect to which the contributing employers participated in a Federal fishery capacity reduction program;

''(3) with respect to which employers under the plan participated in the Northeast Fisheries Assistance Program; and

''(4) with respect to which the annual normal cost is less than $100,000 and the plan is experiencing a funding deficiency on the date of enactment of this Act [Aug. 17, 2006].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

§ 4972. Tax on nondeductible contributions to qualified employer plans

(a) Tax imposed

In the case of any qualified employer plan, there is hereby imposed a tax equal to 10 percent of the nondeductible contributions under the plan (determined as of the close of the taxable year of the employer).

(b) Employer liable for tax

The tax imposed by this section shall be paid by the employer making the contributions.

(c) Nondeductible contributions

For purposes of this section—

(1) In general

The term ''nondeductible contributions'' means, with respect to any qualified employer plan, the sum of—

(A) the excess (if any) of—

(i) the amount contributed for the taxable year by the employer to or under such plan, over

(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

(B) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(i) the portion of the amount so determined returned to the employer during the taxable year, and

(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

(2) Ordering rule for section 404

For purposes of paragraph (1), the amount allowable as a deduction under section 404 for any taxable year shall be treated as—

(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

(B) then from contributions made during such taxable year.

(3) Contributions which may be returned to employer

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).

(4) Special rule for self-employed individuals

For purposes of paragraph (1), if—

(A) the amount which is required to be contributed to a plan under section 412 on behalf of an individual who is an employee (within the meaning of section 401(c)(1)), exceeds

(B) the earned income (within the meaning of section 404(a)(8)) of such individual derived from the trade or business with respect to which such plan is established,

such excess shall be treated as an amount allowable as a deduction under section 404.

(5) Pre-1987 contributions

The term ''nondeductible contribution'' shall not include any contribution made for a taxable year beginning before January 1, 1987.

(6) Exceptions

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or

(B) so much of the contributions to a simple retirement account (within the meaning of section 408(p)) or a simple plan (within the meaning of section 401(k)(11)) which are not deductible when contributed solely because such contributions are not made in connection with a trade or business of the employer.

For purposes of subparagraph (A), the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (A). Subparagraph (B) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).

(7) Defined benefit plan exception

In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6)). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.

(d) Definitions

For purposes of this section—

(1) Qualified employer plan

(A) In general

The term ''qualified employer plan'' means—

(i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) an annuity plan described in section 403(a),

(iii) any simplified employee pension (within the meaning of section 408(k)), and

(iv) any simple retirement account (within the meaning of section 408(p)).

(B) Exemption for governmental and tax exempt plans

The term ''qualified employer plan'' does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1).

(2) Employer

In the case of a plan which provides contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1), the term ''employer'' means the person treated as the employer under section 401(c)(4).

(Added Pub. L. 99–514, title XI, § 1131(c)(1), Oct. 22, 1986, 100 Stat. 2477; amended Pub. L. 100–647, title I, § 1011A(e)(1), (2), title II, § 2005(a)(1), Nov. 10, 1988, 102 Stat. 3477, 3610; Pub. L. 103–465, title VII, § 755(a), Dec. 8, 1994, 108 Stat. 5023; Pub. L. 104–188, title I, § 1421(b)(9)(D), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 105–34, title XV, § 1507(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 107–16, title VI, §§ 616(b)(2)(B), 637(a), (b), 652(b), 653(a), June 7, 2001, 115 Stat. 103, 118, 130; Pub. L. 108–311, title IV, §§ 404(c), 408(b)(9), Oct. 4, 2004, 118 Stat. 1188, 1193; Pub. L. 109–280, title I, § 114(e)(5), title VIII, § 803(c), Aug. 17, 2006, 120 Stat. 855, 996.)

PRIOR PROVISIONS

A prior section, added Pub. L. 93–406, title II, § 2001(f)(1), Sept. 2, 1974, 88 Stat. 955; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, § 312(e)(3), Aug. 13, 1981, 95 Stat. 285; Pub. L. 97–448, title I, § 103(c)(10)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–369, div. A, title IV, § 491(d)(40), July 18, 1984, 98 Stat. 851, related to tax on excess contributions for self-employed individuals, prior to repeal applicable to years beginning after Dec. 31, 1983, by Pub. L. 97–248, title II, § 237(c)(1), Sept. 3, 1982, 96 Stat. 511.

AMENDMENTS

2006—Subsec. (c)(6)(A). Pub. L. 109–280, § 803(c), amended subpar. (A) generally. Prior to amendment, subpar.

(A) read as follows: ''so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

''(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a) and as adjusted under section 404(a)(12)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

''(ii) the amount of contributions described in section 401(m)(4)(A), or''.

Subsec. (c)(7). Pub. L. 109–280, § 114(e)(5), substituted ''except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))'' for ''except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)''.

2004—Subsec. (c)(6). Pub. L. 108–311, § 408(b)(9), amended directory language of Pub. L. 107–16, § 652(b)(3). See 2001 Amendment note below.

Subsec. (c)(6)(A)(ii). Pub. L. 108–311, § 404(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the sum of—

''(I) the amount of contributions described in section 401(m)(4)(A), plus

''(II) the amount of contributions described in section 402(g)(3)(A), or''.

2001—Subsec. (c)(6). Pub. L. 107–16, § 652(b)(4), substituted ''Subparagraph (B)'' for ''Subparagraph (C)'' in concluding provisions.

Pub. L. 107–16, § 652(b)(3), as amended by Pub. L. 108–311, § 408(b)(9), substituted ''subparagraph (A)'' for ''subparagraph (B)'' in two places in concluding provisions.

Pub. L. 107–16, § 652(b)(2), in concluding provisions, struck out first sentence which read as follows: ''If 1 or more defined benefit plans were taken into account in determining the amount allowable as a deduction under section 404 for contributions to any defined contribution plan, subparagraph (B) shall apply only if such defined benefit plans are described in section 404(a)(1)(D).''

Pub. L. 107–16, § 637(b), in concluding provisions, inserted at end ''Subparagraph (C) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).''

Subsec. (c)(6)(A). Pub. L. 107–16, § 652(b)(1), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''contributions that would be deductible under section 404(a)(1)(D) if the plan had more than 100 participants if—

''(i) the plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, and

''(ii) the plan is terminated under section 4041(b) of such Act on or before the last day of the taxable year,''.

Pub. L. 107–16, § 637(a), struck out ''and'' at end.

Subsec. (c)(6)(B). Pub. L. 107–16, § 652(b)(1), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 107–16, § 637(a), substituted '', or'' for period at end.

Subsec. (c)(6)(B)(i). Pub. L. 107–16, § 616(b)(2)(B), substituted ''(within the meaning of section 404(a) and as adjusted under section 404(a)(12))'' for ''(within the meaning of section 404(a))''.

Subsec. (c)(6)(C). Pub. L. 107–16, § 652(b)(1), redesignated subpar. (C) as (B).

Pub. L. 107–16, § 637(a), added subpar. (C).

Subsec. (c)(7). Pub. L. 107–16, § 653(a), added par. (7).

1997—Subsec. (c)(6)(B). Pub. L. 105–34 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7), but only to the extent such contributions do not exceed 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans.''

1996—Subsec. (d)(1)(A)(iv). Pub. L. 104–188 added cl. (iv).

1994—Subsec. (c)(6). Pub. L. 103–465 added par. (6).

1988—Subsec. (c). Pub. L. 100–647, § 1011A(e)(1), amended subsec. (c) generally, revising and restating as pars. (1) to (4) provisions of former pars. (1) and (2).

Subsec. (c)(4), (5). Pub. L. 100–647, § 2005(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(1). Pub. L. 100–647, § 1011A(e)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'qualified employer plan' means—

''(A) any plan meeting the requirements of section 401(a) which includes a trust exempt from the tax under section 501(a),

''(B) an annuity plan described in section 403(a), and

''(C) any simplified employee pension (within the meaning of section 408(k)).''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(e)(5) of Pub. L. 109–280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Amendment by section 803(c) of Pub. L. 109–280 applicable to contributions for taxable years beginning after Dec. 31, 2005, see section 803(d) of Pub. L. 109–280, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(c) of Pub. L. 108–311 effective as if included in the provision of Pub. L. 107–16 to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 616(b)(2)(B) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 616(c) of Pub. L. 107–16, set out as a note under section 404 of this title.

Pub. L. 107–16, title VI, § 637(d), June 7, 2001, 115 Stat. 118, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

Amendment by section 652(b) of Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2001, see section 652(c) of Pub. L. 107–16, set out as a note under section 404 of this title.

Pub. L. 107–16, title VI, § 653(b), June 7, 2001, 115 Stat. 130, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1507(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 755(b) of Pub. L. 103–465 provided that:

''(1) SECTION 4972(C)(6)(A).—Section 4972(c)(6)(A) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years ending on or after the date of enactment of this Act [Dec. 8, 1994].

''(2) SECTION 4972(C)(6)(B).—Section 4972(c)(6)(B) of such Code (as added by this section) shall apply to taxable years ending on or after December 31, 1992.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(e)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2005(a)(1) of Pub. L. 100–647 effective as if included in the amendment made by section 1131(c) of Pub. L. 99–514, see section 2005(e) of Pub. L. 100–647, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with special rules in case of plans maintained pursuant to collective bargaining agreements, see section 1131(d) of Pub. L. 99–514, as amended, set out as an Effective Date of 1986 Amendment note under section 404 of this title.

CONSTRUCTION OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 637(c), June 7, 2001, 115 Stat. 118, provided that: ''Nothing in the amendments made by this section [amending this section] shall be construed to infer the proper treatment of nondeductible contributions under the laws in effect before such amendments.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–108) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

INCREASE IN AMOUNT FOR PLAN TERMINATION INSURANCE UNDER EMPLOYEE RETIREMENT INSURANCE SECURITY ACT OF 1974

Section 1011A(e)(5) of Pub. L. 100–647 provided that: ''In the case of any taxable year beginning in 1987, the amount under section 4972(c)(1)(A)(ii) of the 1986 Code for a plan to which title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] applies shall be increased by the amount (if any) by which, as of the close of the plan year with or within which such taxable year begins—

''(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed

''(B) the assets of such plan.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4973. Tax on excess contributions to certain tax-favored accounts and annuities

(a) Tax imposed

In the case of—

(1) an individual retirement account (within the meaning of section 408(a)),

(2) an Archer MSA (within the meaning of section 220(d)),

(3) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock),

(4) a Coverdell education savings account (as defined in section 530), or

(5) a health savings account (within the meaning of section 223(d)),

there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account or annuity (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

(b) Excess contributions

For purposes of this section, in the case of individual retirement accounts or individual retirement annuities, the term ''excess contributions'' means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to the accounts or for the annuities (other than a contribution to a Roth IRA or a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16)), over

(B) the amount allowable as a deduction under section 219 for such contributions, and

(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

(C) the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed (determined without regard to section 219(f)(6)) to the accounts or for the annuities (including the amount contributed to a Roth IRA) for the taxable year.

For purposes of this subsection, any contribution which is distributed from the individual retirement account or the individual retirement annuity in a distribution to which section 408(d)(4) applies shall be treated as an amount

not contributed. For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(c) Section 403(b) contracts

For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term ''excess contributions'' means the sum of—

(1) the excess (if any) of the amount contributed for the taxable year to such account (other than a rollover contribution described in section 403(b)(8) or 408(d)(3)(A)(iii)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by—

(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e).

(d) Excess contributions to Archer MSAs

For purposes of this section, in the case of Archer MSAs (within the meaning of section 220(d)), the term ''excess contributions'' means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than rollover contributions described in section 220(f)(5)) which is neither excludable from gross income under section 106(b) nor allowable as a deduction under section 220 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 220(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 220(b)(1) (determined without regard to section 106(b)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the Archer MSA in a distribution to which section 220(f)(3) or section 138(c)(3) applies shall be treated as an amount not contributed.

(e) Excess contributions to Coverdell education savings accounts

For purposes of this section—

(1) In general

In the case of Coverdell education savings accounts maintained for the benefit of any one beneficiary, the term ''excess contributions'' means the sum of—

(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $2,000 (or, if less, the sum of the maximum amounts permitted to be contributed under section 530(c) by the contributors to such accounts for such year); and

(B) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(i) the distributions out of the accounts for the taxable year (other than rollover distributions); and

(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year.

(2) Special rules

For purposes of paragraph (1), the following contributions shall not be taken into account:

(A) Any contribution which is distributed out of the Coverdell education savings account in a distribution to which section 530(d)(4)(C) applies.

(B) Any rollover contribution.

(f) Excess contributions to Roth IRAs

For purposes of this section, in the case of contributions to a Roth IRA (within the meaning of section 408A(b)), the term ''excess contributions'' means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to Roth IRAs (other than a qualified rollover contribution described in section 408A(e)), over

(B) the amount allowable as a contribution under sections 408A(c)(2) and (c)(3), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts for the taxable year, and

(B) the excess (if any) of the maximum amount allowable as a contribution under sections 408A(c)(2) and (c)(3) for the taxable year over the amount contributed by the individual to all individual retirement plans for the taxable year.

For purposes of this subsection, any contribution which is distributed from a Roth IRA in a distribution described in section 408(d)(4) shall be treated as an amount not contributed.

(g) Excess contributions to health savings accounts

For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term ''excess contributions'' means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution described in section 220(f)(5) or 223(f)(5)) which is neither excludable from gross income under section 106(d)

nor allowable as a deduction under section 223 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 223(b) (determined without regard to section 106(d)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.

(Added Pub. L. 93–406, title II, § 2002(d), Sept. 2, 1974, 88 Stat. 966; amended Pub. L. 94–455, title XV, § 1501(b)(8), title XIX, § 1904(a)(22), Oct. 4, 1976, 90 Stat. 1736, 1814; Pub. L. 95–600, title I, §§ 156(c)(3), (5), 157(b)(3), (j)(1), title VII, § 701(aa)(1), Nov. 6, 1978, 92 Stat. 2803, 2804, 2809, 2921; Pub. L. 96–222, title I, § 101(a)(13)(C), (14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §§ 311(h)(7), (9), (10), 313(b)(2), Aug. 13, 1981, 95 Stat. 282, 286; Pub. L. 98–369, div. A, title IV, § 491(d)(41)–(44), (55), July 18, 1984, 98 Stat. 851, 852; Pub. L. 99–514, title XI, § 1102(b)(1), title XVIII, § 1848(f), Oct. 22, 1986, 100 Stat. 2415, 2858; Pub. L. 100–647, title I, § 1011(b)(3), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 102–318, title V, § 521(b)(41), July 3, 1992, 106 Stat. 313; Pub. L. 104–188, title I, § 1704(t)(70), (72), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 104–191, title III, § 301(e), Aug. 21, 1996, 110 Stat. 2051; Pub. L. 105–33, title IV, § 4006(b)(1), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105–34, title II, § 213(d), title III, § 302(b), Aug. 5, 1997, 111 Stat. 817, 828; Pub. L. 105–206, title VI, §§ 6004(d)(10), 6005(b)(8), 6023(18)(A), July 22, 1998, 112 Stat. 795, 799, 825; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(6), (b)(2)(C), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–16, title IV, §§ 401(a)(2), (g)(2)(D), 402(a)(4)(A), title VI, § 641(e)(11), June 7, 2001, 115 Stat. 57, 60, 121; Pub. L. 107–22, § 1(b)(1)(C), (2)(B), (4), July 26, 2001, 115 Stat. 197; Pub. L. 108–173, title XII, § 1201(e), Dec. 8, 2003, 117 Stat. 2478; Pub. L. 108–311, title IV, § 408(a)(22), Oct. 4, 2004, 118 Stat. 1192.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–311 substituted ''subsection (a)(3)'' for ''subsection (a)(2)'' in introductory provisions.

2003—Subsec. (a)(5). Pub. L. 108–173, § 1201(e)(1), added par. (5).

Subsec. (g). Pub. L. 108–173, § 1201(e)(2), added subsec. (g).

2001—Subsec. (a)(4). Pub. L. 107–22, § 1(b)(1)(C), substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Subsec. (b)(1)(A). Pub. L. 107–16, § 641(e)(11), substituted ''408(d)(3), or 457(e)(16)'' for ''or 408(d)(3)''.

Subsec. (e). Pub. L. 107–22, § 1(b)(4), substituted ''Coverdell education savings'' for ''education individual retirement'' in heading.

Pub. L. 107–16, § 402(a)(4)(A), which directed the substitution of ''qualified tuition'' for ''qualified State tuition'' wherever appearing in subsec. (e), could not be executed because the term ''qualified State tuition'' did not appear subsequent to amendment by section 401(g)(2)(D) of Pub. L. 107–16, which struck out par. (1)(B). See below.

Subsec. (e)(1). Pub. L. 107–22, § 1(b)(2)(B), substituted ''Coverdell education savings'' for ''education individual retirement'' in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 107–16, §§ 401(a)(2), (g)(2)(D), 901, temporarily substituted ''$2,000'' for ''$500'' and inserted ''and'' at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (e)(1)(B), (C). Pub. L. 107–16, §§ 401(g)(2)(D), 901, temporarily redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''if any amount is contributed (other than a contribution described in section 530(b)(2)(B)) during such year to a qualified State tuition program for the benefit of such beneficiary, any amount contributed to such accounts for such taxable year; and''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (e)(2)(A). Pub. L. 107–22, § 1(b)(2)(B), substituted ''Coverdell education savings'' for ''education individual retirement''.

2000—Subsec. (a)(2). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer'' for ''a Archer''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(6)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (d). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(6), (b)(2)(C), (6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading, ''Archer MSAs'' for ''medical savings accounts'' in introductory provisions, and ''Archer MSA'' for ''medical savings account'' in concluding provisions.

1998—Pub. L. 105–206, § 6023(18)(A), amended section catchline generally. Prior to amendment, catchline read as follows: ''Tax on excess contributions to individual retirement accounts, medical savings accounts, certain section 403(b) contracts, and certain individual retirement annuities''.

Subsec. (b)(1)(A). Pub. L. 105–206, § 6005(b)(8)(B)(i), inserted ''a contribution to a Roth IRA or'' after ''other than''.

Subsec. (b)(2)(C). Pub. L. 105–206, § 6005(b)(8)(B)(ii), inserted ''(including the amount contributed to a Roth IRA)'' after ''annuities''.

Subsec. (e)(1). Pub. L. 105–206, § 6004(d)(10)(A), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''In the case of education individual retirement accounts maintained for the benefit of any 1 beneficiary, the term 'excess contributions' means—

''(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $500, and

''(B) any amount contributed to such accounts for any taxable year if any amount is contributed during such year to a qualified State tuition program for the benefit of such beneficiary.''

Subsec. (e)(2)(B), (C). Pub. L. 105–206, § 6004(d)(10)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''Any contribution described in section 530(b)(2)(B) to a qualified State tuition program.''

Subsec. (f). Pub. L. 105–206, § 6005(b)(8)(C), made technical amendment to directory language of Pub. L. 105–34, § 302(b). See 1997 Amendment note below.

Subsec. (f)(1)(A). Pub. L. 105–206, § 6005(b)(8)(A)(i), substituted ''Roth IRAs'' for ''such accounts''.

Subsec. (f)(2)(B). Pub. L. 105–206, § 6005(b)(8)(A)(ii), substituted ''by the individual to all individual retirement plans'' for ''to the accounts''.

1997—Subsec. (a)(4). Pub. L. 105–34, § 213(d)(1), added par. (4).

Subsec. (d). Pub. L. 105–33 inserted ''or section 138(c)(3)'' after ''section 220(f)(3)'' in concluding provisions.

Subsec. (e). Pub. L. 105–34, § 213(d)(2), added subsec. (e).

Subsec. (f). Pub. L. 105–34, § 302(b), as amended by Pub. L. 105–206, § 6005(b)(8)(C), added subsec. (f).

1996—Pub. L. 104–191, § 301(e)(1), inserted ''medical savings accounts,'' after ''accounts,'' in section catchline.

Subsec. (a). Pub. L. 104–191, § 301(e)(1)–(3), struck out ''or'' at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

Subsec. (b)(1)(A). Pub. L. 104–188, § 1704(t)(72), provided that section 521(b)(41) of Pub. L. 102–318 shall be applied as if ''section'' appeared instead of ''sections'' in the material proposed to be stricken. See 1992 Amendment note below.

Pub. L. 104–188, § 1704(t)(70), substituted ''section'' for ''sections''.

Subsec. (d). Pub. L. 104–191, § 301(e)(4), added subsec. (d).

1992—Subsec. (b)(1)(A). Pub. L. 102–318, which directed the substitution of ''sections 402(c)'' for ''sections 402(a)(5), 402(a)(7)'', was executed by substituting ''sections 402(c)'' for ''section 402(a)(5), 402(a)(7)''. See 1996 Amendment note above.

1988—Subsec. (b). Pub. L. 100–647 substituted ''shall be computed without regard to section 219(g)'' for ''(after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B)'' in last sentence.

1986—Subsec. (b). Pub. L. 99–514, § 1102(b)(1), inserted at end ''For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 (after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B).''

Pub. L. 99–514, § 1848(f), in introductory provisions, substituted ''or individual retirement annuities'' for '', individual retirement annuities, or bonds'', in par. (1)(A), substituted ''(other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), or 408(d)(3)), over'' for ''or bonds (other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3), or 408(d)(3)), over'', and in par. (2)(A), struck out ''or bonds'' after ''for the annuities''.

1984—Pub. L. 98–369, § 491(d)(55), substituted ''and certain individual retirement annuities'' for ''certain individual retirement annuities, and certain retirement bonds'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 491(d)(41), inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), struck out par. (3) which imposed a tax in the case of a retirement bond, within the meaning of section 409, established for the benefit of any individual, and in the concluding provision substituted ''or annuity'' for '', annuity, or bond'' and ''or annuities'' for '', annuities, or bonds''.

Subsec. (b). Pub. L. 98–369, § 491(d)(43), substituted in provision following par. (2)(C) ''or the individual retirement annuity'' for '', individual retirement annuity, or bond''.

Subsec. (b)(1)(A). Pub. L. 98–369, § 491(d)(42), which directed the amendment of subpar. (A) by substituting ''and 408(d)(3)'' for ''408(d)(3), and 409(b)(3)(C)'' was executed, as the probable intent of Congress, by substituting ''or 408(d)(3))'' for ''408(d)(3)), or 409(b)(3)(C)''.

Subsec. (c)(1). Pub. L. 98–369, § 491(d)(44), substituted ''or 408(d)(3)(A)(iii)'' for '', 408(d)(3)(A)(iii), or 409(b)(3)(C)''.

1981—Subsec. (a). Pub. L. 97–34, § 311(h)(9), substituted ''The tax imposed by this subsection shall be paid by such individual'' for ''The tax imposed by this subsection shall be paid by the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate''.

Subsec. (b)(1)(A). Pub. L. 97–34, § 313(b)(2), inserted ''405(d)(3),'' after ''403(b)(8),''.

Subsec. (b)(1)(B). Pub. L. 97–34, § 311(h)(7), substituted ''section 219'' for ''section 219 or 220''.

Subsec. (b)(2)(C). Pub. L. 97–34, § 311(h)(7), (10), substituted ''section 219'' for ''section 219 or 220'', and ''section 219(f)(6)'' for ''sections 219(c)(5) and 220(c)(6)''.

1980—Subsec. (b)(1)(A). Pub. L. 96–222, § 101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (c)(1). Pub. L. 96–222, § 101(a)(13)(C), substituted ''409(b)(3)(C)'' for ''409(d)(3)(C)''.

1978—Subsec. (b)(1)(A). Pub. L. 95–600, § 156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95–600, § 157(b)(3), substituted ''reduced by the sum of—'' for ''reduced by the excess (if any) of'', struck out ''the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable years and reduced by the sum of the distributions out of the account (for the taxable year and all prior taxable years) which were included in the gross income of the payee under section 408(d)(1)'' in provision preceding par. (A), and added subpars. (A), (B), and (C).

Subsec. (b). Pub. L. 95–600, §§ 157(j)(1), 701(aa)(1), struck out in last sentence ''if such distribution consists of an excess contribution solely because of employer contributions to a plan or contract described in section 219(b)(2) or by reason of the application of section 219(b)(1) (without regard to the $1,500 limitation) or section 220(b)(1) (without regard to the $1,750 limitation) and only if such distribution does not exceed the excess of $1,500 or $1,750 if applicable, over the amount described in paragraph (1)(B)'' after ''as an amount not contributed''.

Subsec. (c)(1). Pub. L. 95–600, § 156(c)(5), inserted ''(other than a rollover contribution described in section 403(b)(8), 408(d)(3)(A)(iii), or 409(d)(3)(C))'' after ''account''.

1976—Subsec. (a)(3). Pub. L. 94–455, §§ 1501(b)(8)(A), 1904(a)(22)(A), substituted ''the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate'' for ''such individual'', effective for taxable years beginning after December 31, 1976 and substituted ''such individual'' for ''the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate'', effective for the first day of the first month which begins more than 90 days after Oct. 4, 1976.

Subsec. (b)(1)(B). Pub. L. 94–455, § 1501(b)(8)(B), inserted ''or 220'' after ''under section 219''.

Subsec. (b)(2). Pub. L. 94–455, § 1501(b)(8)(C), inserted ''or 220'' after ''under section 219'' and ''the taxable year and'' before ''all prior taxable years'' and struck out provisions relating to the treatment of contributions out of individual retirement accounts, annuities or bonds to which section 408(d)(4) applied.

Subsec. (c). Pub. L. 94–455, § 1904(a)(22)(B), substituted ''subsection (a)(2)'' for ''subsection (a)(3)'' in provisions preceding par. (1).

EFFECTIVE DATE OF 2003 AMENDMENT

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

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(a)(2), (g)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31,

2001, see section 402(h) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 72 of this title.

Amendment by section 641(e)(11) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

Amendment by section 401(a)(2), (g)(2)(D) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(18)(A) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(10) and 6005(b)(8) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 213(d) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

Amendment by section 302(b) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as a note under section 219 of this title.

Amendment by Pub. L. 105–33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of Pub. L. 105–33, set out as an Effective Date note under section 138 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(b)(1) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1848(f) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(7), (9), (10) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 313(b)(2) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 156(c)(3), (5) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a note under section 403 of this title.

Amendment by section 157(b)(3) of Pub. L. 95–600 applicable to determination of deductions for taxable years beginning after Dec. 31, 1975, see section 157(b)(4)(A) of Pub. L. 95–600, set out as a note under section 219 of this title.

Section 157(j)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions made for taxable years beginning after December 31, 1977.''

Section 701(aa)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in section 1501 of the Tax Reform Act of 1976 [section 1501 of Pub. L. 94–455] at the time of the enactment of such Act [Oct. 4, 1976].''

Section 703(j)(13) of Pub. L. 95–600 provided that: ''Notwithstanding section 1904(d) of the Tax Reform Act of 1976 [Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title], the amendment made by section 1904(a)(22)(A) of such Act [amending this section] shall take effect on the date of the enactment of such Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(8) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

Amendment by section 1904(a)(22) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section 2002(i)(2) of Pub. L. 93–406 provided that: ''The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) [enacting this section and sections 4974 and 6693 of this title and amending sections 37, 46, 50, 56, 72, 801, 805, 901, 3401, and 6047 of this title] shall take effect on January 1, 1975.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the

first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4974. Excise tax on certain accumulations in qualified retirement plans

(a) General rule

If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

(b) Minimum required distribution

For purposes of this section, the term ''minimum required distribution'' means the minimum amount required to be distributed during a taxable year under section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be, as determined under regulations prescribed by the Secretary.

(c) Qualified retirement plan

For purposes of this section, the term ''qualified retirement plan'' means—

(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) an annuity plan described in section 403(a),

(3) an annuity contract described in section 403(b),

(4) an individual retirement account described in section 408(a), or

(5) an individual retirement annuity described in section 408(b).

Such term includes any plan, contract, account, or annuity which, at any time, has been determined by the Secretary to be such a plan, contract, account, or annuity.

(d) Waiver of tax in certain cases

If the taxpayer establishes to the satisfaction of the Secretary that—

(1) the shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and

(2) reasonable steps are being taken to remedy the shortfall,

the Secretary may waive the tax imposed by subsection (a) for the taxable year.

(Added Pub. L. 93–406, title II, § 2002(e), Sept. 2, 1974, 88 Stat. 967; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title I, § 157(i)(1), Nov. 6, 1978, 92 Stat. 2808; Pub. L. 99–514, title XI, § 1121(a)(1), title XVIII, § 1852(a)(7)(B), (C), Oct. 22, 1986, 100 Stat. 2464, 2866.)

AMENDMENTS

1986—Pub. L. 99–514, § 1121(a)(1), amended section generally, substituting provisions imposing an excise tax on certain accumulations in qualified retirement plans for provisions imposing an excise tax on certain accumulations in individual retirement accounts and annuities.

Subsec. (a). Pub. L. 99–514, § 1852(a)(7)(B), substituted ''section 408(a)(6) or 408(b)(3)'' for ''section 408(a)(6) or (7), or 408(b)(3) or (4)''.

Subsec. (b). Pub. L. 99–514, § 1852(a)(7)(C), substituted ''section 408(a)(6) or 408(b)(3)'' for ''section 408(a)(6) or (7) or 408(b)(3) or (4)''.

1978—Subsec. (c). Pub. L. 95–600 added subsec. (c).

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1121(a)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(7)(B), (C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 157(i)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4975. Tax on prohibited transactions

(a) Initial taxes on disqualified person

There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

(b) Additional taxes on disqualified person

In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

(c) Prohibited transaction

(1) General rule

For purposes of this section, the term ''prohibited transaction'' means any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account; or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

(2) Special exemption

The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary may not grant an exemption under this paragraph unless he finds that such exemption is—

(A) administratively feasible,

(B) in the interests of the plan and of its participants and beneficiaries, and

(C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu of such hearing the Secretary may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

(3) Special rule for individual retirement accounts

An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

(4) Special rule for Archer MSAs

An individual for whose benefit an Archer MSA (within the meaning of section 220(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 220(e)(2) applies to such transaction.

(5) Special rule for Coverdell education savings accounts

An individual for whose benefit a Coverdell education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 530(d) applies with respect to such transaction.

(6) Special rule for health savings accounts

An individual for whose benefit a health savings account (within the meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e)(2) to such account.

(d) Exemptions

Except as provided in subsection (f)(6), the prohibitions provided in subsection (c) shall not apply to—

(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

(B) is not made available to highly compensated employees (within the meaning of section 414(q)) in an amount greater than the amount made available to other employees,

(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

(D) bears a reasonable rate of interest, and

(E) is adequately secured;

(2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

(3) any loan to an[1] leveraged employee stock ownership plan (as defined in subsection (e)(7)), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8));

(4) the investment of all or part of a plan's assets in deposits which bear a reasonable in-

[1] So in original. Probably should be ''a''.

terest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

(5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

(i) in an excessive or unreasonable manner, and

(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary but only if the plan receives no less than adequate consideration pursuant to such conversion;

(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than a reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets);

(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction) or which is exempt from section 406 of such Act by reason of section 408(b)(12) of such Act;

(14) any transaction required or permitted under part 1 of subtitle E of title IV or section 4223 of the Employee Retirement Income Security Act of 1974, but this paragraph shall not apply with respect to the application of subsection (c)(1) (E) or (F);

(15) a merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but

this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F);

(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

(A) such stock is in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[2]

(B) such stock is held by such trust as of the date of the enactment of this paragraph,

(C) such sale is pursuant to an election under section 1362(a) by such bank or company,

(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made;

(17) Any[3] transaction in connection with the provision of investment advice described in subsection (e)(3)(B) to a participant or beneficiary in a plan that permits such participant or beneficiary to direct the investment of plan assets in an individual account, if—

(A) the transaction is—

(i) the provision of the investment advice to the participant or beneficiary of the plan with respect to a security or other property available as an investment under the plan,

(ii) the acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice, or

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and

(B) the requirements of subsection (f)(8) are met,[4]

(18) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person (other than a fiduciary described in subsection (e)(3)) with respect to a plan if—

(A) the transaction involves a block trade,

(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade,

(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length[5] transaction, and

(D) the compensation associated with the purchase and sale is not greater than the compensation associated with an arm's length[5] transaction with an unrelated party,[4]

(19) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person if—

(A) the transaction is executed through an electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by—

(i) the applicable Federal regulating entity, or

(ii) such foreign regulatory entity as the Secretary of Labor may determine by regulation,

(B) either—

(i) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable rules of the Securities and Exchange Commission or other relevant governmental authority, or

(ii) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

(C) the price and compensation associated with the purchase and sale are not greater than the price and compensation associated with an arm's length[5] transaction with an unrelated party,

(D) if[6] the disqualified person has an ownership interest in the system or venue described in subparagraph (A), the system or venue has been authorized by the plan sponsor or other independent fiduciary for transactions described in this paragraph, and

(E) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A), a plan fiduciary is provided written or electronic notice of the execution of such transaction through such system or venue,[4]

(20) transactions described in subparagraphs (A), (B), and (D) of subsection (c)(1) between a plan and a person that is a disqualified person other than a fiduciary (or an affiliate) who has or exercises any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of subsection (e)(3)(B)) with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship

[2] So in original. Another closing parenthesis probably should precede the comma.

[3] So in original. Probably should not be capitalized.

[4] So in original. The comma probably should be a semicolon.

[5] So in original. Probably should be ''arm's-length''.

[6] So in original. The word ''if'' probably should not appear.

to such a service provider described in subparagraph (F), (G), (H), or (I) of subsection (e)(2), or both, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration,[4]

(21) any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either) and a plan (as defined in this section) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other disqualified person person,[7] if—

(A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),

(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length[5] foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction,[4]

(22) any transaction described in subsection (c)(1)(A) involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, if—

(A) the transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available,

(B) the transaction is effected at the independent current market price of the security (within the meaning of section 270.17a–7(b) of title 17, Code of Federal Regulations),

(C) no brokerage commission, fee (except for customary transfer fees, the fact of which is disclosed pursuant to subparagraph (D)), or other remuneration is paid in connection with the transaction,

(D) a fiduciary (other than the investment manager engaging in the cross-trades or any affiliate) for each plan participating in the transaction authorizes in advance of any cross-trades (in a document that is separate from any other written agreement of the parties) the investment manager to engage in cross trades at the investment manager's discretion, after such fiduciary has received disclosure regarding the conditions under which cross trades may take place (but only if such disclosure is separate from any other agreement or disclosure involving the asset management relationship), including the written policies and procedures of the investment manager described in subparagraph (H),

(E) each plan participating in the transaction has assets of at least $100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7) of the Employee Retirement Income Security Act of 1974), the master trust has assets of at least $100,000,000,

(F) the investment manager provides to the plan fiduciary who authorized cross trading under subparagraph (D) a quarterly report detailing all cross trades executed by the investment manager in which the plan participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the parties involved in the cross-trade; and (iv) trade price and the method used to establish the trade price,

(G) the investment manager does not base its fee schedule on the plan's consent to cross trading, and no other service (other than the investment opportunities and cost savings available through a cross trade) is conditioned on the plan's consent to cross trading,

(H) the investment manager has adopted, and cross-trades are effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include a description of the manager's pricing policies and procedures, and the manager's policies and procedures for allocating cross trades in an objective manner among accounts participating in the cross-trading program, and

(I) the investment manager has designated an individual responsible for periodically reviewing such purchases and sales to ensure compliance with the written policies and procedures described in subparagraph (H), and following such review, the individual shall issue an annual written report no later than 90 days following the period to which it relates signed under penalty of perjury to the plan fiduciary who authorized cross trading under subparagraph (D) describing the steps performed during the course of the review, the level of compliance, and any specific instances of non-compliance.

The written report shall also notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time,[4] or

(23) except as provided in subsection (f)(11), a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of

[7] So in original.

any security or commodity, if the transaction is corrected before the end of the correction period.

(e) Definitions

(1) Plan

For purposes of this section, the term ''plan'' means—

(A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a),

(B) an individual retirement account described in section 408(a),

(C) an individual retirement annuity described in section 408(b),

(D) an Archer MSA described in section 220(d),

(E) a health savings account described in section 223(d),

(F) a Coverdell education savings account described in section 530, or

(G) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

(2) Disqualified person

For purposes of this section, the term ''disqualified person'' means a person who is—

(A) a fiduciary;

(B) a person providing services to the plan;

(C) an employer any of whose employees are covered by the plan;

(D) an employee organization any of whose members are covered by the plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

(3) Fiduciary

For purposes of this section, the term ''fiduciary'' means any person who—

(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

(4) Stockholdings

For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

(5) Partnerships; trusts

For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

(6) Member of family

For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

(7) Employee stock ownership plan

The term ''employee stock ownership plan'' means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h), section 409(*o*), and, if applicable, section 409(n), section 409(p), and section 664(g) and, if the employer has a registration-type class of securities (as defined in section 409(e)(4)), it meets the requirements of section 409(e).

(8) Qualifying employer security

The term ''qualifying employer security'' means any employer security within the meaning of section 409(*l*). If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

(9) Section made applicable to withdrawal liability payment funds

For purposes of this section—

(A) In general

The term ''plan'' includes a trust described in section 501(c)(22).

(B) Disqualified person

In the case of any trust to which this section applies by reason of subparagraph (A), the term ''disqualified person'' includes any person who is a disqualified person with respect to any plan to which such trust is permitted to make payments under section 4223 of the Employee Retirement Income Security Act of 1974.

(f) Other definitions and special rules

For purposes of this section—

(1) Joint and several liability

If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

(2) Taxable period

The term ''taxable period'' means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212,

(B) the date on which the tax imposed by subsection (a) is assessed, or

(C) the date on which correction of the prohibited transaction is completed.

(3) Sale or exchange; encumbered property

A transfer or real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

(4) Amount involved

The term ''amount involved'' means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and

(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the taxable period.

(5) Correction

The terms ''correction'' and ''correct'' mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

(6) Exemptions not to apply to certain transactions

(A) In general

In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)), the exemptions provided by subsection (d) (other than paragraphs (9) and (12)) shall not apply to a transaction in which the plan directly or indirectly—

(i) lends any part of the corpus or income of the plan to,

(ii) pays any compensation for personal services rendered to the plan to, or

(iii) acquires for the plan any property from, or sells any property to,

any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(B) Special rules for shareholder-employees, etc.

(i) In general

For purposes of subparagraph (A), the following shall be treated as owner-employees:

(I) A shareholder-employee.

(II) A participant or beneficiary of an individual retirement plan (as defined in section 7701(a)(37)).

(III) An employer or association of employees which establishes such an individual retirement plan under section 408(c).

(ii) Exception for certain transactions involving shareholder-employees

Subparagraph (A)(iii) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in subsection (e)(7)) by a shareholder-employee, a member of the family (as defined in section 267(c)(4)) of such shareholder-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in subparagraph (A).

(iii) Loan exception

For purposes of subparagraph (A)(i), the term ''owner-employee'' shall only include a person described in subclause (II) or (III) of clause (i).

(C) Shareholder-employee

For purposes of subparagraph (B), the term ''shareholder-employee'' means an employee or officer of an S corporation who owns (or is considered as owning within the meaning of section 318(a)(1)) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation.

(7) S corporation repayment of loans for qualifying employer securities

A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7), or as engaging in a prohibited transaction for purposes of subsection (d)(3), merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.

(8) Provision of investment advice to participant and beneficiaries

(A) In general

The prohibitions provided in subsection (c) shall not apply to transactions described in subsection (d)(17) if the investment advice provided by a fiduciary adviser is provided under an eligible investment advice arrangement.

(B) Eligible investment advice arrangement

For purposes of this paragraph, the term ''eligible investment advice arrangement'' means an arrangement—

(i) which either—

(I) provides that any fees (including any commission or other compensation) received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets do not vary depending on the basis of any investment option selected, or

(II) uses a computer model under an investment advice program meeting the requirements of subparagraph (C) in connection with the provision of investment advice by a fiduciary adviser to a participant or beneficiary, and

(ii) with respect to which the requirements of subparagraphs (D), (E), (F), (G), (H), and (I) are met.

(C) Investment advice program using computer model

(i) In general

An investment advice program meets the requirements of this subparagraph if the requirements of clauses (ii), (iii), and (iv) are met.

(ii) Computer model

The requirements of this clause are met if the investment advice provided under the investment advice program is provided pursuant to a computer model that—

(I) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,

(II) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

(III) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

(IV) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and

(V) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately weighted with respect to any investment option.

(iii) Certification

(I) In general

The requirements of this clause are met with respect to any investment advice program if an eligible investment expert certifies, prior to the utilization of the computer model and in accordance with rules prescribed by the Secretary of Labor, that the computer model meets the requirements of clause (ii).

(II) Renewal of certifications

If, as determined under regulations prescribed by the Secretary of Labor,

there are material modifications to a computer model, the requirements of this clause are met only if a certification described in subclause (I) is obtained with respect to the computer model as so modified.

(III) Eligible investment expert

The term ''eligible investment expert'' means any person which meets such requirements as the Secretary of Labor may provide and which does not bear any material affiliation or contractual relationship with any investment adviser or a related person thereof (or any employee, agent, or registered representative of the investment adviser or related person).

(iv) Exclusivity of recommendation

The requirements of this clause are met with respect to any investment advice program if—

(I) the only investment advice provided under the program is the advice generated by the computer model described in clause (ii), and

(II) any transaction described in (d)(17)(A)(ii)[8] occurs solely at the direction of the participant or beneficiary.

Nothing in the preceding sentence shall preclude the participant or beneficiary from requesting investment advice other than that described in clause (i), but only if such request has not been solicited by any person connected with carrying out the arrangement.

(D) Express authorization by separate fiduciary

The requirements of this subparagraph are met with respect to an arrangement if the arrangement is expressly authorized by a plan fiduciary other than the person offering the investment advice program, any person providing investment options under the plan, or any affiliate of either.

(E) Audits

(i) In general

The requirements of this subparagraph are met if an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing—

(I) conducts an annual audit of the arrangement for compliance with the requirements of this paragraph, and

(II) following completion of the annual audit, issues a written report to the fiduciary who authorized use of the arrangement which presents its specific findings regarding compliance of the arrangement with the requirements of this paragraph.

(ii) Special rule for individual retirement and similar plans

In the case of a plan described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of subsection (e)(1), in lieu of the requirements of clause (i), audits of the arrangement shall be conducted at such times and in such manner as the Secretary of Labor may prescribe.

(iii) Independent auditor

For purposes of this subparagraph, an auditor is considered independent if it is not related to the person offering the arrangement to the plan and is not related to any person providing investment options under the plan.

(F) Disclosure

The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides to a participant or a beneficiary before the initial provision of the investment advice with regard to any security or other property offered as an investment option, a written notification (which may consist of notification by means of electronic communication)—

(I) of the role of any party that has a material affiliation or contractual relationship with the fiduciary adviser,[9] in the development of the investment advice program and in the selection of investment options available under the plan,

(II) of the past performance and historical rates of return of the investment options available under the plan,

(III) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

(IV) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

(V) the[10] manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed,

(VI) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

(VII) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(VIII) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property, and

(ii) at all times during the provision of advisory services to the participant or beneficiary, the fiduciary adviser—

[8] So in original. Probably should be ''subsection (d)(17)(A)(ii)''.

[9] So in original. The comma probably should not appear.

[10] So in original. Probably should be ''of the''.

(I) maintains the information described in clause (i) in accurate form and in the manner described in subparagraph (H),

(II) provides, without charge, accurate information to the recipient of the advice no less frequently than annually,

(III) provides, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(IV) provides, without charge, accurate information to the recipient of the advice concerning any material change to the information required to be provided to the recipient of the advice at a time reasonably contemporaneous to the change in information.

(G) Other conditions

The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(ii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

(iii) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length[5] transaction would be.

(H) Standards for presentation of information

(i) In general

The requirements of this subparagraph are met if the notification required to be provided to participants and beneficiaries under subparagraph (F)(i) is written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and is sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(ii) Model form for disclosure of fees and other compensation

The Secretary of Labor shall issue a model form for the disclosure of fees and other compensation required in subparagraph (F)(i)(III) which meets the requirements of clause (i).

(I) Maintenance for 6 years of evidence of compliance

The requirements of this subparagraph are met if a fiduciary adviser who has provided advice referred to in subparagraph (A) maintains, for a period of not less than 6 years after the provision of the advice, any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(17) have been met. A transaction prohibited under subsection (c) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(J) Definitions

For purposes of this paragraph and subsection (d)(17)—

(i) Fiduciary adviser

The term ''fiduciary adviser'' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) by the person to a participant or beneficiary of the plan and who is—

(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(III) an insurance company qualified to do business under the laws of a State,

(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

(V) an affiliate of a person described in any of subclauses (I) through (IV), or

(VI) an employee, agent, or registered representative of a person described in subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

For purposes of this title, a person who develops the computer model described in subparagraph (C)(ii) or markets the investment advice program or computer model shall be treated as a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) to a participant or beneficiary and shall be treated as a fiduciary adviser for purposes of this paragraph and subsection (d)(17), except that the Secretary of Labor may prescribe rules under which only 1 fiduciary adviser may elect to be treated as a fiduciary with respect to the plan.

(ii) Affiliate

The term ''affiliate'' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

(iii) Registered representative

The term ''registered representative'' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).

(9) Block trade

The term ''block trade'' means any trade of at least 10,000 shares or with a market value of at least $200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.

(10) Adequate consideration

The term ''adequate consideration'' means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

(11) Correction period

(A) In general

For purposes of subsection (d)(23), the term ''correction period'' means the 14-day period beginning on the date on which the disqualified person discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph and subsection (d)(23)) constitute a prohibited transaction.

(B) Exceptions

(i) Employer securities

Subsection (d)(23) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1) of the Employee Retirement Income Security Act of 1974) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2) of such Act).

(ii) Knowing prohibited transaction

In the case of any disqualified person, subsection (d)(23) does not apply to a transaction if, at the time the transaction is entered into, the disqualified person knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a prohibited transaction.

(C) Abatement of tax where there is a correction

If a transaction is not treated as a prohibited transaction by reason of subsection (d)(23), then no tax under subsections (a) and (b) shall be assessed with respect to such transaction, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(D) Definitions

For purposes of this paragraph and subsection (d)(23)—

(i) Security

The term ''security'' has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof).

(ii) Commodity

The term ''commodity'' has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof).

(iii) Correct

The term ''correct'' means, with respect to a transaction—

(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

(II) to restore to the plan or affected account any profits made through the use of assets of the plan.

(g) Application of section

This section shall not apply—

(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

(2) to a governmental plan (within the meaning of section 414(d)); or

(3) to 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.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

(h) Notification of Secretary of Labor

Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity

to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

(i) Cross reference

For provisions concerning coordination procedures between Secretary of Labor and Secretary of the Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3003 of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, §2003(a), Sept. 2, 1974, 88 Stat. 971; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title I, §141(f)(5), (6), Nov. 6, 1978, 92 Stat. 2795; Pub. L. 96–222, title I, §101(a)(7)(C), (K), (L)(iv)(III), (v)(XI), Apr. 1, 1980, 94 Stat. 198–201; Pub. L. 96–364, title II, §§208(b), 209(b), Sept. 26, 1980, 94 Stat. 1289, 1290; Pub. L. 96–596, §2(a)(1)(K),(L), (2)(I), (3)(F), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 97–448, title III, §305(d)(5), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, §491(d)(45), (46), (e)(7), (8), July 18, 1984, 98 Stat. 851–853; Pub. L. 99–514, title XI, §1114(b)(15)(A), title XVIII, §§1854(f)(3)(A), 1899A(51), Oct. 22, 1986, 100 Stat. 2452, 2882, 2961; Pub. L. 101–508, title XI, §11701(m), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 104–188, title I, §§1453(a), 1702(g)(3), Aug. 20, 1996, 110 Stat. 1817, 1873; Pub. L. 104–191, title III, §301(f), Aug. 21, 1996, 110 Stat. 2051; Pub. L. 105–34, title II, §213(b), title X, §1074(a), title XV, §§1506(b)(1), 1530(c)(10), title XVI, §1602(a)(5), Aug. 5, 1997, 111 Stat. 816, 949, 1065, 1079, 1094; Pub. L. 105–206, title VI, §6023(19), July 22, 1998, 112 Stat. 825; Pub. L. 106–554, §1(a)(7) [title II, §202(a)(7), (b)(7), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–16, title VI, §§612(a), 656(b), June 7, 2001, 115 Stat. 100, 134; Pub. L. 107–22, §1(b)(1)(D), (3)(D), July 26, 2001, 115 Stat. 197; Pub. L. 108–173, title XII, §1201(f), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 108–357, title II, §§233(c), 240(a), Oct. 22, 2004, 118 Stat. 1434, 1437; Pub. L. 109–135, title IV, §413(a)(2), Dec. 21, 2005, 119 Stat. 2641; Pub. L. 109–280, title VI, §§601(b)(1), (2), 611(a)(2), (c)(2), (d)(2), (e)(2), (g)(2), 612(b), Aug. 17, 2006, 120 Stat. 958, 959, 967, 969–971, 974, 976; Pub. L. 110–458, title I, §106(a)(2), (b)(2), (c), Dec. 23, 2008, 122 Stat. 5106.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Part 1 of subtitle E of title IV of such Act is classified generally to part 1 (29 U.S.C. 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. Sections 401, 405 to 408, 3003, 4044, 4223, and 4231 of such Act are classified to sections 1101, 1105 to 1108, 1203, 1344, 1403, and 1411, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (d)(16)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The Investment Company Act of 1940, referred to in subsecs. (e)(8) and (g), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (f)(8)(J)(i)(I), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (f)(8)(J)(i)(IV), (10)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. Section 6 of the Act is classified to section 78f of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2008—Subsec. (d)(17). Pub. L. 110–458, §106(a)(2)(A), substituted ''that permits'' for ''and that permits'' in introductory provisions.

Subsec. (d)(18). Pub. L. 110–458, §106(b)(2)(A), in introductory provisions, substituted ''disqualified person'' for ''party in interest'' and ''subsection (e)(3)'' for ''subsection (e)(3)(B)''.

Subsec. (d)(19) to (21). Pub. L. 110–458, §106(b)(2)(B), substituted ''disqualified person'' for ''party in interest'' wherever appearing.

Subsec. (d)(21)(C). Pub. L. 110–458, §106(b)(2)(C), struck out ''or less'' before ''than 3 percent''.

Subsec. (f)(8)(A). Pub. L. 110–458, §106(a)(2)(B)(i), substituted ''subsection (d)(17)'' for ''subsection (b)(14)''.

Subsec. (f)(8)(C)(iv)(II). Pub. L. 110–458, §106(a)(2)(B)(ii), substituted ''(d)(17)(A)(ii)'' for ''subsection (b)(14)(B)(ii)''.

Subsec. (f)(8)(F)(i)(I). Pub. L. 110–458, §106(a)(2)(B)(iii), substituted ''fiduciary adviser,'' for ''financial adviser''.

Subsec. (f)(8)(I). Pub. L. 110–458, §106(a)(2)(B)(iv), substituted ''subsection (c)'' for ''section 406''.

Subsec. (f)(8)(J)(i). Pub. L. 110–458, §106(a)(2)(B)(v), substituted ''a participant'' for ''the participant'' in introductory provisions and concluding provisions, inserted ''referred to in subsection (e)(3)(B)'' after ''investment advice'' in introductory provisions, and substituted ''subsection (d)(4)'' for ''section 408(b)(4)'' in subcl. (II).

Subsec. (f)(11)(B)(i). Pub. L. 110–458, §106(c), inserted ''of the Employee Retirement Income Security Act of 1974'' after ''section 407(d)(1)'' and ''of such Act'' after ''section 407(d)(2)''.

2006—Subsec. (d)(17). Pub. L. 109–280, §601(b)(1), added par. (17).

Subsec. (d)(18). Pub. L. 109–280, §611(a)(2)(A), added par. (18).

Subsec. (d)(19). Pub. L. 109–280, §611(c)(2), added par. (19).

Subsec. (d)(20). Pub. L. 109–280, §611(d)(2)(A), added par. (20).

Subsec. (d)(21). Pub. L. 109–280, §611(e)(2), added par. (21).

Subsec. (d)(22). Pub. L. 109–280, §611(g)(2), added par. (22).

Subsec. (d)(23). Pub. L. 109–280, §612(b)(1), added par. (23).

Subsec. (f)(8). Pub. L. 109–280, §601(b)(2), added par. (8).

Subsec. (f)(9). Pub. L. 109–280, §611(a)(2)(B), added par. (9).

Subsec. (f)(10). Pub. L. 109–280, §611(d)(2)(B), added par. (10).

Subsec. (f)(11). Pub. L. 109–280, §612(b)(2), added par. (11).

2005—Subsec. (d)(16)(A). Pub. L. 109–135, §413(a)(2)(A), inserted ''or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))'' after ''a bank (as defined in section 581)''.

Subsec. (d)(16)(C). Pub. L. 109–135, §413(a)(2)(B), inserted ''or company'' after ''such bank''.

2004—Subsec. (d)(16). Pub. L. 108–357, §233(c), added par. (16).

Subsec. (f)(7). Pub. L. 108–357, §240(a), added par. (7).

2003—Subsec. (c)(6). Pub. L. 108–173, § 1201(f)(1), added par. (6).

Subsec. (e)(1)(E) to (G). Pub. L. 108–173, § 1201(f)(2), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

2001—Subsec. (c)(5). Pub. L. 107–22, § 1(b)(1)(D), (3)(D), in heading, substituted ''Coverdell education savings'' for ''education individual retirement'' and in text, substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Subsec. (e)(1)(E). Pub. L. 107–22, § 1(b)(1)(D), substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Subsec. (e)(7). Pub. L. 107–16, § 656(b), inserted '', section 409(p),'' after ''409(n)'' in concluding provisions.

Subsec. (f)(6)(B)(iii). Pub. L. 107–16, § 612(a), added cl. (iii).

2000—Subsec. (c)(4). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer'' for ''a Archer''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(7), (b)(7)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading and ''Archer MSA'' for ''medical savings account'' in text.

Subsec. (e)(1)(D). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer'' for ''a Archer''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(7)], substituted ''Archer MSA'' for ''medical savings account''.

1998—Subsec. (c)(3). Pub. L. 105–206, § 6023(19)(A), substituted ''exempt from the tax'' for ''exempt for the tax''.

Subsec. (i). Pub. L. 105–206, § 6023(19)(B), substituted ''Secretary of the Treasury'' for ''Secretary of Treasury''.

1997—Subsec. (a). Pub. L. 105–34, § 1074(a), substituted ''15 percent'' for ''10 percent''.

Subsec. (c)(4). Pub. L. 105–34, § 1602(a)(5), substituted ''if section 220(e)(2) applies to such transaction.'' for ''if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 220(e)(2) to such account.''

Subsec. (c)(5). Pub. L. 105–34, § 213(b)(2), added par. (5).

Subsec. (d). Pub. L. 105–34, § 1506(b)(1)(B)(ii), struck out concluding provisions which read as follows: ''The exemptions provided by this subsection (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982), a participant or beneficiary of an individual retirement account or an individual retirement annuity (as defined in section 408), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.''

Pub. L. 105–34, § 1506(b)(1)(B)(i), substituted ''Except as provided in subsection (f)(6), the prohibitions'' for ''The prohibitions'' in introductory provisions.

Subsec. (e)(1)(D) to (F). Pub. L. 105–34, § 213(b)(1), struck out ''or'' at end of subpar. (D), added subpar. (E), and redesignated former subpar. (E) as (F).

Subsec. (e)(7). Pub. L. 105–34, § 1530(c)(10), inserted ''and section 664(g)'' after ''section 409(n)'' in concluding provisions.

Subsec. (f)(6). Pub. L. 105–34, § 1506(b)(1)(A), added par. (6).

1996—Subsec. (a). Pub. L. 104–188, § 1453(a), substituted ''10 percent'' for ''5 percent''.

Subsec. (c)(4). Pub. L. 104–191, § 301(f)(1), added par. (4).

Subsec. (d)(13). Pub. L. 104–188, § 1702(g)(3), substituted ''408(b)(12)'' for ''408(b)''.

Subsec. (e)(1). Pub. L. 104–191, § 301(f)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'plan' means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) (or a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be such a trust, plan, or account).''

1990—Subsec. (d)(13). Pub. L. 101–508 inserted before semicolon at end ''or which is exempt from section 406 of such Act by reason of section 408(b) of such Act''.

1986—Subsec. (d). Pub. L. 99–514, § 1899A(51), inserted a closing parenthesis after ''and (12)'' in second sentence.

Subsec. (d)(1)(B). Pub. L. 99–514, § 1114(b)(15)(A), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''highly compensated employees, officers, or shareholders''.

Subsec. (e)(7). Pub. L. 99–514, § 1854(f)(3)(A), inserted '', section 409(*o*), and, if applicable, section 409(n)'' in last sentence.

1984—Subsec. (d). Pub. L. 98–369, § 491(d)(45), substituted in provision following par. (15) ''or an individual retirement annuity (as defined in section 408)'' for '', individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409)''.

Subsec. (e)(1). Pub. L. 98–369, § 491(d)(46), struck out ''or 405(a)'' after ''section 403(a)'' and ''or a retirement bond described in section 409'' after ''section 408(b)'', and substituted ''or annuity'' for ''annuity, or bond'' and ''or account'' for ''account, or bond''.

Subsec. (e)(7). Pub. L. 98–369, § 491(e)(7), substituted ''section 409(h)'' for ''section 409A(h)'', ''section 409(e)(4)'' for ''section 409A(e)(4)'', and ''section 409(e)'' for ''section 409A(e)''.

Subsec. (e)(8). Pub. L. 98–369, § 491(e)(8), substituted ''section 409(*l*)'' for ''section 409A(*l*)''.

1983—Subsec. (d). Pub. L. 97–448 inserted '', as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982'' after ''section 1379'' in last sentence.

1980—Subsec. (b). Pub. L. 96–596, § 2(a)(1)(K), substituted ''taxable period'' for ''correction period''.

Subsec. (d)(14), (15). Pub. L. 96–364, § 208(b), added pars. (14) and (15).

Subsec. (e)(7). Pub. L. 96–222, § 101(a)(7)(K), (L)(iv)(III), (v)(XI), substituted references to an employee stock ownership plan, for references to a leveraged employee stock ownership plan wherever appearing therein, and substituted provisions relating to treatment of a plan as an employee stock ownership plan, for provisions relating to treatment of a plan as a leveraged employee stock ownership plan.

Subsec. (e)(8). Pub. L. 96–222, § 101(a)(7)(C), substituted provisions defining ''qualifying employer security'' within the meaning of section 409A(*l*), for provisions defining such term as stock, or otherwise an equity security, or within the meaning of section 503(e)(1) to (3).

Subsec. (e)(9). Pub. L. 96–364, § 209(b), added par. (9).

Subsec. (f)(2)(B), (C). Pub. L. 96–596, § 2(a)(2)(I), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(4)(B). Pub. L. 96–596, § 2(a)(1)(L), substituted ''taxable period'' for ''correction period''.

Subsec. (f)(6). Pub. L. 96–596, § 2(a)(3)(F), struck out par. (6), which defined correction period, with respect to a prohibited transaction, as the period beginning on the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, ex-

tended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about the correction of the prohibited transaction.

1978—Subsec. (d)(3). Pub. L. 95–600, §141(f)(6), substituted ''leveraged employee'' for ''employee''.

Subsec. (e)(7). Pub. L. 95–600, §141(f)(5), substituted in heading ''Leveraged employee'' for ''Employee'', and in text, ''leveraged employee'' for ''employee'' and inserted provision that a plan not be treated as a leveraged employee stock ownership plan unless it meet the requirements of section 409A(e) and (h).

1976—Subsecs. (c) to (f). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VI, §601(b)(4), Aug. 17, 2006, 120 Stat. 966, as amended by Pub. L. 110–458, title I, §106(a)(3), Dec. 23, 2008, 122 Stat. 5106, provided that: ''Except as provided in this subsection [amending this section and enacting provisions set out as notes under this section], the amendments made by this subsection shall apply with respect to advice referred to in section 4975(e)(3)(B) of the Internal Revenue Code of 1986 provided after December 31, 2006.''

Pub. L. 109–280, title VI, §611(h), Aug. 17, 2006, 120 Stat. 975, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1002, 1108, and 1112 of Title 29, Labor] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006].

''(2) BONDING RULE.—The amendments made by subsection (b) [amending section 1112 of Title 29] shall apply to plan years beginning after such date.''

Pub. L. 109–280, title VI, §612(c), Aug. 17, 2006, 120 Stat. 977, provided that: ''The amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall apply to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after the date of the enactment of this Act [Aug. 17, 2006] constitutes a prohibited transaction.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 413(d) of Pub. L. 109–135, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 233(c) of Pub. L. 108–357 effective Oct. 22, 2004, see section 233(e) of Pub. L. 108–357, set out as a note under section 512 of this title.

Pub. L. 108–357, title II, §240(b), Oct. 22, 2004, 118 Stat. 1437, provided that: ''The amendment made by this section [amending this section] shall apply to distributions with respect to S corporation stock made after December 31, 1997.''

EFFECTIVE DATE OF 2003 AMENDMENT

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

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as an Effective and Termination Dates of 2001 Amendment note under section 26 of this title.

Pub. L. 107–16, title VI, §612(c), June 7, 2001, 115 Stat. 100, provided that: ''The amendment made by this section [amending this section and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 2001.''

Amendment by section 656(b) of Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2004, except that in the case of any employee stock ownership plan established after Mar. 14, 2001, or established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of this title is not in effect on such date, amendment applicable to plan years ending after Mar. 14, 2001, see section 656(d) of Pub. L. 107–16, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 213(b) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

Section 1074(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to prohibited transactions occurring after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1506(b)(1) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 1506(c) of Pub. L. 105–34, set out as a note under section 409 of this title.

Amendment by section 1530(c)(10) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1602(a)(5) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Section 1453(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to prohibited transactions occurring after the date of the enactment of this Act [Aug. 20, 1996].''

Amendment by section 1702(g)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(15)(A) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1854(f)(3)(A) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(45), (46) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 491(e)(7), (8) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective on date of enactment of Subchapter S Revision Act of 1982 [Oct. 19, 1982], see section 311(c)(4) of Pub. L. 97–448, set out as a note under section 1368 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 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 an Effective Date note under section 4961 of this title.

Amendment by section 208(b) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by section 209(b) of Pub. L. 96–364 applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Section 101(b)(1)(C) of Pub. L. 96–222 provided that: ''The amendment made by subparagraph (C) of subsection (a)(6) [probably should be '(a)(7)', which amended this section] shall apply to stock acquired after December 31, 1979.''

Amendment by section 101(a)(7)(K), (L)(iv)(III), (v)(XI) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 141(h) of Pub. L. 95–600, as added by Pub. L. 96–222, title I, § 101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraphs (5) and (6) of subsection (f) [section 141(f)(5), (6) of Pub. L. 95–600] shall apply—

''(1) insofar as they make the requirements of subsections (e) and (h)(1)(B) of section 409A [now section 409] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applicable to section 4975 of such Code, to stock acquired after December 31, 1979, and

''(2) insofar as they make paragraphs (1)(A) and (2) of section 409A(h) [now section 409(h)] of such Code applicable to such section 4975, to distributions after December 31, 1978.''

EFFECTIVE DATE; SAVINGS PROVISION

Section 2003(c) of Pub. L. 93–406, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1)(A) The amendments made by this section [enacting this section and amending section 503 of this title] shall take effect on January 1, 1975.

''(B) If, before the amendments made by this section [enacting this section and amending section 503 of this title] take effect, an organization described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is denied exemption under section 501(a) of such Code by reason of section 503 of such Code, the denial of such exemption shall not apply if the disqualified person elects (in such manner and at such time as the Secretary or his delegate shall by regulations prescribe) to pay, with respect to the prohibited transaction (within the meaning of section 503(b) or (g)) which resulted in such denial of exemption, a tax in the amount and in the manner provided with respect to the tax imposed under section 4975 of such Code. An election made under this subparagraph, once made, shall be irrevocable. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

''(2) Section 4975 of the Internal Revenue Code of 1986 (relating to tax on prohibited transactions) shall not apply to—

''(A) a loan of money or other extension of credit between a plan and a disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law);

''(B) a lease of joint use of property involving the plan and a disqualified person pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law;

''(C) the sale, exchange, or other disposition of property described in subparagraph (B) between a plan and a disqualified person before June 30, 1984, if—

''(i) in the case of a sale, exchange, or other disposition of the property by the plan to the disqualified person, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

''(ii) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition:

''(D) Until June 30, 1977, the provision of services to which subparagraphs (A), (B), and (C) do not apply between a plan and a disqualified person (i) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (ii) if the disqualified person ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; or

''(E) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a disqualified person, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a)(2)(A) (relating to the prohibition against holding excess employer securities and employer real property) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1107(a)(2)] and if the plan receives not less than adequate consideration.

For the purposes of this paragraph, the term 'disqualified person' has the meaning provided by section 4975(e)(2) of the Internal Revenue Code of 1986.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

DETERMINATION OF FEASIBILITY OF APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAMS FOR INDIVIDUAL RETIREMENT AND SIMILAR PLANS

Pub. L. 109–280, title VI, § 601(b)(3), Aug. 17, 2006, 120 Stat. 964, provided that:

''(A) SOLICITATION OF INFORMATION.—As soon as practicable after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor, in consultation with the Secretary of the Treasury, shall—

''(i) solicit information as to the feasibility of the application of computer model investment advice programs for plans described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of section 4975(e)(1) of the Internal Revenue Code of 1986, including soliciting information from—

''(I) at least the top 50 trustees of such plans, determined on the basis of assets held by such trustees, and

''(II) other persons offering computer model investment advice programs based on nonproprietary products, and

''(ii) shall on the basis of such information make the determination under subparagraph (B).

The information solicited by the Secretary of Labor under clause (i) from persons described in subclauses (I) and (II) of clause (i) shall include information on computer modeling capabilities of such persons with respect to the current year and preceding year, including such capabilities for investment accounts maintained by such persons.

''(B) DETERMINATION OF FEASIBILITY.—The Secretary of Labor, in consultation with the Secretary of the Treasury, shall, on the basis of information received under subparagraph (A), determine whether there is any computer model investment advice program which may be utilized by a plan described in subparagraph (A)(i) to provide investment advice to the account beneficiary of the plan which—

''(i) utilizes relevant information about the account beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

''(ii) takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolio of the account beneficiary, and

''(iii) allows the account beneficiary, in directing the investment of assets, sufficient flexibility in obtaining advice to evaluate and select investment options.

The Secretary of Labor shall report the results of such determination to the committees of Congress referred to in subparagraph (D)(ii) not later than December 31, 2007.

''(C) APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAM.—

''(i) CERTIFICATION REQUIRED FOR USE OF COMPUTER MODEL.—

''(I) RESTRICTION ON USE.—Subclause (II) of section 4975(f)(8)(B)(i) of the Internal Revenue Code of 1986 shall not apply to a plan described in subparagraph (A)(i).

''(II) RESTRICTION LIFTED IF MODEL CERTIFIED.—If the Secretary of Labor determines under subparagraph (B) or (D) that there is a computer model investment advice program described in subparagraph (B), subclause (I) shall cease to apply as of the date of such determination.

''(ii) CLASS EXEMPTION IF NO INITIAL CERTIFICATION BY SECRETARY.—If the Secretary of Labor determines under subparagraph (B) that there is no computer model investment advice program described in subparagraph (B), the Secretary of Labor shall grant a class exemption from treatment as a prohibited transaction under section 4975(c) of the Internal Revenue Code of 1986 to any transaction described in section 4975(d)(17)(A) of such Code with respect to plans described in subparagraph (A)(i), subject to such conditions as set forth in such exemption as are in the interests of the plan and its account beneficiary and protective of the rights of the account beneficiary and as are necessary to—

''(I) ensure the requirements of sections 4975(d)(17) and 4975(f)(8) (other than subparagraph (C) thereof) of the Internal Revenue Code of 1986 are met, and

''(II) ensure the investment advice provided under the investment advice program utilizes prescribed objective criteria to provide asset allocation portfolios comprised of securities or other property available as investments under the plan.

If the Secretary of Labor solicits any information under subparagraph (A) from a person and such person does not provide such information within 60 days after the solicitation, then, unless such failure was due to reasonable cause and not wilful neglect, such person shall not be entitled to utilize the class exemption under this clause.

''(D) SUBSEQUENT DETERMINATION.—

''(i) IN GENERAL.—If the Secretary of Labor initially makes a determination described in subparagraph (C)(ii), the Secretary may subsequently determine that there is a computer model investment advice program described in subparagraph (B). If the Secretary makes such subsequent determination, then the class exemption described in subparagraph (C)(ii) shall cease to apply after the later of—

''(I) the date which is 2 years after such subsequent determination, or

''(II) the date which is 3 years after the first date on which such exemption took effect.

''(ii) REQUESTS FOR DETERMINATION.—Any person may request the Secretary of Labor to make a determination under this subparagraph with respect to any computer model investment advice program, and the Secretary of Labor shall make a determination with respect to such request within 90 days. If the Secretary of Labor makes a determination that such program is not described in subparagraph (B), the Secretary shall, within 10 days of such determination, notify the Committee on Ways and Means and the Committee on Education and the Workforce [now Committee on Education and Labor] of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate of such determination and the reasons for such determination.

''(E) EFFECTIVE DATE.—The provisions of this paragraph shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

COORDINATION OF 2006 AMENDMENT WITH EXISTING EXEMPTIONS

Pub. L. 109–280, title VI, § 601(c), Aug. 17, 2006, 120 Stat. 966, provided that: ''Any exemption under section 408(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1108(b)] and section 4975(d) of the Internal Revenue Code of 1986 provided by the amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall not in any manner alter existing individual or class exemptions, provided by statute or administrative action.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INTENT OF CONGRESS CONCERNING EMPLOYEE STOCK OWNERSHIP PLANS

Section 803(h) of Pub. L. 94–455 provided that: ''The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, and the Tax Reduction Act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. Because of the special purposes for which employee stock ownership plans are established, it is consistent with the intent of Congress to permit these plans (whether structured as pension, stock bonus, or profit-sharing plans) to distribute income on employer securities currently.''

§ 4976. Taxes with respect to funded welfare benefit plans

(a) General rule

If—

(1) an employer maintains a welfare benefit fund, and

(2) there is a disqualified benefit provided during any taxable year,

there is hereby imposed on such employer a tax equal to 100 percent of such disqualified benefit.

(b) Disqualified benefit

For purposes of subsection (a)—

(1) In general

The term ''disqualified benefit'' means—

(A) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for such employee under section 419A(d) and such payment is not from such account,

(B) any post-retirement medical benefit or life insurance benefit provided with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of section 505(b) with respect to such benefit (whether or not such requirements apply to such plan), and

(C) any portion of a welfare benefit fund reverting to the benefit of the employer.

(2) Exception for collective bargaining plans

Paragraph (1)(B) shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that the benefits referred to in paragraph (1)(B) were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Exception for nondeductible contributions

Paragraph (1)(C) shall not apply to any amount attributable to a contribution to the fund which is not allowable as a deduction under section 419 for the taxable year or any prior taxable year (and such contribution shall not be included in any carryover under section 419(d)).

(4) Exception for certain amounts charged against existing reserve

Subparagraphs (A) and (B) of paragraph (1) shall not apply to post-retirement benefits charged against an existing reserve for post-retirement medical or life insurance benefits (as defined in section 512(a)(3)(E)) or charged against the income on such reserve.

(c) Definitions

For purposes of this section, the terms used in this section shall have the same respective meanings as when used in subpart D of part I of subchapter D of chapter 1.

(Added Pub. L. 98–369, div. A, title V, § 511(c)(1), July 18, 1984, 98 Stat. 861; amended Pub. L. 99–514, title XVIII, § 1851(a)(11), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100–647, title I, § 1011B(a)(27)(A), (B), title III, § 3021(a)(1)(C), Nov. 10, 1988, 102 Stat. 3487, 3626; Pub. L. 101–140, title II, § 203(a)(2), Nov. 8, 1989, 103 Stat. 830.)

CODIFICATION

Pub. L. 101–140 amended this section to read as if the amendments made by section 1011B(a)(27) of Pub. L. 100–647 (enacting subsec. (c)) had not been enacted. Subsequent to enactment by Pub. L. 100–647, subsec. (c) was amended by Pub. L. 100–647, § 3021(a)(1)(C). See 1988 Amendment note below.

AMENDMENTS

1989—Subsec. (b)(5). Pub. L. 101–140 amended subsec. (b) to read as if amendments by Pub. L. 100–647, § 1011B(a)(27)(B), had not been enacted, see 1988 Amendment note below.

Subsecs. (c), (d). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, § 1011B(a)(27)(A), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b)(5). Pub. L. 100–647, § 1011B(a)(27)(B), added par. (5) relating to limitation in case of benefits to which section 89 applies.

Subsec. (c). Pub. L. 100–647, § 1011B(a)(27)(A), added subsec. (c) relating to tax on funded welfare benefit funds which include discriminatory employee benefit plan. Former subsec. (c) redesignated (d).

Subsec. (c)(1)(B). Pub. L. 100–647, § 3021(a)(1)(C)(i), substituted ''any testing year (as defined in section 89(j)(13))'' for ''any plan year'', see Codification note above.

Subsec. (c)(2)(A). Pub. L. 100–647, § 3021(a)(1)(C)(ii), substituted ''testing'' for ''plan'' in cls. (i) and (ii), see Codification note above.

Subsec. (d). Pub. L. 100–647, § 1011B(a)(27)(A), redesignated former subsec. (c) as (d).

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of subsection (a), the term 'disqualified benefit' means—

''(1) any medical benefit or life insurance benefit provided with respect to a key employee other than from a separate account established for such owner under section 419A(d), and

''(2) any post-retirement medical or life insurance benefit unless the plan meets the requirements of section 505(b)(1) with respect to such benefit, and

''(3) any portion of such fund reverting to the benefit of the employer.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of

Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(27)(A), (B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3021(a)(1)(C) of Pub. L. 100–647 effective as if included in the amendments by section 1151 of Pub. L. 99–514, see section 3021(d)(1) of Pub. L. 100–647, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to benefits provided after Dec. 31, 1985, see section 511(e)(7) of Pub. L. 98–369, set out as a note under section 419 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4977. Tax on certain fringe benefits provided by an employer

(a) Imposition of tax

In the case of an employer to whom an election under this section applies for any calendar year, there is hereby imposed a tax for such calendar year equal to 30 percent of the excess fringe benefits.

(b) Excess fringe benefits

For purposes of subsection (a), the term ''excess fringe benefits'' means, with respect to any calendar year—

(1) the aggregate value of the fringe benefits provided by the employer during the calendar year which were not includible in gross income under paragraphs (1) and (2) of section 132(a), over

(2) 1 percent of the aggregate amount of compensation—

(A) which was paid by the employer during such calendar year to employees, and

(B) was includible in gross income for purposes of chapter 1.

(c) Effect of election on section 132(a)

If—

(1) an election under this section is in effect with respect to an employer for any calendar year, and

(2) at all times on or after January 1, 1984, and before the close of the calendar year involved, substantially all of the employees of the employer were entitled to employee discounts on goods or services provided by the employer in 1 line of business,

for purposes of paragraphs (1) and (2) of section 132(a) (but not for purposes of section 132(h)), all employees of any line of business of the employer which was in existence on January 1, 1984, shall be treated as employees of the line of business referred to in paragraph (2).

(d) Period of election

An election under this section shall apply to the calendar year for which made and all subsequent calendar years unless revoked by the employer.

(e) Treatment of controlled groups

All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(f) Section to apply only to employment within the United States

Except as otherwise provided in regulations, this section shall apply only with respect to employment within the United States.

(Added Pub. L. 98–369, div. A, title V, § 531(e)(1), July 18, 1984, 98 Stat. 885; amended Pub. L. 99–514, title XVIII, § 1853(c)(1), (2), Oct. 22, 1986, 100 Stat. 2871; Pub. L. 103–66, title XIII, § 13213(d)(3)(D), Aug. 10, 1993, 107 Stat. 474; Pub. L. 104–188, title I, § 1704(t)(66), Aug. 20, 1996, 110 Stat. 1890.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188 substituted ''section 132(h)'' for ''section 132(i)(2)'' in closing provisions.

1993—Subsec. (c). Pub. L. 103–66 substituted ''section 132(i)(2)'' for ''section 132(g)(2)'' in closing provisions.

1986—Subsec. (c)(2). Pub. L. 99–514, § 1853(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''as of January 1, 1984, substantially all of the employees of the employer were entitled to employee discounts or services provided by the employer in 1 line of business,''.

Subsec. (f). Pub. L. 99–514, § 1853(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as a note under section 132 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF SUBSECTION (c) OF THIS SECTION TO AGRICULTURAL COOPERATIVES INCORPORATED IN 1964

Section 1853(c)(3) of Pub. L. 99–514 provided that: ''For purposes of determining whether the requirements of section 4977(c) of the Internal Revenue Code of 1954 [now 1986] are met in the case of an agricultural cooperative incorporated in 1964, there shall not be taken into account employees of a member of the same controlled group as such cooperative which became a member during July 1980.''

§ 4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives

(a) Tax on dispositions of securities to which section 1042 applies before close of minimum holding period

If, during the 3-year period after the date on which the employee stock ownership plan or eligible worker-owned cooperative acquired any qualified securities in a sale to which section 1042 applied or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied, such plan or cooperative disposes of any qualified securities and—

(1) the total number of shares held by such plan or cooperative after such disposition is less than the total number of employer securities held immediately after such sale, or

(2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition is less than 30 percent of the total value of all employer securities as of such disposition (60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied),

there is hereby imposed a tax on the disposition equal to the amount determined under subsection (b).

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be equal to 10 percent of the amount realized on the disposition.

(2) Limitation

The amount realized taken into account under paragraph (1) shall not exceed that portion allocable to qualified securities acquired in the sale to which section 1042 applied or acquired in the qualified gratuitous transfer to which section 664(g) applied determined as if such securities were disposed of—

(A) first from qualified securities to which section 1042 applied or to which section 664(g) applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

(B) then from any other employer securities.

If subsection (d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.

(3) Distributions to employees

The amount realized on any distribution to an employee for less than fair market value shall be determined as if the qualified security had been sold to the employee at fair market value.

(c) Liability for payment of taxes

The tax imposed by this subsection shall be paid by—

(1) the employer, or

(2) the eligible worker-owned cooperative,

that made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be).

(d) Section not to apply to certain dispositions

(1) Certain distributions to employees

This section shall not apply with respect to any distribution of qualified securities (or sale of such securities) which is made by reason of—

(A) the death of the employee,

(B) the retirement of the employee after the employee has attained 59½ years of age,

(C) the disability of the employee (within the meaning of section 72(m)(7)), or

(D) the separation of the employee from service for any period which results in a 1-year break in service (within the meaning of section 411(a)(6)(A)).

(2) Certain reorganizations

In the case of any exchange of qualified securities in any reorganization described in section 368(a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for purposes of this section.

(3) Liquidation of corporation into cooperative

In the case of any exchange of qualified securities pursuant to the liquidation of the corporation issuing qualified securities into the eligible worker-owned cooperative in a transaction which meets the requirements of section 332 (determined by substituting ''100 percent'' for ''80 percent'' each place it appears in section 332(b)(1)), such exchange shall not be treated as a disposition for purposes of this section.

(4) Dispositions to meet diversification requirements

This section shall not apply to any disposition of qualified securities which is required under section 401(a)(28).

(e) Definitions and special rules

For purposes of this section—

(1) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given to such term by section 4975(e)(7).

(2) Qualified securities

The term ''qualified securities'' has the meaning given to such term by section 1042(c)(1); except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(3) Eligible worker-owned cooperative

The term ''eligible worker-owned cooperative'' has the meaning given to such term by section 1042(c)(2).

(4) Disposition

The term ''disposition'' includes any distribution.

(5) Employer securities

The term ''employer securities'' has the meaning given to such term by section 409(*l*).

(Added Pub. L. 98–369, div. A, title V, §545(a), July 18, 1984, 98 Stat. 894; amended Pub. L. 99–514, title XVIII, §1854(e), Oct. 22, 1986, 100 Stat. 2880; Pub., L. 100–203, title X, §10413(b)(1), Dec. 22, 1987, 101 Stat. 1330–438; Pub. L. 100–647, title I, §1011B(j)(4), Nov. 10, 1988, 102 Stat. 3492; Pub. L. 101–239, title VII, §7304(a)(2)(C)(ii), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, §1602(b)(4), Aug. 20, 1996, 110 Stat. 1834; Pub. L. 105–34, title XV, §1530(c)(11)–(14), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 108–311, title IV, §408(a)(23), Oct. 4, 2004, 118 Stat. 1192.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–311 substituted ''(60 percent'' for ''60 percent''.

1997—Subsec. (a). Pub. L. 105–34, §1530(c)(11)(A), inserted ''or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied'' after ''section 1042 applied'' in introductory provisions.

Subsec. (a)(2). Pub. L. 105–34, §1530(c)(11)(B), inserted before comma at end ''60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied)''.

Subsec. (b)(2). Pub. L. 105–34, §1530(c)(12)(A), inserted ''or acquired in the qualified gratuitous transfer to which section 664(g) applied'' after ''section 1042 applied'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 105–34, §1530(c)(12)(B), inserted ''or to which section 664(g) applied'' after ''section 1042 applied''.

Subsec. (c). Pub. L. 105–34, §1530(c)(13), substituted ''written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be)'' for ''written statement described in section 1042(b)(3)''.

Subsec. (e)(2). Pub. L. 105–34, §1530(c)(14), inserted before period at end ''; except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1))''.

1996—Subsec. (b)(2). Pub. L. 104–188 added subpars. (A) and (B) and closing provisions and struck out former subpars. (A) to (D) and closing provisions which read as follows:

''(A) first, from section 133 securities (as defined in section 4978B(e)(2)) acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

''(B) second, from section 133 securities (as so defined) acquired before such 3-year period unless such securities (or proceeds from the disposition) have been allocated to accounts of participants or beneficiaries.

''(C) third, from qualified securities to which section 1042 applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

''(D) then from any other employer securities.

If subsection (d) or section 4978B(d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.''

1989—Subsec. (b)(2). Pub. L. 101–239 substituted ''determined as if such securities were disposed of—'', subpars. (A) to (D), and concluding provision for ''(determined as if such securities were disposed of in the order described in section 4978A(e))''.

1988—Subsec. (d)(4). Pub. L. 100–647 added par. (4).

1987—Subsec. (b)(2). Pub. L. 100–203 substituted ''(determined as if such securities were disposed of in the order described in section 4978A(e))'' for ''(determined as if such securities were disposed of before any other securities)''.

1986—Subsec. (a)(1). Pub. L. 99–514, §1854(e)(1), substituted ''than'' for ''then''.

Subsec. (b)(1). Pub. L. 99–514, §1854(e)(2), substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 99–514, §1854(e)(3), substituted ''section 1042(b)(3)'' for ''section 1042(a)(2)(B)''.

Subsec. (d)(1)(C). Pub. L. 99–514, §1854(e)(4), substituted ''section 72(m)(7)'' for ''section 72(m)(5)''.

Subsec. (d)(3). Pub. L. 99–514, §1854(e)(7), added par. (3).

Subsec. (e)(2). Pub. L. 99–514, §1854(e)(5), substituted ''section 1042(c)(1)'' for ''section 1042(b)(1)''.

Subsec. (e)(3). Pub. L. 99–514, §1854(e)(6), substituted ''section 1042(c)(2)'' for ''section 1042(b)(1)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10413(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting section 4978A of this title and amending this section] shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 545(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see

section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 4978A. Repealed. Pub. L. 101–239, title VII, § 7304(a)(2)(C)(i), Dec. 19, 1989, 103 Stat. 2353]

Section, added Pub. L. 100–203, title X, § 10413(a), Dec. 22, 1987, 101 Stat. 1330–436; amended Pub. L. 100–647, title VI, § 6060(a), Nov. 10, 1988, 102 Stat. 3699, related to tax on certain dispositions of employer securities to which section 2057 applied.

EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 409 of this title.

[§ 4978B. Repealed. Pub. L. 104–188, title I, § 1602(b)(5)(A), Aug. 20, 1996, 110 Stat. 1834]

Section, added Pub. L. 101–239, title VII, § 7301(d)(1), Dec. 19, 1989, 103 Stat. 2347; amended Pub. L. 101–508, title XI, § 11701(e), Nov. 5, 1990, 104 Stat. 1388–507, related to tax on disposition of employer securities to which former section 133 of this title applied.

EFFECTIVE DATE OF REPEAL

Repeal applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as a note under former section 133 of this title.

§ 4979. Tax on certain excess contributions

(a) General rule

In the case of any plan, there is hereby imposed a tax for the taxable year equal to 10 percent of the sum of—

(1) any excess contributions under such plan for the plan year ending in such taxable year, and

(2) any excess aggregate contributions under the plan for the plan year ending in such taxable year.

(b) Liability for tax

The tax imposed by subsection (a) shall be paid by the employer.

(c) Excess contributions

For purposes of this section, the term ''excess contributions'' has the meaning given such term by sections 401(k)(8)(B), 408(k)(6)(C), and 501(c)(18).

(d) Excess aggregate contribution

For purposes of this section, the term ''excess aggregate contribution'' has the meaning given to such term by section 401(m)(6)(B). For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), such contract shall be treated as a plan described in subsection (e)(1).

(e) Plan

For purposes of this section, the term ''plan'' means—

(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) any annuity plan described in section 403(a),

(3) any annuity contract described in section 403(b),

(4) a simplified employee pension of an employer which satisfies the requirements of section 408(k), and

(5) a plan described in section 501(c)(18).

Such term includes any plan which, at any time, has been determined by the Secretary to be such a plan.

(f) No tax where excess distributed within specified period after close of year

(1) In general

No tax shall be imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent such contribution (together with any income allocable thereto through the end of the plan year for which the contribution was made) is distributed (or, if forfeitable, is forfeited) before the close of the first 2½ months (6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3))) of the following plan year.

(2) Year of inclusion

Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in the recipient's taxable year in which such distributions were made.

(Added Pub. L. 99–514, title XI, § 1117(b)(1), Oct. 22, 1986, 100 Stat. 2461; amended Pub. L. 100–647, title I, § 1011(*l*)(8)–(11), Nov. 10, 1988, 102 Stat. 3470, 3471; Pub. L. 109–280, title IX, § 902(e)(1)–(3)(A), Aug. 17, 2006, 120 Stat. 1038.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–280, § 902(e)(1)(B), substituted ''specified period after'' for ''2½ months of'' in heading.

Subsec. (f)(1). Pub. L. 109–280, § 902(e)(1)(A), (3)(A), inserted ''through the end of the plan year for which the contribution was made'' after ''thereto'' and ''(6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3)))'' after ''2½ months''.

Subsec. (f)(2). Pub. L. 109–280, § 902(e)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.

''(B) DE MINIMIS DISTRIBUTIONS.—If the total excess contributions and excess aggregate contributions distributed to a recipient under a plan for any plan year are less than $100, such distributions (and any income allocable thereto) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made.''

1988—Subsec. (a)(1). Pub. L. 100–647, § 1011(*l*)(8), struck out ''a cash or deferred arrangement which is part of'' after ''contributions under''.

Subsec. (c). Pub. L. 100–647, § 1011(*l*)(9), struck out ''403(b),'' and substituted ''408(k)(6)(C)'' for ''408(k)(8)(B)''.

Subsec. (d). Pub. L. 100–647, § 1011(*l*)(10), inserted sentence at end relating to determination of excess aggregate contributions under certain annuity contracts.

Subsec. (f)(2). Pub. L. 100–647, § 1011(*l*)(11), substituted ''Year of inclusion'' for ''Included in prior year'' as heading, and amended text generally. Prior to amendment, text read as follows: ''Any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 401 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out this section, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4979A. Tax on certain prohibited allocations of qualified securities

(a) Imposition of tax

If—

(1) there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative,

(2) there is an allocation described in section 664(g)(5)(A),

(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.

(b) Prohibited allocation

For purposes of this section, the term ''prohibited allocation'' means—

(1) any allocation of qualified securities acquired in a sale to which section 1042 applies which violates the provisions of section 409(n), and

(2) any benefit which accrues to any person in violation of the provisions of section 409(n).

(c) Liability for tax

The tax imposed by this section shall be paid—

(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

(A) the employer sponsoring such plan, or

(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.

(d) Special statute of limitations for tax attributable to certain allocations

The statutory period for the assessment of any tax imposed by this section on an allocation described in subsection (a)(2) of qualified employer securities shall not expire before the date which is 3 years from the later of—

(1) the 1st allocation of such securities in connection with a qualified gratuitous transfer (as defined in section 664(g)(1)), or

(2) the date on which the Secretary is notified of the allocation described in subsection (a)(2).

(e) Definitions and special rules

For purposes of this section—

(1) Definitions

Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

(2) Special rules relating to tax imposed by reason of paragraph (3) or (4) of subsection (a)

(A) Prohibited allocations

The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

(B) Synthetic equity

The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

(C) Special rule during first nonallocation year

For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

(D) Statute of limitations

The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

(ii) the date on which the Secretary is notified of such allocation or ownership.

(Added and amended Pub. L. 99–514, title XI, § 1172(b)(2), title XVIII, § 1854(a)(9)(A), Oct. 22, 1986, 100 Stat. 2514, 2877; Pub. L. 101–239, title

VII, § 7304(a)(2)(D), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, § 1704(t)(22), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title XV, § 1530(c)(15)–(17), Aug. 5, 1997, 111 Stat. 1079, 1080; Pub. L. 107–16, title VI, § 656(c), June 7, 2001, 115 Stat. 134.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–16, § 656(c)(1), added pars. (3) and (4) and, in concluding provisions, substituted ''there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.'' for ''there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.''

Subsec. (c). Pub. L. 107–16, § 656(c)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The tax imposed by this section shall be paid by—

''(1) the employer sponsoring such plan, or

''(2) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be).''

Subsec. (e). Pub. L. 107–16, § 656(c)(3), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''Terms used in this section have the same respective meaning as when used in section 4978.''

1997—Subsec. (a). Pub. L. 105–34, § 1530(c)(15), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''If there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.''

Subsec. (c). Pub. L. 105–34, § 1530(c)(16), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The tax imposed by this section shall be paid by—

''(1) the employer sponsoring such plan, or

''(2) the eligible worker-owned cooperative,

which made the written statement described in section 1042(b)(3)(B).''

Subsecs. (d), (e). Pub. L. 105–34, § 1530(c)(17), added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (c). Pub. L. 104–188 amended directory language of Pub. L. 101–239, § 7304(a)(2)(D)(ii). See 1989 Amendment note below.

1989—Subsec. (b)(1). Pub. L. 101–239, § 7304(a)(2)(D)(i), struck out ''or section 2057'' after ''section 1042''.

Subsec. (c). Pub. L. 101–239, § 7304(a)(2)(D)(ii), as amended by Pub. L. 104–188, struck out ''or section 2057(d)'' after ''section 1042(b)(3)(B)'' in concluding provisions.

1986—Subsec. (b)(1). Pub. L. 99–514, § 1172(b)(2)(A), inserted reference to section 2057.

Subsec. (c). Pub. L. 99–514, § 1172(b)(2)(B), inserted reference to section 2057(d).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2004, except that in the case of any employee stock ownership plan established after Mar. 14, 2001, or established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of this title is not in effect on such date, amendment applicable to plan years ending after Mar. 14, 2001, see section 656(d) of Pub. L. 107–16, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1172(b)(2) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, with respect to which election is made by executor of an estate who is required to file the return of the tax imposed by this title on a date (including extensions) after Oct. 22, 1986, see section 1172(c) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE

Section 1854(a)(9)(D) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [enacting this section and amending section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4980. Tax on reversion of qualified plan assets to employer

(a) Imposition of tax

There is hereby imposed a tax of 20 percent of the amount of any employer reversion from a qualified plan.

(b) Liability for tax

The tax imposed by subsection (a) shall be paid by the employer maintaining the plan.

(c) Definitions and special rules

For purposes of this section—

(1) Qualified plan

The term ''qualified plan'' means any plan meeting the requirements of section 401(a) or 403(a), other than—

(A) a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A, or

(B) a governmental plan (within the meaning of section 414(d)).

Such term shall include any plan which, at any time, has been determined by the Secretary to be a qualified plan.

(2) Employer reversion

(A) In general

The term ''employer reversion'' means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

(B) Exceptions

The term ''employer reversion'' shall not include—

(i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating any provision of section 401,

(ii) any distribution to the employer which is allowable under section 401(a)(2)—

(I) in the case of a multiemployer plan, by reason of mistakes of law or fact or the return of any withdrawal liability payment,

(II) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or

(III) in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of contributions to be deductible, or

(iii) any transfer described in section 420(f)(2)(B)(ii)(II).

(3) Exception for employee stock ownership plans

(A) In general

If, upon an employer reversion from a qualified plan, any applicable amount is transferred from such plan to an employee stock ownership plan described in section 4975(e)(7) or a tax credit employee stock ownership plan (as described in section 409), such amount shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of the employer) if the requirements of subparagraphs (B), (C), and (D) are met.

(B) Investment in employer securities

The requirements of this subparagraph are met if, within 90 days after the transfer (or such longer period as the Secretary may prescribe), the amount transferred is invested in employer securities (as defined in section 409(*l*)) or used to repay loans used to purchase such securities.

(C) Allocation requirements

The requirements of this subparagraph are met if the portion of the amount transferred which is not allocated under the plan to accounts of participants in the plan year in which the transfer occurs—

(i) is credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over a period not to exceed 7 years, and

(ii) when allocated to accounts of participants under the plan, is treated as an employer contribution for purposes of section 415(c), except that—

(I) the annual addition (as determined under section 415(c)) attributable to each such allocation shall not exceed the value of such securities as of the time such securities were credited to such suspense account, and

(II) no additional employer contributions shall be permitted to an employee stock ownership plan described in subparagraph (A) of the employer before the allocation of such amount.

The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or ⅛ of the amount attributable to the securities acquired. In the case of dividends on securities held in the suspense account, the requirements of this subparagraph are met only if the dividends are allocated to accounts of participants or paid to participants in proportion to their accounts, or used to repay loans used to purchase employer securities.

(D) Participants

The requirements of this subparagraph are met if at least half of the participants in the qualified plan are participants in the employee stock ownership plan (as of the close of the 1st plan year for which an allocation of the securities is required).

(E) Applicable amount

For purposes of this paragraph, the term ''applicable amount'' means any amount which—

(i) is transferred after March 31, 1985, and before January 1, 1989, or

(ii) is transferred after December 31, 1988, pursuant to a termination which occurs after March 31, 1985, and before January 1, 1989.

(F) No credit or deduction allowed

No credit or deduction shall be allowed under chapter 1 for any amount transferred to an employee stock ownership plan in a transfer to which this paragraph applies.

(G) Amount transferred to include income thereon, etc.

The amount transferred shall not be treated as meeting the requirements of subparagraphs (B) and (C) unless amounts attributable to such amount also meet such requirements.

(4) Time for payment of tax

For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs.

(d) Increase in tax for failure to establish replacement plan or increase benefits

(1) In general

Subsection (a) shall be applied by substituting ''50 percent'' for ''20 percent'' with respect to any employer reversion from a qualified plan unless—

(A) the employer establishes or maintains a qualified replacement plan, or

(B) the plan provides benefit increases meeting the requirements of paragraph (3).

(2) Qualified replacement plan

For purposes of this subsection, the term ''qualified replacement plan'' means a qualified plan established or maintained by the employer in connection with a qualified plan termination (hereinafter referred to as the ''replacement plan'') with respect to which the following requirements are met:

(A) Participation requirement

At least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

(B) Asset transfer requirement

(i) 25 percent cushion

A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the transfer is in an amount equal to the excess (if any) of—

(I) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, over

(II) the amount determined under clause (ii).

(ii) Reduction for increase in benefits

The amount determined under this clause is an amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment which—

(I) is adopted during the 60-day period ending on the date of termination of the qualified plan, and

(II) takes effect immediately on the termination date.

(iii) Treatment of amount transferred

In the case of the transfer of any amount under clause (i)—

(I) such amount shall not be includible in the gross income of the employer,

(II) no deduction shall be allowable with respect to such transfer, and

(III) such transfer shall not be treated as an employer reversion for purposes of this section.

(C) Allocation requirements

(i) In general

In the case of any defined contribution plan, the portion of the amount transferred to the replacement plan under subparagraph (B)(i) is—

(I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or

(II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

(ii) Coordination with section 415 limitation

If, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the 7-year period under such clause—

(I) such amount shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants by reason of any such limitation, shall be allocated to the participant as provided in section 415.

(iii) Treatment of income

Any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

(iv) Unallocated amounts at termination

If any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan—

(I) such amount shall be allocated to the accounts of participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

(3) Pro rata benefit increases

(A) In general

The requirements of this paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which—

(i) have an aggregate present value not less than 20 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, and

(ii) take effect immediately on the termination date.

(B) Pro rata increase

For purposes of subparagraph (A), a pro rata increase is an increase in the present value of the accrued benefit of each qualified participant in an amount which bears the same ratio to the aggregate amount determined under subparagraph (A)(i) as—

(i) the present value of such participant's accrued benefit (determined without regard to this subsection), bears to

(ii) the aggregate present value of accrued benefits of the terminated plan (as so determined).

Notwithstanding the preceding sentence, the aggregate increases in the present value of the accrued benefits of qualified participants who are not active participants shall not exceed 40 percent of the aggregate amount determined under subparagraph (A)(i) by substituting ''equal to'' for ''not less than''.

(4) Coordination with other provisions

(A) Limitations

A benefit may not be increased under paragraph (2)(B)(ii) or (3)(A), and an amount may not be allocated to a participant under paragraph (2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or 415.

(B) Treatment as employer contributions

Any increase in benefits under paragraph (2)(B)(ii) or (3)(A), or any allocation of any

amount (or income allocable thereto) to any account under paragraph (2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

(C) 10-year participation requirement

Except as provided by the Secretary, section 415(b)(5)(D) shall not apply to any increase in benefits by reason of this subsection to the extent that the application of this subparagraph does not discriminate in favor of highly compensated employees (as defined in section 414(q)).

(5) Definitions and special rules

For purposes of this subsection—

(A) Qualified participant

The term ''qualified participant'' means an individual who—

(i) is an active participant,

(ii) is a participant or beneficiary in pay status as of the termination date,

(iii) is a participant not described in clause (i) or (ii)—

(I) who has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date, and

(II) whose service, which was creditable under the terminated plan, terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs, or

(iv) is a beneficiary of a participant described in clause (iii)(II) and has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date.

(B) Present value

Present value shall be determined as of the termination date and on the same basis as liabilities of the plan are determined on termination.

(C) Reallocation of increase

Except as provided in paragraph (2)(C), if any benefit increase is reduced by reason of the last sentence of paragraph (3)(A)(ii) or paragraph (4), the amount of such reduction shall be allocated to the remaining participants on the same basis as other increases (and shall be treated as meeting any allocation requirement of this subsection).

(D) Plans taken into account

For purposes of determining whether there is a qualified replacement plan under paragraph (2), the Secretary may provide that—

(i) 2 or more plans may be treated as 1 plan, or

(ii) a plan of a successor employer may be taken into account.

(E) Special rule for participation requirement

For purposes of paragraph (2)(A), all employers treated as 1 employer under section 414(b), (c), (m), or (*o*) shall be treated as 1 employer.

(6) Subsection not to apply to employer in bankruptcy

This subsection shall not apply to an employer who, as of the termination date of the qualified plan, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in similar proceedings under State law.

(Added Pub. L. 99–514, title XI, § 1132(a), Oct. 22, 1986, 100 Stat. 2478; amended Pub. L. 100–647, title I, § 1011A(f)(1)–(3), (6), (7), title V, § 5072(a), title VI, § 6069(a), Nov. 10, 1988, 102 Stat. 3478, 3479, 3681, 3704; Pub. L. 101–508, title XII, §§ 12001, 12002(a), Nov. 5, 1990, 104 Stat. 1388–562; Pub. L. 104–188, title I, § 1704(a), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 109–280, title IX, § 901(a)(2)(C), Aug. 17, 2006, 120 Stat. 1029; Pub. L. 110–458, title I, § 108(i)(3), Dec. 23, 2008, 122 Stat. 5110.)

AMENDMENTS

2008—Subsec. (c)(2)(B)(iii). Pub. L. 110–458 added cl. (iii).

2006—Subsec. (c)(3)(A). Pub. L. 109–280 substituted ''if the requirements of subparagraphs (B), (C), and (D) are met'' for ''if—

''(i) the requirements of subparagraphs (B), (C), and (D) are met, and

''(ii) under the plan, employer securities to which subparagraph (B) applies must, except to the extent necessary to meet the requirements of section 401(a)(28), remain in the plan until distribution to participants in accordance with the provisions of such plan''.

1996—Subsecs. (a), (d). Pub. L. 104–188 provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Sections 12001 and 12002(a) of title XII of Pub. L. 101–508 directed the amendment of this section without specifying that the amendment was to the Internal Revenue Code of 1986. See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–508, § 12001, which directed the substitution of ''20 percent'' for ''15 percent'' in ''section 4980(a)'' without specifying the Internal Revenue Code of 1986, was executed to subsec. (a) of this section. See 1996 Amendment note above.

Subsec. (d). Pub. L. 101–508, § 12002(a), which directed the addition of subsec. (d) to ''section 4980'' without specifying the Internal Revenue Code of 1986, was executed to this section. See 1996 Amendment note above.

1988—Subsec. (a). Pub. L. 100–647, § 6069(a), substituted ''15'' for ''10''.

Subsec. (c)(1)(A). Pub. L. 100–647, § 1011A(f)(1), substituted ''subtitle A'' for ''this subtitle''.

Subsec. (c)(3)(A). Pub. L. 100–647, § 1011A(f)(2), inserted ''or a tax credit employee stock ownership plan (as described in section 409)'' after ''section 4975(e)(7)'' in introductory text, and '', except to the extent necessary to meet the requirements of section 401(a)(28),'' after ''must'' in cl. (ii).

Subsec. (c)(3)(C). Pub. L. 100–647, § 1011A(f)(3), struck out ''(by reason of the limitations of section 415)'' after ''not allocated'' in introductory text, and inserted sentence at end relating to minimum amount allocated in year of transfer.

Pub. L. 100–647, § 1011A(f)(7), inserted sentence at end relating to dividends on securities held in suspense account.

Subsec. (c)(3)(F), (G). Pub. L. 100–647, § 1011A(f)(6), added subpars. (F) and (G).

Subsec. (c)(4). Pub. L. 100–647, § 5072(a), added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 12003 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle A (§§ 12001–12003) of title XII of Pub. L. 101–508, amending this section and sections 1002, 1104, and 1344 of Title 29, Labor] shall apply to reversions occurring after September 30, 1990.

''(b) EXCEPTION.—The amendments made by this subtitle shall not apply to any reversion after September 30, 1990, if—

''(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990,

''(2) in the case of plans subject to title I [29 U.S.C. 1001 et seq.] (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 1, 1990,

''(3) in the case of plans not subject to title I or IV of such Act, a request for a determination letter with respect to the termination was filed with the Secretary of the Treasury or the Secretary's delegate before October 1, 1990, or

''(4) in the case of plans not subject to title I or IV of such Act and having only 1 participant, a resolution terminating the plan was adopted by the employer before October 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(f)(1)–(3), (6), (7) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 5072(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to reversions after December 31, 1988.''

Section 6069(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to reversions occurring on or after October 21, 1988.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any reversion on or after October 21, 1988, pursuant to a plan termination if—

''(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 21, 1988,

''(B) with respect to plans subject to title I of such Act [29 U.S.C. 1001 et seq.], a notice of intent to reduce future accruals required under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 21, 1988,

''(C) with respect to plans not subject to title I or IV of such Act, the Board of Directors of the employer approved the termination or the employer took other binding action before October 21, 1988, or

''(D) such plan termination was directed by a final order of a court of competent jurisdiction entered before October 21, 1988, and notice of such order was provided to participants before such date.''

EFFECTIVE DATE

Section 1132(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011A(f)(4), (5), Nov. 10, 1988, 102 Stat. 3479, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to reversions occurring after December 31, 1985.

''(2) EXCEPTION WHERE TERMINATION DATE OCCURRED BEFORE JANUARY 1, 1986.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall not apply to any reversion after December 31, 1985, which occurs pursuant to a plan termination where the termination date is before January 1, 1986.

''(B) ELECTION TO HAVE AMENDMENTS APPLY.—A corporation may elect to have the amendments made by this section apply to any reversion after 1985 pursuant to a plan termination occurring before 1986 if such corporation was incorporated in the State of Delaware in March, 1978, and became a parent corporation of the consolidated group on September 19, 1978, pursuant to a merger agreement recorded in the State of Nevada on September 19, 1978.

''(3) TERMINATION DATE.—For purposes of paragraph (2), the term 'termination date' is the date of the termination (within the meaning of section 411(d)(3) of the Internal Revenue Code of 1986) of the plan.

''(4) TRANSITION RULE FOR CERTAIN TERMINATIONS.—

''(A) IN GENERAL.—In the case of a taxpayer to which this paragraph applies, the amendments made by this section shall not apply to any termination occurring before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986].

''(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to—

''(i) a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma,

''(ii) a corporation incorporated on January 17, 1917, which is located in Coatesville, Pennsylvania,

''(iii) a corporation incorporated on January 23, 1928, which has its principal place of business in New York, New York,

''(iv) a corporation incorporated on April 23, 1956, which has its principal place of business in Dallas, Texas, and

''(v) a corporation incorporated in the State of Nevada, the principal place of business of which is in Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986.

''(5) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—Section 4980(c)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to reversions occurring after March 31, 1985.''

TRANSFER OF EXCESS ASSETS FROM QUALIFIED PENSION PLAN TO WELFARE BENEFIT PLAN

Pub. L. 101–239, title VII, § 7861(b), Dec. 19, 1989, 103 Stat. 2430, provided that:

''(1) Notwithstanding any other provision of law, in the case of any qualified pension plan and welfare benefit plan described in paragraph (2), the assets of such pension plan in excess of its liabilities may be transferred to such welfare benefit plan upon the termination of such pension plan if such assets are to be used to provide retiree health benefits.

''(2) For purposes of paragraph (1), a qualified pension plan and welfare benefit plan are described in this paragraph if—

''(A) both such plans are jointly administered pursuant to a collective bargaining agreement between the employer maintaining such plans and one or more employee representatives,

''(B) the welfare benefit plan provides retiree health benefits, and

''(C) the qualified pension plan has assets in excess of liabilities (determined on a termination basis) and the welfare benefit plan has assets which are less

than the present value of the benefits to be provided under the plan (determined as of the time of termination of the pension plan).

''(3) For purposes of the Internal Revenue Code of 1986, any transfer of assets to which paragraph (1) applies shall be treated as a reversion of such assets to the employer maintaining the plan which is includible in the gross income of such employer and subject to the tax imposed by section 4980 of such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 4980A. Repealed. Pub. L. 105–34, title X, § 1073(a), Aug. 5, 1997, 111 Stat. 948]

Section, added Pub. L. 99–514, title XI, § 1133(a), Oct. 22, 1986, 100 Stat. 2481, § 4981A; renumbered § 4980A and amended Pub. L. 100–647, title I, § 1011A(g)(1)(A), (2)–(6), (9), Nov. 10, 1988, 102 Stat. 3479–3482; Pub. L. 102–318, title V, § 521(b)(42), July 3, 1992, 106 Stat. 313; Pub. L. 104–188, title I, §§ 1401(b)(12), 1452(b), Aug. 20, 1996, 110 Stat. 1789, 1816, related to tax on excess distributions from qualified retirement plans.

EFFECTIVE DATE OF REPEAL

Section 1073(c) of Pub. L. 105–34 provided that:

''(1) EXCESS DISTRIBUTION TAX REPEAL.—Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall apply to excess distributions received after December 31, 1996.

''(2) EXCESS RETIREMENT ACCUMULATION TAX REPEAL.—The repeal made by subsection (a) with respect to section 4980A(d) of the Internal Revenue Code of 1986 and the amendments made by subsection (b) [amending sections 691, 2013, 2053, and 6018 of this title] shall apply to estates of decedents dying after December 31, 1996.''

§ 4980B. Failure to satisfy continuation coverage requirements of group health plans

(a) General rule

There is hereby imposed a tax on the failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to a qualified beneficiary shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term ''noncompliance period'' means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the earlier of—

(i) the date such failure is corrected, or

(ii) the date which is 6 months after the last day in the period applicable to the qualified beneficiary under subsection (f)(2)(B) (determined without regard to clause (iii) thereof).

If a person is liable for tax under subsection (e)(1)(B) by reason of subsection (e)(2)(B) with respect to any failure, the noncompliance period for such person with respect to such failure shall not begin before the 45th day after the written request described in subsection (e)(2)(B) is provided to such person.

(3) Minimum tax for noncompliance period where failure discovered after notice of examination

Notwithstanding paragraphs (1) and (2) of subsection (c)—

(A) In general

In the case of 1 or more failures with respect to a qualified beneficiary—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such beneficiary shall not be less than the lesser of $2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

(B) Higher minimum tax where violations are more than de minimis

To the extent violations by the employer (or the plan in the case of a multiemployer plan) for any year are more than de minimis, subparagraph (A) shall be applied by substituting ''$15,000'' for ''$2,500'' with respect to the employer (or such plan).

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered exercising reasonable diligence

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

(2) Tax not to apply to failures corrected within 30 days

No tax shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

(3) $100 limit on amount of tax for failures on any day with respect to a qualified beneficiary

(A) In general

Except as provided in subparagraph (B), the maximum amount of tax imposed by subsection (a) on failures on any day during the noncompliance period with respect to a qualified beneficiary shall be $100.

(B) Special rule where more than 1 qualified beneficiary

If there is more than 1 qualified beneficiary with respect to the same qualifying

event, the maximum amount of tax imposed by subsection (a) on all failures on any day during the noncompliance period with respect to such qualified beneficiaries shall be $200.

(4) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect—

(A) Single employer plans

(i) In general

In the case of failures with respect to plans other than multiemployer plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) $500,000.

(ii) Taxable years in the case of certain controlled groups

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(B) Multiemployer plans

(i) In general

In the case of failures with respect to a multiemployer plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 213(d)) directly or through insurance, reimbursement, or otherwise, or

(II) $500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as 1 plan.

(ii) Special rule for employers required to pay tax

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a multiemployer plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a multiemployer plan.

(C) Special rule for persons providing benefits

In the case of a person described in subsection (e)(1)(B) (and not subsection (e)(1)(A)), the aggregate amount of tax imposed by subsection (a) for failures during a taxable year with respect to all plans shall not exceed $2,000,000.

(5) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Tax not to apply to certain plans

This section shall not apply to—

(1) any failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary if the qualifying event with respect to such beneficiary occurred during the calendar year immediately following a calendar year during which all employers maintaining such plan normally employed fewer than 20 employees on a typical business day,

(2) any governmental plan (within the meaning of section 414(d)), or

(3) any church plan (within the meaning of section 414(e)).

(e) Liability for tax

(1) In general

Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

(A)(i) In the case of a plan other than a multiemployer plan, the employer.

(ii) In the case of a multiemployer plan, the plan.

(B) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the plan and whose act or failure to act caused (in whole or in part) the failure.

(2) Special rules for persons described in paragraph (1)(B)

(A) No liability unless written agreement

Except in the case of liability resulting from the application of subparagraph (B) of this paragraph, a person described in subparagraph (B) (and not in subparagraph (A)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

(B) Failure to cover qualified beneficiaries where current employees are covered

A person shall be treated as described in paragraph (1)(B) with respect to a qualified beneficiary if—

(i) such person provides coverage under a group health plan for any similarly situated beneficiary under the plan with respect to whom a qualifying event has not occurred, and

(ii) the—

(I) employer or plan administrator, or

(II) in the case of a qualifying event described in subparagraph (C) or (E) of subsection (f)(3) where the person described in clause (i) is the plan administrator, the qualified beneficiary,

submits to such person a written request that such person make available to such qualified beneficiary the same coverage which such person provides to the beneficiary referred to in clause (i).

(f) Continuation coverage requirements of group health plans

(1) In general

A group health plan meets the requirements of this subsection only if the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act)[1] is not reduced below the coverage provided by the plan as of May 1, 1993, and only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

(2) Continuation coverage

For purposes of paragraph (1), the term ''continuation coverage'' means coverage under the plan which meets the following requirements:

(A) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.

(B) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(i) Maximum required period

(I) General rule for terminations and reduced hours

In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

(II) Special rule for multiple qualifying events

If a qualifying event (other than a qualifying event described in paragraph (3)(F)) occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

(III) Special rule for certain bankruptcy proceedings

In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (g)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(IV) General rule for other qualifying events

In the case of a qualifying event not described in paragraph (3)(B) or (3)(F), the date which is 36 months after the date of the qualifying event.

(V) Special rule for PBGC recipients

In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974, notwithstanding subclause (I) or (II), the date of the death of the covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond February 12, 2011.

(VI) Special rule for TAA-eligible individuals

In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who is (as of the date that the period of coverage would, but for this subclause or subclause (VII), otherwise terminate under subclause (I) or (II)) a TAA-eligible individual (as defined in paragraph (5)(C)(iv)(II)), the period of coverage shall not terminate by reason of subclause (I) or (II), as the case may be, before the later of the date specified in such subclause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond February 12, 2011.

(VII) Medicare entitlement followed by qualifying event

In the case of a qualifying event described in paragraph (3)(B) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this clause before the close of the 36-month period beginning on the date the covered employee became so entitled.

(VIII) Special rule for disability

In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage under this section, any reference in subclause (I) or (II) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such

[1] See References in Text note below.

determination under paragraph (6)(C) before the end of such 18 months.

(ii) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(iii) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(iv) Group health plan coverage or medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(I) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of this title, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or title XXVII of the Public Health Service Act), or

(II) in the case of a qualified beneficiary other than a qualified beneficiary described in subsection (g)(1)(D) entitled to benefits under title XVIII of the Social Security Act.

(v) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this section, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act that the qualified beneficiary is no longer disabled.

(C) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(i) shall not exceed 102 percent of the applicable premium for such period, and

(ii) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to ''102 percent'' is deemed a reference to ''150 percent'' for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i).

(D) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(E) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(3) Qualifying event

For purposes of this subsection, the term ''qualifying event'' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary—

(A) The death of the covered employee.

(B) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(C) The divorce or legal separation of the covered employee from the employee's spouse.

(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in subsection (g)(1)(D) within one year before or after the date of commencement of the proceeding.

(4) Applicable premium

For purposes of this subsection—

(A) In general

The term ''applicable premium'' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(B) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(i) In general

Except as provided in clause (ii), the applicable premium for any period of con-

tinuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(I) is determined on an actuarial basis, and

(II) takes into account such factors as the Secretary may prescribe in regulations.

(ii) Determination on basis of past cost

If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(iii) Clause (ii) not to apply where significant change

A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

(C) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(5) Election

For purposes of this subsection—

(A) Election period

The term ''election period'' means the period which—

(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(ii) is of at least 60 days' duration, and

(iii) ends not earlier than 60 days after the later of—

(I) the date described in clause (i), or

(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

(B) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of subsection (g)(1) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(C) Temporary extension of COBRA election period for certain individuals

(i) In general

In the case of a nonelecting TAA-eligible individual and notwithstanding subparagraph (A), such individual may elect continuation coverage under this subsection during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

(ii) Commencement of coverage; no reach-back

Any continuation coverage elected by a TAA-eligible individual under clause (i) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

(iii) Preexisting conditions

With respect to an individual who elects continuation coverage pursuant to clause (i), the period—

(I) beginning on the date of the TAA-related loss of coverage, and

(II) ending on the first day of the 60-day election period described in clause (i),

shall be disregarded for purposes of determining the 63-day periods referred to in section 9801(c)(2), section 701(c)(2) of the Employee Retirement Income Security Act of 1974, and section 2701(c)(2)[1] of the Public Health Service Act.

(iv) Definitions

For purposes of this subsection:

(I) Nonelecting TAA-eligible individual

The term ''nonelecting TAA-eligible individual'' means a TAA-eligible individual who has a TAA-related loss of coverage and did not elect continuation coverage under this subsection during the TAA-related election period.

(II) TAA-eligible individual

The term ''TAA-eligible individual'' means an eligible TAA recipient (as defined in paragraph (2) of section 35(c)) and an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

(III) TAA-related election period

The term ''TAA-related election period'' means, with respect to a TAA-related loss of coverage, the 60-day election period under this subsection which is a direct consequence of such loss.

(IV) TAA-related loss of coverage

The term ''TAA-related loss of coverage'' means, with respect to an individ-

ual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

(6) Notice requirement

In accordance with regulations prescribed by the Secretary—

(A) The group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

(B) The employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3) with respect to such employee within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event.

(C) Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3) within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage under this section is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled.

(D) The plan administrator shall notify—

(i) in the case of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3), any qualified beneficiary with respect to such event, and

(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator. For purposes of subparagraph (D), any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(7) Covered employee

For purposes of this subsection, the term ''covered employee'' means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1)).

(8) Optional extension of required periods

A group health plan shall not be treated as failing to meet the requirements of this subsection solely because the plan provides both—

(A) that the period of extended coverage referred to in paragraph (2)(B) commences with the date of the loss of coverage, and

(B) that the applicable notice period provided under paragraph (6)(B) commences with the date of the loss of coverage.

(g) Definitions

For purposes of this section—

(1) Qualified beneficiary

(A) In general

The term ''qualified beneficiary'' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this section.

(B) Special rule for terminations and reduced employment

In the case of a qualifying event described in subsection (f)(3)(B), the term ''qualified beneficiary'' includes the covered employee.

(C) Exception for nonresident aliens

Notwithstanding subparagraphs (A) and (B), the term ''qualified beneficiary'' does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship of the individual.

(D) Special rule for retirees and widows

In the case of a qualifying event described in subsection (f)(3)(F), the term ''qualified beneficiary'' includes a covered employee who had retired on or before the date of sub-

stantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(i) as the spouse of the covered employee,

(ii) as the dependent child of the covered employee, or

(iii) as the surviving spouse of the covered employee.

(2) Group health plan

The term ''group health plan'' has the meaning given such term by section 5000(b)(1). Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c)).

(3) Plan administrator

The term ''plan administrator'' has the meaning given the term ''administrator'' by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

(4) Correction

A failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the qualified beneficiary is placed in a financial position which is as good as such beneficiary would have been in had such failure not occurred.

For purposes of applying subparagraph (B), the qualified beneficiary shall be treated as if he had elected the most favorable coverage in light of the expenses he incurred since the failure first occurred.

(Added Pub. L. 100–647, title III, § 3011(a), Nov. 10, 1988, 102 Stat. 3616; amended Pub. L. 101–239, title VI, §§ 6202(b)(3)(B), 6701(a)–(c), title VII, §§ 7862(c)(2)(B), (3)(C), (4)(B), (5)(A), 7891(d)(1)(B), (2)(A), Dec. 19, 1989, 103 Stat. 2233, 2294, 2295, 2432, 2433, 2446; Pub. L. 101–508, title XI, § 11702(f), Nov. 5, 1990, 104 Stat. 1388–515; Pub. L. 103–66, title XIII, § 13422(a), Aug. 10, 1993, 107 Stat. 566; Pub. L. 104–188, title I, § 1704(g)(1)(A), (t)(21), Aug. 20, 1996, 110 Stat. 1880, 1888; Pub. L. 104–191, title III, § 321(d)(1), title IV, § 421(c), Aug. 21, 1996, 110 Stat. 2058, 2088; Pub. L. 107–210, div. A, title II, § 203(e)(3), Aug. 6, 2002, 116 Stat. 971; Pub. L. 111–5, div. B, title I, § 1899F(b), Feb. 17, 2009, 123 Stat. 429; Pub. L. 111–344, title I, § 116(b), Dec. 29, 2010, 124 Stat. 3616.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (f)(1), does not contain a section 2162. The reference probably should be to section 1928 of the Social Security Act, which is classified to section 1396s of Title 42, The Public Health and Welfare, and which relates to pediatric vaccines.

The Social Security Act, referred to in subsec. (f)(2)(B)(i)(IV), (VII), (VIII), (iv)(II), (v), (3)(D), (6)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), and XVIII (§ 1395 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(2)(B)(i)(V), (iv)(I), (5)(C)(iii), and (g)(3), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§ 1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. Sections 3(16)(A) and 701(c)(2) of the Act are classified to sections 1002(16)(A) and 1181(c)(2), respectively, of Title 29. Title IV of the Act is classified principally to subchapter III (§ 1301 et seq.) of chapter 18 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (f)(2)(B)(iv)(I), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XXVII of the Act is classified generally to subchapter XXV (§ 300gg et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Section 2701 of the Public Health Service Act, referred to in subsec. (f)(5)(C)(iii), was classified to section 300gg of Title 42, The Public Health and Welfare, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111–148, title I, §§ 1201(2), 1563(c)(1), formerly § 1562(c)(1), title X, § 10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg–3 of Title 42. A new section 2701, related to fair health insurance premiums, was added and amended by Pub. L. 111–148, title I, § 1201(4), title X, § 10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of Title 42.

AMENDMENTS

2010—Subsec. (f)(2)(B)(i)(V), (VI). Pub. L. 111–344 substituted ''February 12, 2011'' for ''December 31, 2010''.

2009—Subsec. (f)(2)(B)(i)(V). Pub. L. 111–5, § 1899F(b)(2), added subcl. (V). Former subcl. (V) redesignated (VII).

Subsec. (f)(2)(B)(i)(VI). Pub. L. 111–5, § 1899F(b)(2), added subcl. (VI). Former subcl. (VI) redesignated (VIII).

Pub. L. 111–5, § 1899F(b)(1), designated concluding provisions as subcl. (VI) and inserted heading.

Subsec. (f)(2)(B)(i)(VII), (VIII). Pub. L. 111–5, § 1899F(b)(2), designated subcls. (V) and (VI) as (VII) and (VIII), respectively.

2002—Subsec. (f)(5)(C). Pub. L. 107–210 added subpar. (C).

1996—Subsec. (f)(2)(B)(i). Pub. L. 104–191, § 421(c)(1)(A), in concluding provisions, substituted ''at any time during the first 60 days of continuation coverage under this section'' for ''at the time of a qualifying event described in paragraph (3)(B)'', struck out ''with respect to such event'' after ''(II) to 18 months'', and inserted ''(with respect to all qualified beneficiaries)'' after ''29 months''.

Pub. L. 104–188, § 1704(t)(21), made technical amendment to directory language of Pub. L. 101–239, § 6701(a)(1). See 1989 Amendment note below.

Subsec. (f)(2)(B)(i)(V). Pub. L. 104–188, § 1704(g)(1)(A), substituted ''Medicare entitlement followed by qualifying event'' for ''Qualifying event involving medicare entitlement'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of an event described in paragraph (3)(D) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act.''

Subsec. (f)(2)(B)(iv)(I). Pub. L. 104–191, § 421(c)(1)(B), inserted ''(other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of this title, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or title XXVII of the Public Health Service Act)'' before '', or''.

Subsec. (f)(2)(B)(v). Pub. L. 104–191, § 421(c)(1)(C), substituted ''at any time during the first 60 days of continuation coverage under this section'' for ''at the time of a qualifying event described in paragraph (3)(B)''.

Subsec. (f)(6)(C). Pub. L. 104–191, § 421(c)(2), substituted ''at any time during the first 60 days of continuation coverage under this section'' for ''at the time of a qualifying event described in paragraph (3)(B)''.

Subsec. (g)(1)(A). Pub. L. 104–191, § 421(c)(3), inserted at end ''Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this section.''

Subsec. (g)(2). Pub. L. 104–191, § 321(d)(1), inserted at end ''Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c)).''

1993—Subsec. (f)(1). Pub. L. 103–66 inserted ''the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act) is not reduced below the coverage provided by the plan as of May 1, 1993, and only if'' after ''only if''.

1990—Subsec. (d)(1). Pub. L. 101–508 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''any failure of a group health plan to meet the requirements of subsection (f) if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year,''.

1989—Subsec. (f)(2)(B)(i). Pub. L. 101–239, § 6701(a)(1), as amended by Pub. L. 104–188, § 1704(t)(21), inserted at end ''In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B), any reference in subclause (I) or (II) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under paragraph (6)(C) before the end of such 18 months.''

Subsec. (f)(2)(B)(i)(V). Pub. L. 101–239, § 7862(c)(5)(A), added subcl. (V).

Subsec. (f)(2)(B)(iv). Pub. L. 101–239, § 7862(c)(3)(C), substituted ''entitlement'' for ''eligibility'' in heading and inserted ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in subcl. (I).

Subsec. (f)(2)(B)(v). Pub. L. 101–239, § 6701(a)(2), added cl. (v).

Subsec. (f)(2)(C). Pub. L. 101–239, § 7862(c)(4)(B), amended last sentence generally. Prior to amendment, last sentence read as follows: ''If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.''

Pub. L. 101–239, § 6701(b), inserted at end ''In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i).''

Subsec. (f)(6). Pub. L. 101–239, § 7891(d)(1)(B)(ii), inserted after and below subpar. (D) the following new flush sentence ''The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.''

Pub. L. 101–239, § 7891(d)(1)(B)(i)(II), inserted ''(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)'' after ''14 days'' in last sentence.

Subsec. (f)(6)(B). Pub. L. 101–239, § 7891(d)(1)(B)(i)(I), inserted ''(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)'' after ''30 days''.

Subsec. (f)(6)(C). Pub. L. 101–239, § 6701(c), inserted before period at end ''and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B) is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled''.

Subsec. (f)(7). Pub. L. 101–239, § 7862(c)(2)(B), substituted ''the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))'' for ''the individual's employment or previous employment with an employer''.

Subsec. (f)(8). Pub. L. 101–239, § 7891(d)(2)(A), added par. (8).

Subsec. (g)(2). Pub. L. 101–239, § 6202(b)(3)(B), substituted ''section 5000(b)(1)'' for ''section 162(i)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–344, title I, § 116(d), Dec. 29, 2010, 124 Stat. 3616, provided that: ''The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111–5, div. B, title I, § 1899F(d), Feb. 17, 2009, 123 Stat. 430, provided that: ''The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of Title 19, Customs Duties, on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of Title 19.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 321(d)(1) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

Section 421(d) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section, sections 1162, 1166, and 1167 of Title 29, Labor, and sections 300bb–2, 300bb–6, and 300bb–8 of Title 42, The Public Health and Welfare] shall become effective on January 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date.''

Section 1704(g)(2) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13422(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply with respect to plan years beginning after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6202(b)(3)(B) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of this title.

Section 6701(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date.''

Section 7862(c)(2)(C) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section and section 1167 of Title 29, Labor] shall apply to plan years beginning after December 31, 1989.''

Amendment by section 7862(c)(3)(C) of Pub. L. 101–239 applicable to (i) qualifying events occurring after Dec. 31, 1989, and (ii) in the case of qualified beneficiaries who elected continuation coverage after Dec. 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such), see section 7862(c)(3)(D) of Pub. L. 101–239, set out as a note under section 162 of this title.

Section 7862(c)(4)(C) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section and section 1162 of Title 29, Labor] shall apply to plan years beginning after December 31, 1989.''

Section 7862(c)(5)(C) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section and section 1162 of Title 29] shall apply to plan years beginning after December 31, 1989.''

Section 7891(d)(1)(C) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section and section 1166 of Title 29] shall apply with respect to plan years beginning on or after January 1, 1990.''

Section 7891(d)(2)(C) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section and section 1167 of Title 29] shall apply with respect to plan years beginning on or after January 1, 1990.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 162 of this title.

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a note under section 2918 of Title 29, Labor.

NOTIFICATION OF CHANGES IN CONTINUATION COVERAGE

Section 421(e) of Pub. L. 104–191 provided that: ''Not later than November 1, 1996, each group health plan (covered under title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1161 et seq.], and section 4980B(f) of the Internal Revenue Code of 1986) shall notify each qualified beneficiary who has elected continuation coverage under such title, part or section of the amendments made by this section [amending this section, sections 1162, 1166, and 1167 of Title 29, Labor, and sections 300bb–2, 300bb–6, and 300bb–8 of Title 42, The Public Health and Welfare].''

§ 4980C. Requirements for issuers of qualified long-term care insurance contracts

(a) General rule

There is hereby imposed on any person failing to meet the requirements of subsection (c) or (d) a tax in the amount determined under subsection (b).

(b) Amount

(1) In general

The amount of the tax imposed by subsection (a) shall be $100 per insured for each day any requirement of subsection (c) or (d) is not met with respect to each qualified long-term care insurance contract.

(2) Waiver

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that payment of the tax would be excessive relative to the failure involved.

(c) Responsibilities

The requirements of this subsection are as follows:

(1) Requirements of model provisions

(A) Model regulation

The following requirements of the model regulation must be met:

(i) Section 13 (relating to application forms and replacement coverage).

(ii) Section 14 (relating to reporting requirements), except that the issuer shall also report at least annually the number of claims denied during the reporting period for each class of business (expressed as a percentage of claims denied), other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition.

(iii) Section 20 (relating to filing requirements for marketing).

(iv) Section 21 (relating to standards for marketing), including inaccurate completion of medical histories, other than sections 21C(1) and 21C(6) thereof, except that—

(I) in addition to such requirements, no person shall, in selling or offering to sell a qualified long-term care insurance contract, misrepresent a material fact; and

(II) no such requirements shall include a requirement to inquire or identify whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance.

(v) Section 22 (relating to appropriateness of recommended purchase).

(vi) Section 24 (relating to standard format outline of coverage).

(vii) Section 25 (relating to requirement to deliver shopper's guide).

(B) Model Act

The following requirements of the model Act must be met:

(i) Section 6F (relating to right to return), except that such section shall also apply to denials of applications and any refund shall be made within 30 days of the return or denial.

(ii) Section 6G (relating to outline of coverage).

(iii) Section 6H (relating to requirements for certificates under group plans).

(iv) Section 6I (relating to policy summary).

(v) Section 6J (relating to monthly reports on accelerated death benefits).

(vi) Section 7 (relating to incontestability period).

(C) Definitions

For purposes of this paragraph, the terms ''model regulation'' and ''model Act'' have the meanings given such terms by section 7702B(g)(2)(B).

(2) Delivery of policy

If an application for a qualified long-term care insurance contract (or for a certificate under such a contract for a group) is approved, the issuer shall deliver to the applicant (or policyholder or certificateholder) the contract (or certificate) of insurance not later than 30 days after the date of the approval.

(3) Information on denials of claims

If a claim under a qualified long-term care insurance contract is denied, the issuer shall, within 60 days of the date of a written request by the policyholder or certificateholder (or representative)—

(A) provide a written explanation of the reasons for the denial, and

(B) make available all information directly relating to such denial.

(d) Disclosure

The requirements of this subsection are met if the issuer of a long-term care insurance policy discloses in such policy and in the outline of coverage required under subsection (c)(1)(B)(ii) that the policy is intended to be a qualified long-term care insurance contract under section 7702B(b).

(e) Qualified long-term care insurance contract defined

For purposes of this section, the term ''qualified long-term care insurance contract'' has the meaning given such term by section 7702B.

(f) Coordination with State requirements

If a State imposes any requirement which is more stringent than the analogous requirement imposed by this section or section 7702B(g), the requirement imposed by this section or section 7702B(g) shall be treated as met if the more stringent State requirement is met.

(Added Pub. L. 104–191, title III, § 326(a), Aug. 21, 1996, 110 Stat. 2065.)

EFFECTIVE DATE

Section 327 of title III of Pub. L. 104–191 provided that:

''(a) IN GENERAL.—The provisions of, and amendments made by, this part [part II (§§ 325–327) of subtitle C of title III of Pub. L. 104–191, enacting this section and amending section 7702B of this title] shall apply to contracts issued after December 31, 1996. The provisions of section 321(f) [set out as an Effective Date note under section 7702B of this title] (relating to transition rule) shall apply to such contracts.

''(b) ISSUERS.—The amendments made by section 326 [enacting this section] shall apply to actions taken after December 31, 1996.''

§ 4980D. Failure to meet certain group health plan requirements

(a) General rule

There is hereby imposed a tax on any failure of a group health plan to meet the requirements of chapter 100 (relating to group health plan requirements).

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

(2) Noncompliance period

For purposes of this section, the term ''noncompliance period'' means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the date such failure is corrected.

(3) Minimum tax for noncompliance period where failure discovered after notice of examination

Notwithstanding paragraphs (1) and (2) of subsection (c)—

(A) In general

In the case of 1 or more failures with respect to an individual—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such individual shall not be less than the lesser of $2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

(B) Higher minimum tax where violations are more than de minimis

To the extent violations for which any person is liable under subsection (e) for any year are more than de minimis, subparagraph (A) shall be applied by substituting ''$15,000'' for ''$2,500'' with respect to such person.

(C) Exception for church plans

This paragraph shall not apply to any failure under a church plan (as defined in section 414(e)).

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered exercising reasonable diligence

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such tax did not know, and exercising reasonable diligence would not have known, that such failure existed.

(2) Tax not to apply to failures corrected within certain periods

No tax shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B)(i) in the case of a plan other than a church plan (as defined in section 414(e)), such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such tax knew, or exercising reasonable diligence would have known, that such failure existed, and

(ii) in the case of a church plan (as so defined), such failure is corrected before the close of the correction period (determined under the rules of section 414(e)(4)(C)).

(3) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect—

(A) Single employer plans

(i) In general

In the case of failures with respect to plans other than specified multiple employer health plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) $500,000.

(ii) Taxable years in the case of certain controlled groups

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(B) Specified multiple employer health plans

(i) In general

In the case of failures with respect to a specified multiple employer health plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 9832(d)(3)) directly or through insurance, reimbursement, or otherwise, or

(II) $500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as one plan.

(ii) Special rule for employers required to pay tax

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a specified multiple employer health plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a specified multiple employer health plan.

(4) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Tax not to apply to certain insured small employer plans

(1) In general

In the case of a group health plan of a small employer which provides health insurance coverage solely through a contract with a health insurance issuer, no tax shall be imposed by this section on the employer on any failure (other than a failure attributable to section 9811) which is solely because of the health insurance coverage offered by such issuer.

(2) Small employer

(A) In general

For purposes of paragraph (1), the term ''small employer'' means, with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as one employer.

(B) 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 a small 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.

(C) Predecessors

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

(3) Health insurance coverage; health insurance issuer

For purposes of paragraph (1), the terms ''health insurance coverage'' and ''health insurance issuer'' have the respective meanings given such terms by section 9832.

(e) Liability for tax

The following shall be liable for the tax imposed by subsection (a) on a failure:

(1) Except as otherwise provided in this subsection, the employer.

(2) In the case of a multiemployer plan, the plan.

(3) In the case of a failure under section 9803 (relating to guaranteed renewability) with respect to a plan described in subsection (f)(2)(B), the plan.

(f) Definitions

For purposes of this section—

(1) Group health plan

The term ''group health plan'' has the meaning given such term by section 9832(a).

(2) Specified multiple employer health plan

The term ''specified multiple employer health plan'' means a group health plan which is—

(A) any multiemployer plan, or

(B) any multiple employer welfare arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974, as in effect on the date of the enactment of this section).

(3) Correction

A failure of a group health plan shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the person to whom the failure relates is placed in a financial position which is as good as such person would have been in had such failure not occurred.

(Added Pub. L. 104–191, title IV, § 402(a), Aug. 21, 1996, 110 Stat. 2084; amended Pub. L. 105–34, title XV, § 1531(b)(2), Aug. 5, 1997, 111 Stat. 1085; Pub. L. 109–135, title IV, § 412(ww), Dec. 21, 2005, 119 Stat. 2640.)

REFERENCES IN TEXT

Section 3(40) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(2)(B), is classified to section 1002(40) of Title 29, Labor.

The date of the enactment of this section, referred to in subsec. (f)(2)(B), is the date of enactment of Pub. L. 104–191, which was approved Aug. 21, 1996.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–135 substituted ''plan requirements'' for ''plans requirements''.

1997—Subsec. (a). Pub. L. 105–34, § 1531(b)(2)(A), substituted ''plans'' for ''plan portability, access, and renewability''.

Subsec. (c)(3)(B)(i)(I). Pub. L. 105–34, § 1531(b)(2)(B), substituted ''9832(d)(3)'' for ''9805(d)(3)''.

Subsec. (d)(1). Pub. L. 105–34, § 1531(b)(2)(C), inserted ''(other than a failure attributable to section 9811)'' after ''on any failure''.

Subsec. (d)(3). Pub. L. 105–34, § 1531(b)(2)(D), substituted ''section 9832'' for ''section 9805''.

Subsec. (f)(1). Pub. L. 105–34, § 1531(b)(2)(E), substituted ''section 9832(a)'' for ''section 9805(a)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1531(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting sections 9811 and 9812 of this title, amending this section and sections 9801 and 9831 of this title, and renumbering sections 9804 to 9806 of this title as sections 9831 to 9833 of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.''

EFFECTIVE DATE

Section 402(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [enacting this section] shall apply to failures under chapter 100 of the Internal Revenue Code of 1986 (as added by section 401 of this Act).''

§ 4980E. Failure of employer to make comparable Archer MSA contributions

(a) General rule

In the case of an employer who makes a contribution to the Archer MSA of any employee with respect to coverage under a high deductible health plan of the employer during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

(b) Amount of tax

The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of employees for taxable years of such employees ending with or within such calendar year.

(c) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Employer required to make comparable MSA contributions for all participating employees

(1) In general

An employer meets the requirements of this subsection for any calendar year if the employer makes available comparable contributions to the Archer MSAs of all comparable participating employees for each coverage period during such calendar year.

(2) Comparable contributions

(A) In general

For purposes of paragraph (1), the term ''comparable contributions'' means contributions—

(i) which are the same amount, or

(ii) which are the same percentage of the annual deductible limit under the high deductible health plan covering the employees.

(B) Part-year employees

In the case of an employee who is employed by the employer for only a portion of the calendar year, a contribution to the Archer MSA of such employee shall be treated as comparable if it is an amount which bears the same ratio to the comparable amount (determined without regard to this subparagraph) as such portion bears to the entire calendar year.

(3) Comparable participating employees

For purposes of paragraph (1), the term ''comparable participating employees'' means all employees—

(A) who are eligible individuals covered under any high deductible health plan of the employer, and

(B) who have the same category of coverage.

For purposes of subparagraph (B), the categories of coverage are self-only and family coverage.

(4) Part-time employees

(A) In general

Paragraph (3) shall be applied separately with respect to part-time employees and other employees.

(B) Part-time employee

For purposes of subparagraph (A), the term ''part-time employee'' means any employee who is customarily employed for fewer than 30 hours per week.

(e) Controlled groups

For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 employer.

(f) Definitions

Terms used in this section which are also used in section 220 have the respective meanings given such terms in section 220.

(Added Pub. L. 104–191, title III, § 301(c)(4)(A), Aug. 21, 1996, 110 Stat. 2049; amended Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(8), (b)(2)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–147, title IV, § 417(17)(A), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107–147 substituted ''Archer MSA contributions'' for ''medical savings account contributions'' in section catchline.

2000—Subsec. (a). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(8)], substituted ''Archer MSA'' for ''medical savings account''.

Subsecs. (b), (d)(1). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(D)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (d)(2)(B). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(8)], substituted ''Archer MSA'' for ''medical savings account''.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

§ 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements

(a) Imposition of tax

There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term ''noncompliance period'' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered and reasonable diligence exercised

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

(2) Tax not to apply to failures corrected within 30 days

No tax shall be imposed by subsection (a) on any failure if—

(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Overall limitation for unintentional failures

(A) In general

If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

(B) Taxable years in the case of certain controlled groups

For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(4) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

(d) Liability for tax

The following shall be liable for the tax imposed by subsection (a):

(1) In the case of a plan other than a multiemployer plan, the employer.

(2) In the case of a multiemployer plan, the plan.

(e) Notice requirements for plans significantly reducing benefit accruals

(1) In general

If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals) and to each employer who has an obligation to contribute to the plan.

(2) Notice

The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) Timing of notice

Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Designees

Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) Notice before adoption of amendment

A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(f) Definitions and special rules

For purposes of this section—

(1) Applicable individual

The term ''applicable individual'' means, with respect to any plan amendment—

(A) each participant in the plan, and

(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(2) Applicable pension plan

The term ''applicable pension plan'' means—

(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 employer-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.

(3) Special rules for employers providing free choice vouchers

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.

(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 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.

(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).

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

(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.)

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsecs. (a)(2), (b)(1)(B), (3) 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 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, 139D, 162, 4980H, and 6056 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

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 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. Excise tax on high cost employer-sponsored health coverage

(a) Imposition of tax

If—

(1) an employee is covered under any applicable employer-sponsored coverage of an employer at any time during a taxable period, and

(2) there is any excess benefit with respect to the coverage,

there is hereby imposed a tax equal to 40 percent of the excess benefit.

(b) Excess benefit

For purposes of this section—

(1) In general

The term ''excess benefit'' means, with respect to any applicable employer-sponsored coverage made available by an employer to an employee during any taxable period, the sum of the excess amounts determined under paragraph (2) for months during the taxable period.

(2) Monthly excess amount

The excess amount determined under this paragraph for any month is the excess (if any) of—

(A) the aggregate cost of the applicable employer-sponsored coverage of the employee for the month, over

(B) an amount equal to 1/12 of the annual limitation under paragraph (3) for the calendar year in which the month occurs.

(3) Annual limitation

For purposes of this subsection—

(A) In general

The annual limitation under this paragraph for any calendar year is the dollar

limit determined under subparagraph (C) for the calendar year.

(B) Applicable annual limitation

(i) In general

Except as provided in clause (ii), the annual limitation which applies for any month shall be determined on the basis of the type of coverage (as determined under subsection (f)(1)) provided to the employee by the employer as of the beginning of the month.

(ii) Multiemployer plan coverage

Any coverage provided under a multiemployer plan (as defined in section 414(f)) shall be treated as coverage other than self-only coverage.

(C) Applicable dollar limit

(i) 2018

In the case of 2018, the dollar limit under this subparagraph is—

(I) in the case of an employee with self-only coverage, $10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage), and

(II) in the case of an employee with coverage other than self-only coverage, $27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage).

(ii) Health cost adjustment percentage

For purposes of clause (i), the health cost adjustment percentage is equal to 100 percent plus the excess (if any) of—

(I) the percentage by which the per employee cost for providing coverage under the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for plan year 2018 (determined by using the benefit package for such coverage in 2010) exceeds such cost for plan year 2010, over

(II) 55 percent.

(iii) Age and gender adjustment

(I) In general

The amount determined under subclause (I) or (II) of clause (i), whichever is applicable, for any taxable period shall be increased by the amount determined under subclause (II).

(II) Amount determined

The amount determined under this subclause is an amount equal to the excess (if any) of—

(aa) the premium cost of the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for the type of coverage provided such individual in such taxable period if priced for the age and gender characteristics of all employees of the individual's employer, over

(bb) that premium cost for the provision of such coverage under such option in such taxable period if priced for the age and gender characteristics of the national workforce.

(iv) Exception for certain individuals

In the case of an individual who is a qualified retiree or who participates in a plan sponsored by an employer the majority of whose employees covered by the plan are engaged in a high-risk profession or employed to repair or install electrical or telecommunications lines—

(I) the dollar amount in clause (i)(I) shall be increased by $1,650, and

(II) the dollar amount in clause (i)(II) shall be increased by $3,450,[1]

(v) Subsequent years

In the case of any calendar year after 2018, each of the dollar amounts under clauses (i) (after the application of clause (ii)) and (iv) shall be increased to the amount equal to such amount as in effect for the calendar year preceding such year, increased by an amount equal to the product of—

(I) such amount as so in effect, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such year (determined by substituting the calendar year that is 2 years before such year for ''1992'' in subparagraph (B) thereof), increased by 1 percentage point in the case of determinations for calendar years beginning before 2020.

If any amount determined under this clause is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

(c) Liability to pay tax

(1) In general

Each coverage provider shall pay the tax imposed by subsection (a) on its applicable share of the excess benefit with respect to an employee for any taxable period.

(2) Coverage provider

For purposes of this subsection, the term ''coverage provider'' means each of the following:

(A) Health insurance coverage

If the applicable employer-sponsored coverage consists of coverage under a group health plan which provides health insurance coverage, the health insurance issuer.

(B) HSA and MSA contributions

If the applicable employer-sponsored coverage consists of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the employer.

(C) Other coverage

In the case of any other applicable employer-sponsored coverage, the person that administers the plan benefits.

[1] So in original. The comma probably should be a period.

(3) Applicable share

For purposes of this subsection, a coverage provider's applicable share of an excess benefit for any taxable period is the amount which bears the same ratio to the amount of such excess benefit as—

(A) the cost of the applicable employer-sponsored coverage provided by the provider to the employee during such period, bears to

(B) the aggregate cost of all applicable employer-sponsored coverage provided to the employee by all coverage providers during such period.

(4) Responsibility to calculate tax and applicable shares

(A) In general

Each employer shall—

(i) calculate for each taxable period the amount of the excess benefit subject to the tax imposed by subsection (a) and the applicable share of such excess benefit for each coverage provider, and

(ii) notify, at such time and in such manner as the Secretary may prescribe, the Secretary and each coverage provider of the amount so determined for the provider.

(B) Special rule for multiemployer plans

In the case of applicable employer-sponsored coverage made available to employees through a multiemployer plan (as defined in section 414(f)), the plan sponsor shall make the calculations, and provide the notice, required under subparagraph (A).

(d) Applicable employer-sponsored coverage; cost

For purposes of this section—

(1) Applicable employer-sponsored coverage

(A) In general

The term ''applicable employer-sponsored coverage'' means, with respect to any employee, coverage under any group health plan made available to the employee by an employer which is excludable from the employee's gross income under section 106, or would be so excludable if it were employer-provided coverage (within the meaning of such section 106).

(B) Exceptions

The term ''applicable employer-sponsored coverage'' shall not include—

(i) any coverage (whether through insurance or otherwise) described in section 9832(c)(1) (other than subparagraph (G) thereof) or for long-term care, or

(ii) any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth (including any organ or structure within the mouth) or for treatment of the eye, or

(iii) any coverage described in section 9832(c)(3) the payment for which is not excludable from gross income and for which a deduction under section 162(*l*) is not allowable.

(C) Coverage includes employee paid portion

Coverage shall be treated as applicable employer-sponsored coverage without regard to whether the employer or employee pays for the coverage.

(D) Self-employed individual

In the case of an individual who is an employee within the meaning of section 401(c)(1), coverage under any group health plan providing health insurance coverage shall be treated as applicable employer-sponsored coverage if a deduction is allowable under section 162(*l*) with respect to all or any portion of the cost of the coverage.

(E) Governmental plans included

Applicable employer-sponsored coverage shall include coverage under any group health plan established and maintained primarily for its civilian employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any such government.

(2) Determination of cost

(A) In general

The cost of applicable employer-sponsored coverage shall be determined under rules similar to the rules of section 4980B(f)(4), except that in determining such cost, any portion of the cost of such coverage which is attributable to the tax imposed under this section shall not be taken into account and the amount of such cost shall be calculated separately for self-only coverage and other coverage. In the case of applicable employer-sponsored coverage which provides coverage to retired employees, the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries.

(B) Health FSAs

In the case of applicable employer-sponsored coverage consisting of coverage under a flexible spending arrangement (as defined in section 106(c)(2)), the cost of the coverage shall be equal to the sum of—

(i) the amount of employer contributions under any salary reduction election under the arrangement, plus

(ii) the amount determined under subparagraph (A) with respect to any reimbursement under the arrangement in excess of the contributions described in clause (i).

(C) Archer MSAs and HSAs

In the case of applicable employer-sponsored coverage consisting of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the cost of the coverage shall be equal to the amount of employer contributions under the arrangement.

(D) Allocation on a monthly basis

If cost is determined on other than a monthly basis, the cost shall be allocated to months in a taxable period on such basis as the Secretary may prescribe.

(3) Employee

The term ''employee'' includes any former employee, surviving spouse, or other primary insured individual.

(e) Penalty for failure to properly calculate excess benefit

(1) In general

If, for any taxable period, the tax imposed by subsection (a) exceeds the tax determined under such subsection with respect to the total excess benefit calculated by the employer or plan sponsor under subsection (c)(4)—

(A) each coverage provider shall pay the tax on its applicable share (determined in the same manner as under subsection (c)(4)) of the excess, but no penalty shall be imposed on the provider with respect to such amount, and

(B) the employer or plan sponsor shall, in addition to any tax imposed by subsection (a), pay a penalty in an amount equal to such excess, plus interest at the underpayment rate determined under section 6621 for the period beginning on the due date for the payment of tax imposed by subsection (a) to which the excess relates and ending on the date of payment of the penalty.

(2) Limitations on penalty

(A) Penalty not to apply where failure not discovered exercising reasonable diligence

No penalty shall be imposed by paragraph (1)(B) on any failure to properly calculate the excess benefit during any period for which it is established to the satisfaction of the Secretary that the employer or plan sponsor neither knew, nor exercising reasonable diligence would have known, that such failure existed.

(B) Penalty not to apply to failures corrected within 30 days

No penalty shall be imposed by paragraph (1)(B) on any such failure if—

(i) such failure was due to reasonable cause and not to willful neglect, and

(ii) such failure is corrected during the 30-day period beginning on the 1st date that the employer knew, or exercising reasonable diligence would have known, that such failure existed.

(C) Waiver by Secretary

In the case of any such failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by paragraph (1), to the extent that the payment of such penalty would be excessive or otherwise inequitable relative to the failure involved.

(f) Other definitions and special rules

For purposes of this section—

(1) Coverage determinations

(A) In general

Except as provided in subparagraph (B), an employee shall be treated as having self-only coverage with respect to any applicable employer-sponsored coverage of an employer.

(B) Minimum essential coverage

An employee shall be treated as having coverage other than self-only coverage only if the employee is enrolled in coverage other than self-only coverage in a group health plan which provides minimum essential coverage (as defined in section 5000A(f)) to the employee and at least one other beneficiary, and the benefits provided under such minimum essential coverage do not vary based on whether any individual covered under such coverage is the employee or another beneficiary.

(2) Qualified retiree

The term ''qualified retiree'' means any individual who—

(A) is receiving coverage by reason of being a retiree,

(B) has attained age 55, and

(C) is not entitled to benefits or eligible for enrollment under the Medicare program under title XVIII of the Social Security Act.

(3) Employees engaged in high-risk profession

The term ''employees engaged in a high-risk profession'' means law enforcement officers (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968), employees in fire protection activities (as such term is defined in section 3(y) of the Fair Labor Standards Act of 1938), individuals who provide out-of-hospital emergency medical care (including emergency medical technicians, paramedics, and first-responders), individuals whose primary work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof), and individuals engaged in the construction, mining, agriculture (not including food processing), forestry, and fishing industries. Such term includes an employee who is retired from a high-risk profession described in the preceding sentence, if such employee satisfied the requirements of such sentence for a period of not less than 20 years during the employee's employment.

(4) Group health plan

The term ''group health plan'' has the meaning given such term by section 5000(b)(1).

(5) Health insurance coverage; health insurance issuer

(A) Health insurance coverage

The term ''health insurance coverage'' has the meaning given such term by section 9832(b)(1) (applied without regard to subparagraph (B) thereof, except as provided by the Secretary in regulations).

(B) Health insurance issuer

The term ''health insurance issuer'' has the meaning given such term by section 9832(b)(2).

(6) Person that administers the plan benefits

The term ''person that administers the plan benefits'' shall include the plan sponsor if the plan sponsor administers benefits under the plan.

(7) Plan sponsor

The term ''plan sponsor'' has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

(8) Taxable period

The term ''taxable period'' means the calendar year or such shorter period as the Secretary may prescribe. The Secretary may have different taxable periods for employers of varying sizes.

(9) Aggregation rules

All employers treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer.

(10) Denial of deduction

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

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this 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.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(2)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (f)(3), is classified to section 3796b of Title 42, The Public Health and Welfare.

Section 3(y) of the Fair Labor Standards Act of 1938, referred to in subsec. (f)(3), is classified to section 203(y) of Title 29, Labor.

Section 3(16)(B) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(7), is classified to section 1002(16)(B) of Title 29, Labor.

AMENDMENTS

2010—Subsec. (b)(3)(B). Pub. L. 111–152, § 1401(a)(1), designated existing provisions as cl. (i), inserted heading, substituted ''Except as provided in clause (ii), the annual'' for ''The annual'', and added cl. (ii).

Subsec. (b)(3)(C). Pub. L. 111–152, § 1401(a)(2)(A), struck out introductory provisions which read: ''Except as provided in subparagraph (D)—''.

Subsec. (b)(3)(C)(i). Pub. L. 111–152, § 1401(a)(2)(B)(i), substituted ''2018'' for ''2013'' in heading and introductory provisions.

Subsec. (b)(3)(C)(i)(I). Pub. L. 111–152, § 1401(a)(2)(B)(ii), substituted ''$10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage)'' for ''$8,500''.

Subsec. (b)(3)(C)(i)(II). Pub. L. 111–152, § 1401(a)(2)(B)(iii), substituted ''$27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage)'' for ''$23,000''.

Subsec. (b)(3)(C)(ii), (iii). Pub. L. 111–152, § 1401(a)(2)(C), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (v), respectively.

Subsec. (b)(3)(C)(iv). Pub. L. 111–152, § 1401(a)(2)(D), inserted ''covered by the plan'' after ''whose employees'' in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

''(I) the dollar amount in clause (i)(I) (determined after the application of subparagraph (D)) shall be increased by $1,350, and

''(II) the dollar amount in clause (i)(II) (determined after the application of subparagraph (D)) shall be increased by $3,000.''

Pub. L. 111–152, § 1401(a)(2)(C), redesignated cl. (ii) as (iv).

Subsec. (b)(3)(C)(v). Pub. L. 111–152, § 1401(a)(2)(E)(i), (ii), substituted ''2018'' for ''2013'' and ''clauses (i) (after the application of clause (ii)) and (iv)'' for ''clauses (i) and (ii)'' in introductory provisions.

Pub. L. 111–152, § 1401(a)(2)(C), redesignated cl. (iii) as (v).

Subsec. (b)(3)(C)(v)(II). Pub. L. 111–152, § 1401(a)(2)(E)(iii), inserted ''in the case of determinations for calendar years beginning before 2020'' after ''1 percentage point''.

Subsec. (b)(3)(D). Pub. L. 111–152, § 1401(a)(3), struck out subpar. (D) which provided transition rule for States with highest coverage costs.

Subsec. (d)(1)(B)(i). Pub. L. 111–148, § 10901(b), substituted ''section 9832(c)(1) (other than subparagraph (G) thereof)'' for ''section 9832(c)(1)(A)''.

Subsec. (d)(1)(B)(ii), (iii). Pub. L. 111–152, § 1401(a)(4), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (d)(3). Pub. L. 111–152, § 1401(a)(5), added par. (3).

Subsec. (f)(3). Pub. L. 111–148, § 10901(a), inserted ''individuals whose primary work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof),'' before ''and individuals engaged in the construction, mining''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, § 10901(c), Mar. 23, 2010, 124 Stat. 1016, as amended by Pub. L. 111–152, title I, § 1401(b)(2), Mar. 30, 2010, 124 Stat. 1060, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE

Pub. L. 111–148, title IX, § 9001(c), Mar. 23, 2010, 124 Stat. 853, as amended by Pub. L. 111–152, title I, § 1401(b)(1), Mar. 30, 2010, 124 Stat. 1060, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2017.''

CHAPTER 44—QUALIFIED INVESTMENT ENTITIES

Sec.
4981. Excise tax on undistributed income of real estate investment trusts.
4982. Excise tax on undistributed income of regulated investment companies.

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—

(A) with the application of paragraph (2) to such taxable year, and

(B) by substituting ''100 percent'' for each percentage set forth in paragraph (1).

(c) Distributed amount

For purposes of this section—

(1) In general

The term ''distributed amount'' means, with respect to any calendar year, the sum of—

(A) the deduction for dividends paid (as defined in section 561) during such calendar year (but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D)), and

(B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 857 for any taxable year ending in such calendar year.

(2) Increase by prior year overdistribution

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

(A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over

(B) the grossed up required distribution for such preceding calendar year.

(3) Determination of dividends paid

The amount of the dividends paid during any calendar year shall be determined without regard to the provisions of section 858.

(d) Time for payment of tax

The tax imposed by this section for any calendar year shall be paid on or before March 15 of the following calendar year.

(e) Definitions and special rules

For purposes of this section—

(1) Ordinary income

The term ''ordinary income'' means the real estate investment trust taxable income (as defined in section 857(b)(2)) determined—

(A) without regard to subparagraph (B) of section 857(b)(2),

(B) by not taking into account any gain or loss from the sale or exchange of a capital asset, and

(C) by treating the calendar year as the trust's taxable year.

(2) Capital gain net income

(A) In general

The term ''capital gain net income'' has the meaning given such term by section 1222(9) (determined by treating the calendar year as the trust's taxable year).

(B) Reduction for net ordinary loss

The amount determined under subparagraph (A) shall be reduced by the amount of the trust's net ordinary loss for the taxable year.

(C) Net ordinary loss

For purposes of this paragraph, the net ordinary loss for the calendar year is the amount which would be net operating loss of the trust for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1).

(3) Treatment of deficiency distributions

In the case of any deficiency dividend (as defined in section 860(f))—

(A) such dividend shall be taken into account when paid without regard to section 860, and

(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid.

(Added Pub. L. 94–455, title XVI, §1605(a), Oct. 4, 1976, 90 Stat. 1754; amended Pub. L. 99–514, title VI, §668(a), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 100–647, title I, §1006(s)(1), (3), Nov. 10, 1988, 102 Stat. 3418.)

AMENDMENTS

1988—Subsec. (c)(1)(A). Pub. L. 100–647, §1006(s)(3), inserted ''(but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D)'' after ''such calendar year''.

Subsec. (e)(2). Pub. L. 100–647, §1006(s)(1), amended par. (2) generally, designating existing provisions as subpar. (A) and adding subpars. (B) and (C).

1986—Pub. L. 99–514 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'' as section catchline and amended text generally. Prior to amendment text read as follows: ''Effective with respect to taxable years beginning after December 31, 1979, there is hereby imposed on each real estate investment trust for the taxable year a tax equal to 3 percent of the amount (if any) by which 75 percent of the real estate investment trust taxable income (as defined in section 857(b)(2), but determined without regard to section 857(b)(2)(B), and by excluding any net

capital gain for the taxable year) exceeds the amount of the dividends paid deduction (as defined in section 561, but computed without regard to capital gains dividends as defined in section 857(b)(3)(C) and without regard to any dividend paid after the close of the taxable year) for the taxable year. For purposes of the preceding sentence, the determination of the real estate investment trust taxable income shall be made by taking into account only the amount and character of the items of income and deduction as reported by such trust in its return for the taxable year.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99–514, set out as a note under section 856 of this title.

§ 4982. Excise tax on undistributed income of regulated investment companies

(a) Imposition of tax

There is hereby imposed a tax on every regulated investment company 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) 98 percent of the regulated investment company's ordinary income for such calendar year, plus

(B) 98.2 percent of the regulated investment company's capital gain net income for the 1-year period ending on October 31 of 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—

(A) with the application of paragraph (2) to such taxable year, and

(B) by substituting ''100 percent'' for each percentage set forth in paragraph (1).

(c) Distributed amount

For purposes of this section—

(1) In general

The term ''distributed amount'' means, with respect to any calendar year, the sum of—

(A) the deduction for dividends paid (as defined in section 561) during such calendar year, and

(B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 852 for any taxable year ending in such calendar year.

(2) Increase by prior year overdistribution

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

(A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over

(B) the grossed up required distribution for such preceding calendar year.

(3) Determination of dividends paid

The amount of the dividends paid during any calendar year shall be determined without regard to—

(A) the provisions of section 855, and

(B) any exempt-interest dividend as defined in section 852(b)(5).

(4) Special rule for estimated tax payments

(A) In general

In the case of a regulated investment company which elects the application of this paragraph for any calendar year—

(i) the distributed amount with respect to such company for such calendar year shall be increased by the amount on which qualified estimated tax payments are made by such company during such calendar year, and

(ii) the distributed amount with respect to such company for the following calendar year shall be reduced by the amount of such increase.

(B) Qualified estimated tax payments

For purposes of this paragraph, the term ''qualified estimated tax payments'' means, with respect to any calendar year, payments of estimated tax of a tax described in paragraph (1)(B) for any taxable year which begins (but does not end) in such calendar year.

(d) Time for payment of tax

The tax imposed by this section for any calendar year shall be paid on or before March 15 of the following calendar year.

(e) Definitions and special rules

For purposes of this section—

(1) Ordinary income

The term ''ordinary income'' means the investment company taxable income (as defined in section 852(b)(2)) determined—

(A) without regard to subparagraphs (A) and (D) of section 852(b)(2),

(B) by not taking into account any gain or loss from the sale or exchange of a capital asset, and

(C) by treating the calendar year as the company's taxable year.

(2) Capital gain net income

(A) In general

Except as provided in subparagraph (B), the term ''capital gain net income'' has the

meaning given such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year).

(B) Reduction by net ordinary loss for calendar year

The amount determined under subparagraph (A) shall be reduced (but not below the net capital gain) by the amount of the company's net ordinary loss for the calendar year.

(C) Definitions

For purposes of this paragraph—

(i) Net capital gain

The term ''net capital gain'' has the meaning given such term by section 1222(11) (determined by treating the 1-year period ending on October 31 of the calendar year as the company's taxable year).

(ii) Net ordinary loss

The net ordinary loss for the calendar year is the amount which would be the net operating loss of the company for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1).

(3) Treatment of deficiency distributions

In the case of any deficiency dividend (as defined in section 860(f))—

(A) such dividend shall be taken into account when paid without regard to section 860, and

(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid.

(4) Election to use taxable year in certain cases

(A) In general

If—

(i) the taxable year of the regulated investment company ends with the month of November or December, and

(ii) such company makes an election under this paragraph,

subsection (b)(1)(B) and paragraph (2) of this subsection shall be applied by taking into account the company's taxable year in lieu of the 1-year period ending on October 31 of the calendar year.

(B) Election revocable only with consent

An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(5) Treatment of specified gains and losses after October 31 of calendar year

(A) In general

Any specified gain or specified loss which (but for this paragraph) would be properly taken into account for the portion of the calendar year after October 31 shall be treated as arising on January 1 of the following calendar year.

(B) Specified gains and losses

For purposes of this paragraph—

(i) Specified gain

The term ''specified gain'' means ordinary gain from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency gain attributable to a section 988 transaction (within the meaning of section 988) and any amount includible in gross income under section 1296(a)(1).

(ii) Specified loss

The term ''specified loss'' means ordinary loss from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency loss attributable to a section 988 transaction (within the meaning of section 988) and any amount allowable as a deduction under section 1296(a)(2).

(C) Special rule for companies electing to use the taxable year

In the case of any company making an election under paragraph (4), subparagraph (A) shall be applied by substituting the last day of the company's taxable year for October 31.

(6) Treatment of mark to market gain

(A) In general

For purposes of determining a regulated investment company's ordinary income, notwithstanding paragraph (1)(C), each specified mark to market provision shall be applied as if such company's taxable year ended on October 31. In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31.

(B) Specified mark to market provision

For purposes of this paragraph, the term ''specified mark to market provision'' means sections 1256 and 1296 and any other provision of this title (or regulations thereunder) which treats property as disposed of on the last day of the taxable year.

(7) Elective deferral of certain ordinary losses

Except as provided in regulations prescribed by the Secretary, in the case of a regulated investment company which has a taxable year other than the calendar year—

(A) such company may elect to determine its ordinary income for the calendar year without regard to any net ordinary loss (determined without regard to specified gains and losses taken into account under paragraph (5)) which is attributable to the portion of such calendar year which is after the beginning of the taxable year which begins in such calendar year, and

(B) any amount of net ordinary loss not taken into account for a calendar year by reason of subparagraph (A) shall be treated as arising on the 1st day of the following calendar year.

(f) Exception for certain regulated investment companies

This section shall not apply to any regulated investment company for any calendar year if at

all times during such calendar year each shareholder in such company was—

(1) a trust described in section 401(a) and exempt from tax under section 501(a),

(2) a segregated asset account of a life insurance company held in connection with variable contracts (as defined in section 817(d))[1]

(3) any other tax-exempt entity whose ownership of beneficial interests in the company would not preclude the application of section 817(h)(4), or

(4) another regulated investment company described in this subsection.

For purposes of the preceding sentence, any shares attributable to an investment in the regulated investment company (not exceeding $250,000) made in connection with the organization of such company shall not be taken into account.

(Added Pub. L. 99–514, title VI, § 651(a), Oct. 22, 1986, 100 Stat. 2294; amended Pub. L. 100–203, title X, § 10104(b)(1), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, § 1006(*l*)(2), (5), (6), Nov. 10, 1988, 102 Stat. 3413, 3414; Pub. L. 101–239, title VII, § 7204(a)(1), Dec. 19, 1989, 103 Stat. 2334; Pub. L. 105–34, title XI, § 1122(c)(1), Aug. 5, 1997, 111 Stat. 976; Pub. L. 111–325, title IV, §§ 401(a), 402(a), 403(a), 404(a), Dec. 22, 2010, 124 Stat. 3552–3554.)

AMENDMENTS

2010—Subsec. (b)(1)(B). Pub. L. 111–325, § 404(a), substituted ''98.2 percent'' for ''98 percent''.

Subsec. (c)(4). Pub. L. 111–325, § 403(a), added par. (4).

Subsec. (e)(5) to (7). Pub. L. 111–325, § 402(a), added pars. (5) to (7) and struck out former pars. (5) and (6) which related to treatment of foreign currency gains and losses after October 31 of calendar year and treatment of gain recognized under section 1296, respectively.

Subsec. (f). Pub. L. 111–325, § 401(a)(1), struck out ''either'' before dash at end of introductory provisions.

Subsec. (f)(3), (4). Pub. L. 111–325, § 401(a)(2)–(4), added pars. (3) and (4).

1997—Subsec. (e)(6). Pub. L. 105–34 added par. (6).

1989—Subsec. (b)(1)(A). Pub. L. 101–239 substituted ''98 percent'' for ''97 percent''.

1988—Subsec. (e)(2). Pub. L. 100–647, § 1006(*l*)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'capital gain net income' has the meaning given to such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year).''

Subsec. (e)(5). Pub. L. 100–647, § 1006(*l*)(5), added par. (5).

Subsec. (f). Pub. L. 100–647, § 1006(*l*)(6), added subsec. (f).

1987—Subsec. (b)(1)(B). Pub. L. 100–203 substituted ''98 percent'' for ''90 percent''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title IV, § 401(b), Dec. 22, 2010, 124 Stat. 3552, provided that: ''The amendment made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title IV, § 402(b), Dec. 22, 2010, 124 Stat. 3553, provided that: ''The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title IV, § 403(b), Dec. 22, 2010, 124 Stat. 3554, provided that: ''The amendment made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title IV, § 404(b), Dec. 22, 2010, 124 Stat. 3554, provided that: ''The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7204(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to calendar years ending after July 10, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10104(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 651 of the Tax Reform Act of 1986 [section 651 of Pub. L. 99–514, see Effective Date note below].''

EFFECTIVE DATE

Section 651(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting this section and amending sections 852 and 855 of this title] shall apply to calendar years beginning after December 31, 1986.''

CHAPTER 45—PROVISIONS RELATING TO EXPATRIATED ENTITIES

Sec.
4985. Stock compensation of insiders in expatriated corporations.

PRIOR PROVISIONS

A prior chapter 45, consisting of sections 4986 to 4998, related to windfall profit tax on domestic crude oil, prior to repeal by Pub. L. 100–418, title I, § 1941(a), (c), Aug. 23, 1988, 102 Stat. 1322, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

§ 4985. Stock compensation of insiders in expatriated corporations

(a) Imposition of tax

In the case of an individual who is a disqualified individual with respect to any expatriated corporation, there is hereby imposed on such person a tax equal to—

(1) the rate of tax specified in section 1(h)(1)(C), multiplied by

(2) the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on

[1] So in original. Probably should be followed by a comma.

the date which is 6 months before the expatriation date.

(b) Value

For purposes of subsection (a)—

(1) In general

The value of specified stock compensation shall be—

(A) in the case of a stock option (or other similar right) or a stock appreciation right, the fair value of such option or right, and

(B) in any other case, the fair market value of such compensation.

(2) Date for determining value

The determination of value shall be made—

(A) in the case of specified stock compensation held on the expatriation date, on such date,

(B) in the case of such compensation which is canceled during the 6 months before the expatriation date, on the day before such cancellation, and

(C) in the case of such compensation which is granted after the expatriation date, on the date such compensation is granted.

(c) Tax to apply only if shareholder gain recognized

Subsection (a) shall apply to any disqualified individual with respect to an expatriated corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(B)(i) with respect to such corporation.

(d) Exception where gain recognized on compensation

Subsection (a) shall not apply to—

(1) any stock option which is exercised on the expatriation date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise, and

(2) any other specified stock compensation which is exercised, sold, exchanged, distributed, cashed-out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

(e) Definitions

For purposes of this section—

(1) Disqualified individual

The term ''disqualified individual'' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the expatriation date—

(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation or any member of the expanded affiliated group which includes such corporation, or

(B) would be subject to such requirements if such corporation or member were an issuer of equity securities referred to in such section.

(2) Expatriated corporation; expatriation date

(A) Expatriated corporation

The term ''expatriated corporation'' means any corporation which is an expatriated entity (as defined in section 7874(a)(2)). Such term includes any predecessor or successor of such a corporation.

(B) Expatriation date

The term ''expatriation date'' means, with respect to a corporation, the date on which the corporation first becomes an expatriated corporation.

(3) Specified stock compensation

(A) In general

The term ''specified stock compensation'' means payment (or right to payment) granted by the expatriated corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

(B) Exceptions

Such term shall not include—

(i) any option to which part II of subchapter D of chapter 1 applies, or

(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

(4) Expanded affiliated group

The term ''expanded affiliated group'' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(f) Special rules

For purposes of this section—

(1) Cancellation of restriction

The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

(2) Payment or reimbursement of tax by corporation treated as specified stock compensation

Any payment of the tax imposed by this section directly or indirectly by the expatriated corporation or by any member of the expanded affiliated group which includes such corporation—

(A) shall be treated as specified stock compensation, and

(B) shall not be allowed as a deduction under any provision of chapter 1.

(3) Certain restrictions ignored

Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

(4) Property transfers

Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

(5) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 108–357, title VIII, § 802(a), Oct. 22, 2004, 118 Stat. 1566.)

REFERENCES IN TEXT

Section 16(a) of the Securities Exchange Act of 1934, referred to in subsec. (e)(1)(A), is classified to section 78p(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

Prior sections 4986 to 4998 were repealed by Pub. L. 100–418, title I, § 1941(a), (c), Aug. 23, 1988, 102 Stat. 1322, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

Section 4986, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 230, related to imposition of windfall profit tax on domestic crude oil.

Section 4987, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 230; amended Pub. L. 97–34, title VI, § 602(a), Aug. 13, 1981, 95 Stat. 337; Pub. L. 98–369, div. A, title I, § 25(a), July 18, 1984, 98 Stat. 506, related to amount of windfall profit tax on domestic crude oil.

Section 4988, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 231; amended Pub. L. 97–448, title II, § 201(a), (h)(1)(D), Jan. 12, 1983, 96 Stat. 2391, 2394; Pub. L. 99–514, title XIII, § 1301(j)(4), Oct. 22, 1986, 100 Stat. 2657, related to windfall profit and removal price.

Section 4989, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 233; amended Pub. L. 97–448, title II, § 201(b), Jan. 12, 1983, 96 Stat. 2392, related to adjusted base price for purposes of windfall profit tax on domestic crude oil.

Section 4990, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 234, related to phaseout of windfall profit tax on domestic crude oil.

Section 4991, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 235; amended Pub. L. 97–34, title VI, §§ 601(b)(1), 603(a), Aug. 13, 1981, 95 Stat. 336, 338; Pub. L. 97–448, title II, § 201(c), Jan. 12, 1983, 96 Stat. 2392; Pub. L. 99–514, title XVIII, § 1879(h)(1), Oct. 22, 1986, 100 Stat. 2907, related to taxable crude oil and categories of oil.

Section 4992, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 236; amended Pub. L. 97–34, title VI, § 603(c), Aug. 13, 1981, 95 Stat. 338; Pub. L. 97–354, § 3(b)(2), Oct. 19, 1982, 96 Stat. 1688; Pub. L. 97–448, title II, § 201(d), Jan. 12, 1983, 96 Stat. 2392, related to independent producer oil.

Section 4993, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 239; amended Pub. L. 97–448, title II, § 201(e), Jan. 12, 1983, 96 Stat. 2392, related to incremental tertiary oil.

Section 4994, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 241; amended Pub. L. 97–34, title VI, §§ 601(b)(2), 603(b), 604(a)–(c), Aug. 13, 1981, 95 Stat. 337–339; Pub. L. 97–248, title II, § 291, Sept. 3, 1982, 96 Stat. 572; Pub. L. 97–448, title I, § 106(a)(2), (4)(B), (b), title II, § 201(f), Jan. 12, 1983, 96 Stat. 2388, 2390, 2392, related to definitions and special rules with respect to exempt oil.

Section 4995, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 244; amended Pub. L. 97–34, title VI, § 601(b)(3), Aug. 13, 1981, 95 Stat. 337; Pub. L. 97–448, title II, § 201(g), Jan. 12, 1983, 96 Stat. 2393, related to withholding and depository requirements bearing on the windfall profit tax.

Section 4996, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 247; amended Pub. L. 97–248, title II, § 284(a), Sept. 3, 1982, 96 Stat. 569; Pub. L. 97–354, § 3(b)(1), Oct. 19, 1982, 96 Stat. 1688; Pub. L. 97–448, title II, § 201(h)(1)(A)–(C), (2), Jan. 12, 1983, 96 Stat. 2393–2395, provided for other definitions and special rules bearing on the windfall profit tax.

Section 4997, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 249; amended Pub. L. 97–448, title II, § 201(i)(1), Jan. 12, 1983, 96 Stat. 2395, related to records and information, and regulations, bearing on the windfall profit.

Section 4998, added Pub. L. 96–223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 250, related to cross references.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, § 802(d), Oct. 22, 2004, 118 Stat. 1568, provided that: "The amendments made by this section [enacting this chapter and amending sections 162, 275, and 3121 of this title] shall take effect on March 4, 2003; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 4985 of the Internal Revenue Code of 1986, as added by this section."

CHAPTER 46—GOLDEN PARACHUTE PAYMENTS

Sec.
4999. Golden parachute payments.

§ 4999. Golden parachute payments

(a) Imposition of tax

There is hereby imposed on any person who receives an excess parachute payment a tax equal to 20 percent of the amount of such payment.

(b) Excess parachute payment defined

For purposes of this section, the term "excess parachute payment" has the meaning given to such term by section 280G(b).

(c) Administrative provisions

(1) Withholding

In the case of any excess parachute payment which is wages (within the meaning of section 3401) the amount deducted and withheld under section 3402 shall be increased by the amount of the tax imposed by this section on such payment.

(2) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(Added Pub. L. 98–369, div. A, title I, § 67(b)(1), July 18, 1984, 98 Stat. 587.)

EFFECTIVE DATE

Section applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98–369, set out as a note under section 280G of this title.

CHAPTER 47—CERTAIN GROUP HEALTH PLANS

Sec.
5000. Certain group health plans.

AMENDMENTS

1989—Pub. L. 101–239, title VI, § 6202(b)(4)(A), Dec. 19, 1989, 103 Stat. 2233, struck out "LARGE" after "CER-

TAIN'' in chapter heading and ''large'' after ''Certain'' in item 5000.

§ 5000. Certain group health plans

(a) Imposition of tax

There is hereby imposed on any employer (including a self-employed person) or employee organization that contributes to a nonconforming group health plan a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each group health plan to which the employer or employee organization contributes.

(b) Group health plan and large group health plan

For purposes of this section—

(1) Group health plan

The term ''group health plan'' means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

(2) Large group health plan

The term ''large group health plan'' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year. For purposes of the preceding sentence—

(A) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer,

(B) all employees of the members of an affiliated service group (as defined in section 414(m)) shall be treated as employed by a single employer, and

(C) leased employees (as defined in section 414(n)(2)) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n).

(c) Nonconforming group health plan

For purposes of this section, the term ''nonconforming group health plan'' means a group health plan or large group health plan that at any time during a calendar year does not comply with the requirements of subparagraphs (A) and (C) or subparagraph (B), respectively, of paragraph (1), or with the requirements of paragraph (2), of section 1862(b) of the Social Security Act.

(d) Government entities

For purposes of this section, the term ''employer'' does not include a Federal or other governmental entity.

(Added Pub. L. 99–509, title IX, § 9319(d)(1), Oct. 21, 1986, 100 Stat. 2012; amended Pub. L. 101–239, title VI, § 6202(b)(2), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 103–66, title XIII, § 13561(d)(2), (e)(2)(A), Aug. 10, 1993, 107 Stat. 594, 595.)

REFERENCES IN TEXT

Section 1862(b) of the Social Security Act, referred to in subsec. (c), is classified to section 1395y(b) of Title 42, The Public Health and Welfare.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66, § 13561(e)(2)(A)(i), which directed insertion of ''(including a self-employed person)'' after ''employer'', was executed by making the insertion after ''employer'' the first time it appeared, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 103–66, § 13561(e)(2)(A)(ii), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The term 'group health plan' means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees.''

Subsec. (b)(2). Pub. L. 103–66, § 13561(d)(2), inserted at end ''For purposes of the preceding sentence—'' and added subpars. (A) to (C).

Subsec. (c). Pub. L. 103–66, § 13561(e)(2)(A)(iii), substituted ''of paragraph (1), or with the requirements of paragraph (2), of section 1862(b)'' for ''of section 1862(b)(1)''.

1989—Pub. L. 101–239, § 6202(b)(2)(A), struck out ''large'' after ''Certain'' in section catchline.

Subsec. (a). Pub. L. 101–239, § 6202(b)(2)(B), substituted ''group health plan'' for ''large group health plan'' in two places.

Subsec. (b). Pub. L. 101–239, § 6202(b)(2)(C), substituted ''Group health plan and large'' for ''Large'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'large group health plan' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.''

Subsec. (c). Pub. L. 101–239, § 6202(b)(2)(C), substituted ''group'' for ''large group'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'nonconforming large group health plan' means a large group health plan that at any time during a calendar year does not comply with the requirements of section 1862(b)(4)(A)(i) of the Social Security Act.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13561(d)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and section 1395y of Title 42, The Public Health and Welfare] shall take effect 90 days after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of this title.

EFFECTIVE DATE

Section applicable to items and services furnished on or after Jan. 1, 1987, see section 9319(f) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1395y of Title 42, The Public Health and Welfare.

CHAPTER 48—MAINTENANCE OF MINIMUM ESSENTIAL COVERAGE

Sec.
5000A. Requirement to maintain minimum essential coverage.

§ 5000A. Requirement to maintain minimum essential coverage

(a) Requirement to maintain minimum essential coverage

An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.

(b) Shared responsibility payment

(1) In general

If a taxpayer who is an applicable individual, or an applicable individual for whom the taxpayer is liable under paragraph (3), fails to meet the requirement of subsection (a) for 1 or more months, then, except as provided in subsection (e), there is hereby imposed on the taxpayer a penalty with respect to such failures in the amount determined under subsection (c).

(2) Inclusion with return

Any penalty imposed by this section with respect to any month shall be included with a taxpayer's return under chapter 1 for the taxable year which includes such month.

(3) Payment of penalty

If an individual with respect to whom a penalty is imposed by this section for any month—

(A) is a dependent (as defined in section 152) of another taxpayer for the other taxpayer's taxable year including such month, such other taxpayer shall be liable for such penalty, or

(B) files a joint return for the taxable year including such month, such individual and the spouse of such individual shall be jointly liable for such penalty.

(c) Amount of penalty

(1) In general

The amount of the penalty imposed by this section on any taxpayer for any taxable year with respect to failures described in subsection (b)(1) shall be equal to the lesser of—

(A) the sum of the monthly penalty amounts determined under paragraph (2) for months in the taxable year during which 1 or more such failures occurred, or

(B) an amount equal to the national average premium for qualified health plans which have a bronze level of coverage, provide coverage for the applicable family size involved, and are offered through Exchanges for plan years beginning in the calendar year with or within which the taxable year ends.

(2) Monthly penalty amounts

For purposes of paragraph (1)(A), the monthly penalty amount with respect to any taxpayer for any month during which any failure described in subsection (b)(1) occurred is an amount equal to 1/12 of the greater of the following amounts:

(A) Flat dollar amount

An amount equal to the lesser of—

(i) the sum of the applicable dollar amounts for all individuals with respect to whom such failure occurred during such month, or

(ii) 300 percent of the applicable dollar amount (determined without regard to paragraph (3)(C)) for the calendar year with or within which the taxable year ends.

(B) Percentage of income

An amount equal to the following percentage of the excess of the taxpayer's household income for the taxable year over the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer for the taxable year:

(i) 1.0 percent for taxable years beginning in 2014.

(ii) 2.0 percent for taxable years beginning in 2015.

(iii) 2.5 percent for taxable years beginning after 2015.

(3) Applicable dollar amount

For purposes of paragraph (1)—

(A) In general

Except as provided in subparagraphs (B) and (C), the applicable dollar amount is $695.

(B) Phase in

The applicable dollar amount is $95 for 2014 and $325 for 2015.

(C) Special rule for individuals under age 18

If an applicable individual has not attained the age of 18 as of the beginning of a month, the applicable dollar amount with respect to such individual for the month shall be equal to one-half of the applicable dollar amount for the calendar year in which the month occurs.

(D) Indexing of amount

In the case of any calendar year beginning after 2016, the applicable dollar amount shall be equal to $695, increased by an amount equal to—

(i) $695, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2015'' for ''calendar year 1992'' in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(4) Terms relating to income and families

For purposes of this section—

(A) Family size

The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

(B) Household income

The term ''household income'' means, with respect to any taxpayer for any taxable year, an amount equal to the sum of—

(i) the modified adjusted gross income of the taxpayer, plus

(ii) the aggregate modified adjusted gross incomes of all other individuals who—

(I) were taken into account in determining the taxpayer's family size under paragraph (1), and

(II) were required to file a return of tax imposed by section 1 for the taxable year.

(C) Modified adjusted gross income

The term ''modified adjusted gross income'' means adjusted gross income increased by—

(i) any amount excluded from gross income under section 911, and

(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(d) Applicable individual

For purposes of this section—

(1) In general

The term ''applicable individual'' means, with respect to any month, an individual other than an individual described in paragraph (2), (3), or (4).

(2) Religious exemptions

(A) Religious conscience exemption

Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act which certifies that such individual is—

(i) a member of a recognized religious sect or division thereof which is described in section 1402(g)(1), and

(ii) an adherent of established tenets or teachings of such sect or division as described in such section.

(B) Health care sharing ministry

(i) In general

Such term shall not include any individual for any month if such individual is a member of a health care sharing ministry for the month.

(ii) Health care sharing ministry

The term ''health care sharing ministry'' means an organization—

(I) which is described in section 501(c)(3) and is exempt from taxation under section 501(a),

(II) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,

(III) members of which retain membership even after they develop a medical condition,

(IV) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and

(V) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

(3) Individuals not lawfully present

Such term shall not include an individual for any month if for the month the individual is not a citizen or national of the United States or an alien lawfully present in the United States.

(4) Incarcerated individuals

Such term shall not include an individual for any month if for the month the individual is incarcerated, other than incarceration pending the disposition of charges.

(e) Exemptions

No penalty shall be imposed under subsection (a) with respect to—

(1) Individuals who cannot afford coverage

(A) In general

Any applicable individual for any month if the applicable individual's required contribution (determined on an annual basis) for coverage for the month exceeds 8 percent of such individual's household income for the taxable year described in section 1412(b)(1)(B) of the Patient Protection and Affordable Care Act. For purposes of applying this subparagraph, the taxpayer's household income shall be increased by any exclusion from gross income for any portion of the required contribution made through a salary reduction arrangement.

(B) Required contribution

For purposes of this paragraph, the term ''required contribution'' means—

(i) in the case of an individual eligible to purchase minimum essential coverage consisting of coverage through an eligible-employer-sponsored plan, the portion of the annual premium which would be paid by the individual (without regard to whether paid through salary reduction or otherwise) for self-only coverage, or

(ii) in the case of an individual eligible only to purchase minimum essential coverage described in subsection (f)(1)(C), the annual premium for the lowest cost bronze plan available in the individual market through the Exchange in the State in the rating area in which the individual resides (without regard to whether the individual purchased a qualified health plan through the Exchange), reduced by the amount of the credit allowable under section 36B for the taxable year (determined as if the individual was covered by a qualified health plan offered through the Exchange for the entire taxable year).

(C) Special rules for individuals related to employees

For purposes of subparagraph (B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination under subparagraph (A) shall be made by reference to[1] required contribution of the employee.

(D) Indexing

In the case of plan years beginning in any calendar year after 2014, subparagraph (A) shall be applied by substituting for ''8 percent'' the percentage the Secretary of Health and Human Services determines reflects the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period.

(2) Taxpayers with income below filing threshold

Any applicable individual for any month during a calendar year if the individual's household income for the taxable year described in section 1412(b)(1)(B) of the Patient Protection and Affordable Care Act is less than the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer.

(3) Members of Indian tribes

Any applicable individual for any month during which the individual is a member of an Indian tribe (as defined in section 45A(c)(6)).

(4) Months during short coverage gaps

(A) In general

Any month the last day of which occurred during a period in which the applicable individual was not covered by minimum essential coverage for a continuous period of less than 3 months.

(B) Special rules

For purposes of applying this paragraph—

(i) the length of a continuous period shall be determined without regard to the calendar years in which months in such period occur,

(ii) if a continuous period is greater than the period allowed under subparagraph (A), no exception shall be provided under this paragraph for any month in the period, and

(iii) if there is more than 1 continuous period described in subparagraph (A) covering months in a calendar year, the exception provided by this paragraph shall only apply to months in the first of such periods.

The Secretary shall prescribe rules for the collection of the penalty imposed by this section in cases where continuous periods include months in more than 1 taxable year.

(5) Hardships

Any applicable individual who for any month is determined by the Secretary of Health and Human Services under section 1311(d)(4)(H) to have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.

(f) Minimum essential coverage

For purposes of this section—

(1) In general

The term ''minimum essential coverage'' means any of the following:

(A) Government sponsored programs

Coverage under—

(i) the Medicare program under part A of title XVIII of the Social Security Act,

(ii) the Medicaid program under title XIX of the Social Security Act,

(iii) the CHIP program under title XXI of the Social Security Act,

(iv) medical coverage under chapter 55 of title 10, United States Code, including coverage under the TRICARE program;[2]

(v) 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,

(vi) a health plan under section 2504(e) of title 22, United States Code (relating to Peace Corps volunteers);[2] or

(vii) the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note).

(B) Employer-sponsored plan

Coverage under an eligible employer-sponsored plan.

(C) Plans in the individual market

Coverage under a health plan offered in the individual market within a State.

(D) Grandfathered health plan

Coverage under a grandfathered health plan.

(E) Other coverage

Such other health benefits coverage, such as a State health benefits risk pool, as the Secretary of Health and Human Services, in coordination with the Secretary, recognizes for purposes of this subsection.

(2) Eligible employer-sponsored plan

The term ''eligible employer-sponsored plan'' means, with respect to any employee, a group health plan or group health insurance coverage offered by an employer to the employee which is—

(A) a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act), or

(B) any other plan or coverage offered in the small or large group market within a State.

Such term shall include a grandfathered health plan described in paragraph (1)(D) offered in a group market.

[1] So in original. Probably should be followed by ''the''.

[2] So in original. The semicolon probably should be a comma.

(3) Excepted benefits not treated as minimum essential coverage

The term ''minimum essential coverage'' shall not include health insurance coverage which consists of coverage of excepted benefits—

(A) described in paragraph (1) of subsection (c) of section 2791 of the Public Health Service Act; or

(B) described in paragraph (2), (3), or (4) of such subsection if the benefits are provided under a separate policy, certificate, or contract of insurance.

(4) Individuals residing outside United States or residents of territories

Any applicable individual shall be treated as having minimum essential coverage for any month—

(A) if such month occurs during any period described in subparagraph (A) or (B) of section 911(d)(1) which is applicable to the individual, or

(B) if such individual is a bona fide resident of any possession of the United States (as determined under section 937(a)) for such month.

(5) Insurance-related terms

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

(g) Administration and procedure

(1) In general

The penalty provided by this section shall be paid upon notice and demand by the Secretary, and except as provided in paragraph (2), shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) Special rules

Notwithstanding any other provision of law—

(A) Waiver of criminal penalties

In the case of any failure by a taxpayer to timely pay any penalty imposed by this section, such taxpayer shall not be subject to any criminal prosecution or penalty with respect to such failure.

(B) Limitations on liens and levies

The Secretary shall not—

(i) file notice of lien with respect to any property of a taxpayer by reason of any failure to pay the penalty imposed by this section, or

(ii) levy on any such property with respect to such failure.

(Added and amended Pub. L. 111–148, title I, §1501(b), title X, §10106(b)–(d), Mar. 23, 2010, 124 Stat. 244, 909, 910; Pub. L. 111–152, title I, §§1002, 1004(a)(1)(C), (2)(B), Mar. 30, 2010, 124 Stat. 1032, 1034; Pub. L. 111–159, §2(a), Apr. 26, 2010, 124 Stat. 1123; Pub. L. 111–173, §1(a), May 27, 2010, 124 Stat. 1215.)

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsecs. (d)(2)(A), (e)(1)(A), (2), and (f)(5), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Title I of the Act enacted chapter 157 of Title 42, The Public Health and Welfare, and enacted, amended, and transferred numerous other sections and notes in the Code. Sections 1311(d)(4)(H) and 1412(b)(1)(B) of the Act are classified to sections 18031(d)(4)(H) and 18082(b)(1)(B), respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

The Social Security Act, referred to in subsec. (f)(1)(A)(i) to (iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title XVIII of the Act is classified generally to part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 2791 of the Public Health Service Act, referred to in subsec. (f)(2)(A), (3), is classified to section 300gg–91 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–148, §10106(b)(1), amended par. (1) generally. Prior to amendment, text read as follows: ''If an applicable individual fails to meet the requirement of subsection (a) for 1 or more months during any calendar year beginning after 2013, then, except as provided in subsection (d), there is hereby imposed a penalty with respect to the individual in the amount determined under subsection (c).''

Subsec. (c)(1), (2). Pub. L. 111–148, §10106(b)(2), amended pars. (1) and (2) generally. Prior to amendment pars. (1) and (2) related to the amount of and dollar limitations on penalty for failure to maintain minimum essential coverage.

Subsec. (c)(2)(B). Pub. L. 111–152, §1002(a)(1)(A), inserted ''the excess of'' before ''the taxpayer's household income'' and ''for the taxable year over the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer'' before ''for the taxable year'' in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 111–152, §1002(a)(1)(B), substituted ''1.0'' for ''0.5''.

Subsec. (c)(2)(B)(ii). Pub. L. 111–152, §1002(a)(1)(C), substituted ''2.0'' for ''1.0''.

Subsec. (c)(2)(B)(iii). Pub. L. 111–152, §1002(a)(1)(D), substituted ''2.5'' for ''2.0''.

Subsec. (c)(3)(A). Pub. L. 111–152, §1002(a)(2)(A), substituted ''$695'' for ''$750''.

Subsec. (c)(3)(B). Pub. L. 111–152, §1002(a)(2)(B), substituted ''$325'' for ''$495''.

Pub. L. 111–148, §10106(b)(3), substituted ''$495'' for ''$350''.

Subsec. (c)(3)(D). Pub. L. 111–152, §1002(a)(2)(C), substituted ''$695'' for ''$750'' in introductory provisions and cl. (i).

Subsec. (c)(4)(B)(i), (ii). Pub. L. 111–152, §1004(a)(1)(C), substituted ''modified adjusted gross'' for ''modified gross''.

Subsec. (c)(4)(C). Pub. L. 111–152, §1004(a)(2)(B), amended subpar. (C) generally. Prior to amendment, text read as follows: ''The term 'modified gross income' means gross income—

''(i) decreased by the amount of any deduction allowable under paragraph (1), (3), (4), or (10) of section 62(a),

''(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

''(iii) determined without regard to sections 911, 931, and 933.''

Subsec. (c)(4)(D). Pub. L. 111–152, §1002(b)(1), struck out subpar. (D). Text read as follows:

''(i) IN GENERAL.—The term 'poverty line' has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

''(ii) POVERTY LINE USED.—In the case of any taxable year ending with or within a calendar year, the poverty

line used shall be the most recently published poverty line as of the 1st day of such calendar year.''

Subsec. (d)(2)(A). Pub. L. 111–148, § 10106(c), amended subpar. (A) generally. Prior to amendment, text read as follows: ''Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act which certifies that such individual is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section.''

Subsec. (e)(1)(C). Pub. L. 111–148, § 10106(d), amended subpar. (C) generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination shall be made by reference to the affordability of the coverage to the employee.''

Subsec. (e)(2). Pub. L. 111–152, § 1002(b)(2), substituted ''below filing threshold'' for ''under 100 percent of poverty line'' in heading and ''the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer.'' for ''100 percent of the poverty line for the size of the family involved (determined in the same manner as under subsection (b)(4)).'' in text.

Subsec. (f)(1)(A)(iv). Pub. L. 111–159, § 2(a)(1), added cl. (iv) and struck out former cl. (iv) which read as follows: ''the TRICARE for Life program,''.

Subsec. (f)(1)(A)(v). Pub. L. 111–173, § 1(a), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''the veteran's health care program under chapter 17 of title 38, United States Code,''.

Subsec. (f)(1)(A)(vii). Pub. L. 111–159, § 2(a)(2)–(4), added cl. (vii).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–173, § 1(b), May 27, 2010, 124 Stat. 1215, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in section 1501(b) of the Patient Protection and Affordable Care Act [Pub. L. 111–148].''

Pub. L. 111–159, § 2(b), Apr. 26, 2010, 124 Stat. 1123, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 1501(b) of the Patient Protection and Affordable Care Act [Pub. L. 111–148] and shall be executed immediately after the amendments made by such section 1501(b).''

EFFECTIVE DATE

Pub. L. 111–148, title I, § 1501(d), Mar. 23, 2010, 124 Stat. 249, provided that: ''The amendments made by this section [enacting this section and section 18091 of Title 42, The Public Health and Welfare] shall apply to taxable years ending after December 31, 2013.''

CHAPTER 49—COSMETIC SERVICES

Sec.
5000B. Imposition of tax on indoor tanning services.

PRIOR PROVISIONS

A prior chapter 49, added Pub. L. 111–148, title IX, § 9017(a), Mar. 23, 2010, 124 Stat. 872, which related to elective cosmetic medical procedures and consisted of section 5000B, was not set out in the Code in view of Pub. L. 111–148, title X, § 10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the amendments made by section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

§ 5000B. Imposition of tax on indoor tanning services

(a) In general

There is hereby imposed on any indoor tanning service a tax equal to 10 percent of the amount paid for such service (determined without regard to this section), whether paid by insurance or otherwise.

(b) Indoor tanning service

For purposes of this section—

(1) In general

The term ''indoor tanning service'' means a service employing any electronic product designed to incorporate 1 or more ultraviolet lamps and intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning.

(2) Exclusion of phototherapy services

Such term does not include any phototherapy service performed by a licensed medical professional.

(c) Payment of tax

(1) In general

The tax imposed by this section shall be paid by the individual on whom the service is performed.

(2) Collection

Every person receiving a payment for services on which a tax is imposed under subsection (a) shall collect the amount of the tax from the individual on whom the service is performed and remit such tax quarterly to the Secretary at such time and in such manner as provided by the Secretary.

(3) Secondary liability

Where any tax imposed by subsection (a) is not paid at the time payments for indoor tanning services are made, then to the extent that such tax is not collected, such tax shall be paid by the person who performs the service.

(Added Pub. L. 111–148, title X, § 10907(b), Mar. 23, 2010, 124 Stat. 1020.)

PRIOR PROVISIONS

A prior section 5000B, added Pub. L. 111–148, title IX, § 9017(a), Mar. 23, 2010, 124 Stat. 872, which related to tax on elective cosmetic medical procedures, and section 9017(c) of Pub. L. 111–148, which provided that the amendments made by section 9017 of Pub. L. 111–148 were applicable to procedures performed on or after Jan. 1, 2010, were not set out in the Code in view of Pub. L. 111–148, title X, § 10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the provisions of, and amendments made by, section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

EFFECTIVE DATE

Pub. L. 111–148, title X, § 10907(d), Mar. 23, 2010, 124 Stat. 1021, provided that: ''The amendments made by this section [enacting this section] shall apply to services performed on or after July 1, 2010.''

CHAPTER 50—FOREIGN PROCUREMENT

Sec.
5000C. Imposition of tax on certain foreign procurement.

§ 5000C. Imposition of tax on certain foreign procurement

(a) Imposition of tax

There is hereby imposed on any foreign person that receives a specified Federal procurement

payment a tax equal to 2 percent of the amount of such specified Federal procurement payment.

(b) Specified Federal procurement payment

For purposes of this section, the term ''specified Federal procurement payment'' means any payment made pursuant to a contract with the Government of the United States for—

(1) the provision of goods, if such goods are manufactured or produced in any country which is not a party to an international procurement agreement with the United States, or

(2) the provision of services, if such services are provided in any country which is not a party to an international procurement agreement with the United States.

(c) Foreign person

For purposes of this section, the term ''foreign person'' means any person other than a United States person.

(d) Administrative provisions

(1) Withholding

The amount deducted and withheld under chapter 3 shall be increased by the amount of tax imposed by this section on such payment.

(2) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(Added Pub. L. 111–347, title III, § 301(a)(1), Jan. 2, 2011, 124 Stat. 3666.)

EFFECTIVE DATE

Pub. L. 111–347, title III, § 301(a)(3), Jan. 2, 2011, 124 Stat. 3666, provided that: ''The amendments made by this subsection [enacting this section] shall apply to payments received pursuant to contracts entered into on and after the date of the enactment of this Act [Jan. 2, 2011].''

PROHIBITION ON REIMBURSEMENT OF FEES

Pub. L. 111–347, title III, § 301(b), Jan. 2, 2011, 124 Stat. 3666, provided that:

''(1) IN GENERAL.—The head of each executive agency shall take any and all measures necessary to ensure that no funds are disbursed to any foreign contractor in order to reimburse the tax imposed under section 5000C of the Internal Revenue Code of 1986.

''(2) ANNUAL REVIEW.—The Administrator for Federal Procurement Policy shall annually review the contracting activities of each executive agency to monitor compliance with the requirements of paragraph (1).

''(3) EXECUTIVE AGENCY.—For purposes of this subsection, the term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403) [see 41 U.S.C. 133].''

APPLICATION

Pub. L. 111–347, title III, § 301(c), Jan. 2, 2011, 124 Stat. 3666, provided that: ''This section [enacting this section and provisions set out as notes under this section] and the amendments made by this section shall be applied in a manner consistent with United States obligations under international agreements.''

Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

Chapter		Sec.[1]
51.	Distilled spirits, wines, and beer	5001
52.	Tobacco products and cigarette papers and tubes	5701
53.	Machine guns and certain other firearms[2]	5801
54.	Greenmail	5881
55.	Structured settlement factoring transactions	5891

[1] Section numbers editorially supplied.

AMENDMENTS

2002—Pub. L. 107–134, title I, § 115(b), Jan. 23, 2002, 115 Stat. 2438, added item relating to chapter 55.

1997—Pub. L. 105–33, title IX, § 9302(g)(3)(D), Aug. 5, 1997, 111 Stat. 673, added item relating to chapter 52 and struck out former item relating to chapter 52 ''Cigars, cigarettes, smokeless tobacco, pipe tobacco, and cigarette papers and tubes''.

1988—Pub. L. 100–647, title V, § 5061(c)(4), Nov. 10, 1988, 102 Stat. 3680, substituted ''Cigars, cigarettes, smokeless tobacco, pipe tobacco, and cigarette papers and tubes'' for ''Tobacco, cigars, cigarettes, smokeless tobacco, and cigarette papers and tubes'' in item relating to chapter 52.

Pub. L. 100–647, title I, § 1018(u)(16), Nov. 10, 1988, 102 Stat. 3590, inserted ''smokeless tobacco,'' after ''cigarettes,'' in item relating to chapter 52.

1987—Pub. L. 100–203, title X, § 10228(c), Dec. 22, 1987, 101 Stat. 1330–418, added item relating to chapter 54.

CHAPTER 51—DISTILLED SPIRITS, WINES, AND BEER

Subchapter		Sec.[1]
A.	Gallonage and occupational taxes	5001
B.	Qualification requirements for distilled spirits plants	5171
C.	Operation of distilled spirits plants	5201
D.	Industrial use of distilled spirits	5271
E.	General provisions relating to distilled spirits	5291
F.	Bonded and taxpaid wine premises	5351
G.	Breweries	5401
H.	Miscellaneous plants and warehouses	5501
I.	Miscellaneous general provisions	5551
J.	Penalties, seizures, and forfeitures relating to liquors	5601

PRIOR PROVISIONS

The provisions of a prior chapter 51, Distilled Spirits, Wines, and Beer, were set out as:

Subchapter A, Gallonage and occupational taxes, comprising sections 5001 to 5012, 5021 to 5028, 5041 to 5045, 5051 to 5057, 5061 to 5065, 5081 to 5084, 5091 to 5093, 5101 to 5106, 5111 to 5116, 5121 to 5124, 5131 to 5134, and 5141 to 5149.

Subchapter B, Distilleries, comprising sections 5171 to 5180, 5191 to 5197, and 5211 to 5217.

Subchapter C, Internal Revenue bonded warehouses, comprising sections 5231 to 5233 and 5241 to 5252.

Subchapter D, Rectifying plants, comprising sections 5271 to 5275 and 5281 to 5285.

Subchapter E, Industrial alcohol plants, bonded warehouses, denaturing plants, and denaturation, comprising sections 5301 to 5320 and 5331 to 5334.

Subchapter F, Bonded and taxpaid wine premises, comprising sections 5351 to 5357, 5361 to 5373, 5381 to 5388, 5391, and 5392.

Subchapter G, Breweries, comprising sections 5401 to 5403 and 5411 to 5416.

Subchapter H, Miscellaneous plants and warehouses, comprising sections 5501, 5502, 5511, 5512, and 5521 to 5523.

Subchapter I, Miscellaneous general provisions, comprising sections 5551 to 5557.

Subchapter J, Penalties, seizures, and forfeitures relating to liquors, comprising sections 5601 to

[2] Chapter heading amended by Pub. L. 90–618 without corresponding amendment of analysis.

[1] Section numbers editorially supplied.