§ 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 a 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 4980F 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.


Amendments


Effective Date of 2006 Amendment


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 employer (as defined in section 5000A(f)(2)) for any month, and

(2) Overall limitation

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

(c) Definitions and special rules

For purposes of this section—

(1) Applicable payment amount

The term "applicable payment amount" means, with respect to any month, $2,000.

(2) Applicable large employer

(A) In general

The term "applicable large employer" means, with respect to a calendar year, an

"(2) TRANSITION.—Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (d) 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."

"(2) T
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) 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).
(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's such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made for such allowance or payment.


REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsecs. (a)(2), (b), (c)(1), (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 22, The Federal Regulation of Radio and Television, Mar. 23, 2010, 124 Stat. 911, provided that: "The amendment made by this paragraph (2) [amending this section] shall apply to months beginning after December 31, 2013."

The Patient Protection and Affordable Care Act, referred to in subsec. (b), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 914, provided that: "The amendment made by this paragraph (2) [amending this section] shall apply to months beginning after December 31, 2013."


The effective date of the Patient Protection and Affordable Care Act, referred to in subsec. (b)(3), is Pub. L. 111–148, title X, §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."

$4980L 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—

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


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

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

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