

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.)

#### Statutory Notes and Related Subsidiaries

#### 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.

### § 4960. Tax on excess tax-exempt organization executive compensation

#### (a) Tax imposed

There is hereby imposed a tax equal to the product of the rate of tax under section 11 and the sum of—

(1) so much of the remuneration paid (other than any excess parachute payment) by an applicable tax-exempt organization for the taxable year with respect to employment of any covered employee in excess of \$1,000,000, plus

(2) any excess parachute payment paid by such an organization to any covered employee.

For purposes of the preceding sentence, remuneration shall be treated as paid when there is no substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)) of the rights to such remuneration.

#### (b) Liability for tax

The employer shall be liable for the tax imposed under subsection (a).

#### (c) Definitions and special rules

For purposes of this section—

##### (1) Applicable tax-exempt organization

The term “applicable tax-exempt organization” means any organization which for the taxable year—

(A) is exempt from taxation under section 501(a),

(B) is a farmers’ cooperative organization described in section 521(b)(1),

(C) has income excluded from taxation under section 115(1), or

(D) is a political organization described in section 527(e)(1).

#### (2) Covered employee

For purposes of this section, the term “covered employee” means any employee (including any former employee) of an applicable tax-exempt organization if the employee—

(A) is one of the 5 highest compensated employees of the organization for the taxable year, or

(B) was a covered employee of the organization (or any predecessor) for any preceding taxable year beginning after December 31, 2016.

#### (3) Remuneration

For purposes of this section:

##### (A) In general

The term “remuneration” means wages (as defined in section 3401(a)), except that such term shall not include any designated Roth contribution (as defined in section 402A(c)) and shall include amounts required to be included in gross income under section 457(f).

##### (B) Exception for remuneration for medical services

The term “remuneration” shall not include the portion of any remuneration paid to a licensed medical professional (including a veterinarian) which is for the performance of medical or veterinary services by such professional.

#### (4) Remuneration from related organizations

##### (A) In general

Remuneration of a covered employee by an applicable tax-exempt organization shall include any remuneration paid with respect to employment of such employee by any related person or governmental entity.

##### (B) Related organizations

A person or governmental entity shall be treated as related to an applicable tax-exempt organization if such person or governmental entity—

(i) controls, or is controlled by, the organization,

(ii) is controlled by one or more persons which control the organization,

(iii) is a supported organization (as defined in section 509(f)(3)) during the taxable year with respect to the organization,

(iv) is a supporting organization described in section 509(a)(3) during the taxable year with respect to the organization, or

(v) in the case of an organization which is a voluntary employees’ beneficiary association described in section 501(c)(9), establishes, maintains, or makes contributions to such voluntary employees’ beneficiary association.

##### (C) Liability for tax

In any case in which remuneration from more than one employer is taken into ac-

count under this paragraph in determining the tax imposed by subsection (a), each such employer shall be liable for such tax in an amount which bears the same ratio to the total tax determined under subsection (a) with respect to such remuneration as—

(i) the amount of remuneration paid by such employer with respect to such employee, bears to

(ii) the amount of remuneration paid by all such employers to such employee.

**(5) Excess parachute payment**

For purposes of determining the tax imposed by subsection (a)(2)—

**(A) In general**

The term “excess parachute payment” means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

**(B) Parachute payment**

The term “parachute payment” means any payment in the nature of compensation to (or for the benefit of) a covered employee if—

(i) such payment is contingent on such employee’s separation from employment with the employer, and

(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such separation equals or exceeds an amount equal to 3 times the base amount.

**(C) Exception**

Such term does not include any payment—

(i) described in section 280G(b)(6) (relating to exemption for payments under qualified plans),

(ii) made under or to an annuity contract described in section 403(b) or a plan described in section 457(b),

(iii) to a licensed medical professional (including a veterinarian) to the extent that such payment is for the performance of medical or veterinary services by such professional, or

(iv) to an individual who is not a highly compensated employee as defined in section 414(q).

**(D) Base amount**

Rules similar to the rules of 280G(b)(3) shall apply for purposes of determining the base amount.

**(E) Property transfers; present value**

Rules similar to the rules of paragraphs (3) and (4) of section 280G(d) shall apply.

**(6) Coordination with deduction limitation**

Remuneration the deduction for which is not allowed by reason of section 162(m) shall not be taken into account for purposes of this section.

**(d) Regulations**

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance of the tax under this section, including regulations to prevent avoidance of such tax through the per-

formance of services other than as an employee or by providing compensation through a pass-through or other entity to avoid such tax.

(Added Pub. L. 115-97, title I, §13602(a), Dec. 22, 2017, 131 Stat. 2157.)

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE

Pub. L. 115-97, title I, §13602(c), Dec. 22, 2017, 131 Stat. 2159, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2017.”

**Subchapter E—Abatement of First and Second Tier Taxes in Certain Cases**

Sec. 4961.	Abatement of second tier taxes where there is correction.
4962. 4963.	Abatement of first tier taxes in certain cases. Definitions.

**Editorial Notes**

AMENDMENTS

1996—Pub. L. 104-168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475, redesignated former subchapter D as E.

1987—Pub. L. 100-203, title X, §10712(a), (b)(5), Dec. 22, 1987, 101 Stat. 1330-465, 1330-467, redesignated former subchapter C as D, and struck out “private foundation” before “first tier taxes” in item 4962.

1984—Pub. L. 98-369, div. A, title III, §305(b)(1), (2), July 18, 1984, 98 Stat. 783, substituted “Abatement of First and Second Tier Taxes in Certain Cases” for “Abatement of Second Tier Taxes Where There Is Correction During Correction Period” in the subchapter heading, added item 4962, and renumbered former item 4962 as 4963.

**§ 4961. Abatement of second tier taxes where there is correction**

**(a) General rule**

If any taxable event is corrected during the correction period for such event, then any second tier tax imposed with respect to such event (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

**(b) Supplemental proceeding**

If the determination by a court that the taxpayer is liable for a second tier tax has become final, such court shall have jurisdiction to conduct any necessary supplemental proceeding to determine whether the taxable event was corrected during the correction period. Such a supplemental proceeding may be begun only during the period which ends on the 90th day after the last day of the correction period. Where such a supplemental proceeding has begun, the reference in the second sentence of section 6213(a) to a final decision of the Tax Court shall be treated as including a final decision in such supplemental proceeding.

**(c) Suspension of period of collection for second tier tax**

**(1) Proceeding in District Court or United States Court of Federal Claims**

If, not later than 90 days after the day on which the second tier tax is assessed, the first