

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

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. 115-141, div. U, title IV, §401(a)(325)(C), Mar. 23, 2018, 132 Stat. 1200.)

Editorial Notes

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115-141 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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 96-596, §2(d), Dec. 24, 1980, 94 Stat. 3474, 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.)

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

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,