

**§ 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.)

**Editorial Notes**

**AMENDMENTS**

2006—Subsec. (d). Pub. L. 109-432 added subsec. (d).

**Statutory Notes and Related Subsidiaries**

**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  $\frac{1}{2}$  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.

**(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,  $\frac{1}{2}$  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