

(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.

(4) Time for response

The Secretary shall allow an applicable large employer at least 90 days from the date of the first letter which informs the employer of a proposed assessment of the employer shared responsibility payment under this section to respond to the proposed assessment before taking any further action with respect to such proposed assessment.

(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; Pub. L. 112-10, div. B, title VIII, §1858(b)(4), Apr. 15, 2011, 125 Stat. 169; Pub. L. 114-41, title IV, §4007(a)(1), July 31, 2015, 129 Stat. 465; Pub. L. 115-141, div. U, title IV, §401(a)(2)(B), Mar. 23, 2018, 132 Stat. 1184; Pub. L. 118-168, §4(a), Dec. 23, 2024, 138 Stat. 2587.)

Editorial Notes

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsecs. (a)(2), (b)(1)(B), 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 former 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, 162, 4980H, and 6056 of this title and former section 139D 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

2024—Subsec. (d)(4). Pub. L. 118-168 added par. (4).
 2018—Subsec. (c)(2)(F). Pub. L. 115-141 substituted “Department of Veterans Affairs” for “Veterans Administration” in heading.
 2015—Subsec. (c)(2)(F). Pub. L. 114-41 added subpar. (F).
 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.”
 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 ½ 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).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2024 AMENDMENT

Pub. L. 118-168, §4(b), Dec. 23, 2024, 138 Stat. 2587, provided that: “The amendment made by this section [amending this section] shall apply to assessments proposed in taxable years beginning after the date of the enactment of this Act [Dec. 23, 2024].”

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-41, title IV, §4007(a)(2), July 31, 2015, 129 Stat. 466, provided that: “The amendment made by this subsection [amending this section] shall apply to months beginning after December 31, 2013.”

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-10 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.

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. Repealed. Pub. L. 116-94, div. N, title I, § 503(a), Dec. 20, 2019, 133 Stat. 3119]

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; Pub. L. 114-113, div. P, title I, §§101(b), 102, Dec. 18, 2015, 129 Stat. 3037; Pub. L. 114-255, div. C, title XVIII, §18001(a)(4), Dec. 13, 2016, 130 Stat. 1342; Pub. L. 115-97, title I, §11002(d)(12), Dec. 22, 2017, 131 Stat. 2062; Pub. L. 115-141, div. U, title IV, §401(a)(237), (238), Mar. 23, 2018, 132 Stat. 1195, related to excise tax on high cost employer-sponsored health coverage.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2019, see section 503(c) of Pub. L. 116-94, set out as an Effective Date of 2019 Amendment note under section 6051 of this title.

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.

Editorial Notes

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)¹ 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

¹ See References in Text note below.