

(Added Pub. L. 104-191, title III, §301(c)(4)(A), Aug. 21, 1996, 110 Stat. 2049; amended Pub. L. 106-554, §1(a)(7) [title II, §202(a)(8), (b)(2)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A-629; Pub. L. 107-147, title IV, §417(17)(A), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107-147 substituted “Archer MSA contributions” for “medical savings account contributions” in section catchline.

2000—Subsec. (a). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(8)], substituted “Archer MSA” for “medical savings account”.

Subsecs. (b), (d)(1). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(D)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (d)(2)(B). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(8)], substituted “Archer MSA” for “medical savings account”.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

§ 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements

(a) Imposition of tax

There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be \$100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term “noncompliance period” means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered and reasonable diligence exercised

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

(2) Tax not to apply to failures corrected within 30 days

No tax shall be imposed by subsection (a) on any failure if—

(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

(B) such person provides the notice described in subsection (e) during the 30-day

period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Overall limitation for unintentional failures

(A) In general

If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed \$500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

(B) Taxable years in the case of certain controlled groups

For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(4) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

(d) Liability for tax

The following shall be liable for the tax imposed by subsection (a):

(1) In the case of a plan other than a multiemployer plan, the employer.

(2) In the case of a multiemployer plan, the plan.

(e) Notice requirements for plans significantly reducing benefit accruals

(1) In general

If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals).

(2) Notice

The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) Timing of notice

Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Designees

Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) Notice before adoption of amendment

A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(f) Definitions and special rules

For purposes of this section—

(1) Applicable individual

The term “applicable individual” means, with respect to any plan amendment—

(A) each participant in the plan, and

(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(2) Applicable pension plan

The term “applicable pension plan” means—

(A) any defined benefit plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or

(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

(3) Early retirement

A plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of reducing the rate of future benefit accrual.

(g) New technologies

The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.

(Added Pub. L. 107-16, title VI, § 659(a)(1), June 7, 2001, 115 Stat. 137; amended Pub. L. 107-147, title IV, § 411(u)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109-280, title V, § 502(c)(2), Aug. 17, 2006, 120 Stat. 941.)

AMENDMENT OF SUBSECTION (e)(1)

Pub. L. 109-280, title V, § 502(c)(2), (d), Aug. 17, 2006, 120 Stat. 941, provided that, applicable to plan years beginning after Dec. 31, 2007, sub-

section (e)(1) of this section is amended by inserting “and to each employer who has an obligation to contribute to the plan” before the period at the end.

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107-147, § 411(u)(1)(A), substituted “the notice described in paragraph (2)” for “written notice”.

Subsec. (f)(2)(A). Pub. L. 107-147, § 411(u)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “any defined benefit plan, or”.

Subsec. (f)(3). Pub. L. 107-147, § 411(u)(1)(C), struck out “significantly” before “reduces” and before “reducing”.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title V, § 502(d), Aug. 17, 2006, 120 Stat. 941, provided that: “The amendments made by this section [amending this section and sections 1021, 1054, and 1132 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001. Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Pub. L. 107-16, title VI, § 659(c), June 7, 2001, 115 Stat. 141, as amended by Pub. L. 107-147, title IV, § 411(u)(3), Mar. 9, 2002, 116 Stat. 52, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1054 of Title 29, Labor] shall apply to plan amendments taking effect on or after the date of the enactment of this Act [June 7, 2001].

“(2) TRANSITION.—Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (3) 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.”

§ 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.