118TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
118–111

EMPLOYER REPORTING IMPROVEMENT ACT

JUNE 13, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Missouri, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 3801]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3801) to amend the Internal Revenue Code of 1986 to streamline and improve the employer reporting process relating to health insurance coverage and to protect dependent privacy, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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39–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employer Reporting Improvement Act".

SEC. 2. TIN REPORTING FLEXIBILITY.

(a) IN GENERAL.—Section 6055(b)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following flush sentence:

"For purposes of subparagraph (B)(i), in the case of any individual whose name is required to be set forth in a return under subsection (a), if the person required to make a return under such subsection is unable to collect information on the TINs of such individuals, the Secretary may allow the individual's full name and date of birth to be substituted for the name and TIN.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns the due date for which is after December 31, 2024.

SEC. 3. ELECTRONIC STATEMENTS.

(a) IN GENERAL.—Section 6056(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(3) ELECTRONIC DELIVERY.—An individual shall be deemed to have consented to receive the statement under this subsection in electronic form if such individual has affirmatively consented at any prior time, to the person who is the employer of the individual during the calendar year to which the statement relates, to receive such statement in electronic form. The preceding sentence shall not apply if the individual revokes such consent in writing.".

(b) STATEMENTS RELATING TO HEALTH INSURANCE COVERAGE.—Section 6055(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(3) ELECTRONIC DELIVERY.—An individual shall be deemed to have consented to receive the statement under this subsection in electronic form if such individual has affirmatively consented at any prior time, to the person required to make such statement, to receive such statement in electronic form. The preceding sentence shall not apply if the individual revokes such consent in writing.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to statements the due date for which is after December 31, 2024.

SEC. 4. TIME FOR RESPONSE.

(a) IN GENERAL.—Section 4980H(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(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.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to assessments proposed in taxable years beginning after the date of the enactment of this Act.

SEC. 5. STATUTE OF LIMITATIONS ON PENALTY ASSESSMENT.

(a) IN GENERAL.—Section 6501 of the Internal Revenue Code of 1986 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) ASSESSABLE PAYMENT OF EMPLOYER SHARED RESPONSIBILITY.—In the case of any assessable payment under section 4980H, the period for assessment shall expire at the end of the 6-year period beginning on the due date for filing the return under section 6056 (or, if later, the date such return was filed) for the calendar year with respect to which such payment is determined.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to returns which are due after December 31, 2024.

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

The bill, H.R. 3801, the "Employer Reporting Improvement Act," as ordered reported by the Committee on Ways and Means on June 7, 2023, to streamline health care reporting requirements.

B. Background and Need for Legislation

The Patient Protection and Affordable Care Act (ACA) required that employers must annually report health insurance coverage data to the IRS during the year-end tax filing season. This information is used to determine if an employee's health coverage offer is affordable. In 2023, employer sponsored coverage is considered affordable if an individual's share of the monthly premium in the lowest cost plan offered by the employer is less than 9.12% of your household income. If it is not affordable, employees may purchase an exchange plan and be eligible for premium tax credit.

During this reporting process, employers are required to submit tax identification (TIN) or Social Security numbers of the plan enrollee and a spouse or dependent who is enrolled in the health coverage. If an employer incorrectly submits this information, if they do not offer affordable coverage, or if the IRS believes that the employee is incorrectly claiming a premium tax credit, the employer may face financial penalties. Employers are restricted to a narrow penalty appeal window with no statute of limitations.

The Committee believes legislation is needed to give employees flexibility to report names and dates of birth for employee's spouses and dependents if the TIN or Social Security Number is inaccessible. The Committee also believes it is necessary to provide employers with relief by extending the appeal window for a potential penalty to 90 days and establishing a 6-year statute of limitations on assessing penalties.

C. Legislative History

Background

H.R. 3801 was introduced on June 5, 2023, and was referred to the Committee on Ways and Means.

Committee hearings

On Thursday, March 23, 2023, the Ways and Means Subcommittee on Health held hearing on "Why Health Care is Unaffordable: The Fallout of Democrats" Inflation on Patients and Small Businesses".

Committee action

The Committee on Ways and Means marked up H.R. 3801, the "Employer Reporting Improvement Act," on June 7, 2023, and ordered the bill, as amended, favorably reported (with a quorum being present).

D. Legislative History

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop and consider H.R. 3801:

(1) Committee on Ways and Means Subcommittee on Health "Why Health Care is Unaffordable: The Fallout of Democrats" Inflation on Patients and Small Businesses".

II. EXPLANATION OF THE BILL

A. TIN Reporting Flexibility (sec. 2 of the Bill and sec. 6055 of the Code)

PRESENT LAW

Under the Patient Protection and Affordable Care Act ("PPACA"),[1] persons (including health insurance issuers and employers that self-insure) that provide minimum essential coverage[2] to any individual during a calendar year ("reporting entities") must report certain health insurance coverage information to both the covered individual and to the Internal Revenue Service ("IRS").[3]

The information required to be reported includes: (1) the name, address, and taxpayer identification number ("TIN") of the primary insured, and the name and TIN of each other individual obtaining coverage under the policy; (2) the dates during which the individual was covered under the policy during the calendar year; (3) whether the coverage is a qualified health plan offered through an Exchange;[4] (4) the amount of any premium tax credit or cost-sharing reduction received by the individual with respect to such coverage; and (5) such other information as the Secretary of the Treasury ("Secretary") may require.

If health insurance coverage is provided through an employer-provided group health plan, the reporting entity is also required to report the name, address and employer identification number of the employer, the portion of the premium, if any, required to be paid by the employer, and any other information the Secretary may require to administer the tax credit for eligible small employers.[5]

The reporting entity is required to report the above information, along with the name, address and contact information of the reporting insurer, to the IRS on or before February 28 (March 31 if filing electronically) of the year following the calendar year to which the information relates.[6] The reporting entity is required to report the above information, along with the name, address and contact information of the reporting entity, to the covered individual on or before January 31 of the year following the calendar year for which the information is required to be reported to the IRS.[7] The IRS has generally designated Form 1094–B, *Transmittal of Health Coverage Information Returns*, and Form 1095–B, *Health Coverage*, for reporting entities to meet these requirements. However, an applicable large employer that offers coverage through a self-insured health plan generally reports this information using Part III of the Form 1095–C, *Employer-Provided Health Insurance Offer and Coverage*, which is the form that is also used by applica-

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[1] Pub. L. No. 111–148, March 23, 2010, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152, March 30, 2010.
[2] As defined in section 5000A.
[3] Sec. 6055.
[4] An Exchange established under section 1311 of the PPACA.
[5] Under section 45R.
[6] Treas. Reg. sec. 1.6055–1(f)(1).
[7] Treas. Reg. sec. 1.6055–1(g)(4)(i).

ble large employers for the separate requirement (described in part B of this document) of reporting offers of health insurance coverage for their employees.[8]

A reporting entity that fails to comply with these reporting requirements is subject to the penalties for failure to file an information return and failure to furnish payee statements, respectively.[9]

Under Treasury regulations,[10] the IRS permits reporting entities to submit names and birthdates (instead of TINs) for both the primary insured and each other individual insured under the same policy if the reporting entity is unable to collect such individuals' TINs through "reasonable efforts."[11] Reasonable efforts generally include three solicitations (one initial and two annual solicitations during the two years following enrollment) to collect the individual's TIN.[12]

REASONS FOR CHANGE

The Committee believes that the Treasury regulations permitting reporting entities to submit names and dates of birth when reporting information about minimum essential coverage, if the reporting entity is unable to collect covered individuals' TINs, has reduced burdens and provided certainty for reporting entities.

EXPLANATION OF PROVISION

Under the provision, the Secretary may allow for any covered individual's full name and date of birth to be substituted for the individual's name and TIN if the reporting entity is unable to collect information on the TIN of such individual. The provision thus generally codifies the current Treasury regulations permitting this practice.

EFFECTIVE DATE

The provision is effective for returns for which the due date is after December 31, 2024.

B. Electronic Statements (sec. 3 of the Bill and secs. 6055 and 6056 of the Code)

PRESENT LAW

For a description of the reporting requirements generally applicable to persons that provide minimum essential coverage, see part A of this document.

Employer shared responsibility for health coverage

In general

An applicable large employer may be subject to a tax, referred to as the employer-shared responsibility payment ("ESRP") for a month if one or more of its full-time employees is certified to the employer as receiving for the month a premium tax credit ("PTC") for health insurance purchased on an Exchange or reduced cost-

[8] Treas. Reg. sec. 1.6055–1(f)(2).
[9] Sec. 6724(d)(1)(B)(xxiv), (d)(2)(GG); Treas. Reg. sec. 1.6055–1(h).
[10] Treas. Reg. sec. 1.6055–1(e)(ii), (iii).
[11] See T.D. 9660, 79 Fed. Reg. 13220, March 10, 2014.
[12] *Ibid*.

sharing for the employee's share of expenses covered by such health insurance.[13] Whether an applicable large employer owes an ESRP and the amount of any penalty depend on whether the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under a group health plan sponsored by the employer and, if the employer offers such a group health plan, whether the coverage offered is affordable and provides minimum value.

Definition of applicable large employer

"Applicable large employer" generally means, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year.[14] In addition, in determining whether an employer is an applicable large employer, members of the same controlled group, group under common control, and affiliated service group are treated as a single employer.[15]

Employer shared responsibility payments

If an applicable large employer does not offer its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is certified as benefiting from PTCs or reduced cost-sharing, the employer may be subject to an ESRP of $2,880 (for 2023)[16] (divided by 12 and applied on a monthly basis) multiplied by the number of its full-time employees minus 30, regardless of the number of full-time employees so certified.

Generally, an employee who is offered minimum essential coverage under an employer-sponsored plan is not eligible for a PTC or reduced cost-sharing unless the coverage is unaffordable or fails to provide minimum value.[17] However, if an employer offers its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan but at least one full-time employee is certified as being allowed PTC or reduced cost-sharing (because the coverage is unaffordable or fails to provide minimum value), the employer may be subject to an ESRP of $4,320 (for 2023) (divided by 12 and applied on a monthly basis) multiplied by the number of such full-time employees. The ESRP in this case is capped at the amount that would apply if the employer failed to offer its full-time employees and their dependents minimum essential coverage.[18]

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[13] Sec. 4980H. PTCs for health insurance purchased on an Exchange are provided under section 36B. Reduced cost-sharing for an individual's share of expenses covered by such health insurance is provided under section 1402 of PPACA.

[14] Sec. 4980H(c)(2). Additional rules apply, for example, in the case of an employer that was not in existence for the entire preceding calendar year. *Ibid*.

[15] The rules for determining controlled group, group under common control, and affiliated service group under section 414(b), (c), (m) and (o) apply.

[16] Sec. 4980H(a), (c). Pursuant to Notice 2015–87, the IRS publishes annual updates to these values at https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act.

[17] Under section 36B(c)(2)(C), coverage under an employer-sponsored plan is unaffordable if the employee's share of the premium for self-only coverage exceeds 9.12 percent (for 2023) of household income (this percentage is updated as needed to reflect cost-of-living changes, see Rev. Proc. 2022–34, 2022–33 I.R.B. 143), and the coverage fails to provide minimum value if the plan's share of total allowed cost of provided benefits is less than 60 percent of such costs.

[18] Sec. 4980H(b).

Employer reporting of offers of health insurance coverage

Each applicable large employer subject to the ESRP must report certain health insurance coverage information to both its full-time employees and to the IRS.[19]

The information required to be reported includes: (1) the name, address and employer identification number of the employer; (2) a certification as to whether the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan; (3) the number of full-time employees of the employer for each month during the calendar year; (4) the name, address and TIN of each full-time employee employed by the employer during the calendar year and the number of months, if any, during which the employee (and any dependents) was covered under a plan sponsored by the employer during the calendar year; and (5) such other information as the Secretary may require.

Applicable large employers that offer employees and dependents the opportunity to enroll in minimum essential coverage also must report: (1) the length of any waiting period with respect to such coverage; (2) the months during the calendar year during which the coverage was available; (3) the monthly premium for the lowest cost option in each of the enrollment categories under the plan; and (4) the employer's share of the total allowed costs of benefits under the plan.

The employer is required to file the return and transmittal to the IRS on or before February 28 (March 31 if filing electronically) of the year succeeding the calendar year to which it relates.[20] The employer is required to report to each full-time employee the above information required to be reported with respect to that employee, along with the name, address and contact information of the reporting employer, on or before January 31 of the year following the calendar year for which the information is required to be reported to the IRS.[21] The IRS generally has designated Form 1094–C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*, and Form 1095–C, *Employer-Provided Health Insurance Offer and Coverage*, for employers to meet these requirements.

An employer that fails to comply with these reporting requirements is subject to the penalties for failure to file an information return and failure to furnish payee statements, respectively.[22]

Electronic furnishing of statements

Provided certain conditions are met, the IRS allows both applicable large employers fulfilling reporting requirements related to offers of health insurance coverage and reporting entities fulfilling reporting requirements related to minimum essential coverage to furnish the required statements to individuals electronically.[23] Re-

[19] Sec. 6056.
[20] Treas. Reg. sec. 301.6056–1(e).
[21] Employers have an automatic extension of 30 days after January 31 to furnish this information to individuals. Treas. Reg. sec. 301.6056 1(g)(1).
[22] Sec. 6724(d)(1)(B)(xxv), (d)(2)(HH); Treas. Reg. sec. 301.6056–1(i).
[23] Treas. Regs. secs. 1.6055–2; 301.6056–2. The applicable conditions generally relate to consent and withdrawal of consent, notice requirements, and access periods.

cipients must consent to receiving electronic statements and must be permitted to withdraw consent. [24]

REASONS FOR CHANGE

The Committee believes the Treasury regulations permitting applicable large employers and reporting entities to furnish required statements electronically has reduced administrative burdens and expenses related to these reporting responsibilities. The Committee intends that applicable large employers and reporting entities have confidence that they may continue to furnish these statements electronically.

EXPLANATION OF PROVISION

Under the provision, applicable large employers [25] and reporting entities [26] are permitted to furnish statements to an individual electronically if the individual has previously consented at any prior time, to the employer of the individual during the relevant calendar year or relevant reporting entity, to receive such statement in electronic form, so long as the individual has not revoked consent in writing. The provision thus generally codifies the existing regulations permitting electronic furnishing of Forms 1095–B and 1095–C.

EFFECTIVE DATE

The provision is effective for statements for which the due date is after December 31, 2024.

C. TIME FOR RESPONSE (SEC. 4 OF THE BILL AND SEC. 4980H OF THE CODE)

PRESENT LAW

For a description of the employer-shared responsibility payment ("ESRP"), see part B of this document.

Generally, when the IRS has made an initial finding that an applicable large employer may be liable for an assessment of the ESRP, the IRS sends the employer a letter (currently, Letter 226–J), which typically provides that the employer has 30 days to respond regarding the proposed assessment.

REASONS FOR CHANGE

The Committee believes that 30 days may not be enough time for applicable large employers to respond to a Letter 226–J. The Committee intends that the IRS be required to provide employers more time to respond to these letters before taking any further steps in the assessment process.

EXPLANATION OF PROVISION

Under the provision, the Secretary is required to allow applicable large employers at least 90 days from date of the first letter which informs the employer of a proposed assessment of the ESRP (currently, Letter 226–J) to respond to the proposed assessment before

[24] *Ibid.*
[25] With regard to section 6056.
[26] With regard to section 6055.

taking any further action with respect to such proposed assessment.

EFFECTIVE DATE

The provision is effective for assessments proposed in taxable years beginning after the date of the enactment.

D. STATUTE OF LIMITATIONS ON PENALTY ASSESSMENT (SEC. 5 OF THE BILL AND 6501 OF THE CODE)

PRESENT LAW

For a description of the employer-shared responsibility payment ("ESRP"), see part B of this document.

Generally, the IRS may assess a tax or additional amount with respect to a tax within three years of the filing of a tax return.[27] Numerous exceptions to this limitations period are provided, including expanded periods based on substantial omissions or failure to file a required tax return. In 2019, the IRS Office of Chief Counsel opined in advice to a field office that there is no statute of limitations regarding whether an applicable larger employer may be liable for the ESRP payment because there is no tax return filed to report an employer's liability for the ESRP.[28]

REASONS FOR CHANGE

Because the IRS is of the view that there is no statute of limitations applicable to the ESRP, applicable large employers may be assessed an ESRP for any previous year during which the employer was potentially liable, potentially leading to assessments long after the year in question.

The Committee believes that, in the interests of fairness and finality, assessments of the ESRP should be subject to a statute of limitations, similar to other excise taxes, and subject to appropriate exceptions. The Committee also understands that the ESRP is a complex excise tax to administer, however, and that therefore the applicable limitations should be set at six years.

EXPLANATION OF PROVISION

Under the provision, a six-year limitations period is added for assessments of the ESRP under section 4980H. The statute of limitations begins on the due date of the applicable large employer's return under section 6056 (relating to the requirement that applicable large employers subject to the ESRP report certain information related to offers of health insurance coverage), or the date the return is filed, if later.

EFFECTIVE DATE

The provision is effective with respect to returns which are due after December 31, 2024.

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[27] Sec. 6501.

[28] Office of the Chief Counsel Memorandum, Statute of Limitations for IRC § 4980H, 20200801F, December 26, 2019, available at https://www.irs.gov/pub/irs-lafa/20200801f.pdf.

III. VOTE OF THE COMMITTEE

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 3801, the "Employer Reporting Improvement Act," on June 7, 2023.

The bill, H.R. 3801, the "Employer Reporting Improvement Act," as amended, was ordered favorably reported to the House of Representatives by a recorded vote of 37 yeas to 0 nays (with a quorum being present).

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)	✓			Mr. Neal			
Mr. Buchanan	✓			Mr. Doggett	✓		
Mr. Smith (NE)	✓			Mr. Thompson	✓		
Mr. Kelly	✓			Mr. Larson	✓		
Mr. Schweikert	✓			Mr. Blumenauer			
Mr. LaHood	✓			Mr. Pascrell	✓		
Dr. Wenstrup	✓			Mr. Davis	✓		
Mr. Arrington	✓			Ms. Sanchez			
Dr. Ferguson	✓			Mr. Higgins	✓		
Mr. Estes	✓			Ms. Sewell			
Mr. Smucker				Ms. DelBene			
Mr. Hern	✓			Ms. Chu	✓		
Ms. Miller	✓			Ms. Moore	✓		
Dr. Murphy	✓			Mr. Kildee	✓		
Mr. Kustoff	✓			Mr. Beyer	✓		
Mr. Fitzpatrick	✓			Mr. Evans	✓		
Mr. Steube	✓			Mr. Schneider	✓		
Ms. Tenney	✓			Mr. Panetta	✓		
Mrs. Fischbach	✓						
Mr. Moore	✓						
Mrs. Steel	✓						
Ms. Van Duyne	✓						
Mr. Feenstra	✓						
Ms. Malliotakis	✓						
Mr. Carey	✓						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 3801, as reported.

The estimated effect of the bill on Federal fiscal year budget receipts is a loss of less than $500,000 for the period 2023–2033.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill does not authorize funding, so no statement of general performance goals and objectives is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not

contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Tax Complexity Analysis

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. Changes in Existing Law Proposed by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

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SEC. 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-spon-

sored 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 $^1/_{12}$ 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, $^1/_{12}$ 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 seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(C) RULES FOR DETERMINING EMPLOYER SIZE.—For purposes of this paragraph—

(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) PREDECESSORS.—Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) APPLICATION OF EMPLOYER SIZE TO ASSESSABLE PENALTIES.—

(i) IN GENERAL.—The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating—

(I) the assessable payment under subsection (a), or

(II) the overall limitation under subsection (b)(2).

(ii) AGGREGATION.—In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II) shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

(E) FULL-TIME EQUIVALENTS TREATED AS FULL-TIME EMPLOYEES.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

(F) EXEMPTION FOR HEALTH COVERAGE UNDER TRICARE OR THE DEPARTMENT OF VETERANS AFFAIRS.—Solely for

purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an individual shall not be taken into account as an employee for such month if such individual has medical coverage for such month under—

(i) chapter 55 of title 10, United States Code, including coverage under the TRICARE program, or

(ii) under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.

(3) APPLICABLE PREMIUM TAX CREDIT AND COST-SHARING REDUCTION.—The term "applicable premium tax credit and cost-sharing reduction" means—

(A) any premium tax credit allowed under section 36B,

(B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, and

(C) any advance payment of such credit or reduction under section 1412 of such Act.

(4) FULL-TIME EMPLOYEE.—

(A) IN GENERAL.—The term "full-time employee" means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(B) HOURS OF SERVICE.—The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(5) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any calendar year after 2014, each of the dollar amounts in subsection (b) and paragraph (1) shall be increased by an amount equal to the product of—

(i) such dollar amount, and

(ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

(B) ROUNDING.—If the amount of any increase under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.

(6) OTHER DEFINITIONS.—Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

(7) TAX NONDEDUCTIBLE.—For denial of deduction for the tax imposed by this section, see section 275(a)(6).

(d) ADMINISTRATION AND PROCEDURE.—

(1) IN GENERAL.—Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) TIME FOR PAYMENT.—The Secretary may provide for the payment of any assessable payment provided by this section on

an annual, monthly, or other periodic basis as the Secretary may prescribe.

(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.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

Subchapter A—RETURNS AND RECORDS

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PART III—INFORMATION RETURNS

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Subpart D—INFORMATION REGARDING HEALTH INSURANCE COVERAGE

SEC. 6055. REPORTING OF HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Every person who provides minimum essential coverage to an individual during a calendar year shall, at such time as the Secretary may prescribe, make a return described in subsection (b).

(b) FORM AND MANNER OF RETURN.—

(1) IN GENERAL.—A return is described in this subsection if such return—

(A) is in such form as the Secretary may prescribe, and

(B) contains—

(i) the name, address and TIN of the primary insured and the name and TIN of each other individual obtaining coverage under the policy,

(ii) the dates during which such individual was covered under minimum essential coverage during the calendar year,

(iii) in the case of minimum essential coverage which consists of health insurance coverage, information concerning—

(I) whether or not the coverage is a qualified health plan offered through an Exchange established under section 1311 of the Patient Protection and Affordable Care Act, and

(II) in the case of a qualified health plan, the amount (if any) of any advance payment under section 1412 of the Patient Protection and Affordable Care Act of any cost-sharing reduction under section 1402 of such Act or of any premium tax credit under section 36B with respect to such coverage, and

(iv) such other information as the Secretary may require.

For purposes of subparagraph (B)(i), in the case of any individual whose name is required to be set forth in a return under subsection (a), if the person required to make a return under such subsection is unable to collect information on the TINs of such individuals, the Secretary may allow the individual's full name and date of birth to be substituted for the name and TIN.

(2) INFORMATION RELATING TO EMPLOYER-PROVIDED COVERAGE.—If minimum essential coverage provided to an individual under subsection (a) consists of health insurance coverage of a health insurance issuer provided through a group health plan of an employer, a return described in this subsection shall include—

(A) the name, address, and employer identification number of the employer maintaining the plan,

(B) the portion of the premium (if any) required to be paid by the employer, and

(C) if the health insurance coverage is a qualified health plan in the small group market offered through an Exchange, such other information as the Secretary may require for administration of the credit under section 45R (relating to credit for employee health insurance expenses of small employers).

(c) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REPORTED.—

(1) IN GENERAL.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(A) the name and address of the person required to make such return and the phone number of the information contact for such person, and

(B) the information required to be shown on the return with respect to such individual.

(2) TIME FOR FURNISHING STATEMENTS.—The written statement required under paragraph (1) shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(3) ELECTRONIC DELIVERY.—An individual shall be deemed to have consented to receive the statement under this subsection in electronic form if such individual has affirmatively consented at any prior time, to the person required to make such statement,

to receive such statement in electronic form. The preceding sentence shall not apply if the individual revokes such consent in writing.

(d) COVERAGE PROVIDED BY GOVERNMENTAL UNITS.—In the case of coverage provided by any governmental unit or any agency or instrumentality thereof, the officer or employee who enters into the agreement to provide such coverage (or the person appropriately designated for purposes of this section) shall make the returns and statements required by this section.

(e) MINIMUM ESSENTIAL COVERAGE.—For purposes of this section, the term "minimum essential coverage" has the meaning given such term by section 5000A(f).

SEC. 6056. CERTAIN EMPLOYERS REQUIRED TO REPORT ON HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Every applicable large employer required to meet the requirements of section 4980H with respect to its full-time employees during a calendar year shall, at such time as the Secretary may prescribe, make a return described in subsection (b).

(b) FORM AND MANNER OF RETURN.—A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe, and

(2) contains—

(A) the name, date, and employer identification number of the employer,

(B) a certification as to whether the 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)),

(C) if the employer certifies that the employer did offer to its full-time employees (and their dependents) the opportunity to so enroll—

(i) the length of any waiting period (as defined in section 2701(b)(4) of the Public Health Service Act) with respect to such coverage,

(ii) the months during the calendar year for which coverage under the plan was available,

(iii) the monthly premium for the lowest cost option in each of the enrollment categories under the plan, and

(iv) the employer share of the total allowed costs of benefits provided under the plan,

(D) the number of full-time employees for each month during the calendar year,

(E) the name, address, and TIN of each full-time employee during the calendar year and the months (if any) during which such employee (and any dependents) were covered under any such health benefits plans, and

(F) such other information as the Secretary may require.

The Secretary shall have the authority to review the accuracy of the information provided under this subsection, including the applicable large employer's share under paragraph (2)(C)(iv).

(c) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REPORTED.—

(1) IN GENERAL.—Every person required to make a return under subsection (a) shall furnish to each full-time employee whose name is required to be set forth in such return under subsection (b)(2)(E) a written statement showing—

(A) the name and address of the person required to make such return and the phone number of the information contact for such person, and

(B) the information required to be shown on the return with respect to such individual.

(2) TIME FOR FURNISHING STATEMENTS.—The written statement required under paragraph (1) shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(3) ELECTRONIC DELIVERY.—An individual shall be deemed to have consented to receive the statement under this subsection in electronic form if such individual has affirmatively consented at any prior time, to the person who is the employer of the individual during the calendar year to which the statement relates, to receive such statement in electronic form. The preceding sentence shall not apply if the individual revokes such consent in writing.

(d) COORDINATION WITH OTHER REQUIREMENTS.—To the maximum extent feasible, the Secretary may provide that—

(1) any return or statement required to be provided under this section may be provided as part of any return or statement required under section 6051 or 6055, and

(2) in the case of an applicable large employer offering health insurance coverage of a health insurance issuer, the employer may enter into an agreement with the issuer to include information required under this section with the return and statement required to be provided by the issuer under section 6055.

(e) COVERAGE PROVIDED BY GOVERNMENTAL UNITS.—In the case of any applicable large employer which is a governmental unit or any agency or instrumentality thereof, the person appropriately designated for purposes of this section shall make the returns and statements required by this section.

(f) DEFINITIONS.—For purposes of this section, any term used in this section which is also used in section 4980H shall have the meaning given such term by section 4980H.

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CHAPTER 66—LIMITATIONS

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Subchapter A—LIMITATIONS ON ASSESSMENT AND COLLECTION

SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable

by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) TIME RETURN DEEMED FILED.—

(1) EARLY RETURN.—For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 4, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) RETURN OF CERTAIN EMPLOYMENT AND WITHHOLDING TAXES.—For purposes of this section, if a return of tax imposed by chapter 3, 4, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) RETURN EXECUTED BY SECRETARY.—Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) RETURN OF EXCISE TAXES.—For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) EXCEPTIONS.—

(1) FALSE RETURN.—In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) WILLFUL ATTEMPT TO EVADE TAX.—In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) NO RETURN.—In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) EXTENSION BY AGREEMENT.—

(A) IN GENERAL.—Where, before the expiration of the time prescribed for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended

by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.

(5) TAX RESULTING FROM CHANGES IN CERTAIN INCOME TAX OR ESTATE TAX CREDITS.—For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) TERMINATION OF PRIVATE FOUNDATION STATUS.—In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(7) SPECIAL RULE FOR CERTAIN AMENDED RETURNS.—Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.

(8) FAILURE TO NOTIFY SECRETARY OF CERTAIN FOREIGN TRANSFERS.—

(A) IN GENERAL.—In the case of any information which is required to be reported to the Secretary pursuant to an election under section 1295(b) or under section 1298(f), 6038, 6038A, 6038B, 6038D, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any tax return, event, or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.

(B) APPLICATION TO FAILURES DUE TO REASONABLE CAUSE.—If the failure to furnish the information referred to in subparagraph (A) is due to reasonable cause and not willful neglect, subparagraph (A) shall apply only to the item or items related to such failure.

(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) which) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sen-

tence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

(A) the date on which the Secretary is furnished the information so required, or

(B) the date that a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.

(11) CERTAIN ORDERS OF CRIMINAL RESTITUTION.—In the case of any amount described in section 6201(a)(4), such amount may be assessed, or a proceeding in court for the collection of such amount may be begun without assessment, at any time.

(12) CERTAIN TAXES ATTRIBUTABLE TO PARTNERSHIP ADJUSTMENTS.—In the case of any partnership adjustment determined under subchapter C of chapter 63, the period for assessment of any tax imposed under chapter 2 or 2A which is attributable to such adjustment shall not expire before the date that is 1 year after—

(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under section 6234, such decision becomes final, or

(B) in any other case, 90 days after the date on which the notice of the final partnership adjustment is mailed under section 6231.

(d) REQUEST FOR PROMPT ASSESSMENT.—Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1)(A) such written request notifies the Secretary that the corporation contemplates dissolution at or before the expiration of such 18-month period, (B) the dissolution is in good faith begun before the expiration of such 18-month period, and (C) the dissolution is completed;

(2)(A) such written request notifies the Secretary that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(e) SUBSTANTIAL OMISSION OF ITEMS.—Except as otherwise provided in subsection (c)—

(1) INCOME TAXES.—In the case of any tax imposed by subtitle A—

(A) GENERAL RULE.—If the taxpayer omits from gross income an amount properly includible therein and—

(i) such amount is in excess of 25 percent of the amount of gross income stated in the return, or

(ii) such amount—

(I) is attributable to one or more assets with respect to which information is required to be reported under section 6038D (or would be so required if such section were applied without regard to the dollar threshold specified in subsection (a) thereof and without regard to any exceptions provided pursuant to subsection (h)(1) thereof), and

(II) is in excess of $5,000,

the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(B) DETERMINATION OF GROSS INCOME.—For purposes of subparagraph (A)—

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services;

(ii) An understatement of gross income by reason of an overstatement of unrecovered cost or other basis is an omission from gross income; and

(iii) In determining the amount omitted from gross income (other than in the case of an overstatement of unrecovered cost or other basis), there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(C) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.

(2) ESTATE AND GIFT TAXES.—In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the period for which the return was filed items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun

without assessment, at any time within 6 years after the return was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(3) EXCISE TAXES.—In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 41, 42, 43, or 44 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the existence and nature of such item.

(f) PERSONAL HOLDING COMPANY TAX.—If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth—

(1) the items of gross income and adjusted ordinary gross income, described in section 543, received by the corporation during such year, and

(2) the names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

(g) CERTAIN INCOME TAX RETURNS OF CORPORATIONS.—

(1) TRUSTS OR PARTNERSHIPS.—If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) EXEMPT ORGANIZATIONS.—If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(3) DISC.—If a corporation determines in good faith that it is a DISC (as defined in section 992(a)) and files a return as such under section 6011(c)(2) and if such corporation is thereafter held to be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be

deemed the return of a corporation which is not a DISC for purposes of this section.

(h) NET OPERATING LOSS OR CAPITAL LOSS CARRYBACKS.—In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.

(i) FOREIGN TAX CARRYBACKS.—In the case of a deficiency attributable to the application to the taxpayer of a carryback under section 904(c) (relating to carryback and carryover of excess foreign taxes) or under section 907(f) (relating to carryback and carryover of disallowed foreign oil and gas taxes), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(c) or 907(f) which result in such carryback.

(j) CERTAIN CREDIT CARRYBACKS.—

(1) IN GENERAL.—In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(2) CREDIT CARRYBACK DEFINED.—For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(k) TENTATIVE CARRYBACK ADJUSTMENT ASSESSMENT PERIOD.—In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, or a credit carryback (as defined in section 6511(d)(4)(C)) to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(l) SPECIAL RULE FOR CHAPTER 42 AND SIMILAR TAXES.—

(1) IN GENERAL.—For purposes of any tax imposed by section 4912, by chapter 42 (other than section 4940), or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, trust, or other organization (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For

purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) CERTAIN CONTRIBUTIONS TO SECTION 501(C)(3) ORGANIZATIONS.—In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3) organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) CERTAIN SET-ASIDES DESCRIBED IN SECTION 4942(G)(2).—In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section 4942(g)(2)(B)(ii), such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates.

(4) INDIVIDUAL RETIREMENT PLANS.—

(A) IN GENERAL.—For purposes of any tax imposed by section 4973 or 4974 in connection with an individual retirement plan, the return referred to in this section shall include the income tax return filed by the person on whom the tax under such section is imposed for the year in which the act (or failure to act) giving rise to the liability for such tax occurred.

(B) RULE IN CASE OF INDIVIDUALS NOT REQUIRED TO FILE RETURN.—In the case of a person who is not required to file an income tax return for such year—

(i) the return referred to in this section shall be the income tax return that such person would have been required to file but for the fact that such person was not required to file such return, and

(ii) the 3-year period referred to in subsection (a) with respect to the return shall be deemed to begin on the date by which the return would have been required to be filed (excluding any extension thereof).

(C) PERIOD FOR ASSESSMENT IN CASE OF INCOME TAX RETURN.—In any case in which the return with respect to a tax imposed by section 4973 is the individual's income tax return for purposes of this section, subsection (a) shall be applied by substituting a 6-year period in lieu of the 3-year period otherwise referred to in such subsection.

(D) EXCEPTION FOR CERTAIN ACQUISITIONS OF PROPERTY.—In the case of any tax imposed by section 4973 that is attributable to acquiring property for less than fair market value, subparagraph (A) shall not apply.

(m) DEFICIENCIES ATTRIBUTABLE TO ELECTION OF CERTAIN CREDITS.—The period for assessing a deficiency attributable to any election under section 30B(h)(9), 30C(e)(4), 30D(f)(6), 35(g)(11), 40(f), 43, 45B, 45C(d)(4), 45H(g), or 51(j) (or any revocation thereof) shall

not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

(n) ASSESSABLE PAYMENT OF EMPLOYER SHARED RESPONSIBILITY.—In the case of any assessable payment under section 4980H, the period for assessment shall expire at the end of the 6-year period beginning on the due date for filing the return under section 6056 (or, if later, the date such return was filed) for the calendar year with respect to which such payment is determined.

[(n)**]** *(o)* CROSS REFERENCE.—For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

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