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Internal Revenue Code Section 4980E(d)(4)(B)

Failure of employer to make comparable Archer MSA contributions

(a) General rule.

In the case of an employer who makes a contribution to the Archer MSA of any employee with respect to coverage under a high deductible health plan of the employer during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

(b) Amount of tax.

The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of employees for taxable years of such employees ending with or within such calendar year.

(c) 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 relative to the failure involved.

(d) Employer required to make comparable MSA contributions for all participating employees.

(1) In general.

An employer meets the requirements of this subsection for any calendar year if the employer makes available comparable contributions to the Archer MSAs of all comparable participating employees for each coverage period during such calendar year.

(2) Comparable contributions.

(A) In general. For purposes of paragraph (1), the term "comparable contributions" means contributions-

(i) which are the same amount, or

(ii) which are the same percentage of the annual deductible limit under the high deductible health plan covering the employees.

(B) Part-year employees. In the case of an employee who is employed by the employer for only a portion of the calendar year, a contribution to the Archer MSA of such employee shall be treated as comparable if it is an amount which bears the same ratio to the comparable amount (determined without regard to this subparagraph) as such portion bears to the entire calendar year.

(3) Comparable participating employees.

For purposes of paragraph (1) , the term "comparable participating employees" means all employees-

(A) who are eligible individuals covered under any high deductible health plan of the employer, and

(B) who have the same category of coverage.

For purposes of subparagraph (B), the categories of coverage are self-only and family coverage.

(4) Part-time employees.

(A) In general. Paragraph (3) shall be applied separately with respect to part-time employees and other employees.



(B) Part-time employee. For purposes of subparagraph (A) , the term "part-time employee" means any employee who is customarily employed for fewer than 30 hours per week.

(e) Controlled groups.

For purposes of this section , all persons treated as a single employer under subsection (b) , (c) , (m) , or (o) of section 414 shall be treated as 1 employer.

(f) Definitions.

Terms used in this section which are also used in section 220 have the respective meanings given such terms in section 220 .