

such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such tax knew, or exercising reasonable diligence would have known, that such failure existed, and

(ii) in the case of a church plan (as so defined), such failure is corrected before the close of the correction period (determined under the rules of section 414(e)(4)(C)).

**(3) Overall limitation for unintentional failures**

In the case of failures which are due to reasonable cause and not to willful neglect—

**(A) Single employer plans**

**(i) In general**

In the case of failures with respect to plans other than specified multiple employer health plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) \$500,000.

**(ii) Taxable years in the case of certain controlled groups**

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

**(B) Specified multiple employer health plans**

**(i) In general**

In the case of failures with respect to a specified multiple employer health plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 9832(d)(3)) directly or through insurance, reimbursement, or otherwise, or

(II) \$500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as one plan.

**(ii) Special rule for employers required to pay tax**

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a specified multiple employer health plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a specified multiple employer health plan.

**(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 relative to the failure involved.

**(d) Tax not to apply to certain insured small employer plans**

**(1) In general**

In the case of a group health plan of a small employer which provides health insurance coverage solely through a contract with a health insurance issuer, no tax shall be imposed by this section on the employer on any failure (other than a failure attributable to section 9811) which is solely because of the health insurance coverage offered by such issuer.

**(2) Small employer**

**(A) In general**

For purposes of paragraph (1), the term “small employer” means, with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one employer.

**(B) 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 a small 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.

**(C) Predecessors**

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

**(3) Health insurance coverage; health insurance issuer**

For purposes of paragraph (1), the terms “health insurance coverage” and “health insurance issuer” have the respective meanings given such terms by section 9832.

**(e) Liability for tax**

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

(1) Except as otherwise provided in this subsection, the employer.

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

(3) In the case of a failure under section 9803 (relating to guaranteed renewability) with respect to a plan described in subsection (f)(2)(B), the plan.

**(f) Definitions**

For purposes of this section—

**(1) Group health plan**

The term “group health plan” has the meaning given such term by section 9832(a).