



# Instructions for Form 8928

(June 2009)

## Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code

Section references are to the Internal Revenue Code unless otherwise noted.

### General Instructions

#### Purpose of Form

File Form 8928 to report the tax due on the following failures by group health plans or employers.

- A failure to satisfy continuation coverage requirements under section 4980B.
- A failure to meet portability, access, and renewability requirements under section 4980D.
- A failure to make comparable Archer MSA contributions under section 4980E.
- A failure to make comparable health savings account (HSA) contributions under section 4980G.

#### Who Must File

Form 8928 must be filed by:

1. Any employer, group health plan, plan administrator, or plan sponsor liable for the tax under section 4980B for failure to offer continuation coverage to a qualified beneficiary.
2. Any employer or group health plan liable for the tax under section 4980D for failure to comply with the following group health plan requirements.
  - a. Limitation on preexisting condition exclusion period under section 9801.
  - b. Nondiscrimination in eligibility to enroll and premium contributions under section 9802.
  - c. Guaranteed renewability to employers in a multiemployer or multiple employer welfare arrangement under section 9803.
  - d. 48-hour hospital length of stay in connection with childbirth for mothers and newborns under section 9811.
  - e. Parity in mental health benefits and substance use disorder benefits under section 9812.
3. Any employer liable for the tax under section 4980E for failure to make comparable Archer medical savings account (MSA) contributions for all participating employees.
4. Any employer liable for the tax under section 4980G for failure to make comparable health savings account

(HSA) contributions for all participating employees.

#### When to File

For a failure under section 4980B or section 4980D, if the failure is by an employer or other person responsible for providing or administering benefits under the plan (such as an insurer or third-party administrator), file Form 8928 on or before the due date for filing the person's federal income tax return.

If the failure under sections 4980B or section 4980D is by a multiemployer or multiple employer plan, file Form 8928 on or before the last day of the seventh month following the end of the plan year.

For a failure under section 4980E or section 4980G, file Form 8928 on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made.

**Extension.** File Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, to request an automatic extension of time to file Form 8928. You must file Form 7004 on or before the regular due date of Form 8928. See the instructions for Form 7004 for more information. Form 7004 does not extend the time to pay excise taxes due under Form 8928.

#### Where To File



File Form 8928 at the following address.

Department of the Treasury  
Internal Revenue Service  
Cincinnati, OH 45999-0009

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service, DHL Next Day 10:30 a.m., DHL Next Day 12:00 p.m., DHL Next Day 3:00 p.m., DHL 2nd Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx

International Priority, and FedEx International First.

- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

#### Interest and Penalties

**Interest.** Interest is charged on taxes not paid by the due date even if an extension of time to file is granted. Interest is also charged on penalties imposed from the due date, including extensions, to the date of payment for failure to file, negligence, fraud, gross valuation overstatements, and substantial understatements of tax. The interest rate is determined under section 6621.

**Penalty for late filing of return.** If you do not file a return by the due date, including extensions, you may have to pay a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$100. The penalty will not be imposed if you can show that the failure to file on time was due to reasonable cause. If you file late, you must attach a statement to Form 8928 explaining the reasonable cause.

**Penalty for late payment of tax.** If you do not pay the tax when due, you may have to pay a penalty of 1/2 of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if you can show that the failure to pay on time was due to reasonable cause.

Interest and penalties for late filing and late payment will be billed separately after the return is filed.

#### Claim for Refund or Credit/Amended Return

File an amended Form 8928 for any of the following:

- To claim a refund of overpaid taxes reportable on Form 8928;

- To receive a credit for overpaid taxes; or
- To report additional taxes due within the same tax year of the filer if those taxes have the same due date as those previously reported.

File an amended return by writing "Amended Return" at the top of Form 8928 and completing the appropriate part.

If you file an amended return to claim a refund or credit, the claim must state in detail the reasons for claiming the refund. In order for the IRS to promptly consider your claim, you must explain why you are filing the claim and provide the appropriate supporting evidence. See Regulations section 301.6402-2 for more details.

## Specific Instructions

**Filer tax year.** Enter the tax year of the employer, entity, or individual on whom the tax is imposed by using the plan year beginning and ending dates entered in Part I of Form 5500 or by using the tax year of the business return filed, if applicable.

**Item A. Name and address of filer.** Enter the name and address of the employer, individual, or other entity who is liable for the tax.

Include the suite, room, or other unit numbers after the street number. If the post office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

If the entity has a foreign address, enter the information in the following order: city or town, province or state, and country. Follow the country's practice for entering the postal code. Do not abbreviate the country name.

**Item B. Filer's identifying number.** Enter the nine-digit employer identification number (EIN) assigned to the plan sponsor/employer, entity, or individual on whom the tax is imposed in the appropriate section. The identifying number of an individual, other than a sole proprietor with an EIN, is his or her social security number (SSN). The identifying number of all others is their EIN.

**Item C. Name of plan.** Enter the formal name of the plan, name of the plan sponsor, or name of the insurance company or financial institution of the direct filing entity (DFE). In the case of a group insurance arrangement (GIA), enter the name of the trust or other entity that holds the insurance contract. In the case of a master trust investment account (MTIA), enter the name of the sponsoring employers.

If the plan covers only the employees of one employer, enter the employer's name or enough information to identify the plan. This should be the same name indicated on the Form 5500 series return/report if that form is required to be filed for the plan.

**Item D. Name and address of plan sponsor.** The term "plan sponsor" means:

1. The employer, for a group health plan established or maintained by a single employer;
2. The employee organization, in the case of a plan of an employee organization;
3. The association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, if the group health plan is established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers.

Include the suite, room, or other unit numbers after the street number. If the post office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

If the plan sponsor has a foreign address, enter the information in the following order: city or town, province or state, and country. Follow the country's practice for entering the postal code. Do not abbreviate the country name.

**Item E. Plan sponsor's EIN.** Enter the nine-digit EIN assigned to the plan sponsor. This should be the same number used to file the Form 5500 series return/report.

**Item F. Plan year ending.** "Plan year" means the calendar or fiscal year on which the records of the plan are kept. Enter eight digits in month/date/year order. This number assists the IRS in properly identifying the plan and time period for which the Form 8928 is being filed. For example, a plan year ended March 31, 2010, should be shown as 03/31/2010.

**Item G. Plan number.** Enter the three-digit number that the employer or plan administrator assigned to the plan. This three-digit number is used with the EIN entered on line B and is used by the IRS, the Department of Labor, and the Pension Benefit Guaranty Corporation as a unique 12-digit number to identify the plan.



*If the plan number is not provided, this will cause a delay in processing your return.*

**Item H. Unintentional failure.** Check this box if you are claiming a limitation of the penalty under Parts I or II due to unintentional failure.

**Filer's signature.** To reduce the possibility of correspondence and penalties, please sign and date the form. Also enter a daytime phone number where you can be reached.

**Paid preparer's signature.** Anyone who prepares your return and does not charge you should not sign the return. For example, a regular full-time employee or your business partner who prepares the return should not sign.

Generally, anyone who is paid to prepare the return must sign the return in the space provided and fill in the *Paid Preparer's Use Only* area. See section 7701(a)(36)(B) for exceptions.

In addition to signing and completing the required information, the paid preparer must give a copy of the completed return to the taxpayer.

**Note.** A paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

## Part I. Tax on Failure To Satisfy Continuation Coverage Requirements Under Section 4980B

Complete lines 1 through 6 for each qualifying event for which one or more failures to satisfy continuation coverage requirements occurred during the reporting period. If multiple qualifying events occurred with different noncompliance periods, complete lines 1 through 6 on a separate Part I for each qualifying event. Then complete a "summary" Form 8928 with items A through H and enter the total amount of the excise tax on line 7 of that summary form for all qualifying events.

Write "Summary Form" at the top to indicate that this is a summary form and attach all copies to it.

For purposes of Part I, a qualifying event is any of the following.

- Death of the covered employee.
- Termination or reduction of hours of the covered employee's employment (other than by employee gross misconduct).
- Divorce or legal separation of the covered employee from the employee's spouse.
- Covered employee becoming entitled to social security benefits.
- Dependent child of the covered employee ceasing to be a covered child under the terms of the plan.
- Chapter 11 bankruptcy of the employer from whose employment the covered employee retired.

**Example 1.** On April 2, 2009, the plan sponsor of a single employer plan discovered that the plan failed to send a notice of continuation coverage to an

employee who experienced a qualifying event on January 31, 2009. There were no other violations discovered. The plan sponsor needs to submit one Form 8928 for the reporting period from February 1, 2009 through April 2, 2009, with a noncompliance period of 61 days.

**Example 2.** On September 16, 2009, the third-party administrator for a multiemployer plan discovered that the plan failed to send a notice of continuation coverage to any of the employees who experienced a qualifying event since February 28, 2008. During this period, there were 10 qualifying events. The third-party administrator needs to complete a separate Part 1, lines 1 through 6, for each qualifying event that occurred during the period from March 1, 2008 through September 16, 2009 and then complete items A through H and lines 7 through 11 on a “summary” Form 8928. The third-party administrator will then submit all copies of Form 8928 with their summary form.

**Note.** The excise tax under this part will not apply if the failure is due to reasonable cause and not to willful neglect, and if the failure is corrected within the 30-day period beginning on the first date the person liable for the tax knew, or should have known, that the failure existed.

**Line 1.** Calculate the total number of days of noncompliance within the reporting period beginning on the date the failure first occurred and ending on the earlier of the date the failure is corrected or, at the latest, a date that is six months after the last day of the maximum continuation coverage period under the qualifying event that led to the failure.

**TIP** *The noncompliance period may include portions of more than one plan year (in the case of an employee benefit plan) or one tax year (in the case of an employer or third-party administrator). In that case, only the portion of the noncompliance period falling within that plan year or tax year would be used to calculate the excise tax due for that year.*

**Example 1.** Sarah Green experienced a qualifying event on May 15, 2008. Under the terms of her health plan, her coverage under the plan terminated on May 31, 2008, and she was eligible for continuation coverage on June 1, 2008. Her plan sponsor failed to offer continuation coverage until July 15, 2008. The plan would file Form 8928 for the 2008 plan year, and the noncompliance period used to calculate the excise tax due under Part I is 45 days.

**Example 2.** Bruce Smith experienced a qualifying event on November 16, 2008. Under the terms of his health plan, coverage terminated on the date of the qualifying event, and he was eligible for continuation coverage on November 17, 2008. His plan sponsor failed to offer continuation coverage until February 1, 2009. In this case, the plan would file Form 8928 for the 2008 plan year and the 2009 plan year. The noncompliance period used to calculate the excise tax due under Part I for the 2008 plan year is 45 days, and the noncompliance period used to calculate the excise tax due under Part I for the 2009 plan year is 31 days.

**Line 4.** The minimum excise tax under Part I is \$2,500 if the failure or failures were not corrected before the date a notice of examination of income tax liability was sent from the IRS. This applies if the failures occurred before and during the examination period.

**Line 5.** The minimum excise tax under Part I is \$15,000 if the failure or failures are determined to be more than *de minimis*.

**Line 7.** If you had more than one qualifying event during the reporting period, complete lines 1 through 6 on a separate Part I for each qualifying event and enter the total from line 6 from all copies of Part I on line 7 of your summary form. See the discussion and examples 1 and 2 under Part I, above.

**\$2,000,000 maximum.** The maximum excise tax payable by third-party administrators, HMOs, and insurance companies under Part I is \$2,000,000. For those entities, do not enter more than \$2,000,000 on this line even if the aggregate excise tax owed for all failures under Part I is more than \$2,000,000.

**Lines 8–11.** If the failures were unintentional, due to reasonable cause and not due to willful neglect, check the box in item H and complete lines 8 and 9 to calculate the maximum excise tax due under Part I. Then, on line 11, enter the smallest of lines 7, 9, or 10.

For a single employer plan, enter on line 8 the aggregate amount paid or incurred by the employer (or a predecessor) during the preceding tax year for its group health plan. For a multiemployer plan, enter on line 8 the amount paid by the trust to provide medical care, directly or through insurance or reimbursement, during the tax year.

**TIP** *If an employer who participates in a multiemployer plan is required to pay the excise tax under Part I due to an unintentional failure, calculate the amount on line 8 as if the plan was a single employer plan and not a multiemployer plan.*

**Waiver of excise tax.** The Secretary may waive part or all of the excise tax under this part, to the extent that payment of the tax would be excessive relative to the failure involved. This only applies to failures due to cause and not to willful neglect.

The tax under Part I will not apply to the following.

- Any failure of a group health plan if the qualifying event occurred during the calendar year immediately following a calendar year during which all employers maintaining the plan normally employed fewer than 20 employees on a typical business day.
- Any governmental plan under section 414(d).
- Any church plan under section 414(e).

## Part II. Tax on Failure To Meet Portability, Access, and Renewability Requirements Under Section 4980D

Complete lines 12 through 18 for each failure to meet certain group health plan requirements that occurred during the reporting period. If multiple failures occurred with different noncompliance periods, complete lines 12 through 18 on a separate Part II for each failure. Then complete a “summary” Form 8928 with items A through H and enter the total amount of the excise tax on line 19 of that summary form for all failures under Part II.

Write “Summary Form” at the top to indicate that this is a summary form and attach all copies to it.

**Exception for certain insured small employer plans.** If you are a small employer who provides health insurance coverage solely through a contract with a health insurance issuer, you will not be liable for the excise tax under this part for any failure that is solely the result of the health insurance coverage offered by the issuer.

“Small employer” is generally defined as 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 current plan year.

**Note.** The excise tax under this part will not apply if the failure is due to reasonable cause and not to willful neglect, and the failure is corrected within the 30-day period beginning on the first date the person liable for the tax knew, or should have known, that the failure existed. For this purpose, a failure is treated as corrected if the failure is retroactively undone to the

extent possible and the person to whom the failure relates is placed in a financial position which is as good as such person would have been in had the failure not occurred.

In the case of a church plan, the failure must be corrected before the close of the correction period, as defined under section 414(e)(4)(C).

**Line 12.** Calculate the total number of days of noncompliance within the reporting period beginning on the date the failure first occurred and ending on the date the failure is corrected.



*The noncompliance period may include portions of more than one plan year (in the case of an employee benefit plan) or one tax year (in the case of an employer or third-party administrator). In that case, only the portion of the noncompliance period falling within that plan year or tax year would be used to calculate the excise tax due for that year.*

**Line 16.** The minimum excise tax under Part II is \$2,500 if the failure or failures were not corrected before the date a notice of examination of income tax liability was sent from the IRS. This applies if the failures occurred before and during the examination period.

**Line 17.** The minimum excise tax under Part II is \$15,000 if the failure or failures are determined to be more than *de minimis*.

**Note.** The \$15,000 minimum excise tax for failures that are determined to be more than *de minimis* does not apply to a church plan, as defined in section 414(e). If your plan meets the requirements for a church plan, enter “-0-” on this line.

**Line 19.** If you had more than one failure during the reporting period, complete lines 12 through 18 on a separate Part II for each qualifying event and enter the total from line 18 from all copies of Part II on line 19 of your summary form. See the discussion and examples 1 and 2 under Part I, above.

**Lines 20–23.** If the failures were unintentional, due to reasonable cause and not due to willful neglect, check the box in item H and complete lines 20 and 21 to calculate the maximum excise tax due under Part II. Then, on line 23, enter the smallest of lines 19, 21, or 22.

For a single employer plan, enter on line 20 the aggregate amount paid or incurred by the employer (or a predecessor) during the preceding tax year for its group health plan. For a multiemployer plan, enter on line 20 the amount paid or incurred by the trust to provide medical care, directly or

through insurance or reimbursement, during the tax year.



*If an employer who participates in a multiemployer plan is required to pay the excise tax under Part II due to an unintentional failure, calculate the amount on line 20 as if the plan was a single employer plan and not a multiemployer plan.*

**Waiver of excise tax.** The Secretary may waive part or all of the excise tax under this part, to the extent that payment of the tax would be excessive relative to the failure involved. This only applies to failures due to reasonable cause and not to willful neglect.

### Part III. Tax on Failure To Make Comparable Archer MSA Contributions Under Section 4980E

An employer is liable for tax under section 4980E if he fails to make available comparable contributions to the Archer MSAs of all comparable participating employees for each coverage period during the calendar year.

“Comparable contributions” are contributions which are the same amount or which are the same percentage of the annual deductible limit under the high deductible health plan covering the employees.

“Comparable participating employees” are employees who are eligible individuals covered under any high deductible health plan of the employer, and who have the same category of coverage.

**Line 24.** Enter the aggregate amount contributed to employees’ Archer MSAs for tax years ending with or within the calendar year.

**Waiver of excise tax.** The Secretary may waive part or all of the excise tax under this part, to the extent that payment of the tax would be excessive relative to the failure involved. This only applies to failures due to reasonable cause and not to willful neglect.

**Controlled group.** For purposes of this part, all persons treated as a single employer under section 414(b), (c), (m), or (o) will be treated as one employer.

### Part IV. Tax on Failure To Make Comparable HSA Contributions Under Section 4980G

An employer is liable for tax under section 4980G if he fails to make available comparable contributions to

the HSA of all comparable participating employees for each coverage period during the calendar year.

**Line 26.** Enter the aggregate amount contributed to employees’ health savings accounts for tax years ending with or within the calendar year.

**Waiver of excise tax.** The Secretary may waive part or all of the excise tax under this part, to the extent that payment of the tax would be excessive relative to the failure involved. This only applies to failures due to reasonable cause and not to willful neglect.

**Controlled group.** For purposes of this part, all persons treated as a single employer under section 414(b), (c), (m), or (o) will be treated as one employer.

**Note.** Highly compensated employees are not treated as comparable participating employees when determining a failure to make comparable HSA contributions to a health savings account of an employee who is not a highly compensated employee.

### Part V. Tax Due



Make your check or money order payable to the “United States Treasury” for the full amount due. Attach the payment to your return. Write your name, identifying number, plan number, and “Form 8928, Part(s)\_\_\_\_\_” on your payment.

File at the address shown under *Where To File*, earlier.

#### Privacy Act and Paperwork

**Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. This form is required to be filed under sections 4980B, 4980D, 4980E, and 4980G of the Internal Revenue Code. Section 6109 requires you to provide your identifying number. If you fail to provide this information in a timely manner, you may be liable for penalties and interest. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to federal and state or local agencies to enforce federal nontax criminal laws and to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the

administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

<b>Recordkeeping . . .</b>	10 hrs., 2 min.
<b>Learning about the law or the form . . .</b>	2 hrs., 55 min.
<b>Preparing and sending the form to the IRS . . . . .</b>	5 hrs., 36 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee,

SE:W:CAR:MP:T:T:SP, IR-6526, 1111 Constitution Ave. NW, Washington, DC 20224. Do not send this form to this address. Instead, see *Where To File* on page 1.

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