

LEGISLATIVE HISTORY
SENATE REPORT NO. 100-445

matically means compliance with the health care continuation rules, the State law rule becomes the operative rule with respect to that aspect.

Multiemployer plans

In the case of a failure with respect to coverage provided by a multiemployer plan, the rules regarding liability are the same as the rules described above except that "multiemployer plan" replaces "employer" each place the employer is referred to above.

Waiver

In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary is authorized to waive part or all of the excise tax to the extent that the tax would be unreasonably burdensome. The determination of whether a tax is unreasonably burdensome is to be made based on the seriousness of the failure and not on a particular taxpayer's ability to pay the tax.

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In determining whether to exercise this waiver authority, the Secretary is to take into account the efforts made by the taxpayer to comply with the health care continuation rules. In evaluating such efforts, the Secretary is to examine certain factors. One factor is the quality of the taxpayer's compliance program with respect to, for example, (1) the training of individuals responsible for operational compliance, and (2) the preparation of written instructions for such individuals. Another factor is the extent to which the compliance program has been designed based on competent professional advice, such as legal and (where appropriate) actuarial counsel, and the extent to which such program is updated, based on such advice, to reflect changes in the law or in other circumstances. Another factor is the extent to which the operation of the compliance program is monitored by auditors, taking into account the safeguards established to assure the independence of the auditors.

Deductibility

The excise tax is nondeductible.

Effective Date

This provision applies to taxable years beginning after December 31, 1988. Of course, this provision does not apply to any plan with respect to a period for which the health care continuation rules are not effective under the original effective date of the rules.

In addition, it is intended that, with respect to taxable years beginning before January 1, 1989, the Secretary is to exercise administrative restraint in applying the sanction applicable under present law, taking into account whether the employer has made all reasonable efforts to prevent and correct any violation of the health care continuation rules.