

included in the amendments made by section 312 of the Taxpayer Relief Act of 1997 [Pub. L. 105-34].

“(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section [amending this section] is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Nov. 11, 2003] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.”

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, §542(f), June 7, 2001, 115 Stat. 86, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 1022 and 6716 of this title and amending this section and sections 170, 684, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title] shall apply to estates of decedents dying after December 31, 2009.

“(2) TRANSFERS TO NONRESIDENTS.—The amendments made by subsection (e)(1) [amending section 684 of this title] shall apply to transfers after December 31, 2009.

“(3) SECTION 4947.—The amendment made by subsection (e)(4) [amending section 4947 of this title] shall apply to deductions for taxable years beginning after December 31, 2009.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 312(d) of Pub. L. 105-34, as amended by Pub. L. 105-206, title VI, §6005(e)(3), July 22, 1998, 112 Stat. 806, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 25, 32, 56, 143, 163, 215, 280A, 464, 512, 1016, 1033, 1038, 1223, 1250, 1274, 6012, 6045, 6212, 6334, 6504, and 7872 of this title and repealing section 1034 of this title] shall apply to sales and exchanges after May 6, 1997.

“(2) SALES ON OR BEFORE DATE OF ENACTMENT.—At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange on or before the date of the enactment of this Act [Aug. 5, 1997].

“(3) CERTAIN SALES WITHIN 2 YEARS AFTER DATE OF ENACTMENT.—Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2-year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

“(4) BINDING CONTRACTS.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

“(A) such sale or exchange is pursuant to a contract which was binding on such date, or

“(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such

sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 6011(b) of Pub. L. 100-647 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 123(b) of Pub. L. 97-34 provided that: “The amendment made by this section [amending this section] shall apply to residences sold or exchanged after July 20, 1981.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 404(d)(1) of Pub. L. 95-600 provided that: “The amendments made by this section [amending this section and sections 1033, 1034, 1038, 1250, and 6012 of this title] shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 1404(b) of Pub. L. 94-455 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.”

#### EFFECTIVE DATE

Section 206(c) of Pub. L. 88-272 provided that: “The amendments made by this section [enacting this section, redesignating former section 121 as 122, and amending sections 1033, 1034, and 6012 of this title] shall apply to dispositions after Dec. 31, 1963, in taxable years ending after such date.”

#### SENSE OF CONGRESS CONCERNING TAX TREATMENT OF PRINCIPAL RESIDENCE OF MEMBERS OF ARMED FORCES WHILE AWAY FROM HOME ON ACTIVE DUTY

Pub. L. 105-261, div. A, title X, §1074, Oct. 17, 1998, 112 Stat. 2138, provided that: “It is the sense of Congress that a member of the Armed Forces should be treated for purposes of section 121 of the Internal Revenue Code of 1986 as using property as a principal residence during any continuous period that the member is serving on active duty for 180 days or more with the Armed Forces, but only if the member used the property as a principal residence for any period during or immediately before that period of active duty.”

#### TRANSITIONAL RULE IN CASE OF SALE OR EXCHANGE OF RESIDENCE BEFORE JULY 26, 1981

Section 404(d)(2) of Pub. L. 95-600, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied by substituting ‘8-year period’ for ‘5-year period’ and ‘5 years’ for ‘3 years’ in subsections (a), (d)(2), and (d)(5) of such section.”

### § 122. Certain reduced uniformed services retirement pay

#### (a) General rule

In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pur-

suant to the provisions of chapter 73 of title 10, United States Code.

**(b) Special rule**

**(1) Amount excluded from gross income**

In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

**(2) Consideration for the contract**

For purposes of paragraph (1) and section 72(n), the term “consideration for the contract” means, in respect of any individual, the sum of—

(A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) any amounts deposited at any time by him pursuant to section 1438 or 1452(d) of such title 10.

(Added Pub. L. 89-365, §1(a)(1), Mar. 8, 1966, 80 Stat. 32; amended Pub. L. 93-406, title II, §§2005(c)(10), 2007(a), (b)(1), Sept. 2, 1974, 88 Stat. 992, 994.)

PRIOR PROVISIONS

A prior section 122 was renumbered section 140 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-406, §2007(a), substituted “United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code” for “United States who has made an election under chapter 73 of title 10 of the United States Code to receive a reduced amount of retired or retainer pay, gross income does not include the amount of any reduction after December 31, 1965, in his retired or retainer pay by reason of such election”.

Subsec. (b)(2). Pub. L. 93-406, §2005(c)(10), substituted “72(n)” for “72(o)”.

Subsec. (b)(2)(B). Pub. L. 93-406, §2007(b)(1), inserted reference to section 1452(d) of title 10.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(10) of Pub. L. 93-406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

Section 2007(c) of Pub. L. 93-406 provided that: “The amendments made by this section [amending this section and sections 72, 101, and 2039 of this title] apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) [amending sections 101 and 2039 of this title] apply with respect to individuals dying on or after such date”.

EFFECTIVE DATE

Section 1(d) of Pub. L. 89-365 provided that: “The amendments made by subsections (a) and (b) [enacting this section and amending section 72 of this title] shall apply with respect to taxable years ending after December 31, 1965. The amendment made by subsection (c) [amending section 101 of this title] shall apply with re-

spect to individuals making an election under chapter 73 of title 10 of the United States Code who die after December 31, 1965.”

**§ 123. Amounts received under insurance contracts for certain living expenses**

**(a) General rule**

In the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence.

**(b) Limitation**

Subsection (a) shall apply to amounts received by the taxpayer for living expenses incurred during any period only to the extent the amounts received do not exceed the amount by which—

(1) the actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceed

(2) the normal living expenses which would have been incurred for himself and members of his household during such period.

(Added Pub. L. 91-172, title IX, §901(a), Dec. 30, 1969, 83 Stat. 709.)

PRIOR PROVISIONS

A prior section 123 was renumbered section 140 of this title.

EFFECTIVE DATE

Section 901(c) of Pub. L. 91-172 provided that: “The amendments made by this section [enacting this section] shall apply with respect to amounts received on or after January 1, 1969.”

**[§ 124. Repealed. Pub. L. 101-508, title XI, § 11801(a)(9), Nov. 5, 1990, 104 Stat. 1388-520]**

Section, added Pub. L. 95-618, title II, §242(a), Nov. 9, 1978, 92 Stat. 3193, related to qualified transportation provided by employers.

A prior section 124 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

**§ 125. Cafeteria plans**

**(a) General rule**

Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.