(d) Denial of double benefits

No deduction or credit shall be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsection (a).

(e) Basis of property not increased by reason of excludable payments

Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made with respect to property acquired or improved through the use of any payment, to the extent that such adjustment would reflect any amount which is excluded from gross income under subsection (a).

(Added Pub. L. 95–600, title V, § 543(a), Nov. 6, 1978, 92 Stat. 2888; amended Pub. L. 96–222, title I, § 105(a)(7)(A), (C), (E), Apr. 1, 1980, 94 Stat. 220, 221.)

REFERENCES IN TEXT

The Water Bank Act, referred to in subsec. (a)(3), is Pub. L. 91–559, Dec. 19, 1970, 84 Stat. 1468, as amended, which is classified generally to chapter 29 (§ 1301 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 16 and Tables.

The Agricultural Credit Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95–334, Aug. 4, 1978, 92 Stat. 420, as amended. Title IV of the Agricultural Credit Act of 1978 is classified generally to chapter 42 (§ 2201 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

The Soil Conservation and Domestic Allotment Act, referred to in subsec. (a)(5), (7), is act Apr. 27, 1935, ch. 85, 49 Stat. 163, as amended, which is classified generally to chapter 3B (§ 590a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 590q of Title 16 and Tables.

Section 16 of the Soil Conservation and Domestic Policy Act, referred to in subsec. (a)(6), probably means section 16 of the Soil Conservation and Domestic Allotment Act, which was classified to section 590p of Title 16, Conservation, prior to repeal by Pub. L. 104–127, title III, § 336(b)(1), Apr. 4, 1996, 110 Stat. 1006.

The Bankhead-Jones Farm Tenant Act, referred to in subsec. (a)(7), is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (§ 1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 126 was renumbered section 140 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–222, § 105(a)(7)(C), (E), inserted in par. (9) ''or his delegate'' after ''Secretary of the Treasury'' and substituted in par. (10) ''Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia'' for ''Any State program''.

Subsec. (b). Pub. L. 96–222, § 105(a)(7)(A), inserted provisions relating to payments not chargeable to capital account.

Subsec. (c). Pub. L. 96–222, § 105(a)(7)(A), substituted provisions allowing the taxpayer to elect not to have this section apply to any excludable portion for provisions relating to the application of subsec. (a) of this section with other sections.

Subsecs. (d), (e). Pub. L. 96–222, § 105(a)(7)(A), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 543(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting this section and section 1255 of this title] shall apply with respect to grants made under the programs after September 30, 1979.''

§ 127. Educational assistance programs

(a) Exclusion from gross income

(1) In general

Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,250 maximum exclusion

If, but for this paragraph, this section would exclude from gross income more than $5,250 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,250 of such assistance so furnished.

(b) Educational assistance program

(1) In general

For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection.

(2) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents. For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Principal shareholders or owners

Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Other benefits as an alternative

A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in

gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of employees

Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) Definitions; special rules

For purposes of this section—

(1) Educational assistance

The term ''educational assistance'' means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term ''educational assistance'' also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee

The term ''employee'' includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) Attribution rules

(A) Ownership of stock

Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business

The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) Certain tests not applicable

An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) Relationship to current law

This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from income by reason of this section.

(d) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(Added Pub. L. 95–600, title I, §164(a), Nov. 6, 1978, 92 Stat. 2811; amended Pub. L. 98–611, §1(a)–(c), (d)(3)(B), (e), Oct. 31, 1984, 98 Stat. 3176–3178; Pub. L. 99–514, title XI, §§1114(b)(4), 1151(c)(4), (g)(3), 1162(a), Oct. 22, 1986, 100 Stat. 2450, 2503, 2507, 2510; Pub. L. 100–647, title I, §1011B(a)(31)(B), title IV, §4001(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, §203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§7101(a)(1), 7814(a), Dec. 19, 1989, 103 Stat. 2304, 2413; Pub. L. 101–508, title XI, §11403(a), (b), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, §103(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, §13101(a)(1), Aug. 10, 1993, 107 Stat. 420; Pub. L. 104–188, title I, §1202(a), (b), Aug. 20, 1996, 110 Stat. 1772, 1773; Pub. L. 105–34, title II, §221(a), Aug. 5, 1997, 111 Stat. 818; Pub. L. 106–170, title V, §506(a), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 107–16, title IV, §411(a), (b), June 7, 2001, 115 Stat. 63.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 127 was renumbered section 140 of this title.

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–16, §§411(b), 901, temporarily struck out before period at end ''and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree''. See Effective and Termination Dates of 2001 Amendment note below.

Subsecs. (d), (e). Pub. L. 107–16, §§411(a), 901, temporarily redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''This section shall not apply to expenses paid with respect to courses beginning after December 31, 2001.'' See Effective and Termination Dates of 2001 Amendment note below.

1999—Subsec. (d). Pub. L. 106–170 substituted ''December 31, 2001'' for ''May 31, 2000''.

1997—Subsec. (d). Pub. L. 105–34 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''This section shall not apply to taxable years beginning after May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section.''

1996—Subsec. (c)(1). Pub. L. 104–188, § 1202(b), in closing provisions, inserted before period at end '', and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree''.

Subsec. (d). Pub. L. 104–188, § 1202(a), substituted ''May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section.'' for ''December 31, 1994.''

1993—Subsec. (d). Pub. L. 103–66 substituted ''December 31, 1994'' for ''June 30, 1992''.

1991—Subsec. (d). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (c)(1). Pub. L. 101–508, § 11403(b), struck out at end ''The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.''

Subsec. (d). Pub. L. 101–508, § 11403(a), substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (b)(1). Pub. L. 101–140, § 203(a)(1), amended par. (1) to read as if amendments by Pub. L. 99–514, § 1151(c)(4)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(2). Pub. L. 101–140, § 203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, § 1151(g)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(6). Pub. L. 101–140, § 203(a)(1), amended par. (6) to read as if amendments by Pub. L. 99–514, § 1151(c)(4)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(8). Pub. L. 101–239, § 7814(a), struck out par. (8) which read as follows: ''COORDINATION WITH SECTION 117(d).—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase '(below the graduate level)'.''

Subsec. (d). Pub. L. 101–239, § 7101(a)(1), substituted ''September 30, 1990'' for ''December 31, 1988''.

1988—Subsec. (b)(2). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may'' and ''who are'' for ''who may be'' in last sentence.

Subsec. (c)(1). Pub. L. 100–647, § 4001(b)(1), inserted at end ''The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.''

Subsec. (d). Pub. L. 100–647, § 4001(a), substituted ''1988'' for ''1987''.

1986—Subsec. (a)(2). Pub. L. 99–514, § 1162(a)(2), substituted ''$5,250'' for ''$5,000'' in heading and twice in text.

Subsec. (b)(1). Pub. L. 99–514, § 1151(c)(4)(A), added par. (1) and struck out former par (1) which read as follows: ''For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection.''

Subsec. (b)(2). Pub. L. 99–514, § 1151(g)(3), substituted ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).'' for ''For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Pub. L. 99–514, § 1114(b)(4), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, owners, or highly compensated,''.

Subsec. (b)(6). Pub. L. 99–514, § 1151(c)(4)(B), struck out par. (6) which read as follows: ''NOTIFICATION OF EMPLOYEES.—Reasonable notification of the availability and terms of the program must be provided to eligible employees.''

Subsec. (d). Pub. L. 99–514, § 1162(a)(1), substituted ''December 31, 1987'' for ''December 31, 1985''.

1984—Subsec. (a). Pub. L. 98–611, § 1(b), amended subsec. generally, substituting ''Exclusion from gross income'' for ''General rule'' in heading, designating existing provision as par. ''(1) In general'' and adding par. (2).

Subsec. (c)(7). Pub. L. 98–611, § 1(e), substituted ''allowed to the employee'' for ''allowed''.

Subsec. (c)(8). Pub. L. 98–611, § 1(c), added par. (8).

Subsec. (d). Pub. L. 98–611, § 1(a), substituted ''December 31, 1985'' for ''December 31, 1983''.

Subsec. (e). Pub. L. 98–611, § 1(d)(3)(B), added subsec. (e).

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, § 411(d), June 7, 2001, 115 Stat. 63, provided that: ''The amendments made by this section [amending this section and former section 51A of this title] shall apply with respect to expenses relating to courses beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years 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 1999 AMENDMENT

Pub. L. 106–170, title V, § 506(b), Dec. 17, 1999, 113 Stat. 1922, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to courses beginning after May 31, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 221(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1202(c)(1), (2) of Pub. L. 104–188 provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.

''(2) GRADUATE EDUCATION.—The amendment made by subsection (b) [amending this section] shall apply with respect to expenses relating to courses beginning after June 30, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13101(c)(1) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 103(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11403(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7101(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 132 of this title] shall apply to taxable years beginning after December 31, 1988.''

Amendment by section 7814(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4001(a), (b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1987, see section 4001(c) of Pub. L. 100–647, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(4) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(4), (g)(3) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1162(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 1162(c) of Pub. L. 99–514, set out as a note under section 120 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(g) of Pub. L. 98–611, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6039D of this title and amending this section and sections 125, 3231, and 6652 of this title] shall apply to taxable years beginning after December 31, 1983.

''(2) SUBSECTION (d).—The amendments made by subsection (d) [enacting section 6039D and amending this section and sections 125 and 6652 of this title] shall take effect on January 1, 1985.

''(3) SUBSECTION (f).—The amendment made by subsection (f) [amending section 3231 of this title] shall apply to remuneration paid after December 31, 1984.

''(4) NO PENALTIES OR INTEREST ON FAILURE TO WITHHOLD.—No penalty or interest shall be imposed on any failure to withhold under subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to employment taxes) with respect to amounts excluded from gross income under section 127 of such Code (as amended by this section and determined without regard to subsection (a)(2) thereof) with respect to periods during 1984.

''(5) COORDINATION WITH SECTION 117(d).—In the case of education described in section 127(c)(8) of the Internal Revenue Code of 1986, as added by this section, section 117(d) of such Code shall be treated as in effect on and after January 1, 1984.''

EFFECTIVE DATE

Section 164(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting this section and amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1978.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

EXPEDITED PROCEDURES FOR REFUNDS OF OVERPAYMENTS

Section 1202(c)(3) of Pub. L. 104–188 provided that: ''The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1995 or 1996 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee's signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee.''

SPECIAL RULE FOR CERTAIN TAXABLE YEARS

Section 103(a)(2) of Pub. L. 102–227 provided that, in the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 103–66, title XIII, §13101(a)(2), Aug. 10, 1993, 107 Stat. 420.

Section 7101(a)(2) of Pub. L. 101–239 provided that, in the case of any taxable year beginning in 1990, only amounts paid before Oct. 1, 1990, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, §11403(c), Nov. 5, 1990, 104 Stat. 1388–473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 128. Repealed. Pub. L. 101–508, title XI, § 11801(a)(10), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added and amended Pub. L. 97–34, title III, §§ 301(a), 302(a), (d)(1), Aug. 13, 1981, 95 Stat. 267, 270, 274; Pub. L. 97–448, title I, §§ 103(a)(1), (5), (b), 109, Jan. 12, 1983, 96 Stat. 2374, 2375, 2391; Pub. L. 98–21, title I, §§ 121(f)(2), (g), 122(c)(3), (d), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 98–369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505, related to interest on certain savings certificates.

A prior section 128 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.

§ 129. Dependent care assistance programs

(a) Exclusion

(1) In general

Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

(2) Limitation of exclusion

(A) In general

The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

(B) Year of inclusion

The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

(C) Marital status

For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).

(b) Earned income limitation

(1) In general

The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

(2) Special rule for certain spouses

For purposes of paragraph (1), the provisions of section 21(d)(2) shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.

(c) Payments to related individuals

No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee shall be excluded under subsection (a) if such amount was paid or incurred to an individual—

(1) with respect to whom, for such taxable year, a deduction is allowable under section 151(c) (relating to personal exemptions for dependents) to such employee or the spouse of such employee, or

(2) who is a child of such employee (within the meaning of section 152(f)(1)) under the age of 19 at the close of such taxable year.

(d) Dependent care assistance program

(1) In general

For purposes of this section a dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (8) of this subsection. If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees.

(2) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents.

(3) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees described in paragraph (2), or their dependents.

(4) Principal shareholders or owners

Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of eligible employees

Reasonable notification of the availability and terms of the program shall be provided to eligible employees.

(7) Statement of expenses

The plan shall furnish to an employee, on or before January 31, a written statement show-