

tion and renumbering former section 136 as 137] shall apply to amounts received after December 31, 1992.”

### § 137. Adoption assistance programs

#### (a) Exclusion

##### (1) In general

Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

##### (2) \$10,000 exclusion for adoption of child with special needs regardless of expenses

In the case of an adoption of a child with special needs which becomes final during a taxable year, the qualified adoption expenses with respect to such adoption for such year shall be increased by an amount equal to the excess (if any) of \$10,000 over the actual aggregate qualified adoption expenses with respect to such adoption during such taxable year and all prior taxable years.

#### (b) Limitations

##### (1) Dollar limitation

The aggregate of the amounts paid or expenses incurred which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed \$10,000.

##### (2) Income limitation

The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as—

- (A) the amount (if any) by which the taxpayer's adjusted gross income exceeds \$150,000, bears to
- (B) \$40,000.

##### (3) Determination of adjusted gross income

For purposes of paragraph (2), adjusted gross income shall be determined—

- (A) without regard to this section and sections 199, 221, 222, 911, 931, and 933, and
- (B) after the application of sections 86, 135, 219, and 469.

#### (c) Adoption assistance program

For purposes of this section, an adoption assistance program is a separate written plan of an employer for the exclusive benefit of such employer's employees—

- (1) under which the employer provides such employees with adoption assistance, and
- (2) which meets requirements similar to the requirements of paragraphs (2), (3), (5), and (6) of section 127(b).

An adoption reimbursement program operated under section 1052 of title 10, United States Code (relating to armed forces) or section 514 of title 14, United States Code (relating to members of the Coast Guard) shall be treated as an adoption assistance program for purposes of this section.

#### (d) Qualified adoption expenses

For purposes of this section, the term “qualified adoption expenses” has the meaning given

such term by section 23(d) (determined without regard to reimbursements under this section).

#### (e) Certain rules to apply

Rules similar to the rules of subsections (e), (f), and (g) of section 23 shall apply for purposes of this section.

#### (f) Adjustments for inflation

In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(2) and paragraphs (1) and (2)(A) of subsection (b) shall be increased by an amount equal to—

- (1) such dollar amount, multiplied by
- (2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2001” for “calendar year 1992” in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

(Added Pub. L. 104-188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; amended Pub. L. 105-34, title XVI, §1601(h)(2)(C), Aug. 5, 1997, 111 Stat. 1092; Pub. L. 105-277, div. J, title IV, §4003(a)(2)(C), Oct. 21, 1998, 112 Stat. 2681-908; Pub. L. 107-16, title II, §202(a)(2), (b)(1)(B), (2)(B), (d)(2), (e)(2), title IV, §431(c)(1), June 7, 2001, 115 Stat. 47, 48, 68; Pub. L. 107-147, title IV, §§411(c)(2), 418(a)(2), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 108-311, title IV, §403(e), Oct. 4, 2004, 118 Stat. 1188; Pub. L. 108-357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

#### INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

#### 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 137 was renumbered section 140 of this title.

#### AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108-311 amended directory language of Pub. L. 107-147, §411(c)(2)(B). See 2002 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 108-357 inserted “199,” before “221”.

2002—Subsec. (a). Pub. L. 107-147, §411(c)(2)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Gross income of an employee does not include amounts paid or expenses incurred by the employer for adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program. The amount of the exclusion shall be—

“(1) in the case of an adoption of a child other than a child with special needs, the amount of the qualified adoption expenses paid or incurred by the taxpayer, and

“(2) in the case of an adoption of a child with special needs, \$10,000.”

Subsec. (b)(1). Pub. L. 107-147, §411(c)(2)(B), as amended by Pub. L. 108-311, substituted “subsection (a)” for “subsection (a)(1)”.

Subsec. (f). Pub. L. 107-147, § 418(a)(2), inserted at end “If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.”

2001—Subsec. (a). Pub. L. 107-16, §§ 202(a)(2), 901, temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.” See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107-16, §§ 202(b)(1)(B), 901, temporarily substituted “subsection (a)(1)” for “subsection (a)” and “\$10,000” for “\$5,000 (\$6,000, in the case of a child with special needs)”. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 107-16, §§ 202(b)(2)(B), 901, temporarily substituted “\$150,000” for “\$75,000”. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 107-16, §§ 431(c)(1), 901, temporarily inserted “222,” after “221,”. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f). Pub. L. 107-16, §§ 202(d)(2), (e)(2), 901, temporarily added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: “This section shall not apply to amounts paid or expenses incurred after December 31, 2001.” See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(3)(A). Pub. L. 105-277 inserted “221,” after “and sections”.

1997—Subsec. (b)(1). Pub. L. 105-34 substituted “of the amounts paid or expenses incurred which may be taken into account” for “amount excludable from gross income”.

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108-357, set out as a note under section 56 of this title.

Amendment by Pub. L. 108-311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107-147, to which such amendment relates, see section 403(f) of Pub. L. 108-311, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(c)(2) of Pub. L. 107-147 applicable to taxable years beginning after Dec. 31, 2002, except that amendment by section 411(c)(2)(B) applicable to taxable years beginning after Dec. 31, 2001, see section 411(c)(3) of Pub. L. 107-147, set out as a note under section 23 of this title.

Amendment by section 418(a)(2) of Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 418(c) of Pub. L. 107-147, set out as a note under section 21 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 202(b)(1)(B), (2)(B), (d)(2), (e)(2) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107-16, set out as a note under section 23 of this title.

Amendment by section 202(a)(2) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2002, see section 202(g)(2) of Pub. L. 107-16, set out as a note under section 23 of this title.

Amendment by section 431(c)(1) of Pub. L. 107-16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107-16, set out as a note under section 62 of this title.

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 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104-188, set out as a note under section 23 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 138. Medicare Advantage MSA

#### (a) Exclusion

Gross income shall not include any payment to the Medicare Advantage MSA of an individual by the Secretary of Health and Human Services under part C of title XVIII of the Social Security Act.

#### (b) Medicare Advantage MSA

For purposes of this section, the term “Medicare Advantage MSA” means an Archer MSA (as defined in section 220(d))—

(1) which is designated as a Medicare Advantage MSA,

(2) with respect to which no contribution may be made other than—

(A) a contribution made by the Secretary of Health and Human Services pursuant to part C of title XVIII of the Social Security Act, or

(B) a trustee-to-trustee transfer described in subsection (c)(4),

(3) the governing instrument of which provides that trustee-to-trustee transfers described in subsection (c)(4) may be made to and from such account, and

(4) which is established in connection with an MSA plan described in section 1859(b)(3) of the Social Security Act.

#### (c) Special rules for distributions

##### (1) Distributions for qualified medical expenses

In applying section 220 to a Medicare Advantage MSA—

(A) qualified medical expenses shall not include amounts paid for medical care for any individual other than the account holder, and