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

(B) section 220(d)(2)(C) shall not apply.

(2) Penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained

(A) In general

The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a Medicare Advantage MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be increased by 50 percent of the excess (if any) of—

(i) the amount of such payment or distribution, over

(ii) the excess (if any) of—

(I) the fair market value of the assets in such MSA as of the close of the calendar year preceding the calendar year in which the taxable year begins, over

(II) an amount equal to 60 percent of the deductible under the Medicare Advantage MSA plan covering the account holder as of January 1 of the calendar year in which the taxable year begins.

Section 220(f)(4) shall not apply to any payment or distribution from a Medicare Advantage MSA.

(B) Exceptions

Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

(i) becomes disabled within the meaning of section 72(m)(7), or

(ii) dies.

(C) Special rules

For purposes of subparagraph (A)—

(i) all Medicare Advantage MSAs of the account holder shall be treated as 1 account,

(ii) all payments and distributions not used exclusively to pay the qualified medical expenses of the account holder during any taxable year shall be treated as 1 distribution, and

(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

(3) Withdrawal of erroneous contributions

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any payment or distribution from a Medicare Advantage MSA to the Secretary of Health and Human Services of an erroneous contribution to such MSA and of the net income attributable to such contribution.

(4) Trustee-to-trustee transfers

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any trustee-to-trustee transfer from a Medicare Advantage MSA of an account holder to another Medicare Advantage MSA of such account holder.

(d) Special rules for treatment of account after death of account holder

In applying section 220(f)(8)(A) to an account which was a Medicare Advantage MSA of a decedent, the rules of section 220(f) shall apply in lieu of the rules of subsection (c) of this section with respect to the spouse as the account holder of such Medicare Advantage MSA.

(e) Reports

In the case of a Medicare Advantage MSA, the report under section 220(h)—

(1) shall include the fair market value of the assets in such Medicare Advantage MSA as of the close of each calendar year, and

(2) shall be furnished to the account holder—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes in such regulations.

(f) Coordination with limitation on number of taxpayers having Archer MSAs

Subsection (i) of section 220 shall not apply to an individual with respect to a Medicare Advantage MSA, and Medicare Advantage MSAs shall not be taken into account in determining whether the numerical limitations under section 220(j) are exceeded.

(Added Pub. L. 105–33, title IV, § 4006(a), Aug. 5, 1997, 111 Stat. 332; amended Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(3), (b)(6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–311, title IV, § 408(a)(5)(A)–(F), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XVIII of the Act is classified generally to part C (§ 1395w–21 et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Section 1859 of the Act is classified to section 1395w–28 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 138 was renumbered section 140 of this title.

AMENDMENTS

2004—Pub. L. 108–311, § 408(a)(5)(A)–(D), substituted ''Medicare Advantage'' for ''Medicare+Choice'' wherever appearing in section catchline, headings, and text.

Subsec. (c)(2)(C)(i). Pub. L. 108–311, § 408(a)(5)(E), substituted ''Medicare Advantage MSAs'' for ''Medicare+Choice MSAs''.

Subsec. (f). Pub. L. 108–311, § 408(a)(5)(F), substituted ''Medicare Advantage MSAs'' for ''Medicare+Choice MSA's''.

2000—Subsec. (b). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA'' in introductory provisions.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(3)], substituted ''Archer MSA'' for ''medical savings account'' in introductory provisions.

Subsec. (f). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

EFFECTIVE DATE

Section 4006(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [enacting this section, amending sections 220 and 4973 of this title, and renumbering former section 138 of this title as section 139 of this title] shall apply to taxable years beginning after December 31, 1998.''

§ 139. Disaster relief payments

(a) General rule

Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

(b) Qualified disaster relief payment defined

For purposes of this section, the term ''qualified disaster relief payment'' means any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,

(3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or

(4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare,

but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

(c) Qualified disaster defined

For purposes of this section, the term ''qualified disaster'' means—

(1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)),

(2) federally[1] declared disaster (as defined by section 165(h)(3)(C)(i)),

(3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

(4) with respect to amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.

(d) Coordination with employment taxes

For purposes of chapter 2 and subtitle C, qualified disaster relief payments and qualified disaster mitigation payments shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

(e) No relief for certain individuals

Subsections (a), (f), and (g) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terroristic action (as so defined), or a representative of such individual.

(f) Exclusion of certain additional payments

Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.

(g) Qualified disaster mitigation payments

(1) In general

Gross income shall not include any amount received as a qualified disaster mitigation payment.

(2) Qualified disaster mitigation payment defined

For purposes of this section, the term ''qualified disaster mitigation payment'' means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

(3) No increase in basis

Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

(h) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.

(Added Pub. L. 107–134, title I, § 111(a), Jan. 23, 2002, 115 Stat. 2432; amended Pub. L. 109–7, § 1(a), Apr. 15, 2005, 119 Stat. 21; Pub. L. 110–343, div. C, title VII, § 706(a)(2)(D)(iv), Oct. 3, 2008, 122 Stat. 3922.)

REFERENCES IN TEXT

Section 406 of the Air Transportation Safety and System Stabilization Act, referred to in subsec. (f), is section 406 of Pub. L. 107–42, which is set out as a note under section 40101 of Title 49, Transportation.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(2), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 109–7, which was approved Apr. 15, 2005.

The National Flood Insurance Act, referred to in subsec. (g)(2), probably means the National Flood Insurance Act of 1968, title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§ 4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 139 was renumbered section 140 of this title.

[1] So in original. Probably should be preceded by ''a''.