[§ 89. Repealed. Pub. L. 101–140, title II, § 202(a), Nov. 8, 1989, 103 Stat. 830]

Section, added Pub. L. 99–514, title XI, § 1151(a), Oct. 22, 1986, 100 Stat. 2494; amended Pub. L. 100–647, title I, § 1011B(a)(1)–(9), (21), (28), (29), (34), title III, § 3021(a)(1)(A), (B), (2)(A), (3)–(9), (11)–(13)(A), (b)(2)(B), (3), title VI, § 6051(a), Nov. 10, 1988, 102 Stat. 3483–3485, 3487, 3488, 3625–3632, 3695, related to nondiscrimination rules regarding benefits provided under employee benefit plans.

EFFECTIVE DATE OF REPEAL

Section 202(c) of Pub. L. 101–140 provided that: ''The amendments made by this section [repealing this section] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see section 1151(k) set out as a note under section 79 of this title].''

NONENFORCEMENT OF SECTION FOR FISCAL YEAR 1990

Pub. L. 101–136, title V, § 528, Nov. 3, 1989, 103 Stat. 816, provided that: ''No monies appropriated by this Act [see Tables for classification] may be used to implement or enforce section 1151 of the Tax Reform Act of 1986 or the amendments made by such section [section 1151 of Pub. L. 99–514, which enacted section 89 of this title, amended sections 79, 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 3121, 3306, 6039D, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 89 of this title].''

TRANSITIONAL PROVISIONS

Section 3021(c) of Pub. L. 100–647 provided for the first issue of valuation rules, the interim impact on former employees, the meeting of the written requirement for covered plans in connection with implementation of section 89 of the Code, and the issuance by Nov. 15, 1988, of rules necessary to carry out section 89, prior to repeal by Pub. L. 101–140, title II, § 203(a)(7), Nov. 8, 1989, 103 Stat. 831.

PART-TIME EMPLOYEE DEFINED FOR PURPOSES OF SUBSECTION (f)

Section 6070 of Pub. L. 100–647 increased the number of employees who would be excluded from consideration under this section during plan years 1989 and 1990, in the case of a plan maintained by an employer which employs fewer than 10 employees on a normal working day during a plan year, prior to repeal by Pub. L. 101–140, title II, § 203(a)(7), Nov. 8, 1989, 103 Stat. 831.

§ 90. Illegal Federal irrigation subsidies

(a) General rule

Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

(b) Illegal Federal irrigation subsidy

For purposes of this section—

(1) In general

The term ''illegal Federal irrigation subsidy'' means the excess (if any) of—

(A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over

(B) the amount paid for such water.

(2) Federal irrigation water

The term ''Federal irrigation water'' means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

(c) Denial of deduction

No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a).

(Added Pub. L. 100–203, title X, § 10611(a), Dec. 22, 1987, 101 Stat. 1330–451.)

REFERENCES IN TEXT

Section 202 of the Reclamation Reform Act of 1982, referred to in subsec. (b)(2), is classified to section 390bb of Title 43, Public Lands.

EFFECTIVE DATE

Section 10611(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section] shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act [Dec. 22, 1987].''

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec.
101. Certain death payments.[1]
102. Gifts and inheritances.
103. Interest on State and local bonds.
[103A. Repealed.]
104. Compensation for injuries or sickness.
105. Amounts received under accident and health plans.
106. Contributions by employer to accident and health plans.
107. Rental value of parsonages.
108. Income from discharge of indebtedness.
109. Improvements by lessee on lessor's property.
110. Qualified lessee construction allowances for short-term leases.
111. Recovery of tax benefit items.
112. Certain combat zone compensation of members of the Armed Forces.
[113, 114. Repealed.]
115. Income of States, municipalities, etc.
[116. Repealed.]
117. Qualified scholarships.
118. Contributions to the capital of a corporation.
119. Meals or lodging furnished for convenience of employer.[1]
120. Amounts received under qualified group legal services plans.
121. Exclusion of gain from sale of principal residence.
122. Certain reduced uniformed services retirement pay.
123. Amounts received under insurance contracts for certain living expenses.
[124. Repealed.]
125. Cafeteria plans.
126. Certain cost-sharing payments.
127. Educational assistance programs.
[128. Repealed.]
129. Dependent care assistance programs.[2]
130. Certain personal injury liability assignments.
131. Certain foster care payments.
132. Certain fringe benefits.
[133. Repealed.]
134. Certain military benefits.
135. Income from United States savings bonds used to pay higher education tuition and fees.
136. Energy conservation subsidies provided by public utilities.
137. Adoption assistance programs.
138. Medicare Advantage MSA.
139. Disaster relief payments.

[1] So in original. Does not conform to section catchline.

[2] Editorially supplied. Section 129 added by Pub. L. 97–34 without corresponding amendment of part analysis.

139A. Federal subsidies for prescription drug plans.
139B. Benefits provided to volunteer firefighters and emergency medical responders.
139C. COBRA premium assistance.
140. Cross references to other Acts.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title III, § 3001(a)(15)(B), Feb. 17, 2009, 123 Stat. 465, added item 139C.

2007—Pub. L. 110–142, § 5(b), Dec. 20, 2007, 121 Stat. 1806, added item 139B.

2004—Pub. L. 108–357, title I, § 101(b)(3), Oct. 22, 2004, 118 Stat. 1423, struck out item 114 ''Extraterritorial income''.

Pub. L. 108–311, title IV, § 408(a)(5)(G), Oct. 4, 2004, 118 Stat. 1191, substituted ''Medicare Advantage MSA'' for ''Medicare+Choice MSA'' in item 138.

2003—Pub. L. 108–173, title XII, § 1202(c), Dec. 8, 2003, 117 Stat. 2480, added item 139A.

2002—Pub. L. 107–134, title I, § 111(b), Jan. 23, 2002, 115 Stat. 2433, added item 139 and redesignated former item 139 as 140.

2000—Pub. L. 106–519, § 4(6), Nov. 15, 2000, 114 Stat. 2433, added item 114.

1997—Pub. L. 105–34, title III, § 312(d)(14), title XII, § 1213(d), Aug. 5, 1997, 111 Stat. 841, 1001, added item 110 and substituted ''Exclusion of gain from sale of principal residence'' for ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' in item 121.

Pub. L. 105–33, title IV, § 4006(b)(3), Aug. 5, 1997, 111 Stat. 334, added items 138 and 139 and struck out former item 138 ''Cross reference to other Acts''.

1996—Pub. L. 104–188, title I, §§ 1602(b)(8), 1704(t)(4)(B), 1807(c)(7), Aug. 20, 1996, 110 Stat. 1834, 1887, 1902, substituted ''combat zone compensation'' for ''combat pay'' in item 112, struck out item 133 ''Interest on certain loans used to acquire employer securities'', added items 137 and 138, and struck out former item 137 ''Cross reference to other Acts''.

1992—Pub. L. 102–486, title XIX, § 1912(b), Oct. 24, 1992, 106 Stat. 3016, added items 136 and 137 and struck out former item 136 ''Cross references to other Acts''.

1990—Pub. L. 101–508, title XI, § 11801(b)(2), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 110 ''Income taxes paid by lessee corporation'', item 113 ''Mustering-out payments for members of the Armed Forces'', item 114 ''Sports programs conducted for the American National Red Cross'', item 124 ''Qualified transportation provided by employer'', and item 128 ''Interest on certain savings certificates''.

1988—Pub. L. 100–647, title I, § 1013(a)(37), title VI, § 6009(c)(4), Nov. 10, 1988, 102 Stat. 3544, 3690, substituted ''Interest on State and local bonds'' for ''Interest on certain governmental obligations'' in item 103, struck out item 103A ''Mortgage subsidy bonds'', added item 135 and redesignated former item 135 ''Cross references to other Acts'' as item 136.

1986—Pub. L. 99–514, title I, § 123(b)(4), title VI, § 612(b)(8), title XI, § 1168(b), Oct. 22, 1986, 100 Stat. 2113, 2251, 2512, struck out item 116 ''Partial exclusion of dividends received by individuals'', substituted in item 117 ''Qualified scholarships'' for ''Scholarships and fellowship grants'', added item 134, and redesignated former item 134 as 135.

1984—Pub. L. 98–369, div. A, title I, § 171(b), title V, §§ 531(a)(2), 543(b), July 18, 1984, 98 Stat. 699, 881, 892, substituted ''Recovery of tax benefit items'' for ''Recovery of bad debts, prior taxes, and delinquency amounts'' in item 111, added items 132 (relating to certain fringe benefits) and 133 (relating to interest on certain loans used to acquire employer securities), and redesignated former item 132 (relating to cross references to other Acts) as item 134.

Pub. L. 98–369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505, repealed an amendment made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

1983—Pub. L. 97–473, title I, § 101(b)(2), Jan. 14, 1983, 96 Stat. 2606, purported to strike out the item relating to section 130, and added items 130 (relating to certain personal injury liability assignments) and 131 (relating to cross references to other Acts).

Pub. L. 97–473, title I, § 102(b), Jan. 14, 1983, 96 Stat. 2607, struck out item 131 (relating to cross references to other Acts) and added items 131 (relating to certain foster care payments) and 132 (relating to cross references to other Acts).

1981—Pub. L. 97–34, title III, §§ 301(b)(1), 302(c)(1), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274, effective with regard to taxable years beginning after Sept. 30, 1981, redesignated item 128 ''Cross References to other Acts'' as 129 and added item 128 ''Interest on certain savings certificates'' and, section 302(c)(1), with regard to taxable years beginning after Dec. 31, 1984, provided that ''Partial exclusion of interest'' is substituted for ''Interest on certain savings certificates'' in item 128. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Pub. L. 96–499, title XI, § 1102(b), Dec. 5, 1980, 94 Stat. 2669, added item 103A.

Pub. L. 96–223, title IV, § 404(b)(1), Apr. 2, 1980, 94 Stat. 306, inserted ''and interest'' after ''dividends'' in item 116.

1978—Pub. L. 95–618, title II, § 242(b), Nov. 9, 1978, 92 Stat. 3194, redesignated former item 124 as 125 and added item 124.

Pub. L. 95–600, title I, §§ 134(b), 164(c), title IV, § 404(c)(3), title V, § 543(b), Nov. 6, 1978, 92 Stat. 2785, 2814, 2870, 2890, in item 121 substituted ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' for ''Gain from sale of exchange of residence of individual who has attained age 65'', redesignated former item 124 as 128, and added items 125 to 127.

1976—Pub. L. 94–455, title XXI, § 2134(c), Oct. 4, 1976, 90 Stat. 1928, added item 120.

1969—Pub. L. 91–172, title IX, § 901(b), Dec. 30, 1969, 83 Stat. 709, redesignated former item 123 as 124, and added item 123.

1966—Pub. L. 89–365, § 1(a)(2), Mar. 8, 1966, 80 Stat. 32, redesignated former item 122 as 123, and added item 122.

1964—Pub. L. 88–272, title II, § 206(b)(2), Feb. 26, 1964, 78 Stat. 40, redesignated former item 121 as 122, and added item 121.

1958—Pub. L. 85–866, title I, § 3(b), Sept. 2, 1958, 72 Stat. 1607, struck out item 120 ''Statutory subsistence allowance received by police''.

NO FEDERAL INCOME TAX ON RESTITUTION RECEIVED BY VICTIMS OF THE NAZI REGIME OR THEIR HEIRS OR ESTATES

Pub. L. 107–16, title VIII, § 803, June 7, 2001, 115 Stat. 149, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, any excludable restitution payments received by an eligible individual (or the individual's heirs or estate) and any excludable interest—

''(1) shall not be included in gross income; and

''(2) shall not be taken into account for purposes of applying any provision of such Code which takes into account excludable income in computing adjusted gross income, including section 86 of such Code (relating to taxation of Social Security benefits).

For purposes of such Code, the basis of any property received by an eligible individual (or the individual's heirs or estate) as part of an excludable restitution payment shall be the fair market value of such property as of the time of the receipt.

''(b) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means a person who was persecuted on the basis of race, religion, physical or mental disability, or sexual orientation by Nazi Germany, any other Axis regime, or any other Nazi-controlled or Nazi-allied country.

''(c) EXCLUDABLE RESTITUTION PAYMENT.—For purposes of this section, the term 'excludable restitution payment' means any payment or distribution to an individual (or the individual's heirs or estate) which—

''(1) is payable by reason of the individual's status as an eligible individual, including any amount payable by any foreign country, the United States of America, or any other foreign or domestic entity, or a fund established by any such country or entity, any amount payable as a result of a final resolution of a legal action, and any amount payable under a law providing for payments or restitution of property;

''(2) constitutes the direct or indirect return of, or compensation or reparation for, assets stolen or hidden from, or otherwise lost to, the individual before, during, or immediately after World War II by reason of the individual's status as an eligible individual, including any proceeds of insurance under policies issued on eligible individuals by European insurance companies immediately before and during World War II; or

''(3) consists of interest which is payable as part of any payment or distribution described in paragraph (1) or (2).

''(d) EXCLUDABLE INTEREST.—For purposes of this section, the term 'excludable interest' means any interest earned by—

''(1) escrow accounts or settlement funds established pursuant to the settlement of the action entitled 'In re: Holocaust Victim Assets Litigation,' (E.D.N.Y.) C.A. No. 96–4849,

''(2) funds to benefit eligible individuals or their heirs created by the International Commission on Holocaust Insurance Claims as a result of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation 'Remembrance, Responsibility, and Future,' dated July 17, 2000, or

''(3) similar funds subject to the administration of the United States courts created to provide excludable restitution payments to eligible individuals (or eligible individuals' heirs or estates).

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—This section shall apply to any amount received on or after January 1, 2000.

''(2) NO INFERENCE.—Nothing in this Act [see Tables for classification] shall be construed to create any inference with respect to the proper tax treatment of any amount received before January 1, 2000.''

§101. Certain death benefits

(a) Proceeds of life insurance contracts payable by reason of death

(1) General rule

Except as otherwise provided in paragraph (2), subsection (d), subsection (f), and subsection (j), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

(2) Transfer for valuable consideration

In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (1) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee. The preceding sentence shall not apply in the case of such a transfer—

(A) if such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor, or

(B) if such transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

The term ''other amounts'' in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).

[(b) Repealed. Pub. L. 104–188, title I, §1402(a), Aug. 20, 1996, 110 Stat. 1789]

(c) Interest

If any amount excluded from gross income by subsection (a) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(d) Payment of life insurance proceeds at a date later than death

(1) General rule

The amounts held by an insurer with respect to any beneficiary shall be prorated (in accordance with such regulations as may be prescribed by the Secretary) over the period or periods with respect to which such payments are to be made. There shall be excluded from the gross income of such beneficiary in the taxable year received any amount determined by such proration. Gross income includes, to the extent not excluded by the preceding sentence, amounts received under agreements to which this subsection applies.

(2) Amount held by an insurer

An amount held by an insurer with respect to any beneficiary shall mean an amount to which subsection (a) applies which is—

(A) held by any insurer under an agreement provided for in the life insurance contract, whether as an option or otherwise, to pay such amount on a date or dates later than the death of the insured, and

(B) equal to the value of such agreement to such beneficiary

(i) as of the date of death of the insured (as if any option exercised under the life insurance contract were exercised at such time), and

(ii) as discounted on the basis of the interest rate used by the insurer in calculating payments under the agreement and mortality tables prescribed by the Secretary.

(3) Application of subsection

This subsection shall not apply to any amount to which subsection (c) is applicable.

[(e) Repealed. Pub. L. 98–369, div. A, title IV, §421(b)(2), July 18, 1984, 98 Stat. 794]

(f) Proceeds of flexible premium contracts issued before January 1, 1985 payable by reason of death

(1) In general

Any amount paid by reason of the death of the insured under a flexible premium life in-

surance contract issued before January 1, 1985 shall be excluded from gross income only if—

(A) under such contract—

(i) the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time, and

(ii) any amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) is not at any time less than the applicable percentage of the cash value of such contract at such time, or

(B) by the terms of such contract, the cash value of such contract may not at any time exceed the net single premium with respect to the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at such time.

(2) Guideline premium limitation

For purposes of this subsection—

(A) Guideline premium limitation

The term ''guideline premium limitation'' means, as of any date, the greater of—

(i) the guideline single premium, or

(ii) the sum of the guideline level premiums to such date.

(B) Guideline single premium

The term ''guideline single premium'' means the premium at issue with respect to future benefits under the contract (without regard to any qualified additional benefit), and with respect to any charges for qualified additional benefits, at the time of a determination under subparagraph (A) or (E) and which is based on—

(i) the mortality and other charges guaranteed under the contract, and

(ii) interest at the greater of an annual effective rate of 6 percent or the minimum rate or rates guaranteed upon issue of the contract.

(C) Guideline level premium

The term ''guideline level premium'' means the level annual amount, payable over the longest period permitted under the contract (but ending not less than 20 years from date of issue or not later than age 95, if earlier), computed on the same basis as the guideline single premium, except that subparagraph (B)(ii) shall be applied by substituting ''4 percent'' for ''6 percent''.

(D) Computational rules

In computing the guideline single premium or guideline level premium under subparagraph (B) or (C)—

(i) the excess of the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) over the cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(ii) the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95, and

(iii) the amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at any time under the contract.

(E) Adjustments

The guideline single premium and guideline level premium shall be adjusted in the event of a change in the future benefits or any qualified additional benefit under the contract which was not reflected in any guideline single premiums or guideline level premium previously determined.

(3) Other definitions and special rules

For purposes of this subsection—

(A) Flexible premium life insurance contract

The terms ''flexible premium life insurance contract'' and ''contract'' mean a life insurance contract (including any qualified additional benefits) which provides for the payment of one or more premiums which are not fixed by the insurer as to both timing and amount. Such terms do not include that portion of any contract which is treated under State law as providing any annuity benefits other than as a settlement option.

(B) Premiums paid

The term ''premiums paid'' means the premiums paid under the contract less any amounts (other than amounts includible in gross income) to which section 72(e) applies. If, in order to comply with the requirements of paragraph (1)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year—

(i) the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year, and

(ii) notwithstanding the provisions of section 72(e), the amount of any interest so returned shall be includible in the gross income of the recipient.

(C) Applicable percentage

The term ''applicable percentage'' means—

(i) 140 percent in the case of an insured with an attained age at the beginning of the contract year of 40 or less, and

(ii) in the case of an insured with an attained age of more than 40 as of the beginning of the contract year, 140 percent reduced (but not below 105 percent) by one percent for each year in excess of 40.

(D) Cash value

The cash value of any contract shall be determined without regard to any deduction for any surrender charge or policy loan.

(E) Qualified additional benefits

The term ''qualified additional benefits'' means any—

(i) guaranteed insurability,

(ii) accidental death benefit,

(iii) family term coverage, or

(iv) waiver of premium.

(F) Premium payments not disqualifying contract

The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of paragraph (1)(A)(i) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract without cash value on or before the end of the contract year.

(G) Net single premium

In computing the net single premium under paragraph (1)(B)—

(i) the mortality basis shall be that guaranteed under the contract (determined by reference to the most recent mortality table allowed under all State laws on the date of issuance),

(ii) interest shall be based on the greater of—

(I) an annual effective rate of 4 percent (3 percent for contracts issued before July 1, 1983), or

(II) the minimum rate or rates guaranteed upon issue of the contract, and

(iii) the computational rules of paragraph (2)(D) shall apply, except that the maturity date referred to in clause (ii) thereof shall not be earlier than age 95.

(H) Correction of errors

If the taxpayer establishes to the satisfaction of the Secretary that—

(i) the requirements described in paragraph (1) for any contract year was not satisfied due to reasonable error, and

(ii) reasonable steps are being taken to remedy the error,

the Secretary may waive the failure to satisfy such requirements.

(I) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(g) Treatment of certain accelerated death benefits

(1) In general

For purposes of this section, the following amounts shall be treated as an amount paid by reason of the death of an insured:

(A) Any amount received under a life insurance contract on the life of an insured who is a terminally ill individual.

(B) Any amount received under a life insurance contract on the life of an insured who is a chronically ill individual.

(2) Treatment of viatical settlements

(A) In general

If any portion of the death benefit under a life insurance contract on the life of an insured described in paragraph (1) is sold or assigned to a viatical settlement provider, the amount paid for the sale or assignment of such portion shall be treated as an amount paid under the life insurance contract by reason of the death of such insured.

(B) Viatical settlement provider

(i) In general

The term ''viatical settlement provider'' means any person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds described in paragraph (1) if—

(I) such person is licensed for such purposes (with respect to insureds described in the same subparagraph of paragraph (1) as the insured) in the State in which the insured resides, or

(II) in the case of an insured who resides in a State not requiring the licensing of such persons for such purposes with respect to such insured, such person meets the requirements of clause (ii) or (iii), whichever applies to such insured.

(ii) Terminally ill insureds

A person meets the requirements of this clause with respect to an insured who is a terminally ill individual if such person—

(I) meets the requirements of sections 8 and 9 of the Viatical Settlements Model Act of the National Association of Insurance Commissioners, and

(II) meets the requirements of the Model Regulations of the National Association of Insurance Commissioners (relating to standards for evaluation of reasonable payments) in determining amounts paid by such person in connection with such purchases or assignments.

(iii) Chronically ill insureds

A person meets the requirements of this clause with respect to an insured who is a chronically ill individual if such person—

(I) meets requirements similar to the requirements referred to in clause (ii)(I), and

(II) meets the standards (if any) of the National Association of Insurance Commissioners for evaluating the reasonableness of amounts paid by such person in connection with such purchases or assignments with respect to chronically ill individuals.

(3) Special rules for chronically ill insureds

In the case of an insured who is a chronically ill individual—

(A) In general

Paragraphs (1) and (2) shall not apply to any payment received for any period unless—

(i) such payment is for costs incurred by the payee (not compensated for by insurance or otherwise) for qualified long-term care services provided for the insured for such period, and

(ii) the terms of the contract giving rise to such payment satisfy—

(I) the requirements of section 7702B(b)(1)(B), and

(II) the requirements (if any) applicable under subparagraph (B).

For purposes of the preceding sentence, the rule of section 7702B(b)(2)(B) shall apply.

(B) Other requirements

The requirements applicable under this subparagraph are—

(i) those requirements of section 7702B(g) and section 4980C which the Secretary specifies as applying to such a purchase, assignment, or other arrangement,

(ii) standards adopted by the National Association of Insurance Commissioners which specifically apply to chronically ill individuals (and, if such standards are adopted, the analogous requirements specified under clause (i) shall cease to apply), and

(iii) standards adopted by the State in which the policyholder resides (and if such standards are adopted, the analogous requirements specified under clause (i) and (subject to section 4980C(f)) standards under clause (ii), shall cease to apply).

(C) Per diem payments

A payment shall not fail to be described in subparagraph (A) by reason of being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payment relates.

(D) Limitation on exclusion for periodic payments

For limitation on amount of periodic payments which are treated as described in paragraph (1), see section 7702B(d).

(4) Definitions

For purposes of this subsection—

(A) Terminally ill individual

The term ''terminally ill individual'' means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification.

(B) Chronically ill individual

The term ''chronically ill individual'' has the meaning given such term by section 7702B(c)(2); except that such term shall not include a terminally ill individual.

(C) Qualified long-term care services

The term ''qualified long-term care services'' has the meaning given such term by section 7702B(c).

(D) Physician

The term ''physician'' has the meaning given to such term by section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)(1)).

(5) Exception for business-related policies

This subsection shall not apply in the case of any amount paid to any taxpayer other than the insured if such taxpayer has an insurable interest with respect to the life of the insured by reason of the insured being a director, officer, or employee of the taxpayer or by reason of the insured being financially interested in any trade or business carried on by the taxpayer.

(h) Survivor benefits attributable to service by a public safety officer who is killed in the line of duty

(1) In general

Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty—

(A) if such annuity is provided, under a governmental plan which meets the requirements of section 401(a), to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

(B) to the extent such annuity is attributable to such officer's service as a public safety officer.

(2) Exceptions

Paragraph (1) shall not apply with respect to the death of any public safety officer if, as determined in accordance with the provisions of the Omnibus Crime Control and Safe Streets Act of 1968—

(A) the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about such officer's death;

(B) the officer was voluntarily intoxicated (as defined in section 1204 of such Act) at the time of death;

(C) the officer was performing such officer's duties in a grossly negligent manner at the time of death; or

(D) the payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(i) Certain employee death benefits payable by reason of death of certain terrorist victims or astronauts

(1) In general

Gross income does not include amounts (whether in a single sum or otherwise) paid by an employer by reason of the death of an employee who is a specified terrorist victim (as defined in section 692(d)(4)).

(2) Limitation

(A) In general

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to amounts which would have been payable after death if the individual had died other than as a specified terrorist victim (as so defined).

(B) Exception

Subparagraph (A) shall not apply to incidental death benefits paid from a plan described in section 401(a) and exempt from tax under section 501(a).

(3) Treatment of self-employed individuals

For purposes of paragraph (1), the term ''employee'' includes a self-employed individual (as defined in section 401(c)(1)).

(4) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty.

(j) Treatment of certain employer-owned life insurance contracts

(1) General rule

In the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder by reason of paragraph (1) of subsection (a) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract.

(2) Exceptions

In the case of an employer-owned life insurance contract with respect to which the notice and consent requirements of paragraph (4) are met, paragraph (1) shall not apply to any of the following:

(A) Exceptions based on insured's status

Any amount received by reason of the death of an insured who, with respect to an applicable policyholder—

(i) was an employee at any time during the 12-month period before the insured's death, or

(ii) is, at the time the contract is issued—

(I) a director,

(II) a highly compensated employee within the meaning of section 414(q) (without regard to paragraph (1)(B)(ii) thereof), or

(III) a highly compensated individual within the meaning of section 105(h)(5), except that ''35 percent'' shall be substituted for ''25 percent'' in subparagraph (C) thereof.

(B) Exception for amounts paid to insured's heirs

Any amount received by reason of the death of an insured to the extent—

(i) the amount is paid to a member of the family (within the meaning of section 267(c)(4)) of the insured, any individual who is the designated beneficiary of the insured under the contract (other than the applicable policyholder), a trust established for the benefit of any such member of the family or designated beneficiary, or the estate of the insured, or

(ii) the amount is used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described in clause (i).

(3) Employer-owned life insurance contract

(A) In general

For purposes of this subsection, the term ''employer-owned life insurance contract'' means a life insurance contract which—

(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under the contract, and

(ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

For purposes of the preceding sentence, if coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

(B) Applicable policyholder

For purposes of this subsection—

(i) In general

The term ''applicable policyholder'' means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

(ii) Related persons

The term ''applicable policyholder'' includes any person which—

(I) bears a relationship to the person described in clause (i) which is specified in section 267(b) or 707(b)(1), or

(II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).

(4) Notice and consent requirements

The notice and consent requirements of this paragraph are met if, before the issuance of the contract, the employee—

(A) is notified in writing that the applicable policyholder intends to insure the employee's life and the maximum face amount for which the employee could be insured at the time the contract was issued,

(B) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and

(C) is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

(5) Definitions

For purposes of this subsection—

(A) Employee

The term ''employee'' includes an officer, director, and highly compensated employee (within the meaning of section 414(q)).

(B) Insured

The term ''insured'' means, with respect to an employer-owned life insurance contract, an individual covered by the contract who is a United States citizen or resident. In the case of a contract covering the joint lives of 2 individuals, references to an insured include both of the individuals.

(Aug. 16, 1954, ch. 736, 68A Stat. 26; Pub. L. 85–866, title I, §23(d), Sept. 2, 1958, 72 Stat. 1622; Pub. L. 87–792, §7(c), Oct. 10, 1962, 76 Stat. 829; Pub. L. 89–365, §1(c), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91–172, title I, §101(j)(1), Dec. 30, 1969, 83 Stat. 526; Pub. L. 93–406, title II, §§2005(c)(15), 2007(b)(3),

Sept. 2, 1974, 88 Stat. 992, 994; Pub. L. 94–455, title XIX, §§1901(a)(16), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97–248, title II, §§239, 266(a), (b), Sept. 3, 1982, 96 Stat. 514, 547, 550; Pub. L. 98–369, div. A, title II, §221(b)(2), title IV, §421(b)(2), title VII, §713(e), July 18, 1984, 98 Stat. 772, 794, 958; Pub. L. 99–514, title X, §1001(a)–(c), Oct. 22, 1986, 100 Stat. 2387; Pub. L. 104–188, title I, §1402(a), (b)(1), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title III, §331(a), Aug. 21, 1996, 110 Stat. 2067; Pub. L. 105–34, title X, §1084(b)(2), title XV, §1528(a), Aug. 5, 1997, 111 Stat. 952, 1074; Pub. L. 107–134, title I, §102(a), Jan. 23, 2002, 115 Stat. 2429; Pub. L. 108–121, title I, §110(b)(1), (2), Nov. 11, 2003, 117 Stat. 1342; Pub. L. 109–280, title VIII, §863(a), (c)(1), Aug. 17, 2006, 120 Stat. 1021, 1024.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (h), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Section 1204 of the Act is classified to section 3796b 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 3711 of Title 42 and Tables.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 805, 807, 812, and 832 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, §863(c)(1), substituted ''subsection (f), and subsection (j)'' for ''and subsection (f)''.

Subsec. (j). Pub. L. 109–280, §863(a), added subsec. (j).

2003—Subsec. (i). Pub. L. 108–121, §110(b)(2), inserted ''or astronauts'' after ''victims'' in heading.

Subsec. (i)(4). Pub. L. 108–121, §110(b)(1), added par. (4).

2002—Subsec. (i). Pub. L. 107–134 added subsec. (i).

1997—Subsec. (a)(2). Pub. L. 105–34, §1084(b)(2), inserted at end ''The term 'other amounts' in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).''

Subsec. (h). Pub. L. 105–34, §1528(a), added subsec. (h).

1996—Subsec. (b). Pub. L. 104–188, §1402(a), struck out subsec. (b) which related to employees' death benefits.

Subsec. (c). Pub. L. 104–188, §1402(b)(1), substituted ''subsection (a)'' for ''subsection (a) or (b)''.

Subsec. (g). Pub. L. 104–191 added subsec. (g).

1986—Subsec. (d)(1). Pub. L. 99–514, §1001(a), amended second sentence generally, which prior to amendment read as follows: ''There shall be excluded from the gross income of such beneficiary in the taxable year received—

''(A) any amount determined by such proration, and

''(B) in the case of the surviving spouse of the insured, that portion of the excess of the amounts received under one or more agreements specified in paragraph (2)(A) (whether or not payment of any part of such amounts is guaranteed by the insurer) over the amount determined in subparagraph (A) of this paragraph which is not greater than $1,000 with respect to any insured.''

Subsec. (d)(2)(B). Pub. L. 99–514, §1001(c)(2), substituted ''equal'' for ''is equal'' in introductory provisions.

Subsec. (d)(2)(B)(ii). Pub. L. 99–514, §1001(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''as discounted on the basis of the interest rate and mortality tables used by the insurer in calculating payments under the agreement.''

Subsec. (d)(3), (4). Pub. L. 99–514, §1001(c)(1), redesignated par. (4) as (3), and struck out former par. (3), ''Surviving spouse'', which read as follows: ''For purposes of this subsection, the term 'surviving spouse' means the spouse of the insured as of the date of death, including a spouse legally separated but not under a decree of absolute divorce.''

1984—Subsec. (b)(3)(B). Pub. L. 98–369, §713(e), amended subpar. (B) generally, substituting ''certain distributions'' for ''certain lump sum distributions'' in heading, substituting ''amount paid or distributed'' for ''lump sum distribution described in the second sentence of paragraph (2)(B)'' in introductory text and adding cls. (i) and (ii).

Subsec. (e). Pub. L. 98–369, §421(b)(2), repealed subsec. (e) relating to payments of alimony or of income of an estate or trust in case of divorce, etc.

Subsec. (f). Pub. L. 98–369, §221(b)(2)(B), inserted ''issued before January 1, 1985'' in heading.

Subsec. (f)(1). Pub. L. 98–369, §221(b)(2)(A), inserted ''issued before January 1, 1985'' in introductory text.

1982—Subsec. (a)(1). Pub. L. 97–248, §266(b), substituted '', subsection (d), and subsection (f)'' for ''and in subsection (d)''.

Subsec. (b)(3). Pub. L. 97–248, §239, amended par. (3) generally, substituting ''Treatment of self-employed individuals'' for ''Self-employed individual not considered an employee'' in heading, designating existing provisions as subparagraph (A) and, as so designated, adding heading and exception for subpar. (B), and adding subparagraph (B).

Subsec. (f). Pub. L. 97–248, §266(a), added subsec. (f).

1976—Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1901(a)(16), struck out subsec. (f) relating to effective date of section.

1974—Subsec. (b)(2)(B). Pub. L. 93–406, §2005(c)(15), substituted ''a lump sum distribution (as defined in section 402(e)(4)'' for ''total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death''.

Subsec. (b)(2)(D). Pub. L. 93–406, §2007(b)(3), substituted ''if the member or former member of the uniformed services by reason of whose death such annuity is payable'' for ''if the individual who made the election under such chapter''.

1969—Subsec. (b)(2)(B)(iii). Pub. L. 91–172 substituted references to section 170(b)(1)(A) (ii) and (vi), and to religious organizations, for references to section 503(b)(1), (2), or (3).

1966—Subsec. (b)(2)(D). Pub. L. 89–365 provided that par. (1) shall not apply in the case of an annuity under chapter 73 of title 10 if the individual who made the election under that chapter died after attaining retirement age.

1962—Subsec. (b)(2)(B)(ii). Pub. L. 87–792, §7(c)(1), substituted ''described in section 403(a)'' for ''which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a)''.

Subsec. (b)(3). Pub. L. 87–792, §7(c)(2), added par. (3).

1958—Subsec. (b)(2)(B). Pub. L. 85–866 substituted ''This subparagraph shall not apply to total distributions payable (as defined in section 402(a)(3) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—'' for ''(other than total distributions payable, as defined in section 402(a)(3), which are paid to distributee, by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a), or under an annuity contract under a plan which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a), within one taxable year of the distributee by reason of the employee's death)'', and added cls. (i), (ii), and (iii).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §863(d), Aug. 17, 2006, 120 Stat. 1024, provided that: ''The amendments made by this section [enacting section 6039I of this title and amending this section] shall apply to life insurance contracts issued after the date of the enactment of this

Act [Aug. 17, 2006], except for a contract issued after such date pursuant to an exchange described in section 1035 of the Internal Revenue Code of 1986 for a contract issued on or prior to that date. For purposes of the preceding sentence, any material increase in the death benefit or other material change shall cause the contract to be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of such Code), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §110(b)(3), Nov. 11, 2003, 117 Stat. 1342, provided that: ''The amendments made by this subsection [amending this section] shall apply to amounts paid after December 31, 2002, with respect to deaths occurring after such date.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §102(b), Jan. 23, 2002, 115 Stat. 2429, provided that:

''(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to taxable years ending before, on, or after September 11, 2001.

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by 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 [Jan. 23, 2002] 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 DATE OF 1997 AMENDMENT

Section 1084(d) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, §6010(*o*)(3)(B), July 22, 1998, 112 Stat. 816, provided that: ''The amendments made by this section [amending this section and sections 264, 265, 805, 807, 812, and 832 of this title] shall apply to contracts issued after June 8, 1997, in taxable years ending after such date. For purposes of the preceding sentence, any material increase in the death benefit or other material change in the contract shall be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of the Internal Revenue Code of 1986), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives. For purposes of this subsection, an increase in the death benefit under a policy or contract issued in connection with a lapse described in section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, set out as a note under section 264 of this title] shall not be treated as a new contract.''

Section 1528(b) of Pub. L. 105–34, as amended by Pub. L. 107–15, §2, June 5, 2001, 115 Stat. 37, provided that: ''The amendments made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date, and to amounts received in taxable years beginning after December 31, 2001, with respect to individuals dying on or before December 31, 1996.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 331(b) of Pub. L. 104–191 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1996.''

Section 1402(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 406, 407, and 7701 of this title] shall apply with respect to decedents dying after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1001(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to amounts received with respect to deaths occurring after the date of the enactment of this section [Oct. 22, 1986] in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 221(b)(2) of Pub. L. 98–369 effective Jan. 1, 1984, see section 221(d)(4) of Pub. L. 98–369, set out as an Effective Date note under section 7702 of this title.

Amendment by section 421(b)(2) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 266(c)(1) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title II, §221(b)(1), July 18, 1984, 98 Stat. 772, provided that: ''The amendments made by this section [amending this section] shall apply to contracts entered into before January 1, 1985.''

Amendment by section 239 of Pub. L. 97–248 applicable to decedents dying after Dec. 31, 1983, see section 241(b) of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title. Such amendment is applicable, in the case of amounts received under the plan of an S corporation, with respect to decedents dying after Dec. 31, 1982, notwithstanding section 241(b) of Pub. L. 97–248, see section 6(b)(2) of Pub. L. 97–354, Oct. 19, 1982, 96 Stat. 1697, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(16) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(15) of Pub. L. 93–406 applicable only with respect to distributions and 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.

Amendment by section 2007(b)(3) of Pub. L. 93–406 applicable to taxable years ending on or after Sept. 21, 1972, with respect to individuals dying on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93–406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–365 applicable with respect to individuals making an election under chapter 73 of Title 10 who died after Dec. 31, 1965, see section 1(d) of Pub. L. 89–365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1957, see section 23(g) of

Pub. L. 85–866, set out as a note under section 403 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

FLEXIBLE PREMIUM CONTRACTS ISSUED DURING 1984 WHICH MEET REQUIREMENTS OF SECTION 7702 TREATED AS MEETING REQUIREMENTS OF SECTION 101(f)

Flexible premium contracts issued during 1984 which meet requirements of section 7702 of this title treated as meeting requirements of subsec. (f) of this section, see section 221(b)(3) of Pub. L. 98–369, as added by Pub. L. 99–514, set out as a note under section 7702 of this title.

SPECIAL RULES FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983

Section 266(c)(2), (3) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(13), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) SPECIAL RULE FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983.—Any contract entered into before January 1, 1983, which meets the requirements of section 101(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the date which is 1 year after the date of the enactment of this Act [Sept. 3, 1982] shall be treated as meeting the requirements of such section for any period before the date on which such contract meets such requirements. Any death benefits paid under a flexible premium life insurance contract (within the meaning of section 101(f)(3)(A) of such Code) before the date which is 1 year after such date of enactment [Sept. 3, 1982] shall be excluded from gross income.

''(3) SPECIAL RULE FOR CERTAIN CONTRACTS.—Any contract entered into before January 1, 1983, shall be treated as meeting the requirements of subparagraph (A) of section 101(f)(1) of such Code if such contract would meet such requirements if section 101(f)(2)(C) of such Code were applied by substituting '3 percent' for '4 percent'.''

§ 102. Gifts and inheritances

(a) General rule

Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

(b) Income

Subsection (a) shall not exclude from gross income—

(1) the income from any property referred to in subsection (a); or

(2) where the gift, bequest, devise, or inheritance is of income from property, the amount of such income.

Where, under the terms of the gift, bequest, devise, or inheritance, the payment, crediting, or distribution thereof is to be made at intervals, then, to the extent that it is paid or credited or to be distributed out of income from property, it shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property. Any amount included in the gross income of a beneficiary under subchapter J shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property.

(c) Employee gifts

(1) In general

Subsection (a) shall not exclude from gross income any amount transferred by or for an employer to, or for the benefit of, an employee.

(2) Cross references

For provisions excluding certain employee achievement awards from gross income, see section 74(c).

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 28; Pub. L. 99–514, title I, § 122(b), Oct. 22, 1986, 100 Stat. 2110.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

§ 103. Interest on State and local bonds

(a) Exclusion

Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(b) Exceptions

Subsection (a) shall not apply to—

(1) Private activity bond which is not a qualified bond

Any private activity bond which is not a qualified bond (within the meaning of section 141).

(2) Arbitrage bond

Any arbitrage bond (within the meaning of section 148).

(3) Bond not in registered form, etc.

Any bond unless such bond meets the applicable requirements of section 149.

(c) Definitions

For purposes of this section and part IV—

(1) State or local bond

The term ''State or local bond'' means an obligation of a State or political subdivision thereof.

(2) State

The term ''State'' includes the District of Columbia and any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 29; Pub. L. 90–364, title I, § 107(a), June 28, 1968, 82 Stat. 266; Pub. L. 90–634, title IV, § 401(a), Oct. 24, 1968, 82 Stat. 1349; Pub. L. 91–172, title VI, § 601(a), Dec. 30, 1969, 83 Stat. 656; Pub. L. 92–178, title III, § 315(a), (b), Dec. 10, 1971, 85 Stat. 529; Pub. L. 94–164, § 7(a), Dec. 23, 1975, 89 Stat. 976; Pub. L. 94–182, title III, § 301(a), Dec. 31, 1975, 89 Stat. 1056; Pub. L. 94–455, title XIX, §§ 1901(a)(17), (b)(8)(B), 1906(b)(13)(A), title XXI, §§ 2105(a)–(c), 2137(d),

Oct. 4, 1976, 90 Stat. 1765, 1766, 1794, 1834, 1902, 1931; Pub. L. 95–339, title II, §201(a), Aug. 8, 1978, 92 Stat. 467; Pub. L. 95–600, title III, §§331(a), (b), 332(a), 333(a), 334(a), (b), title VII, §703(j)(1), (q)(1), Nov. 6, 1978, 92 Stat. 2839–2841, 2941, 2944; Pub. L. 96–222, title I, §107(a)(3)(C), Apr. 1, 1980, 94 Stat. 223; Pub. L. 96–223, title II, §§241(a), 242(a), 244(a), Apr. 2, 1980, 94 Stat. 281, 283, 286; Pub. L. 96–499, title XI, §1103, Dec. 5, 1980, 94 Stat. 2669; Pub. L. 97–34, title VIII, §§811(a), (b), 812(a), Aug. 13, 1981, 95 Stat. 349, 350; Pub. L. 97–248, title II, §§214(a)–(e), 215(a), (b), 217(a)–(d), 219(a), 221(a), (b), (c)(1), title III, §310(b)(1), (c)(1), (2), Sept. 3, 1982, 96 Stat. 466–469, 472–474, 477, 478, 596, 599; Pub. L. 97–424, title V, §547(a), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 97–473, title II, §202(b)(2), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–369, div. A, title IV, §474(r)(4), title VI, §§621–624(a), (b)(2), (3), 626(a), 627, 628(a), (c)–(e), (g), 630, July 18, 1984, 98 Stat. 839, 915–922, 924, 926, 928, 931–933; Pub. L. 99–272, title XIII, §13209(e), Apr. 7, 1986, 100 Stat. 323; Pub. L. 99–514, title XIII, §1301(a), title XVIII, §§1864(a)(1), (b)–(e), 1865(a), 1869(a), (b), 1870, 1871(a)(1), (b), 1899A(2)–(4), Oct. 22, 1986, 100 Stat. 2602, 2885, 2886, 2888, 2890, 2891, 2958; Pub. L. 100–647, title I, §1013(a)(34)(A), (c)(12)(A), Nov. 10, 1988, 102 Stat. 3544, 3547.)

AMENDMENTS

1988—Subsec. (b)(6)(N). Pub. L. 100–647, §1013(c)(12)(A), amended subpar. (N), as in effect on the day before the date of the enactment of Pub. L. 99–514 [Oct. 22, 1986], by redesignating cls. (ii) and (iii) as (iii) and (iv), respectively, and by striking out cl. (i) and inserting in lieu thereof the following new cls.:

''(i) IN GENERAL.—Except as provided in clause (ii), this paragraph shall not apply to any obligation issued after December 31, 1986.

''(ii) CERTAIN REFUNDINGS.—This paragraph shall apply to any obligation (or series of obligations) issued to refund an obligation issued on or before December 31, 1986, if—

''(I) the average maturity date of the issue of which the refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue,

''(II) the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, and

''(III) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of subclause (I), average maturity shall be determined in accordance with subsection (b)(14)(B)(i).''

Subsec. (c)(7). Pub. L. 100–647, §1013(a)(34)(A), amended par. (7), as in effect on the day before the date of the enactment of Pub. L. 99–514 [Oct. 22, 1986], by substituting ''necessary'' for ''necessary''.

1986—Pub. L. 99–514, §1301(a), in amending section generally, substituted ''Interest on State and local bonds'' for ''Interest on certain governmental obligations'' in section catchline.

Subsec. (a). Pub. L. 99–514, §1301(a), substituted ''Exclusion'' for ''General rule'' in heading and amended text generally. Prior to amendment, text read as follows: ''Gross income does not include interest on—

''(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia; and

''(2) qualified scholarship funding bonds.''

Subsec. (b). Pub. L. 99–514, §1301(a), in amending section generally, substituted provision relating to exceptions for provision relating to industrial development bonds.

Subsec. (b)(11). Pub. L. 99–272 struck out par. (11) relating to pollution control facilities acquired by regional pollution control authorities.

Subsec. (b)(13), (14)(A). Pub. L. 99–514, §1871(b), substituted ''and (6)'' for ''(6), and (7)''.

Subsec. (b)(16)(A). Pub. L. 99–514, §1870, substituted ''clause (ii)'' for ''clause (i)''.

Subsec. (b)(17)(A). Pub. L. 99–514, §1871(b), substituted ''and (6)'' for ''(6), and (7)''.

Subsec. (c). Pub. L. 99–514, §1301(a), in amending section generally, substituted provision relating to definitions for provision relating to arbitrage.

Subsecs. (d) to (g). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsecs. (d) to (g) which related to certain irrigation dams, qualified scholarship funding bonds, certain federally guaranteed obligations, and qualified steam-generating or alcohol-producing facilities, respectively.

Subsec. (h). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (h) which provided that obligations must not be guaranteed.

Subsec. (h)(2)(A). Pub. L. 99–514, §1899A(2), substituted ''guaranteed'' for ''guaranted''.

Subsec. (h)(5)(A). Pub. L. 99–514, §1865(a), struck out ''the United States,'' after ''program of''.

Subsecs. (i) to (k). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsecs. (i) to (k) which related to obligations of certain volunteer fire departments, provided that obligations must be in registered form to be tax-exempt, and required public approval for industrial development bonds, respectively.

Subsec. (*l*). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (*l*) which related to information reporting requirements for certain bonds.

Subsec. (*l*)(2)(F). Pub. L. 99–514, §1864(d), added subpar. (F) which read: ''if such obligation is a private activity bond (as defined in subsection (n)(7)), such information as the Secretary may require for purposes of determining whether the requirements of subsection (n) are met with respect to such obligation.''

Subsec. (m). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (m) which related to obligations exempt other than under this title.

Subsec. (m)(1). Pub. L. 99–514, §1871(a)(1), substituted ''(j), (k), (*l*), (n), and (*o*)'' for ''(k), (*l*), and (n)''.

Subsec. (m)(3)(B). Pub. L. 99–514, §1899A(3), substituted ''608(a)(6)(A)'' for ''608(6)(A)''.

Subsec. (n). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (n) which related to limitation on aggregate amount of private activity bonds issued during any calendar year.

Subsec. (n)(6)(A), (B)(i). Pub. L. 99–514, §1864(b), substituted ''governmental units or other authorities'' for ''governmental units''.

Subsec. (n)(7)(C)(i). Pub. L. 99–514, §1864(c), substituted ''all of the property to be financed by the obligation'' for ''the property described in such paragraph''.

Subsec. (n)(10)(B). Pub. L. 99–514, §1864(e), substituted ''identify project'' for ''specify project'' in heading and ''identify (with reasonable specificity) the project'' for ''specify the project'' in text of subpar. (B)(i).

Subsec. (n)(10)(D). Pub. L. 99–514, §1864(e)(2), substituted ''any identification or specification'' for ''any specification''.

Subsec. (n)(13). Pub. L. 99–514, §1864(a)(1), added par. (13).

Subsec. (*o*). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (*o*) relating to consumer loan bonds.

Pub. L. 99–514, §1869(a), (b)(1), substituted ''Private loan bonds'' for ''Consumer loan bonds'' in subsection and par. (2) headings, ''private loan bond'' for ''consumer loan bond'' in text of pars. (1), (2)(A) and (B), and ''subsection (c)(6)(H)(i)'' for ''subsection (c)(6)(G)(i)'' in par. (2)(C)(ii).

Pub. L. 99–514, §1869(b)(2), redesignated subsec. (*o*), relating to cross references, as (p).

Subsec. (p). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (p) which related to cross references.

Pub. L. 99–514, § 1869(b)(2), redesignated former subsec. (*o*), relating to cross references, as (p).

Subsec. (p)(4). Pub. L. 99–514, § 1899A(4), substituted ''October 27, 1949 (48 U.S.C. 1403)'' for ''October 27, 1919 (48 U.S.C. 1403)''.

1984—Subsec. (b)(4). Pub. L. 98–369, § 628(e), inserted ''For purposes of subparagraph (A), any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.''

Subsec. (b)(6)(F)(iv). Pub. L. 98–369, § 474(r)(4), substituted ''section 30(b)(2)(A)'' for ''section 44F(b)(2)(A)''.

Subsec. (b)(6)(N). Pub. L. 98–369, § 630, designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (b)(6)(P). Pub. L. 98–369, § 628(c), added subpar. (P).

Subsec. (b)(7). Pub. L. 98–369, § 628(g), repealed par. (7) which related to advance refunding of qualified public facilities.

Subsec. (b)(13). Pub. L. 98–369, § 628(d), inserted ''For purposes of this paragraph— (A) a partnership and each of its partners (and their spouses and minor children) shall be treated as related persons, and (B) an S corporation and each of its shareholders (and their spouses and minor children) shall be treated as related persons.''

Subsec. (b)(15). Pub. L. 98–369, § 623, added par. (15).

Subsec. (b)(16) to (18). Pub. L. 98–369, § 627, added pars. (16) to (18).

Subsec. (c). Pub. L. 98–369, § 624(b)(2), struck out ''bonds'' after ''Arbitrage'' in heading.

Subsec. (c)(1). Pub. L. 98–369, § 624(b)(3), inserted ''to arbitrage bonds'' in heading.

Subsec. (c)(6), (7). Pub. L. 98–369, § 624(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h). Pub. L. 98–369, § 622, amended subsec. (h) generally, in par. (1) substituting provisions that obligations are not included in the section if they are federally guaranteed for provisions which excluded obligations guaranteed, in whole or part, by the U.S. under a program to conserve energy, or under other Federal or State programs, in par. (2) substituting provisions defining ''federally guaranteed'' for provisions setting forth obligations to which this subsection applies, and adding pars. (3) to (5).

Subsec. (m)(1). Pub. L. 98–369, § 628(a)(1), inserted ''In the case of an obligation issued after December 31, 1983, such obligation shall not be treated as described in this paragraph unless the appropriate requirements of subsections (b), (c), (h), (k), (*l*), and (n) of this section and section 103A are met with respect to such obligation. For purposes of applying such requirements, a possession of the United States shall be treated as a State; except that clause (ii) of subsection (n)(4)(A) shall not apply.''

Subsec. (m)(2)(B). Pub. L. 98–369, § 628(a)(2), substituted ''is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act'' for ''is exempt from taxation under any provision of this title''.

Subsec. (m)(3). Pub. L. 98–369, § 628(a)(3), added par. (3).

Subsec. (n). Pub. L. 98–369, § 621, added subsec. (n). Former subsec. (n), relating to cross references, redesignated (*o*).

Subsec. (*o*). Pub. L. 98–369, § 626(a), added subsec. (*o*) relating to consumer loan bonds.

Pub. L. 98–369, § 621, redesignated subsec. (n), relating to cross references, as (*o*).

1983—Subsec. (m). Pub. L. 97–424, § 547(a), added subsec. (m). Former subsec. (m) redesignated (n).

Pub. L. 97–473 amended subsec. (m) generally, adding pars. (1) and (2), redesignating former pars. (1) to (3) as (3) to (5), respectively, and striking out par. (24) which had provided reference regarding exempt-interest dividends to section 852(b)(5)(B.) See section 722(b) of Pub. L. 98–369, set out as a note below.

Subsec. (n). Pub. L. 97–424, § 547(a), redesignated former subsec. (m), relating to cross references, as (n).

1982—Subsec. (b)(2). Pub. L. 97–248, § 215(b)(2), substituted ''For purposes of this section'' for ''For purposes of this subsection''.

Subsec. (b)(4). Pub. L. 97–248, §§ 217(a)(1), (b), 221(a), (c)(1), 310(c)(1), in subpar. (A) substituted ''if at all times during the qualified project period'' for ''if each obligation issued pursuant to the issue is in registered form and if'' after ''residential rental property'', and struck out ''(within the meaning of section 167(k)(3)(B))'' after ''low or moderate income'', added subpar. (J), struck out provision that for purposes of subpar. (A), ''targeted area project'' meant a project located in a qualified census tract (within the meaning of section 103A(k)(2)) or an area of chronic economic distress (within the meaning of section 103A(k)(3)) and, in last sentence, substituted ''electric energy or gas from'' for ''electric energy from''.

Subsec. (b)(6)(C). Pub. L. 97–248, § 217(a)(3), substituted ''paragraph (13)'' for ''paragraph (7)''.

Subsec. (b)(6)(F)(iv). Pub. L. 97–248, § 214(d), added cl. (iv).

Subsec. (b)(6)(K) to (O). Pub. L. 97–248, § 214(a)–(c), (e), added subpars. (K) to (O).

Subsec. (b)(9)(A). Pub. L. 97–248, § 217(c), inserted ''ferry,'' after ''rail car'' in provisions preceding cl. (i), and in cl. (ii), inserted ''(or, in the case of a ferry, mass transportation services)'' after ''mass commuting services''.

Subsec. (b)(10). Pub. L. 97–248, § 217(a)(2), added par. (10). Former par. (10) redesignated (13).

Subsec. (b)(11). Pub. L. 97–248, § 217(d), added par. (11).

Subsec. (b)(12). Pub. L. 97–248, § 221(b), added par. (12). [Provisions of par. (12)(A) were formerly contained, as undesignated provisions, in par. (4).]

Subsec. (b)(13). Pub. L. 97–248, § 217(a)(2), redesignated former par. (10) as (13).

Subsec. (b)(14). Pub. L. 97–248, § 219(a), added par. (14).

Subsec. (h). Pub. L. 97–248, § 310(c)(2), substituted ''must not be guaranteed or subsidized'' for ''must be in registered form and not guaranteed or subsidized'' in heading, and in par. (1) struck out subpar. (A) reading ''such obligation is not issued in registered form'', and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (j). Pub. L. 97–248, § 310(b)(1), added subsec. (j). Former subsec. (j), relating to cross references, redesignated (m).

Subsec. (k). Pub. L. 97–248, § 215(a), added subsec. (k).

Subsec. (*l*). Pub. L. 97–248, § 215(b)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 97–248, §§ 215(a), (b)(1), 310(b)(1), redesignated former subsec. (j), relating to cross references, as (m).

1981—Subsec. (b)(4)(I). Pub. L. 97–34, § 811(a), added subpar. (I).

Subsec. (b)(9), (10). Pub. L. 97–34, § 811(b), added par. (9) and redesignated former par. (9) as (10).

Subsecs. (i), (j). Pub. L. 97–34, § 812(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1980—Subsec. (b)(4). Pub. L. 96–499, § 1103(b), inserted before last sentence provisions defining ''targeted area project'' for purposes of subpar. (A).

Subsec. (b)(4)(A). Pub. L. 96–499, § 1103(a), substituted provisions relating to low or moderate income residential rental property for provisions relating to residential real property for family units.

Subsec. (b)(4)(H). Pub. L. 96–223, § 242(a)(1), added subpar. (H).

Subsec. (b)(6)(J). Pub. L. 96–499, § 1103(c), added subpar. (J).

Subsec. (b)(8), (9). Pub. L. 96–223, § 242(a)(2), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c)(5). Pub. L. 96–222, § 107(a)(3)(C), amended the directory language of Pub. L. 96–500, § 703(q)(1). See 1978 Amendment note below for subsec. (c)(5).

Subsec. (g). Pub. L. 96–223, § 241(a), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 96–223, § 244(a), added subsec. (h).

Subsec. (i). Pub. L. 96–223, §§ 241(a), 244(a), redesignated former subsec. (g) as (i).

1978—Subsec. (b)(1). Pub. L. 95–600, § 703(j)(1)(A), substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1)'' in heading.

Subsec. (b)(4). Pub. L. 95–600, §§332(a), 333(a), in subpar. (G)(i) inserted reference to electric utility, industrial, agricultural, or commercial users and added subpar. (G)(ii) and provision following subpar. (G)(ii) relating to the local furnishing of electric energy.

Subsec. (b)(6)(D). Pub. L. 95–600, §331(a), substituted in heading and cl. (i) ''$10,000,000'' for ''$5,000,000''.

Subsec. (b)(6)(I). Pub. L. 95–600, §331(b), added subpar. (I).

Subsec. (b)(7), (8). Pub. L. 95–600, §334(a), (b), added par. (7), redesignated former par. (7) as (8) and, as so redesignated, substituted ''(6), and (7)'' for ''and (6)''.

Subsec. (c)(1). Pub. L. 95–600, §703(j)(1)(B), substituted in heading and text ''(a)(1) or (2)'' for ''(a)(1) or (4)''.

Subsec. (c)(2)(A). Pub. L. 95–600, §703(j)(1)(C), substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1) or (2) or (4)''.

Subsec. (c)(5). Pub. L. 95–600, §703(j)(1)(D), (q)(1), as amended by Pub. L. 96–222, §107(a)(3)(C), substituted ''section 438 of the Higher Education Act of 1965'' for ''section 2 of the Emergency Insured Student Loan Act of 1969'' and ''paragraph (2)(A)'' for ''subsection (d)(2)(A)''.

Subsec. (d). Pub. L. 95–600, §703(j)(1)(E), substituted ''subsection (b)(4)(G)'' for ''subsection (c)(4)(G)''.

Subsec. (e). Pub. L. 95–339 redesignated second subsec. (e), relating to cross references, as (g).

Subsec. (f). Pub. L. 95–339 added subsec. (f).

Subsec. (g). Pub. L. 95–339 redesignated second subsec. (e), relating to cross references, as (g).

1976—Subsec. (a). Pub. L. 94–455, §§1901(a)(17)(A), 2105(a), added par. (2) relating to qualified scholarship funding bonds. Former pars. (2) and (3), relating to obligations of the United States and to the obligations of corporations organized under an Act of Congress, were struck out.

Subsec. (b). Pub. L. 94–455, §1901(a)(17)(B), (C), redesignated subsec. (c) as (b) and in par. (1) of subsec. (b) as so redesignated substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1)''. Former subsec. (b), which created an exception to the rule that gross income did not include interest on obligations of the United States, by providing that the exception did not apply to obligations of the United States (with specified exceptions) unless under the authorizing Acts such interest is wholly exempt from the taxes imposed by this subtitle, was struck out.

Subsec. (c). Pub. L. 94–455, §§1901(a)(17)(B), (D), (b)(8)(B), 1906(b)(13)(A), 2105(c), redesignated subsec. (d) as (c) and, in subsec. (c) as so redesignated, substituted ''(a)(1) or (4)'' for ''(a)(1)'' in par. (1) and ''(a)(1) or (2) or (4)'' for ''(a)(1)'' in par. (2)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (within the meaning of section 151(e)(4))'' in par. (3)(A), added par. (5), redesignated former par. (5) as (6), and in par. (6) as so redesignated substituted ''Secretary'' for ''Secretary or his delegate''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 94–455, §1901(a)(17)(B), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–455, §§1901(a)(17)(B), (E), 2105(b), 2137(d), added subsec. (e) relating to qualified scholarship funding bonds, redesignated former subsec. (f) relating to cross references as a second subsec. (e), reduced the number of cross references in subsec. (e) as so redesignated from twenty-three (which made reference to various obligations of the United States and of corporations organized under Acts of Congress) to three, relating, respectively, to Puerto Rican bonds, Virgin Islands insular and municipal bonds, and certain obligations issued under title I of the Housing Act of 1949, and inserted a fourth cross reference, designated as par. (24) relating to the treatment of exempt-interest dividends. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–455, §1901(a)(17)(B), redesignated subsec. (f), relating to cross references, as (e).

1975—Subsecs. (e), (f). Pub. L. 94–182 and Pub. L. 94–164 made identical amendments, adding subsec. (e) and redesignating former subsec. (e) as (f).

1971—Subsec. (c)(4)(E). Pub. L. 92–178, §315(a)(1), substituted ''energy or gas,'' for ''energy, gas, or water or''.

Subsec. (c)(4)(F). Pub. L. 92–178, §315(a)(2), substituted '', or'' for a period.

Subsec. (c)(4)(G). Pub. L. 92–178, §315(a)(3), added subpar. (G).

Subsec. (c)(6)(F)(iii). Pub. L. 92–178, §315(b), substituted ''$1,000,000'' for ''$250,000''.

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d) and redesignated former subsec. (d) as (e).

1968—Subsec. (c). Pub. L. 90–364 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(6)(D) to (H). Pub. L. 90–634 added subpars. (D) to (H).

Subsec. (d). Pub. L. 90–364 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(34)(B) of Pub. L. 100–647 provided that: ''Subparagraph (A) [amending this section] shall apply to obligations sold after May 2, 1978, and to which Treasury regulation section 1.103–13 (1979) was provided to apply.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(a) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by sections 1864(b)–(e), 1865(a), 1869(a), (b), 1870, and 1871(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1864(a)(2) of Pub. L. 99–514 provided that:

''(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Oct. 22, 1986] in taxable years ending after such date.

''(B) At the election of the issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe), the amendment made by paragraph (1) shall apply to any obligation issued on or before the date of the enactment of this Act.''

Section 1871(a)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to obligations issued after March 28, 1985, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 624(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1867(a), Oct. 22, 1986, 100 Stat. 2888, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 103A of this title] shall apply with respect to bonds issued after December 31, 1984.

''(2) EXCEPTION.—The amendments made by this section shall not apply to obligations issued for the Essex County New Jersey Resource Recovery Project authorized by the Port Authority of New York and New Jersey on November 10, 1983, as part of an agreement approved by Essex County, New Jersey, on July 7, 1981, and approved by the State of New Jersey on December 31, 1981. The aggregate face amount of bonds to which this paragraph applies shall not exceed $350,000,000.''

Section 626(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XIII, §1317(22), title XVIII, §1869(c)(5), Oct. 22, 1986, 100 Stat. 2095, 2698, 2890; Pub. L. 100–647,

title I, § 1013(g)(24), Nov. 10, 1988, 102 Stat. 3554, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection the amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of enactment of this Act [July 18, 1984].

''(2) EXCEPTIONS FOR CERTAIN STUDENT LOAN PROGRAMS.—

''(A) IN GENERAL.—The amendments made by this section [amending this section] shall not apply to obligations issued by a program described in the following table to the extent the aggregate face amount of such obligations does not exceed the amount of allowable obligations specified in the following table with respect to such program:

Program	Amount of Allowable Obligations
Colorado Student Obligation Bond Authority	$60 million
Connecticut Higher Education Supplementary Loan Authority	$15.5 million
District of Columbia	$50 million
Illinois Higher Education Authority	$70 million
State of Iowa	$16 million
Louisiana Public Facilities Authority	$75 million
Maine Health and Higher Education Facilities Authority	$5 million
Maryland Higher Education Supplemental Loan Program	$24 million
Massachusetts College Student Loan Authority	$90 million
Minnesota Higher Education Coordinating Board	$60 million
New Hampshire Higher Education and Health Facilities Authority	$39 million
New York Dormitory Authority	$120 million
Pennsylvania Higher Education Assistance Agency	$300 million
Georgia Private Colleges and University Authority	$31 million
Wisconsin State Building Commission	$60 million
South Dakota Health and Educational Facilities Authority	$6 million

''(B) PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY.—Subparagraph (A) shall apply to obligations issued by the Pennsylvania Higher Education Assistance Agency only if such obligations are issued solely for the purpose of refunding student loan bonds outstanding on March 15, 1984.

''(3) CERTAIN TAX-EXEMPT MORTGAGE SUBSIDY BONDS.—For purposes of applying section 103(*o*) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the term 'consumer loan bond' shall not include any mortgage subsidy bond (within the meaning of section 103A(b) of such Code) to which the amendments made by section 1102 of the Mortgage Subsidy Bond Tax Act of 1980 [enacting section 103A of this title] do not apply.

''(4) REFUNDING EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any obligation or series of obligations the proceeds of which are used exclusively to refund obligations issued before March 15, 1984, except that—

''(A) the amount of the refunding obligations may not exceed 101 percent of the aggregate face amount of the refunded obligations, and

''(B) the maturity date of any refunding obligation may not be later than the date which is 17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

''(5) EXCEPTION FOR CERTAIN ESTABLISHED PROGRAMS.—The amendments made by this section [amending this section] shall not apply to any obligation substantially all of the proceeds of which are used to carry out a program established under State law which has been in effect in substantially the same form during the 30-year period ending on the date of enactment of this Act [July 18, 1984], but only if such proceeds are used to make loans or to fund similar obligations—

''(A) in the same manner in which,

''(B) in the same (or lesser) amount per participant, and

''(C) for the same purposes for which,

such program was operated on March 15, 1984. This subparagraph shall not apply to obligations issued on or after March 15, 1987.

''(6) CERTAIN BONDS FOR RENEWABLE ENERGY PROPERTY.—The amendments made by this section [amending this section] shall not apply to any obligations described in section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [Pub. L. 96–223, set out as a note below].

''(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section [amending this section] shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

''(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

''(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

''(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992.''

Section 631 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XIII, §§ 1316(j), 1317(43), title XVIII, § 1872(a)–(c)(1), Oct. 22, 1986, 100 Stat. 2095, 2670, 2708, 2891, 2892; Pub. L. 100–647, title I, § 1013(f)(8), (g)(40), Nov. 10, 1988, 102 Stat. 3549, 3557, provided that:

''(a) PRIVATE ACTIVITY BOND CAP.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by section 621 [amending this section] shall apply to obligations issued after December 31, 1983.

''(2) INDUCEMENT RESOLUTION BEFORE JUNE 19, 1984.—The amendment made by section 621 shall not apply to any issue of obligations if—

''(A) there was an inducement resolution (or other comparable preliminary approval) for the issue before June 19, 1984, and

''(B) the issue is issued before January 1, 1985.

''(3) CERTAIN PROJECTS PRELIMINARILY APPROVED BEFORE OCTOBER 19, 1983, GIVEN APPROVAL.—If—

''(A) there was an inducement resolution (or other comparable preliminary approval) for a project before October 19, 1983, by any issuing authority,

''(B) a substantial user of such project notifies the issuing authority within 30 days after the date of the enactment of this Act [July 18, 1984] that it intends to claim its rights under this paragraph, and

''(C) construction of such project began before October 19, 1983, or the substantial user was under a binding contract on such date to incur significant expenditures with respect to such project,

such issuing authority shall allocate its share of the limitation under section 103(n) of such Code for the calendar year during which the obligations were to be issued pursuant to such resolution (or other approval) first to such project. If the amount of obligations required by all projects which meet the requirements of the preceding sentence exceeds the issuing authority's share of the limitation under section 103(n) of such Code, priority under the preceding sentence shall be provided first to those projects for which substantial expenditures were incurred before October 19, 1983. If any issuing authority fails to meet the requirements of this paragraph, the limitation under section 103(n) of such Code for the issuing authority for the calendar year following such failure shall be reduced by the amount of obligations with respect to which such failure occurred.

''(3) [(4)] EXCEPTION FOR CERTAIN BONDS FOR A CONVENTION CENTER AND RESOURCE RECOVERY PROJECT.—In the case of any city, if—

''(A) the city council of such city authorized a feasibility study for a convention center on June 10, 1982, and

''(B) on November 4, 1983, a municipal authority acting for such city accepted a proposal for the construction of a facility that is capable of generating steam and electricity through the combustion of municipal waste,

the amendment made by section 621 shall not apply to any issue, issued during 1984, 1985, 1986, or 1987 and substantially all of the proceeds of which are to be used to finance the convention center (or access ramps and parking facilities therefor) described in subparagraph (A) or the facility described in subparagraph (B).

''(b) PROPERTY FINANCED WITH TAX-EXEMPT BONDS REQUIRED TO BE DEPRECIATED ON STRAIGHT-LINE BASIS.—

''(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by section 628(b) [amending section 168 of this title] shall apply to property placed in service after December 31, 1983, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after October 18, 1983.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by section 628(b) shall not apply with respect to facilities—

''(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, or

''(ii) with respect to which a binding contract to incur significant expenditures was entered into before October 19, 1983.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1983, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before October 19, 1983, the amendments made by section 628(b) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1984, the amendments made by section 628(b) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before October 19, 1983.

''(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before October 19, 1983, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(c) OTHER PROVISIONS RELATING TO TAX-EXEMPT BONDS.—

''(1) IN GENERAL.—Except as otherwise provided in this subtitle, the amendments made by sections 622, 623, 627, and 628(c), (d), and (e) (and the provisions of sections 625(c), 628(f), and 629(b)) [amending this section and enacting provisions set out as notes under this section] shall apply to obligations issued after December 31, 1983.

''(2) OBLIGATIONS INVESTED IN FEDERALLY INSURED DEPOSITS.—Notwithstanding any other provision of this section, clause (ii) of section 103(h)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle) shall apply to obligations issued after April 14, 1983; except that such clause shall not apply to any obligation issued pursuant to a binding contract in effect on March 4, 1983.

''(3) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments (and provisions) referred to in paragraph (1) shall not apply to obligations with respect to facilities—

''(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, and was completed on or after such date,

''(ii) the original use of which commences with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before October 19, 1983, and some of such expenditures are incurred on or after such date, or

''(iii) acquired after October 19, 1983, pursuant to a binding contract entered into on or before such date.

''(B) FACILITIES.—Subparagraph (C) of subsection (b)(2) shall apply for purposes of subparagraph (A) of this paragraph.

''(C) EXCEPTION.—Subparagraph (A) shall not apply with respect to the amendment made by section 628(e) and the provisions of sections 628(f) and 629(b) [amending this section and enacting provisions set out as notes under this section].

''(4) REPEAL OF ADVANCE REFUNDING OF QUALIFIED PUBLIC FACILITIES.—The amendment made by section 628(g) [amending this section] shall apply to refunding obligations issued after the date of the enactment of this Act [July 18, 1984]; except that if substantially all the proceeds of the refunded issue were used to provide airports or docks, such amendment shall only apply to refunding obligations issued after December 31, 1984. In the case of refunding obligations not to exceed $100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting 'the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988]' for 'December 31, 1984' and the amendments made by section 1301 of the Tax Reform Act of 1986 [section 1301 of Pub. L. 99–514, enacting sections 141 to 150 and 7703 of this title, amending this section and sections 2, 22, 25, 32, 86, 105, 152, 153, 163, 194, 269A, 414, 879, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing section 103A of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall not apply. In the case of refunding obligations not exceeding $100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting 'December 31, 1987' for 'December 31, 1984' and the Internal Revenue Code of 1986 shall be applied without regard to section 149(d)(2)..[sic]

''(5) SPECIAL RULE FOR HEALTH CLUB FACILITIES.—In the case of any health club facility, with respect to the amendment made by section 627(c) [amending this section]—

''(A) paragraph (1) shall be applied by substituting 'April 12, 1984' for 'December 31, 1983', and

''(B) paragraph (3) shall be applied by substituting 'April 13, 1984' for 'October 19, 1983' each place it appears.

''(d) PROVISIONS OF THIS SUBTITLE NOT TO APPLY TO CERTAIN PROPERTY.—The amendments made by this subtitle [sections 621–632 of Pub. L. 98–369, amending this section and sections 103A and 168 of this title and enacting provisions set out as notes under this section] shall not apply to any property (and shall not apply to obligations issued to finance such property) if such property is described in any of the following paragraphs:

''(1) Any property described in paragraph (5), (6), or (7) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title].

''(2) Any property described in paragraph (4), (8), or (17) of section 31(g) of this Act [set out as an Effective

Date of 1984 Amendment note under section 168 of this title] but only if the obligation is issued before January 1, 1985, and only if before June 19, 1984, the issuer had evidenced an intent to issue obligations exempt from taxation under the Internal Revenue Code of 1986 in connection with such property.

''(3) Any property described in paragraph (3) of section 216(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [set out as an Effective Date of 1982 Amendment note under section 168 of this title].

''(4) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1986 if—

''(A) a State public authority created pursuant to State legislation which took effect on June 18, 1973, took formal action before October 19, 1983, to commit development funds for such facility.

''(B) such authority issues obligations for any such facility before January 1, 1987, and

''(C) expenditures have been made for the development of any such facility before October 19, 1983.

''(5) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] if—

''(A) a city government, by resolutions adopted on April 10, 1980, and December 27, 1982, took formal action to authorize the submission of a proposal for a feasibility study for such facility and to authorize the presentation to the Department of the Army (U.S. Army Missile Command) of a proposed agreement to jointly pursue construction and operation of such facility,

''(B) such city government (or a public authority on its behalf) issues obligations for such facility before January 1, 1988, and

''(C) expenditures have been made for the development of such facility before October 19, 1983. Notwithstanding the foregoing provisions of this subsection, the amendments made by section 624 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] (relating to arbitrage) shall apply to obligations issued to finance property described in paragraph (5).

''(e) DETERMINATION OF SIGNIFICANT EXPENDITURE.—

''(1) IN GENERAL.—For purposes of this section, the term 'significant expenditures' means expenditures which equal or exceed the lesser of—

''(A) $15,000,000, or

''(B) 20 percent of the estimated cost of the facilities.

''(2) CERTAIN GRANTS TREATED AS EXPENDITURES.—For purposes of paragraph (1), the amount of any UDAG grant preliminarily approved on May 5, 1981, or April 4, 1983, shall be treated as an expenditure with respect to the facility for which such grant was so approved.

''(f) EXCEPTIONS FOR CERTAIN OTHER AMENDMENTS.—If—

''(1) there was an inducement resolution (or other comparable preliminary approval) for an issue before June 19, 1984, by any issuing authority, and

''(2) such issue is issued before January 1, 1985, the following amendments shall not apply:

''(A) the amendments made by section 623 [amending this section],

''(B) the amendments made by subsections (a) and (b) of section 627 [amending this section] (except to the extent such amendments relate to farm land),

''(C) in the case of a race track, the amendment made by section 627(c) [amending this section], and

''(D) the amendments made by section 628(c) [amending this section].''

[Section 1872(a)(2)(B) of Pub. L. 99–514 provided that the amendment of section 631(c)(3) of Pub. L. 98–369, set out above, made by section 1872(a)(2)(B) of Pub. L. 99–514 is effective with respect to obligations issued after Mar. 28, 1985.]

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(2) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 214(f) of Pub. L. 97–248 provided that:

''(1) COMPOSITE ISSUES; SMALL ISSUE EXEMPTION.—The amendments made by subsections (a) and (b) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

''(2) TERMINATION.—The amendment made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 3, 1982].

''(3) RESEARCH EXPENDITURES.—The amendment made by subsection (d) [amending this section] shall apply with respect to expenditures made after the date of the enactment of this Act [Sept. 3, 1982].

''(4) CERTAIN FACILITIES.—The amendment made by subsection (e) [amending this section] shall apply to obligations issued after December 31, 1982.''

Section 215(c) of Pub. L. 97–248 provided that:

''(1) PUBLIC APPROVAL.—The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1982, other than obligations issued solely to refund any obligation which—

''(A) was issued before July 1, 1982, and

''(B) has a maturity which does not exceed 3 years.

''(2) INFORMATION REPORTING.—The amendments made by subsection (b) [amending this section] shall apply to obligations issued after December 31, 1982 (including any obligation issued to refund an obligation issued before such date).''

Section 217(e) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title VII, § 712(h), July 18, 1984, 98 Stat. 947; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982]. For purposes of applying section 168(f)(8)(D)(v) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by subsection (c) [amending this section] shall apply to agreements entered into after the date of the enactment of this Act.''

Section 219(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1982.''

Section 221(d) of Pub. L. 97–248 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

''(2) EXCEPTION.—The amendments made by this section shall not apply with respect to any obligation to which the amendments made by section 1103 of the Mortgage Subsidy Bond Tax Act of 1980 [section 1103 of Pub. L. 96–499, amending this section] do not apply by reason of section 1104 of such Act [section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title].''

Section 310(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(b)(2), 96 Stat. 2405; Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8; 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 4701 of this title and section 757c–5 of former Title 31, Money and Finance, and amending this section and sections 103A, 163, 165, 312, and 1232 of this title] shall apply to obligations issued after December 31, 1982.

''(2) [Repealed. Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8.]

''(3) EXCEPTION FOR CERTAIN WARRANTS, ETC.—The amendments made by subsection (b) [enacting section 4701 of this title and amending this section and sections 163, 165, 312, and 1232 of this title] shall not apply to any obligations issued after December 31, 1982, on the exercise of a warrant or the conversion of a convertible obligation if such warrant or obligation was offered or sold outside the United States without registration

under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and was issued before August 10, 1982. A rule similar to the rule of the preceding sentence shall also apply in the case of any regulations issued under section 163(f)(2)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) except that the date on which such regulations take effect shall be substituted for 'August 10, 1982'.

''(4) [Repealed. Pub. L. 98–216, §6(b), Feb. 14, 1984, 98 Stat. 8.]''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 811(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 13, 1981].''

Section 812(b)(1) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–499, see section 1104 of Pub. L. 96–499, set out as an Effective Date note under section 103A of this title.

Section 241(d) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] and the provisions of subsections (b) and (c) [set out as notes under this section] shall apply with respect to obligations issued after October 18, 1979.''

Section 242(c) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] and the provisions of subsection (b) [set out as a note under this section] shall apply with respect to obligations issued after October 18, 1979.''

Section 244(b) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to obligations issued on or after October 18, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 201(c) of Pub. L. 95–339 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 1978].''

Section 331(c) of Pub. L. 95–600 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply to—

''(A) obligations issued after December 31, 1978, in taxable years ending after such date, and

''(B) capital expenditures made after December 31, 1978, with respect to obligations issued before January 1, 1979.

''(2) The amendment made by subsection (b) [amending this section] shall apply to—

''(A) obligations issued after September 30, 1979, in taxable years ending after such date, and

''(B) capital expenditures made after September 30, 1979, with respect to obligations issued after such date.''

Section 332(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date.''

Section 333(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date.''

Section 334(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978].''

Section 703(q)(2) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to payments made by the Commissioner of Education after December 31, 1976.''

Amendment by section 703(j)(1) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(17), (b)(8)(B) of Pub. L. 94–455 applicable with respect to taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Section 2105(d) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section] apply to obligations issued on or after the date of the enactment of this Act [Oct. 4, 1976].''

Amendment by section 2137(d) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 2137(e) of Pub. L. 94–455, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 301(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Dec. 31, 1975].''

Section 7(b) of Pub. L. 94–164 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of enactment of this Act [Dec. 23, 1975].''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 315(c) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after January 1, 1969. The amendment made by subsection (b) [amending this section] shall apply with respect to expenditures incurred after the date of the enactment of this Act [Dec. 10, 1971].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 601(b) of Pub. L. 91–172 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after October 9, 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 401(b) of Pub. L. 90–634 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to obligations issued after the date of the enactment of this Act [Oct. 24, 1968].''

Section 107(b)(1) of Pub. L. 90–364 provided that: ''Except as provided by paragraph (2) [set out as a note below], the amendment made by subsection (a) [amending this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date.''

TRANSFER OF FUNCTIONS

Functions of Commissioner of Education transferred to Secretary of Education by section 3441(a)(1) of Title 20, Education.

COORDINATION OF CERTAIN AMENDMENTS MADE BY PUB. L. 97–424 AND PUB. L. 97–473

Section 722(b) of Pub. L. 98–369 provided that: ''For purposes of applying the amendments made by section 547 of the Highway Revenue Act of 1982 [Pub. L. 97–424, amending this section] and the amendment made by section 202(b)(2) of Public Law 97–473 [amending this section], Public Law 97–473 shall be deemed to have been enacted immediately before the Highway Revenue Act of 1982.''

VALIDATION OF SINKING FUND REGULATIONS

Section 1013(a)(35) of Pub. L. 100–647 provided that:

''(A) Treasury Regulation section 1.103–13(g) (1979) is hereby enacted into positive law.

''(B)(i) Except as provided in clause (ii), subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which such regulation was provided to apply.

''(ii) Treasury Regulation section 1.103–13(g) (1979) as enacted into positive law by subparagraph (A) shall cease to apply to the extent hereafter modified by the Secretary of the Treasury or his delegate by regulations.''

BONDS ISSUED TO REFUND SUBSECTION (*o*)(3) OBLIGATIONS

Section 1013(c)(15) of Pub. L. 100–647 provided that: ''A bond issued to refund an obligation described in section 103(*o*)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) shall not be treated as described in section 144(b) of the 1986 Code unless it is described in section 144(b)(1)(A) of the 1986 Code.''

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.

TREATMENT OF CERTAIN GUARANTEES BY FARMERS HOME ADMINISTRATION

Section 1865(b) of Pub. L. 99–514 provided that: ''An obligation shall not be treated as federally guaranteed for purposes of section 103(h) of the Internal Revenue Code of 1954 [now 1986] by reason of a guarantee by the Farmers Home Administration if—

''(1) such guarantee is pursuant to a commitment made by the Farmers Home Administration before July 1, 1984, and

''(2) such obligation is issued to finance a convention center project in Carbondale, Illinois.''

TREATMENT OF CERTAIN OBLIGATIONS USED TO FINANCE SOLID WASTE DISPOSAL FACILITY

Section 1865(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Any obligation which is part of an issue a substantial portion of the proceeds of which is to be used to finance a solid waste disposal facility described in paragraph (2) shall not, for purposes of section 103(h) of the Internal Revenue Code of 1954 [now 1986], be treated as an obligation which is federally guaranteed by reason of the sale of fuel, steam, electricity, or other forms of usable energy to the Federal Government or any agency or instrumentality thereof.

''(2) SOLID WASTE DISPOSAL FACILITY.—A solid waste disposal facility is described in this paragraph if such facility is described in section 103(b)(4)(E) of such Code and—

''(A) if—

''(i) a public State authority created pursuant to State legislation which took effect on July 1, 1980, took formal action before October 19, 1983, to commit development funds for such facility,

''(ii) such authority issues obligations for such facility before January 1, 1988, and

''(iii) expenditures have been made for the development of such facility before October 19, 1983,

''(B) if—

''(i) such facility is operated by the South Eastern Public Service Authority of Virginia, and

''(ii) on December 20, 1984, the Internal Revenue Service issued a ruling concluding that a portion of the obligations with respect to such facility would not be treated as federally guaranteed under section 103(h) of such Code by reason of the transitional rule contained in section 631(c)(3)(A)(i) of the Tax Reform Act of 1984 [section 631(c)(3)(A)(i) of Pub. L. 98–369, set out as a note above],

''(C) if—

''(i) a political subdivision of a State took formal action on April 1, 1980, to commit development funds for such facility,

''(ii) such facility has a contract to sell steam to a naval base,

''(iii) such political subdivision issues obligations for such facility before January 1, 1988, and

''(iv) expenditures have been made for the development of such facility before October 19, 1983, or

''(D) if—

''(i) such facility is a thermal transfer facility,

''(ii) is to be built and operated by the Elk Regional Resource Authority, and

''(iii) is to be on land leased from the United States Air Force at Arnold Engineering Development Center near Tullahoma, Tennessee.

''(3) LIMITATIONS.—

''(A) In the case of a solid waste disposal facility described in paragraph (2)(A), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $65,000,000.

''(B) In the case of a solid waste disposal facility described in paragraph (2)(B), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $20,000,000. Such amount shall be in addition to the amount permitted under the Internal Revenue Service ruling referred to in paragraph (2)(B)(ii).

''(C) In the case of a solid waste disposal facility described in paragraph (2)(C), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $75,000,000.

''(D) In the case of a solid waste disposal facility described in paragraph (2)(D), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $25,000,000.''

TRANSITIONAL RULE FOR LIMIT ON SMALL ISSUE EXCEPTION

Section 1866 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3584, provided that: ''The amendment made by section 623 of the Tax Reform Act of 1984 [section 623 of Pub. L. 98–369, amending this section] shall not apply to any obligation (or series of obligations) issued to refund another tax-exempt IDB to which the amendment made by such section 623 did not apply if—

''(1) the average maturity of the issue of which the refunding obligation is a part does not exceed the average maturity of the obligations to be refunded by such issue,

''(2) the amount of the refunding obligation does not exceed the amount of the refunded obligation, and

''(3) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of the preceding sentence, the term 'tax-exempt IDB' means any industrial development bond (as defined in section 103(b) of the Internal Revenue Code of 1954 [now 1986]) the interest on which is exempt from tax under section 103(a) of such Code. For purposes of paragraph (1), average maturity shall be determined in accordance with subsection (b)(14)(B)(i) of such Code.''

[Section 1018(m)(5) of Pub. L. 100–647 provided that: ''A refunding obligation issued before July 1, 1987, shall be treated as meeting the requirement of paragraph (1) of section 1866 of the Reform Act [Pub. L. 99–514, set out above] if such obligation met the requirement of such paragraph as enacted by the Reform Act [Pub. L. 99–514].''']

EXCEPTION FROM 1984 AMENDMENT FOR DOWNTOWN MUSKOGEE REVITALIZATION PROJECT

Section 1867(b) of Pub. L. 99–514 provided that: ''The amendment made by section 624 of the Tax Reform Act of 1984 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] shall not apply to obligations issued with respect to the Downtown Muskogee Revitalization Project for

which a UDAG grant was preliminarily approved on May 5, 1981, if—

''(1) such obligation is issued before January 1, 1986, or

''(2) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subsection applies shall not exceed $10,000,000.''

TRANSITIONAL RULES

Section 1869(c)(1)–(4) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(n), Nov. 10, 1988, 102 Stat. 3584, provided that:

''(1) TREATMENT OF CERTAIN OBLIGATIONS ISSUED BY THE CITY OF BALTIMORE.—Obligations issued by the city of Baltimore, Maryland, after June 30, 1985, shall not be treated as private loan bonds for purposes of section 103(*o*) of the Internal Revenue Code of 1954 [now 1986] (or as private activity bonds for purposes of section 103 and part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by title XIII of this Act [sections 1301 to 1318 of Pub. L. 99–514]) by reason of the use of a portion of the proceeds of such obligations to finance or refinance temporary advances made by the city of Baltimore in connection with loans to persons who are not exempt persons (within the meaning of section 103(b)(3) of such Code) if—

''(A) such obligations are not industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 [now 1986]),

''(B) the portion of the proceeds of such obligations so used is attributable to debt approved by voter referendum on or before November 2, 1982,

''(C) the loans to such nonexempt persons were approved by the Board of Estimates of the city of Baltimore on or before October 19, 1983, and

''(D) the aggregate amount of such temporary advances financed or refinanced by such obligations does not exceed $27,000,000.

''(2) WHITE PINE POWER PROJECT.—The amendment made by section 626(a) of the Tax Reform Act of 1984 [section 626(a) of Pub. L. 98–369, amending this section] shall not apply to any obligation issued during 1984 to provide financing for the White Pine Power Project in Nevada.

''(3) TAX INCREMENT BONDS.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to any tax increment financing obligation issued before August 16, 1986, if—

''(A) substantially all of the proceeds of the issue are to be used to finance—

''(i) sewer, street, lighting, or other governmental improvements to real property,

''(ii) the acquisition of any interest in real property (by a governmental unit having the power to exercise eminent domain), the preparation of such property for new use, or the transfer of such interest to a private developer, or

''(iii) payments of reasonable relocation costs of prior users of such real property,

''(B) all of the activities described in subparagraph (A) are pursuant to a redevelopment plan adopted by the issuing authority before the issuance of such issue,

''(C) repayment of such issue is secured exclusively by pledges of that portion of any increase in real property tax revenues (or their equivalent) attributable to the redevelopment resulting from the issue (or similar issues), and

''(D) none of the property described in subparagraph (A) is subject to a real property or other tax based on a rate or valuation method which differs from the rate and valuation method applicable to any other similar property located within the jurisdiction of the issuing authority.

''(4) EASTERN MAINE ELECTRIC COOPERATIVE.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to obligations issued by Massachusetts Municipal Wholesale Electric Company Project No. 6 if—

''(A) such obligation is issued before January 1, 1986,

''(B) such obligation is issued after such date to refund a prior obligation for such project, except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $100,000,000, or

''(C) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

Subparagraph (B) shall not apply to any obligation issued for the advance refunding of any obligation.''

TREATMENT OF OBLIGATIONS TO FINANCE ST. JOHNS RIVER POWER PARK

Section 1869(c)(6) of Pub. L. 99–514 provided that:

''(A) IN GENERAL.—The amendment made by section 626(a) of the Tax Reform Act of 1984 [section 626(a) of Pub. L. 98–369, amending this section] shall not apply to any obligation issued to finance the project described in subparagraph (B) if—

''(i) such obligation is issued before September 27, 1985,

''(ii) such obligation is issued after such date to refund a prior tax exemption obligation for such project, the amount of such obligation does not exceed the outstanding amount of the refunded obligation, and such prior tax exempt obligation is retired not later than the date 30 days after the issuance of the refunding obligation, or

''(iii) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this clause applies shall not exceed $150,000,000.

Clause (ii) shall not apply to any obligation issued for the advance refunding of any obligation.

''(B) DESCRIPTION OF PROJECT.—The project described in this subparagraph in the St. Johns River Power Park system in Florida which was authorized by legislation enacted by the Florida Legislature in February of 1982.''

CERTAIN PUBLIC UTILITIES TREATED AS EXEMPTED PERSONS UNDER SECTION 103(b); SPECIAL RULES FOR CERTAIN RAILROADS

Section 629 of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XIII, §1316(g)(8)(B), Oct. 22, 1986, 100 Stat. 2095, 2670, provided that:

''(a) CERTAIN PUBLIC UTILITIES.—For purposes of applying section 103(b)(3) of the Internal Revenue Code [of 1986] with respect to—

''(1) any obligations issued after the date of enactment of this Act [July 18, 1984], and

''(2) any obligations issued after December 31, 1969, which were treated as obligations described in section 103(a) of such Code on the day on which such obligations were issued,

the term 'exempt person' shall include a regulated public utility having any customer service area within a State served by a public power authority which was required as a condition of a Federal Power Commission license specified by an Act of Congress enacted prior to the enactment of section 107 of the Revenue and Expenditure Control Act of 1968 (Public Law 90–364) [June 28, 1968] to contract to sell power to one such utility and which is authorized by State law to sell power to other such utilities, but only with respect to the purchase by any such utility and resale to its customers of any output of any electrical generation facility or any portion thereof or any use of any electrical transmission facility or any portion thereof financed by such power authority and owned by it or by such State, and provided that by agreement between such power authority and any such utility there shall be no markup in the resale price charged by such utility of that component of the resale price which represents the price paid by such utility for such output or use. The preceding sentence shall be applied by inserting 'and a rural electric cooperative utility' after 'regulated public util-

ity' but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility.

''(b) CERTAIN RAILROADS.—Section 103(b)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation which is described in section 103(b)(6)(A) of such Code if—

''(1) substantially all of the proceeds of such obligation are used to acquire railroad track and right-of-way from a railroad involved in a title 11 or similar proceeding (within the meaning of section 368(a)(3)(A) of such Code), and

''(2) the Federal Railroad Administration provides joint financing for such acquisitions.

''(c) SPECIAL RULES FOR SUBSECTION (a).—

''(1) OBLIGATIONS SUBJECT TO CAP.—Any obligation described in subsection (a) shall be treated as a private activity bond for purposes of section 103(n) of the Internal Revenue Code of 1986.

''(2) LIMITATION ON AMOUNT OF OBLIGATIONS TO WHICH SUBSECTION (a)(1) APPLIES—The aggregate amount of obligations to which subsection (a)(1) applies shall not exceed $911,000,000.

''(3) LIMITATION ON PURPOSES.—Subsection (a)(1) shall only apply to obligations issued as part of an issue substantially all the proceeds of which are used to provide 1 or more of the following:

''(A) Cable facilities.

''(B) Small hydroelectric facilities.

''(C) The acquisition of an interest in an electrical generating facility.

''(D) Improvements to existing generating facilities.

''(E) Transmission lines.

''(F) Electric generating facilities.''

TREATMENT OF CERTAIN RESIDENTIAL REAL PROPERTY AS RESIDENTIAL RENTAL PROPERTY

Treatment of Pub. L. 98–369, §631(d)(3), residential real property as residential rental property, see section 1809(a)(4)(C) of Pub. L. 99–514, set out as a note under section 168 of this title.

PUBLIC APPROVAL REQUIREMENT IN THE CASE OF PUBLIC AIRPORT

Section 628(f) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(1) the proceeds of any issue are to be used to finance a facility or facilities located on a public airport, and

''(2) the governmental unit issuing such obligations is the owner or operator of such airport,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport for purposes of subsection (k) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to public approval for industrial development bonds).''

SMALL ISSUE LIMIT IN CASE OF CERTAIN URBAN DEVELOPMENT ACTION GRANTS

Section 628(h) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any obligation issued on December 11, 1981, section 103(b)(6)(I) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied by substituting '$15,000,000' for '$10,000,000' if—

''(1) such obligation is part of an issue,

''(2) substantially all of the proceeds of such issue are used to provide facilities with respect to which an urban development action grant under section 119 of the Housing and Community Development Act of 1974 [42 U.S.C. 5318] was preliminarily approved by the Secretary of Housing and Urban Development on January 10, 1980, and

''(3) the Secretary of Housing and Urban Development determines, at the time such grant is approved, that the amount of such grant will equal or exceed 5 percent of the total capital expenditures incurred with respect to such facilities.''

STUDENT LOAN BONDS

Pub. L. 98–369, div. A, title VI, §625, July 18, 1984, 98 Stat. 924, as amended by Pub. L. 99–514, §2, title XVIII, §1868, Oct. 22, 1986, 100 Stat. 2095, 2888, provided that:

''(a) ARBITRAGE REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall prescribe regulations which specify the circumstances under which a qualified student loan bond shall be treated as an arbitrage bond for purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. Such regulations may provide that—

''(A) paragraphs (4) and (5) of section 103(c) of such Code shall not apply, and

''(B) rules similar to section 103(c)(6) shall apply, to qualified student loan bonds.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) QUALIFIED STUDENT LOAN BOND.—The term 'qualified student loan bond' has the meaning given to such term by section 103(*o*)(3) of the Internal Revenue Code of 1986 (as amended by this Act).

''(B) ARBITRAGE BOND.—The term 'arbitrage bond' has the meaning given to such term by section 103(c)(2).

''(3) EFFECTIVE DATE.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, any regulations prescribed by the Secretary under paragraph (1) shall apply to obligations issued after the qualified date.

''(B) QUALIFIED DATE.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'qualified date' means the earlier of—

''(I) the date on which the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] expires, or

''(II) the date, after the date of enactment of this Act [July 18, 1984], on which the Higher Education Act of 1965 is reauthorized.

''(ii) PUBLICATION OF REGULATIONS.—Notwithstanding clause (i), the qualified date shall not be a date which is prior to the date that is 6 months after the date on which the regulations prescribed under paragraph (1) are published in the Federal Register.

''(C) REFUNDING OBLIGATIONS.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligation (or series of refunding obligations) issued exclusively to refund any qualified student loan bond which was issued before the qualified date, except that the requirements of subparagraphs (A) and (B) of section 626(b)(4) of this Act [set out in Effective Date of 1984 Amendment note above] must be met with respect to such refunding.

''(D) FULFILLMENT OF COMMITMENTS.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligations which are needed to fulfill written commitments to acquire or finance student loans which are originated after June 30, 1984, and before the qualified date, but only if—

''(i) such commitments are binding on the qualified date, and

''(ii) the amount of such commitments is consistent with practices of the issuer which were in effect on March 15, 1984, with respect to establishing secondary markets for student loans.

''(b) ARBITRAGE LIMITATION ON STUDENT LOAN BONDS WHICH ARE NOT QUALIFIED STUDENT LOAN BONDS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, any student loan bond (other than a qualified student loan bond) issued after December 31, 1985, shall be treated as an obligation not described in subsection (a)(1) or (2) of section 103 of the Internal Revenue Code of 1986 unless the issue of which such obligation is a part meets requirements similar to those of sections 103(c)(6) and 103A(i) of such Code.

''(c) ISSUANCE OF STUDENT LOAN BONDS WHICH ARE NOT TAX-EXEMPT.—Any issuer who may issue obliga-

tions described in section 103(a) of the Internal Revenue Code of 1986 may elect to issue student loan bonds which are not described in such section 103(a) of such Code without prejudice to—

''(1) the status of any other obligations issued, or to be issued, by such issuer as obligations described in section 103(a) of such Code, or

''(2) the status of the issuer as an organization exempt from taxation under such Code.

''(d) FEDERAL EXECUTIVE BRANCH JURISDICTION OVER TAX-EXEMPT STATUS.—For purposes of Federal law, any determination by the executive branch of the Federal Government of whether interest on any obligation is exempt from taxation under the Internal Revenue Code of 1986 shall be exclusively within the jurisdiction of the Department of the Treasury.

''(e) STUDY ON TAX-EXEMPT STUDENT LOAN BONDS.—

''(1) IN GENERAL.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall conduct studies of—

''(A) the appropriate role of tax-exempt bonds which are issued in connection with the guaranteed student loan program and the PLUS program established under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.], and

''(B) the appropriate arbitrage rules for such bonds.

''(2) REPORT.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall submit to the Committee on Finance and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives reports on the studies conducted under paragraph (1) by no later than 9 months after the date of enactment of this Act [July 18, 1984].''

OBLIGATIONS ISSUED TO PROVIDE SOLID WASTE-ENERGY PRODUCING FACILITIES

Section 241(b) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—For purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any obligation issued by an authority for 2 or more political subdivisions of a State which is part of an issue substantially all of the proceeds of which are to be used to provide solid waste-energy producing facilities shall be treated as an obligation of a political subdivision of a State which meets the requirements of section 103(b)(4)(E) of such Code (relating to solid waste disposal, etc., facilities). Nothing in the preceding sentence shall be construed to override the limitations of section 103(c) of such Code (relating to arbitrage bonds).

''(2) SOLID WASTE-ENERGY PRODUCING FACILITIES.—For purposes of paragraph (1), the term 'solid waste-energy producing facilities' means any solid waste disposal facility and any facility for the production of steam and electrical energy if—

''(A) substantially all of the fuel for the facility producing steam and electrical energy is derived from solid waste from such solid waste disposal facility,

''(B) both such solid waste disposal facility and the facility producing steam and electrical energy are owned and operated by the authority referred to in paragraph (1), and

''(C) all of the electrical energy and steam produced by the facility for producing steam and electricity which is not used by such facility is sold, for purposes other than resale, to an agency or instrumentality of the United States.

''(3) SOLID WASTE DISPOSAL FACILITY.—For purposes of paragraph (2), the term 'solid waste disposal facility' means any solid waste disposal facility within the meaning of section 103(b)(4)(E) of the Internal Revenue Code of 1986 (determined without regard to section 103(g) of such Code).

''(4) OBLIGATIONS MUST BE IN REGISTERED FORM.—This subsection shall not apply to any obligation which is not issued in registered form.''

ALCOHOL-PRODUCING FACILITIES

Section 241(c) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Subparagraph (C) of section 103(g)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not apply to any facility for the production of alcohol from solid waste if—

''(A) substantially all of the solid waste derived feedstock for such facility is produced at a facility which—

''(i) went into full production in 1977,

''(ii) is located within the limits of a city, and

''(iii) is located in the same metropolitan area as the alcohol-producing facility, and

''(B) before March 1, 1980, there were negotiations between a governmental body and an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 with respect to the utilization of a special process for the production of alcohol at such alcohol-producing facility.

''(2) LIMITATION.—The aggregate amount of obligations which may be issued by reason of paragraph (1) with respect to any project shall not exceed $30,000,000.

''(3) TERMINATION.—This subsection shall not apply to obligations issued after December 31, 1985.''

HYDROELECTRIC GENERATING FACILITIES

Section 242(b) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—For purposes of section 103(b)(4)(H) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to qualified hydroelectric generating facilities), in the case of a hydroelectric generating facility described in paragraph (2)—

''(A) the facility shall be treated as a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) without regard to clause (ii) of section 48(*l*)(13)(B) of such Code (relating to maximum generating capacity), and

''(B) the fraction referred to in subparagraph (C) of section 103(b)(8) of such Code shall be deemed to be 1.

''(2) FACILITIES TO WHICH PARAGRAPH (1) APPLIES.—A facility is described in this paragraph if—

''(A) it would be a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) if clause (ii) of section 48(*l*)(13)(B) did not apply,

''(B) it constitutes an expansion of generating capacity at an existing hydroelectric generating facility,

''(C) such facility is located at 1 of 2 dams located in the same county where—

''(i) the rated capacity of the hydroelectric generating facilities at each such dam on October 18, 1979, was more than 750 megawatts,

''(ii) the construction of the first such dam began in 1956, power at such first dam was first generated in 1959, and full power production at such first dam began in 1961, and

''(iii) the construction of the second such dam began in 1959, power at such second dam was first generated in 1963, and full power production at such second dam began in 1964,

''(D) acquisition or construction of the existing facility referred to in subparagraph (B) was financed with the proceeds of an obligation described in section 103(a)(1) of such Code,

''(E) the existing facility is owned and operated by a State, political subdivision of a State, or agency or instrumentality of any of the foregoing,

''(F) no more than 60 percent of the electric power and energy produced by such existing facility and of the qualified hydroelectric generating facility is to be sold to anyone other than an exempt person (within the meaning of section 103(b)(3) of such Code), and

''(G) the agency of the State in which the facility is located which has jurisdiction over water rights had granted, before October 18, 1979, a water right under which expanded power and energy generating capacity for the facility was contemplated.''

STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY

Section 243 of Pub. L. 96–223, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) CERTAIN STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY.—

''(1) IN GENERAL.—Paragraph (1) of subsection (b) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used to provide renewable energy property, if—

''(A) the obligations are general obligations of a State,

''(B) the authority for the issuance of the obligations requires that taxes be levied in sufficient amount to provide for the payment of principal and interest on such obligations,

''(C) the amount of such obligations, when added to the sum of the amounts of all such obligations previously issued by the State which are outstanding, does not exceed the smaller of—

''(i) $500,000,000 or

''(ii) one-half of 1 percent of the value of all property in the State,

''(D) such obligations are issued pursuant to a program to provide financing for small scale energy projects which was established by a State the legislature of which, before October 18, 1979, approved a constitutional amendment to provide for such a program, and

''(E) such obligations meet the requirements of paragraph (1) of section 103(h) of the Internal Revenue Code of 1986.

''(2) RENEWABLE ENERGY PROPERTY.—For purposes of this subsection, the term 'renewable energy property' means property used to produce energy (including heat, electricity, and substitute fuels) from renewable energy sources (including wind, solar, and geothermal energy, waste heat, biomass, and water).

''(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to obligations issued after the date of enactment of this Act [Apr. 2, 1980].''

DISPOSITION OF AMOUNTS GENERATED BY ADVANCE REFUNDING OF CERTAIN GOVERNMENTAL OBLIGATIONS

Section 337 of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 103(a)(8), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—The payment to a charitable organization of a refund profit held in a trust fund or escrow arrangement, or held by an underwriter or other person under a qualified agreement in accordance with that agreement—

''(1) shall not cause the refunding obligations out of which the refund profit arose to be treated as arbitrage bonds (within the meaning of section 103(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and

''(2) may be paid without penalty imposed on the issuer of such obligations.

''(b) RULE FOR GOVERNMENTS WHICH HAVE ALREADY PAID ARBITRAGE PROFITS TO THE UNITED STATES.—In the case of a State or local government which, before January 1, 1977—

''(1) requested in writing a rule by the Internal Revenue Service with respect to the tax consequences of paying refund profit to charitable organizations,

''(2) failed to receive a favorable ruling and did not pay the refund profit to a charitable organization, and

which accounted to the United States for refund profit by direct payment to the United States, or by the purchase of low-interest United States obligations, the Secretary of the Treasury shall pay, out of any amounts in the Treasury not otherwise appropriated, an amount equal to the refund profit for which the State or local government has accounted to the United States. Amounts paid to a State or local government under this subsection shall be distributed to such charitable organizations within 90 days after the date on which the payment is received by the State or local government in the same manner as if the refund profit had not been paid to the United States and met the requirements of subsection (a).

''(c) DEFINITIONS.—For purposes of this section—

''(1) REFUND PROFIT.—The term 'Refund profit' means interest, profit, or other amounts generated by, or arising out of, the advance refunding, before September 24, 1976, of an obligation of a State or local government described in section 103 of such Code.

''(2) CHARITABLE ORGANIZATION.—The term 'charitable organization' means an organization described in section 501(c)(3) of such Code and exempt from taxation under section 501(a) of such Code other than an organization described in section 509(a) of such Code.

''(3) QUALIFIED AGREEMENT.—The term 'qualified agreement' means an agreement (whether or not enforceable) which provides for, or contemplates, the payment of refund profit to one or more charitable organizations.

''(4) LOW-INTEREST UNITED STATES OBLIGATIONS.—The term 'low-interest United States obligations' means United States obligations which bear an interest rate lower than the highest rate of interest borne by public debt securities generally available for purchase at the time such obligations were purchased.''

TRANSITIONAL PROVISIONS FOR INDUSTRIAL DEVELOPMENT BONDS ISSUED BEFORE JANUARY 1, 1969

Section 107(b)(2) of Pub. L. 90–364, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Section 103(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) [subsec. (b)(1), formerly subsec. (c)(1) of this section], shall not apply with respect to any obligation issued before January 1, 1969, if before May 1, 1968—

''(A) the issuance of the obligation (or the project in connection with which the proceeds of the obligations are to be used) was authorized or approved by the governing body of the governmental unit issuing the obligation or by the voters of such governmental unit;

''(B) in connection with the issuance of such obligation or with the use of the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds, a governmental unit has made a significant financial commitment;

''(C) any person (other than a governmental unit) who will use the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds has expended (or has entered into a binding contract to expend) for purposes which are related to the use of such proceeds or property, an amount equal to or in excess of 20 percent of such proceeds; or

''(D) in the case of an obligation issued in conjunction with a project where financial assistance will be provided by a governmental agency concerned with economic development, such agency has approved the project or an application for financial assistance is pending.''

[§ 103A. Repealed. Pub. L. 99–514, title XIII, § 1301(j)(1), Oct. 22, 1986, 100 Stat. 2657]

Section, added Pub. L. 96–499, title XI, § 1102(a), Dec. 5, 1980, 94 Stat. 2660; amended Pub. L. 96–595, § 5(a), (b), Dec. 24, 1980, 94 Stat. 3467; Pub. L. 97–248, title II, § 220(a)–(e), title III, § 310(c)(3), (4), Sept. 3, 1982, 96 Stat. 475, 476, 599; Pub. L. 98–369, div. A, title I, § 42(a)(2), title VI, §§ 611(a)–(c), 612(b), 624(b)(1), July 18, 1984, 98 Stat. 556, 901–903, 911, 924; Pub. L. 99–514, title XVIII, § 1861, Oct. 22, 1986, 100 Stat. 2883, related to mortgage subsidy bonds. See section 143 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of

Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

§ 104. Compensation for injuries or sickness

(a) In general

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;

(3) amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2)).

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee. For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.

(b) Termination of application of subsection (a)(4) in certain cases

(1) In general

Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2).

(2) Individuals to whom subsection (a)(4) continues to apply

An individual is described in this paragraph if—

(A) on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4),

(B) on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

(C) he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

(D) on application therefor, he would be entitled to receive disability compensation from the Veterans' Administration.

(3) Special rules for combat-related injuries

For purposes of this subsection, the term ''combat-related injury'' means personal injury or sickness—

(A) which is incurred—

(i) as a direct result of armed conflict,

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

(4) Amount excluded to be not less than veterans' disability compensation

In the case of any individual described in paragraph (2), the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

(c) Application of prior law in certain cases

The phrase ''(other than punitive damages)'' shall not apply to punitive damages awarded in a civil action—

(1) which is a wrongful death action, and

(2) with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).

(d) Cross references

(1) For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106.

(2) For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section, see section 1403 of title 10, United States Code (relating to career compensation laws).

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 86–723, § 51, Sept. 8, 1960, 74 Stat. 847; Pub. L. 87–792, § 7(d), Oct. 10, 1962, 76 Stat. 829; Pub. L. 94–455, title V, § 505(b), (e)(1), title XIX, § 1901(a)(18), Oct. 4, 1976, 90 Stat. 1567, 1568, 1766; Pub. L. 96–465, title II, § 2206(e)(1), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 97–473, title I, § 101(a), Jan. 14, 1983, 96 Stat. 2605; Pub. L. 101–239, title VII, § 7641(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 104–188, title I, § 1605(a)–(c), Aug. 20, 1996, 110 Stat. 1838; Pub. L. 104–191, title III, § 311(b), Aug. 21, 1996, 110 Stat. 2053; Pub. L. 107–134, title I, § 113(a), Jan. 23, 2002, 115 Stat. 2435.)

REFERENCES IN TEXT

Section 808 of the Foreign Service Act of 1980, referred to in subsec. (a)(4), is Pub. L. 96–465, title I, § 808, Oct. 17, 1980, 94 Stat. 2110, which is classified to section 4048 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2002—Subsec. (a)(5). Pub. L. 107–134 substituted ''a terroristic or military action (as defined in section 692(c)(2)).'' for ''a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States.''

1996—Subsec. (a). Pub. L. 104–188, § 1605(b), in closing provisions, substituted ''For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.'' for ''Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness.''

Subsec. (a)(2). Pub. L. 104–188, § 1605(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;''.

Subsec. (a)(3). Pub. L. 104–191 inserted ''(or through an arrangement having the effect of accident or health insurance)'' after ''accident or health insurance''.

Subsecs. (c), (d). Pub. L. 104–188, § 1605(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1989—Subsec. (a). Pub. L. 101–239 inserted at end ''Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness.''

1983—Subsec. (a)(2). Pub. L. 97–473 substituted ''whether by suit or agreement and whether as lump sums or as periodic payments'' for ''whether by suit or agreement''.

1980—Subsec. (a)(4). Pub. L. 96–465 substituted reference to section 808 of the Foreign Service Act of 1980 for reference to section 831 of the Foreign Service Act of 1946.

1976—Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(18)(A), struck out ''; 60 Stat. 1021'' after ''(22 U.S.C. 1081''.

Subsec. (a)(5). Pub. L. 94–455, § 505(e)(1), added par. (5).

Subsecs. (b), (c). Pub. L. 94–455, § 505(b), added subsec. (b), redesignated former subsec. (b) as (c) and, as so redesignated, § 1901(a)(18)(B), substituted ''1403 of title 10, United States Code (relating to career compensation laws)'' for ''402(h) of the Career Compensation Act of 1949 (37 U.S.C. 272(h))''.

1962—Subsec. (a). Pub. L. 87–792 inserted sentence requiring contributions made on behalf of an individual who is, or has been, an employee within the meaning of section 401(c)(1), while he was such an employee to a trust which is exempt from tax, or under a plan described in section 403(a), to be treated as contributions by the employer which were not includible in the gross income of the employee.

1960—Subsec. (a)(4). Pub. L. 86–723 provided for exclusion from gross income of amounts received as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 FR 8819, 79 Stat. 1318. Environmental Science Services Administration abolished in 1970 and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 FR 15627, 84 Stat. 2090. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 FR 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. See notes under section 311 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, § 113(c), Jan. 23, 2002, 115 Stat. 2435, provided that: ''The amendments made by this section [amending this section and section 692 of this title] shall apply to taxable years ending on or after September 11, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 311(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section and section 162 of this title] shall apply to taxable years beginning after December 31, 1996.''

Section 1605(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts received after the date of the enactment of this Act [Aug. 20, 1996], in taxable years ending after such date.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7641(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts received after July 10, 1989, in taxable years ending after such date.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any amount received—

''(A) under any written binding agreement, court decree, or mediation award in effect on (or issued on or before) July 10, 1989, or

''(B) pursuant to any suit filed on or before July 10, 1989.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 505(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Section 505(e)(2) of Pub. L. 94–455 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 1901(a)(18)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 56(e) of Pub. L. 86–723 provided that: ''The amendment made by section 51 of this Act [amending this section] shall be effective with respect to taxable years ending after the date of enactment of this Act [Sept. 8, 1960].''

TRANSFER OF FUNCTIONS

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

§105. Amounts received under accident and health plans

(a) Amounts attributable to employer contributions

Except as otherwise provided in this section, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

(b) Amounts expended for medical care

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof). Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

(c) Payments unrelated to absence from work

Gross income does not include amounts referred to in subsection (a) to the extent such amounts—

(1) constitute payment for the permanent loss or loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), and

(2) are computed with reference to the nature of the injury without regard to the period the employee is absent from work.

[(d) Repealed. Pub. L. 98–21, title I, §122(b), Apr. 20, 1983, 97 Stat. 87]

(e) Accident and health plans

For purposes of this section and section 104—

(1) amounts received under an accident or health plan for employees, and

(2) amounts received from a sickness and disability fund for employees maintained under the law of a State or the District of Columbia,

shall be treated as amounts received through accident or health insurance.

(f) Rules for application of section 213

For purposes of section 213(a) (relating to medical, dental, etc., expenses) amounts excluded from gross income under subsection (c) or (d) shall not be considered as compensation (by insurance or otherwise) for expenses paid for medical care.

(g) Self-employed individual not considered an employee

For purposes of this section, the term ''employee'' does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(h) Amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan

(1) In general

In the case of amounts paid to a highly compensated individual under a self-insured medical reimbursement plan which does not satisfy the requirements of paragraph (2) for a plan year, subsection (b) shall not apply to such amounts to the extent they constitute an excess reimbursement of such highly compensated individual.

(2) Prohibition of discrimination

A self-insured medical reimbursement plan satisfies the requirements of this paragraph only if—

(A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and

(B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

(3) Nondiscriminatory eligibility classifications

(A) In general

A self-insured medical reimbursement plan does not satisfy the requirements of subparagraph (A) of paragraph (2) unless such plan benefits—

(i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or

(ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated individuals.

(B) Exclusion of certain employees

For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;

(ii) employees who have not attained age 25;

(iii) part-time or seasonal employees;

(iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

(5) Highly compensated individual defined

For purposes of this subsection, the term ''highly compensated individual'' means an individual who is—

(A) one of the 5 highest paid officers,

(B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or

(C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).

(6) Self-insured medical reimbursement plan

The term ''self-insured medical reimbursement plan'' means a plan of an employer to reimburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

(7) Excess reimbursement of highly compensated individual

For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is—

(A) in the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B)), the amount reimbursed under the plan to the employee with respect to such benefit, and

(B) in the case of benefits (other than benefits described in subparagraph (A)[1] paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction—

(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and

(ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year.

In determining the fraction under subparagraph (B), there shall not be taken into account any reimbursement which is attributable to a benefit described in subparagraph (A).

(8) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(10) Time of inclusion

Any amount paid for a plan year that is included in income by reason of this subsection shall be treated as received or accrued in the taxable year of the participant in which the plan year ends.

(i) Sick pay under Railroad Unemployment Insurance Act

Notwithstanding any other provision of law, gross income includes benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness; except to the extent such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(j) Special rule for certain governmental plans

(1) In general

For purposes of subsection (b), amounts paid (directly or indirectly) to the taxpayer from an accident or health plan described in paragraph (2) shall not fail to be excluded from gross income solely because such plan, on or before January 1, 2008, provides for reimbursements of health care expenses of a deceased plan participant's beneficiary.

(2) Plan described

An accident or health plan is described in this paragraph if such plan is funded by a medical trust that is established in connection with a public retirement system and that—

(A) has been authorized by a State legislature, or

(B) has received a favorable ruling from the Internal Revenue Service that the trust's income is not includible in gross income under section 115.

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 87–792, § 7(e), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–272, title II, § 205(a), Feb. 26, 1964, 78 Stat. 38; Pub. L. 94–455, title V, § 505(a), title XIX, § 1901(c)(2), Oct.

[1] So in original. Probably should be followed by a closing parenthesis.

4, 1976, 90 Stat. 1566, 1803; Pub. L. 95–600, title III, §366(a), title VII, §701(c)(1), Nov. 6, 1978, 92 Stat. 2855, 2899; Pub. L. 96–222, title I, §103(a)(13)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96–605, title II, §201(b)(1), Dec. 28, 1980, 94 Stat. 3527; Pub. L. 96–613, §5(b)(1), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 97–34, title I, §§103(c)(2), 111(b)(4), Aug. 13, 1981, 95 Stat. 188, 194; Pub. L. 97–248, title II, §202(b)(3)(C), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98–21, title I, §122(b), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–76, title II, §241(a), Aug. 12, 1983, 97 Stat. 430; Pub. L. 98–369, div. A, title IV, §423(b)(2), July 18, 1984, 98 Stat. 800; Pub. L. 99–514, title XI, §1151(c)(2), title XIII, §1301(j)(9), Oct. 22, 1986, 100 Stat. 2503, 2658; Pub. L. 101–140, title II, §203(a)(1), Nov. 8, 1989, 103 Stat. 830; Pub. L. 108–311, title II, §207(9), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–458, title I, §124(a), Dec. 23, 2008, 122 Stat. 5114.)

REFERENCES IN TEXT

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (i), is classified to section 352(a) of Title 45, Railroads.

AMENDMENTS

2008—Subsec. (j). Pub. L. 110–458 added subsec. (j).

2004—Subsecs. (b), (c)(1). Pub. L. 108–311 inserted ‘‘, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof’’ after ‘‘section 152’’.

1989—Subsecs. (h), (i). Pub. L. 101–140 amended subsecs. (h) and (i) to read as if amendments by Pub. L. 99–514, §1151(c)(2), had not been enacted, see 1986 Amendment note below.

1986—Subsec. (d)(5)(C). Pub. L. 99–514, §1301(j)(9), which directed that subpar. (C) be amended by substituting ‘‘section 7703(a)’’ for ‘‘section 143(a)’’, could not be executed because subsec. (d) was previously repealed by Pub. L. 98–21. See 1983 Amendment note below.

Subsecs. (h), (i). Pub. L. 99–514, §1151(c)(2), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan.

1984—Subsec. (b). Pub. L. 98–369 inserted ‘‘Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.’’

1983—Subsec. (d). Pub. L. 98–21 struck out subsec. (d) which provided that no deduction or credit would be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsec. (a).

Subsec. (i). Pub. L. 98–76 added subsec. (i).

1982—Subsec. (b). Pub. L. 97–248 substituted ‘‘section 213(d)’’ for ‘‘section 213(e)’’.

1981—Subsec. (d)(3). Pub. L. 97–34, §103(c)(2), substituted ‘‘this subsection and section 221’’ for ‘‘this subsection’’ in parenthetical provision.

Subsec. (h)(3)(B)(v). Pub. L. 97–34, §111(b)(4), substituted ‘‘section 911(d)(2)’’ for ‘‘section 911(b)’’.

1980—Subsec. (h)(3)(A). Pub. L. 96–222, §103(a)(13)(B), substituted ‘‘highly compensated individuals’’ for ‘‘highly compensated participants’’.

Subsec. (h)(7)(A). Pub. L. 96–222, §103(a)(13)(C), substituted ‘‘highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B))’’ for ‘‘a highly compensated individual but not to a broad cross-section of employees’’.

Subsec. (h)(8). Pub. L. 96–613 and Pub. L. 96–605 made identical amendments by substituting in heading ‘‘controlled groups, etc.’’ for ‘‘controlled groups’’, and by substituting in text ‘‘subsection (b), (c), or (m) of section 414’’ for ‘‘subsection (b) or (c) of section 414’’.

1978—Subsec. (d)(4). Pub. L. 95–600, §701 (c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (5)(A) and (C).

Subsec. (d)(5). Pub. L. 95–600, §701(c)(1), added heading and subpar. (B), redesignated former par. (4) as subpars. (A) and (C), adding subpar. (C) heading and substituting ‘‘section 143(a)’’ for ‘‘section 143’’; and redesignated former par. (6) as subpar. (D), inserting ‘‘defined’’ in heading.

Subsec. (d)(6), (7). Pub. L. 95–600, §701(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5)(D).

Subsec. (h). Pub. L. 95–600, §366(a), added subsec. (h).

1976—Subsec. (d). Pub. L. 94–455, §505(a), substituted provisions relating to an exclusion of up to $5,200 a year for taxpayers retiring on disability prior to age 65; dollar-for-dollar phase out of exclusion for adjusted annual gross income (including disability income) in excess of $15,000; requirement that married couple must file joint return; defined ‘‘permanent and total disability’’ and ‘‘joint return’’; and inserted special rule for coordination with section 72 of this title for provisions relating to wage continuation plans.

Subsec. (e)(2). Pub. L. 94–455, §1901(c)(2), struck out ‘‘a territory’’ after ‘‘of a State’’.

1964—Subsec. (d). Pub. L. 88–272 substituted provisions stating that ‘‘The preceding sentence shall not apply to amounts attributable to the first 30’’ days if the amounts exceed 75 percent of regular weekly wages, and if they do not exceed said 75 percent, the first sentence of this subsection shall not apply to the extent the amounts exceed $75 weekly and shall not apply to amounts attributable to the first 7 calendar days unless the employee is hospitalized for injury or sickness for at least 1 day in such period, for provisions stating that said ‘‘preceding sentence’’ did not apply in cases of sickness, to amounts attributable to the first 7 days unless the employee was hospitalized for sickness for at least 1 day during such period.

1962—Subsec. (g). Pub. L. 87–792 added subsec. (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §124(b), Dec. 23, 2008, 122 Stat. 5115, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to payments before, on, or after the date of the enactment of this Act [Dec. 23, 2008].’’

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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 1986 AMENDMENT

Amendment by section 1151(c)(2) 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 1301(j)(9) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 241(b) of Pub. L. 98–76 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1983, in taxable years ending after such date.’’

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under subsec. (d)(6) as in effect the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21 set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1983, see section 202(c) of Pub. L. 97–248, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see sections 103(d) and 115 of Pub. L. 97–34, set out as notes under sections 62 and 911, respectively, of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendments by Pub. L. 96–605 and 96–613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980, where amendments applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, set out as a note under section 414 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the 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 OF 1978 AMENDMENT

Section 366(b) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 103(a)(13)(D), Apr. 1, 1980, 94 Stat. 213, provided that: ''The amendment made by this section [amending this section] shall apply to amounts reimbursed after December 31, 1979. For purposes of applying such amendment, there shall not be taken into account any amount reimbursed before January 1, 1980.''

Section 701(c)(3) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The amendments made by paragraphs (1) and (2)(A) [amending this section and provisions set out as a note under this section] shall take effect as if included in section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as such section was amended by section 505(a) of the Tax Reform Act of 1976.

''(B) The amendments made by paragraph (2)(B) [amending provisions set out as notes under this section] shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977 [Pub. L. 95–30, title III, § 301, May 23, 1977, 91 Stat. 152].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 505(f) of Pub. L. 94–455, as added by Pub. L. 95–30, title III, § 301(a), May 23, 1977, 91 Stat. 151, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 1901(c)(2) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 205(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts attributable to periods of absence commencing after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

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.

REVOCATION OF ELECTION

Pub. L. 95–30, title III, § 301(c), May 23, 1977, 91 Stat. 151, as amended by Pub. L. 95–600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Any election made under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] for a taxable year beginning in 1976 may be revoked (in such manner as may be prescribed by regulations) at any time before the expiration of the period for assessing a deficiency with respect to such taxable year (determined without regard to subsection (d) of this section) [set out below].''

PERIOD FOR ASSESSING DEFICIENCY

Pub. L. 95–30, title III, § 301(d), May 23, 1977, 91 Stat. 152, provided that: ''In the case of any revocation made under subsection (c) [set out above], the period for assessing a deficiency with respect to any taxable year affected by the revocation shall not expire before the date which is 1 year after the date of the making of the revocation, and, notwithstanding any law or rule of law, such deficiency, to the extent attributable to such revocation, may be assessed at any time during such 1-year period.''

EFFECTIVE DATE OF CHANGES IN EXCLUSION FOR SICK PAY

Pub. L. 95–30, title III, § 301(e), May 23, 1977, 91 Stat. 152, as amended by Pub. L. 95–600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting and amending provisions set out as notes under this section] shall take effect on October 4, 1976, but shall not apply—

''(1) with respect to any taxpayer who makes or has made an election under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] (as such sections were in effect before the enactment of this Act [May 23, 1977]) for a taxable year beginning in 1976, if such election is not revoked under subsection (c) of this section [set out above], and

''(2) with respect to any taxpayer (other than a taxpayer described in paragraph (1)) who has an annuity starting date at the beginning of a taxable year beginning in 1976 by reason of the amendments made by section 505 of the Tax Reform Act of 1976 [amending this section and section 104 of this title and enacting provisions set out as notes under this section] (as in effect before the enactment of this Act [May 23, 1977]), unless such person elects (in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have such amendments apply.''

SPECIAL RULE FOR EXISTING PERMANENT AND TOTAL DISABILITY CASES

Section 505(c) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, § 301(b)(1), (2), May 23, 1977, 91 Stat. 151; Pub. L. 95–600, title VII, § 701(c)(2)(A), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any individual who—

''(1) retired before January 1, 1977,

''(2) either retired on disability or was entitled to retire on disability, and

''(3) on January 1, 1976, or January 1, 1977, was permanently and totally disabled (within the meaning of section 105(d)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

such individual shall be deemed to have met the requirements of section 105(d)(1)(B) of such Code (as amended by subsection (a) of this section).''

SPECIAL RULE FOR COORDINATION WITH SECTION 72 OF THIS TITLE

Section 505(d) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, §301(b)(3)–(5), May 23, 1977, 91 Stat. 151; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of an individual who—

''(1) retired on disability before January 1, 1977, and

''(2) on December 31, 1975, or December 31, 1976, was entitled to exclude any amount with respect to such retirement disability from gross income under section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954],

for purposes of section 72 the annuity starting date shall not be deemed to occur before the beginning of the taxable year in which the taxpayer attains age 65, or before the beginning of an earlier taxable year for which the taxpayer makes an irrevocable election not to seek the benefits of such section 105(d) for such year and all subsequent years.''

§106. Contributions by employer to accident and health plans

(a) General rule

Except as otherwise provided in this section, gross income of an employee does not include employer-provided coverage under an accident or health plan.

(b) Contributions to Archer MSAs

(1) In general

In the case of an employee who is an eligible individual, amounts contributed by such employee's employer to any Archer MSA of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 220(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) No constructive receipt

No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

(3) Special rule for deduction of employer contributions

Any employer contribution to an Archer MSA, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

(4) Employer MSA contributions required to be shown on return

Every individual required to file a return under section 6012 for the taxable year shall include on such return the aggregate amount contributed by employers to the Archer MSAs of such individual or such individual's spouse for such taxable year.

(5) MSA contributions not part of COBRA coverage

Paragraph (1) shall not apply for purposes of section 4980B.

(6) Definitions

For purposes of this subsection, the terms ''eligible individual'' and ''Archer MSA'' have the respective meanings given to such terms by section 220.

(7) Cross reference

For penalty on failure by employer to make comparable contributions to the Archer MSAs of comparable employees, see section 4980E.

(c) Inclusion of long-term care benefits provided through flexible spending arrangements

(1) In general

Effective on and after January 1, 1997, gross income of an employee shall include employer-provided coverage for qualified long-term care services (as defined in section 7702B(c)) to the extent that such coverage is provided through a flexible spending or similar arrangement.

(2) Flexible spending arrangement

For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which—

(A) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

(B) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.

(d) Contributions to health savings accounts

(1) In general

In the case of an employee who is an eligible individual (as defined in section 223(c)(1)), amounts contributed by such employee's employer to any health savings account (as defined in section 223(d)) of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 223(b) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) Special rules

Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

(3) Cross reference

For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.

(e) FSA and HRA terminations to fund HSAs

(1) In general

A plan shall not fail to be treated as a health flexible spending arrangement or health reimbursement arrangement under this section or section 105 merely because such plan provides for a qualified HSA distribution.

(2) Qualified HSA distribution

The term ''qualified HSA distribution'' means a distribution from a health flexible

spending arrangement or health reimbursement arrangement to the extent that such distribution—

(A) does not exceed the lesser of the balance in such arrangement on September 21, 2006, or as of the date of such distribution, and

(B) is contributed by the employer directly to the health savings account of the employee before January 1, 2012.

Such term shall not include more than 1 distribution with respect to any arrangement.

(3) Additional tax for failure to maintain high deductible health plan coverage

(A) In general

If, at any time during the testing period, the employee is not an eligible individual, then the amount of the qualified HSA distribution—

(i) shall be includible in the gross income of the employee for the taxable year in which occurs the first month in the testing period for which such employee is not an eligible individual, and

(ii) the tax imposed by this chapter for such taxable year on the employee shall be increased by 10 percent of the amount which is so includible.

(B) Exception for disability or death

Clauses (i) and (ii) of subparagraph (A) shall not apply if the employee ceases to be an eligible individual by reason of the death of the employee or the employee becoming disabled (within the meaning of section 72(m)(7)).

(4) Definitions and special rules

For purposes of this subsection—

(A) Testing period

The term ''testing period'' means the period beginning with the month in which the qualified HSA distribution is contributed to the health savings account and ending on the last day of the 12th month following such month.

(B) Eligible individual

The term ''eligible individual'' has the meaning given such term by section 223(c)(1).

(C) Treatment as rollover contribution

A qualified HSA distribution shall be treated as a rollover contribution described in section 223(f)(5).

(5) Tax treatment relating to distributions

For purposes of this title—

(A) In general

A qualified HSA distribution shall be treated as a payment described in subsection (d).

(B) Comparability excise tax

(i) In general

Except as provided in clause (ii), section 4980G shall not apply to qualified HSA distributions.

(ii) Failure to offer to all employees

In the case of a qualified HSA distribution to any employee, the failure to offer such distribution to any eligible individual covered under a high deductible health plan of the employer shall (notwithstanding section 4980G(d)) be treated for purposes of section 4980G as a failure to meet the requirements of section 4980G(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 99–272, title X, § 10001(b), Apr. 7, 1986, 100 Stat. 223; Pub. L. 99–514, title XI, §§ 1114(b)(1), 1151(j)(2), Oct. 22, 1986, 100 Stat. 2450, 2508; Pub. L. 100–647, title I, § 1018(t)(7)(A), title III, § 3011(b)(1), Nov. 10, 1988, 102 Stat. 3589, 3624; Pub. L. 101–239, title VII, § 7862(c)(1)(A), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 104–191, title III, §§ 301(c)(1), 321(c)(2), Aug. 21, 1996, 110 Stat. 2048, 2058; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(2), (b)(2)(A), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–173, title XII, § 1201(d)(1), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 109–432, div. A, title III, § 302(a), Dec. 20, 2006, 120 Stat. 2948.)

REFERENCES IN TEXT

COBRA, referred to in the heading for subsec. (b)(5), probably means the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82, as amended. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2003—Subsec. (d). Pub. L. 108–173 added subsec. (d).

2000—Subsec. (b). Pub. L. 106–554 § 1(a)(7) [title II, § 202(b)(6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

Subsec. (b)(1). Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(3). Pub. L. 106–554 § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(4). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(A)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (b)(6). Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(7). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(A)], substituted ''Archer MSAs'' for ''medical savings accounts''.

1996—Pub. L. 104–191, § 301(c)(1), amended text generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include employer-provided coverage under an accident or health plan.''

Subsec. (c). Pub. L. 104–191, § 321(c)(2), added subsec. (c).

1989—Subsec. (b)(2). Pub. L. 101–239 amended subsec. (b)(2) as it existed prior to general amendment by Pub. L. 100–647 by striking out the last sentence which read as follows: ''Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 (relating to employers under common control) shall apply for purposes of subparagraph (A).'' See Effective Date of 1989 Amendment note below.

1988—Pub. L. 100–647, § 3011(b)(1), amended section generally, substituting a single undesignated par. for former subsec. (a) providing that gross income does not include employer-provided coverage under an accident or health plan and subsec. (b) providing for an exception for highly compensated individuals where a plan fails to provide certain continuation coverage.

Subsec. (b)(1). Pub. L. 100–647, § 1018(t)(7)(A), substituted ''any employer-provided coverage'' for ''any amount contributed by an employer'' and ''under a group'' for ''to a group''.

1986—Pub. L. 99–272 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

Subsec. (a). Pub. L. 99–514, §1151(j)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness.''

Subsec. (b)(1). Pub. L. 99–514, §1114(b)(1), substituted ''highly compensated employee (within the meaning of section 414(q))'' for ''highly compensated individual (within the meaning of section 105(h)(5))''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, §302(c)(1), Dec. 20, 2006, 120 Stat. 2949, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions on or after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(c)(1) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(2) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7862(c)(1)(C) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section and section 1161 of Title 29, Labor] shall apply to years beginning after December 31, 1986.''

Section 7863 of Pub. L. 101–239 provided that: ''Except as otherwise provided in this subpart any amendment made by this subpart [subpart A (§§7861–7863) of part V of title VII of Pub. L. 101–239, amending this section and sections 162, 411, 417, and 4980B of this title and sections 1052 to 1055, 1161, 1162, 1167, 1398, and 1461 of Title 29, Labor, enacting provisions set out as notes under this section and sections 162, 417, 1167, 4980, and 4980B of this title, and amending provisions set out as notes under sections 401 and 411 of this title and sections 1001 and 1054 of Title 29], shall take effect as if included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(t)(7)(A) 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 3011(b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1114(b)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(j)(2) 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.

Section 10001(e) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—The amendments made by this section [amending this section and section 162 of this title] shall apply to plan years beginning on or after July 1, 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

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.

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.

§107. Rental value of parsonages

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 107–181, §2(a), May 20, 2002, 116 Stat. 583.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–181 inserted ''and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities'' before period at end.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–181, § 2(b), May 20, 2002, 116 Stat. 583, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.

''(2) RETURNS POSITIONS.—The amendment made by this section also shall apply to any taxable year beginning before January 1, 2002, for which the taxpayer—

''(A) on a return filed before April 17, 2002, limited the exclusion under section 107 of the Internal Revenue Code of 1986 as provided in such amendment, or

''(B) filed a return after April 16, 2002.

''(3) OTHER YEARS BEFORE 2002.—Except as provided in paragraph (2), notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section 107 of such Code by this Act for any taxable year beginning before January 1, 2002.''

§ 108. Income from discharge of indebtedness

(a) Exclusion from gross income

(1) In general

Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2013.

(2) Coordination of exclusions

(A) Title 11 exclusion takes precedence

Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion

Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) Principal residence exclusion takes precedence over insolvency exclusion unless elected otherwise

Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) Insolvency exclusion limited to amount of insolvency

In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) Reduction of tax attributes

(1) In general

The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL

Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) General business credit

Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) Minimum tax credit

The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) Capital loss carryovers

Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) Basis reduction

(i) In general

The basis of the property of the taxpayer.

(ii) Cross reference

For provisions for making the reduction described in clause (i), see section 1017.

(F) Passive activity loss and credit carryovers

Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) Foreign tax credit carryovers

Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) Amount of reduction

(A) In general

Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) Credit carryover reduction

The reductions described in subparagraphs (B), (C), and (G) shall be 33⅓ cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33⅓ cents for each dollar excluded by subsection (a).

(4) Ordering rules

(A) Reductions made after determination of tax for year

The reductions described in paragraph (2) shall be made after the determination of the

tax imposed by this chapter for the taxable year of the discharge.

(B) Reductions under subparagraph (A) or (D) of paragraph (2)

The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) Reductions under subparagraphs (B) and (G) of paragraph (2)

The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

(5) Election to apply reduction first against depreciable property

(A) In general

The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) Limitation

The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) Other tax attributes not reduced

Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) Treatment of discharge of qualified real property business indebtedness

(1) Basis reduction

(A) In general

The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) Cross reference

For provisions making the reduction described in subparagraph (A), see section 1017.

(2) Limitations

(A) Indebtedness in excess of value

The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) Overall limitation

The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) Qualified real property business indebtedness

The term ''qualified real property business indebtedness'' means indebtedness which—

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) Qualified acquisition indebtedness

For purposes of paragraph (3)(B), the term ''qualified acquisition indebtedness'' means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) Meaning of terms; special rules relating to certain provisions

(1) Indebtedness of taxpayer

For purposes of this section, the term ''indebtedness of the taxpayer'' means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) Title 11 case

For purposes of this section, the term ''title 11 case'' means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) Insolvent

For purposes of this section, the term ''insolvent'' means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer

is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

[(4) Repealed. Pub. L. 99–514, title VIII, § 822(b)(3)(A), Oct. 22, 1986, 100 Stat. 2373]

(5) Depreciable property

The term ''depreciable property'' has the same meaning as when used in section 1017.

(6) Certain provisions to be applied at partner level

In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

(7) Special rules for S corporation

(A) Certain provisions to be applied at corporate level

In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) Reduction in carryover of disallowed losses and deductions

In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) Coordination with basis adjustments under section 1367(b)(2)

For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) Reductions of tax attributes in title 11 cases of individuals to be made by estate

In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) Time for making election, etc.

(A) Time

An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) Revocation only with consent

An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) Manner

An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) Cross reference

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) General rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)

For purposes of this title—

(1) No other insolvency exception

Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) Income not realized to extent of lost deductions

No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) Adjustments for unamortized premium and discount

The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) Acquisition of indebtedness by person related to debtor

(A) Treated as acquisition by debtor

For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) Members of family

For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) Entities under common control treated as related

For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) Purchase-money debt reduction for solvent debtor treated as price reduction

If—

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur—

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) Indebtedness contributed to capital

Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) Recapture of gain on subsequent sale of stock

(A) In general

If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor—

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange,

shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) Special rule for cash basis taxpayers

In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) Stock of parent corporation

For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) Treatment of successor corporation

For purposes of this paragraph, the term ''debtor corporation'' includes a successor corporation.

(E) Partnership rule

Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) Indebtedness satisfied by corporate stock or partnership interest

For purposes of determining income of a debtor from discharge of indebtedness, if—

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(9) Discharge of indebtedness income not taken into account in determining whether entity meets REIT qualifications

Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) Indebtedness satisfied by issuance of debt instrument

(A) In general

For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) Issue price

For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) Student loans

(1) In general

In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or

in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) Student loan

For purposes of this subsection, the term ''student loan'' means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term ''student loan'' includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) Exception for discharges on account of services performed for certain lenders

Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) Payments under National Health Service Corps Loan Repayment Program and certain State loan repayment programs

In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act.

(g) Special rules for discharge of qualified farm indebtedness

(1) Discharge must be by qualified person

(A) In general

Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) Qualified person

For purposes of subparagraph (A), the term ''qualified person'' has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) Qualified farm indebtedness

For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets

(A) In general

The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) Adjusted tax attributes

For purposes of subparagraph (A), the term ''adjusted tax attributes'' means the sum of the tax attributes described in subparagraphs (A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account $3 for each $1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) Qualified property

For purposes of this paragraph, the term ''qualified property'' means any property which is used or is held for use in a trade or business or for the production of income.

(D) Coordination with insolvency exclusion

For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

(h) Special rules relating to qualified principal residence indebtedness

(1) Basis reduction

The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

(2) Qualified principal residence indebtedness

For purposes of this section, the term ''qualified principal residence indebtedness'' means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting ''$2,000,000 ($1,000,000'' for ''$1,000,000 ($500,000'' in clause (ii) thereof) with respect to the principal residence of the taxpayer.

(3) Exception for certain discharges not related to taxpayer's financial condition

Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

(4) Ordering rule

If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

(5) Principal residence

For purposes of this subsection, the term ''principal residence'' has the same meaning as when used in section 121.

(i) Deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument

(1) In general

At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

(2) Deferral of deduction for original issue discount in debt for debt exchanges

(A) In general

If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) Deemed debt for debt exchanges

For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) Applicable debt instrument

For purposes of this subsection—

(A) Applicable debt instrument

The term ''applicable debt instrument'' means any debt instrument which was issued by—

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) Debt instrument

The term ''debt instrument'' means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) Reacquisition

For purposes of this subsection—

(A) In general

The term ''reacquisition'' means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

(i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or

(ii) a related person to such debtor.

(B) Acquisition

The term ''acquisition'' shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

(5) Other definitions and rules

For purposes of this subsection—

(A) Related person

The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

(B) Election

(i) In general

An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

(I) clearly identifies such instrument, and

(II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

(ii) Election irrevocable

Such election, once made, is irrevocable.

(iii) Pass-thru entities

In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

(C) Coordination with other exclusions

If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

(D) Acceleration of deferred items

(i) In general

In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) Special rule for pass-thru entities

The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

(6) Special rule for partnerships

In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

(7) Secretarial authority

The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; June 29, 1956, ch. 463, § 5, 70 Stat. 403; Pub. L. 88–496, § 1(a), June 8, 1960, 74 Stat. 164; Pub. L. 94–455, title XIX, §§ 1906(b)(13)(A), 1951(b)(2)(A), Oct. 4, 1976, 90 Stat. 1834, 1836; Pub. L. 96–589, § 2(a), Dec. 24, 1980, 94 Stat. 3389; Pub. L. 97–354, § 3(e), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, § 102(h)(1), title III, § 304(d), Jan. 12, 1983, 96 Stat. 2372, 2398; Pub. L. 98–369, div. A, title I, § 59(a), (b)(1), title IV, § 474(r)(5), title VII, § 721(b)(2), title X, § 1076(a), July 18, 1984, 98 Stat. 576, 839, 966, 1053; Pub. L. 99–514, title I, § 104(b)(2), title II, § 231(d)(3)(D), title IV, § 405(a), title VI, § 621(e)(1), title VIII, §§ 805(c)(2)–(4), 822(a), (b)(1)–(3), title XI, § 1171(b)(4), title XVIII, § 1847(b)(7), Oct. 22, 1986, 100 Stat. 2105, 2179, 2224, 2266, 2362, 2373, 2513, 2856; Pub. L. 100–647, title I, § 1004(a)(1)–(4), (6), Nov. 10, 1988, 102 Stat. 3385, 3387; Pub. L. 101–508, title XI, §§ 11325(a)(1), (b), 11813(b)(6), Nov. 5, 1990, 104 Stat. 1388–466, 1388–551; Pub. L. 103–66, title XIII, §§ 13150(a)–(c)(5), 13226(a)(1), (2)(B), (b)(1)–(3), Aug. 10, 1993, 107 Stat. 446–448, 487, 488; Pub. L. 104–188, title I, § 1703(n)(2), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title II, § 225(a), Aug. 5, 1997, 111 Stat. 820; Pub. L. 105–206, title VI, § 6004(f), July 22, 1998, 112 Stat. 795; Pub. L. 107–147, title

IV, §402(a), Mar. 9, 2002, 116 Stat. 40; Pub. L. 108–357, title III, §320(a), title VIII, §896(a), Oct. 22, 2004, 118 Stat. 1473, 1648; Pub. L. 110–142, §2(a)–(c), Dec. 20, 2007, 121 Stat. 1803, 1804; Pub. L. 110–343, div. A, title III, §303(a), Oct. 3, 2008, 122 Stat. 3807; Pub. L. 111–5, div. B, title I, §1231(a), Feb. 17, 2009, 123 Stat. 338.)

REFERENCES IN TEXT

Sections 338B(g) and 338I of the Public Health Service Act, referred to in subsec. (f)(4), are classified to sections 254*l*–1(g) and 254q–1, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2009—Subsec. (i). Pub. L. 111–5 added subsec. (i).

2008—Subsec. (a)(1)(E). Pub. L. 110–343 substituted ''January 1, 2013'' for ''January 1, 2010''.

2007—Subsec. (a)(1)(E). Pub. L. 110–142, §2(a), added subpar. (E).

Subsec. (a)(2)(A). Pub. L. 110–142, §2(c)(1), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (a)(2)(C). Pub. L. 110–142, §2(c)(2), added subpar. (C).

Subsec. (h). Pub. L. 110–142, §2(b), added subsec. (h).

2004—Subsec. (e)(8). Pub. L. 108–357, §896(a), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock.''

Subsec. (f)(4). Pub. L. 108–357, §320(a), added par. (4).

2002—Subsec. (d)(7)(A). Pub. L. 107–147 inserted '', including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section'' before period at end.

1998—Subsec. (f)(2). Pub. L. 105–206, §6004(f)(1), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''The term 'student loan' includes any loan made by an educational organization so described or by an organization exempt from tax under section 501(a) to refinance a loan meeting the requirements of the preceding sentence.''

Subsec. (f)(3). Pub. L. 105–206, §6004(f)(2), struck out ''(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))'' after ''paragraph (2)(D)''.

1997—Subsec. (f)(2). Pub. L. 105–34, §225(a)(1), added subpar. (D) and concluding provisions and struck out former subpar. (D) which read as follows: ''any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization.''

Subsec. (f)(2)(B). Pub. L. 105–34, §225(a)(1), struck out ''or'' at end.

Subsec. (f)(3). Pub. L. 105–34, §225(a)(2), added par. (3).

1996—Subsec. (d)(9)(A). Pub. L. 104–188 substituted ''paragraph (3)(C)'' for ''paragraph (3)(B)''.

1993—Subsec. (a)(1)(D). Pub. L. 103–66, §13150(a), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 103–66, §13150(c)(1), substituted '', (C), and (D)'' for ''and (C)''.

Subsec. (a)(2)(B). Pub. L. 103–66, §13150(c)(2), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.''

Subsec. (b)(2)(C) to (E). Pub. L. 103–66, §13226(b)(1), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 103–66, §13226(b)(2), added subpar. (F). Former subpar. (F) redesignated (G).

Pub. L. 103–66, §13226(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(2)(G). Pub. L. 103–66, §13226(b)(2), redesignated subpar. (F) as (G).

Subsec. (b)(3)(B). Pub. L. 103–66, §13226(b)(3)(A), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The reductions described in subparagraphs (B) and (E) of paragraph (2) shall be 33⅓ cents for each dollar excluded by subsection (a).''

Subsec. (b)(4)(B). Pub. L. 103–66, §13226(b)(3)(B), substituted ''(D)'' for ''(C)'' in heading and text.

Subsec. (b)(4)(C). Pub. L. 103–66, §13226(b)(3)(C), substituted ''(G)'' for ''(E)'' in heading and text.

Subsec. (c). Pub. L. 103–66, §13150(b), added subsec. (c).

Subsec. (d). Pub. L. 103–66, §13150(c)(3)(B), substituted ''certain provisions'' for ''subsections (a), (b) and (g)'' in heading.

Subsec. (d)(6), (7)(A). Pub. L. 103–66, §13150(c)(3)(A), (C), substituted ''Certain provisions'' for ''Subsections (a), (b) and (g)'' in heading and ''subsections (a), (b), (c), and (g)'' for ''subsections (a), (b), and (g)'' in text.

Subsec. (d)(7)(B). Pub. L. 103–66, §13150(c)(4), inserted at end ''The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.''

Subsec. (d)(9)(A). Pub. L. 103–66, §13150(c)(5), inserted ''or under paragraph (3)(B) of subsection (c)'' after ''subsection (b)''.

Subsec. (e)(6). Pub. L. 103–66, §13226(a)(2)(B), substituted ''Except as provided in regulations, for'' for ''For''.

Subsec. (e)(8). Pub. L. 103–66, §13226(a)(1)(B), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''For purposes of determining income of the debtor from discharge of indebtedness, the stock for debt exception shall not apply—

''(A) to the issuance of nominal or token shares, or

''(B) with respect to an unsecured creditor, where the ratio of the value of the stock received by such unsecured creditor to the amount of his indebtedness cancelled or exchanged for stock in the workout is less than 50 percent of a similar ratio computed for all unsecured creditors participating in the workout.

Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph.''

Subsec. (e)(10), (11). Pub. L. 103–66, §13226(a)(1)(A), redesignated par. (11) as (10) and struck out former par. (10) which related to satisfaction of indebtedness by transfer of corporation's stock.

Subsec. (g)(3)(B). Pub. L. 103–66, §13226(b)(3)(D), substituted ''subparagraphs (A), (B), (C), (D), (F), and (G)'' for ''subparagraphs (A), (B), (C), and (E)'' and ''subparagraphs (B), (C), and (G)'' for ''subparagraphs (B) and (E)'' and inserted before period at end ''and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover''.

1990—Subsec. (e)(8). Pub. L. 101–508, §11325(b)(2), inserted provision at end that any stock which is a disqualified stock, as so defined, not be treated as stock for purposes of this paragraph.

Subsec. (e)(10)(B). Pub. L. 101–508, §11325(b)(1), substituted heading for one which read: ''Exception for title 11 cases and insolvent debtors'' and amended text generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent.''

Subsec. (e)(11). Pub. L. 101–508, §11325(a)(1), added par. (11).

Subsec. (g)(1)(B). Pub. L. 101–508, §11813(b)(6), substituted ''section 49(a)(1)(D)(iv)'' for ''section 46(c)(8)(D)(iv)''.

1988—Subsec. (a)(1)(C). Pub. L. 100–647, §1004(a)(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 100–647, §1004(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Subparagraph (B) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.''

Subsec. (b). Pub. L. 100–647, § 1004(a)(3), struck out ''in title 11 case or insolvency'' after ''Reduction of tax attributes'' in heading and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)'' in text of par. (1).

Subsec. (d). Pub. L. 100–647, § 1004(a)(6)(B), which directed amendment of subsec. (d) heading by substituting ''subsections (a), (b), and (g)'' for ''subsections (a), and (b)'', was executed by making the substitution for ''subsections (a) and (b)'' as the probable intent of Congress.

Subsec. (d)(6). Pub. L. 100–647, § 1004(a)(6)(A), (C), substituted ''Subsections (a), (b), and (g)'' for ''Subsections (a) and (b)'' in heading and ''subsections (a), (b), and (g)'' for ''subsections (a) and (b)'' in text.

Subsec. (d)(7)(A). Pub. L. 100–647, § 1004(a)(6)(A), (C), substituted ''Subsections (a), (b), and (g)'' for ''Subsections (a) and (b)'' in heading and ''subsections (a), (b), and (g)'' for ''subsections (a) and (b)'' in text.

Subsec. (g). Pub. L. 100–647, § 1004(a)(4), substituted ''indebtedness'' for ''indebtedness of solvent farmers'' in heading and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—For purposes of this section and section 1017, the discharge by a qualified person of qualified farm indebtedness of a taxpayer who is not insolvent at the time of the discharge shall be treated in the same manner as if the discharge had occurred when the taxpayer was insolvent.

''(2) QUALIFIED FARM INDEBTEDNESS.—For purposes of this subsection, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

''(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

''(B) 50 percent or more of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

''(3) QUALIFIED PERSON.—For purposes of this subsection, the term 'qualified person' means a person described in section 46(c)(8)(D)(iv).''

1986—Subsec. (a)(1)(C). Pub. L. 99–514, § 822(a), struck out subpar. (C) relating to exclusion from gross income if the indebtedness discharged is qualified business indebtedness.

Subsec. (a)(2). Pub. L. 99–514, § 822(b)(1), substituted ''Subparagraph (B) of paragraph (1)'' for ''Subparagraphs (B) and (C) of paragraph (1)'' in subpar. (A), struck out subpar. (A) designation and heading, and struck out subpar. (B) providing that insolvency exclusion takes precedence over qualified business exclusion.

Subsec. (b)(2)(B). Pub. L. 99–514, § 231(d)(3)(D), substituted ''General business credit'' for ''Research credit and general business credit'' in heading and amended text, as amended by this Act (Pub. L. 99–514, § 1171(b)(4) (see below)), generally. Prior to amendment, text read as follows: ''Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under—

''(i) section 30 (relating to credit for increasing research activities), or

''(ii) section 38 (relating to general business credit).

For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41.''

Pub. L. 99–514, § 1171(b)(4), struck out last sentence which had been eliminated by the general amendment of subpar. (B) by Pub. L. 99–514, § 231(d)(3)(D). See above.

Subsec. (b)(2)(E). Pub. L. 99–514, § 1847(b)(7), substituted ''section 27'' for ''section 33''.

Subsec. (b)(3). Pub. L. 99–514, § 104(b)(2), substituted ''33⅓ cents'' for ''50 cents''.

Subsec. (c). Pub. L. 99–514, § 822(b)(2), struck out subsec. (c) relating to tax treatment of discharge of qualified business indebtedness.

Subsec. (d). Pub. L. 99–514, § 822(b)(3)(B), struck out reference to subsec. (c) in heading.

Subsec. (d)(4). Pub. L. 99–514, § 822(b)(3)(A), struck out par. (4) relating to treatment of indebtedness as qualified business indebtedness.

Subsec. (d)(6), (7)(A). Pub. L. 99–514, § 822(b)(3)(B), struck out reference to subsec. (c) in heading and text.

Subsec. (d)(7)(B). Pub. L. 99–514, § 822(b)(3)(C), struck out ''The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(C) applies to such discharge.''

Subsec. (d)(9)(A). Pub. L. 99–514, § 822(b)(3)(D), struck out ''under paragraph (4) of this subsection or'' after ''An election''.

Subsec. (e)(7)(A)(ii)(I). Pub. L. 99–514, § 805(c)(2), substituted ''subsection (a) or (b) of section 166'' for ''subsection (a), (b), or (c) of section 166''.

Subsec. (e)(7)(B) to (D). Pub. L. 99–514, § 805(c)(3), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which related to taxpayers on reserve method.

Subsec. (e)(7)(E), (F). Pub. L. 99–514, § 805(c)(3), (4), redesignated subpar. (F) as (E) and substituted ''the foregoing subparagraphs'' for ''subparagraphs (A), (B), (C), (D), and (E)''. Former subpar. (E) redesignated (D).

Subsec. (e)(10)(C). Pub. L. 99–514, § 621(e), repealed the amendment by Pub. L. 98–369, § 59(b)(1), which had added subpar. (C) creating an exception for transfers in certain workouts of the satisfaction of indebtedness by corporation's stock. See 1984 Amendment note below.

Subsec. (g). Pub. L. 99–514, § 405(a), added subsec. (g).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, § 474(r)(5), substituted provisions relating to research credits and general business credits covering carryovers to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under section 30 (relating to credit for increasing research activities), or section 38 (relating to general business credit), and directing that there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41 for former provisions covering carryovers to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under section 38 (relating to investment in certain depreciable property), section 40 (relating to expenses of work incentive programs), section 44B (relating to credit for employment of certain new employees), section 44E (relating to alcohol used as a fuel), or section 44F (relating to credit for increasing research activities), and directing that, for purposes of clause (i), there could not be taken into account any portion of a carryover which was attributable to the employee plan credit (within the meaning of section 48(*o*)(3)).

Subsec. (d)(6). Pub. L. 98–369, § 721(b)(2), struck out ''or S corporation shareholder level'' in heading and second sentence which provided that ''In the case of an S corporation, subsections (a), (b), and (c) shall apply at the shareholder level.''. See par. (7)(A).

Subsec. (d)(7) to (10). Pub. L. 98–369, § 721(b)(2), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (e)(10). Pub. L. 98–369, § 59(a), added par. (10).

Subsec. (e)(10)(C). Pub. L. 98–369, § 59(b)(1), which added subpar. (C), effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, was repealed by Pub. L. 99–514, § 621(e), (f)(2), eff. Jan. 1, 1986, with certain exceptions, see Effective Date of 1986 Amendment note below.

Subsec. (f). Pub. L. 98–369, § 1076(a), added subsec. (f).

1983—Subsec. (b)(2)(B)(v). Pub. L. 97–448, § 102(h)(1), added cl. (v).

Subsec. (e)(7)(A)(iii). Pub. L. 97–448, § 304(d), added cl. (iii).

1982—Subsec. (d)(6). Pub. L. 97–354 inserted ''or S corporation shareholder level'' in heading and inserted ''In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the shareholder level.''

1980—Pub. L. 96–589 completely revised and expanded provisions by specifying the types of indebtedness and by setting out priorities among the exclusions, to reflect the revision of Title 11, Bankruptcy, in 1978.

1976—Pub. L. 94–455, §1951(b)(2)(A), struck out ''(a) Special rule of exclusion.—'' after ''Income from discharge of indebtedness'' and struck out subsec. (b) which related to discharge, cancellation, or modification of indebtedness of certain railroad corporations.

Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1960—Subsec. (b). Pub. L. 86–496 provided that if the discharge, cancellation, or modification of any indebtedness is effected pursuant to a court order in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act, commenced before Jan. 1, 1960, then no amount is to be included in gross income with respect to it, and struck out provisions which made subsection inapplicable to discharges occurring in a taxable year beginning after Dec. 31, 1957.

1956—Subsec. (b). Act June 29, 1956, substituted ''December 31, 1957'' for ''December 31, 1955''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1231(b), Feb. 17, 2009, 123 Stat. 341, provided that: ''The amendments made by this section [amending this section] shall apply to discharges in taxable years ending after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, §303(b), Oct. 3, 2008, 122 Stat. 3807, provided that: ''The amendment made by this section [amending this section] shall apply to discharges of indebtedness occurring on or after January 1, 2010.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §2(d), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness on or after January 1, 2007.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §320(c), Oct. 22, 2004, 118 Stat. 1473, provided that: ''The amendments made by this section [amending this section, sections 3121, 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to amounts received by an individual in taxable years beginning after December 31, 2003.''

Pub. L. 108–357, title VIII, §896(b), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendment made by this section [amending this section] shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §402(b), Mar. 9, 2002, 116 Stat. 40, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to discharges of indebtedness after October 11, 2001, in taxable years ending after such date.

''(2) EXCEPTION.—The amendment made by this section shall not apply to any discharge of indebtedness before March 1, 2002, pursuant to a plan of reorganization filed with a bankruptcy court on or before October 11, 2001.''

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 225(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13150(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 703 and 1017 of this title] shall apply to discharges after December 31, 1992, in taxable years ending after such date.''

Section 13226(a)(3) of Pub. L. 103–66 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 382 of this title] shall apply to stock transferred after December 31, 1994, in satisfaction of any indebtedness.

''(B) EXCEPTION FOR TITLE 11 CASES.—The amendments made by this subsection shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before December 31, 1993.''

Section 13226(b)(4) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to discharges of indebtedness in taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11325(c) 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 section 1275 of this title] shall apply to debt instruments issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer (as the case may be)—

''(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

''(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

''(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

''(D) is pursuant to a transaction—

''(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

''(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

''(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.''

Amendment by section 11813(b)(6) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(d)(3)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Section 405(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges of indebtedness occurring after April 9, 1986, in taxable years ending after such date.''

Repeal by section 621(e)(1) of Pub. L. 99–514 of amendment by section 59(b)(1) of Pub. L. 99–369, which was effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Amendment by section 805(c)(2), (4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Section 822(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges after December 31, 1986.''

Amendment by section 1171(b)(4) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Amendment by section 1847(b)(7) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 59(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if it had been included in the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [Pub. L. 94–455].'' See Effective Date of 1976 Amendment note set out under section 382 of this title.

Section 59(b)[(c)] of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act if such transfer is—

''(A) pursuant to a written contract requiring such transfer which was binding on the corporation at all times on June 7, 1984, and at all times after such date but only if the transfer takes place before January 1, 1985, and only if the transferee held the debt at all times on June 7, 1984, or

''(B) pursuant to the exercise of an option to exchange debt for stock but only if such option was in effect at all times on June 7, 1984, and at all times after such date and only if at all times on June 7, 1984, the option and the debt were held by the same person.

''(3) CERTAIN TRANSFERS TO CONTROLLING SHAREHOLDER.—The amendment made by subsection (a) shall not apply to any transfer before January 1, 1985, by a corporation of its stock in exchange for debt of such corporation if—

''(A) such transfer is to another corporation which at all times on June 7, 1984, owned 75 percent or more of the total value of the stock of the corporation making such transfer, and

''(B) immediately after such transfer, the transferee corporation owns 80 percent or more of the total value of the stock of the transferor corporation.

''(4) CERTAIN TRANSFERS PURSUANT TO DEBT RESTRUCTURE AGREEMENT.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act and before January 1, 1985, if—

''(A) such transfer is covered by a debt restructure agreement entered into by the corporation during November 1983, and

''(B) such agreement was specified in a registration statement filed with the Securities and Exchange Commission by the corporation on March 7, 1984.''

Amendment by section 474(r)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(b) of Pub. L. 98–369 applicable to contributions to capital after Dec. 31, 1980, in taxable years ending after such date, see section 721(y)(2) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Section 1076(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness made on or after January 1, 1983.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96–589, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) FOR SECTION 2 (RELATING TO TAX TREATMENT OF DISCHARGE OF INDEBTEDNESS).—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 2 [amending this section and sections 111, 118, 382, 703 and 1017 of this title] shall apply to any transaction which occurs after December 31, 1980, other than a transaction which occurs in a proceeding in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) [Title 11, Bankruptcy] commencing on or before December 31, 1980.

''(2) TRANSITIONAL RULE.—In the case of any discharge of indebtedness to which subparagraph (A) or (B) of section 108(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to exclusion from gross income), as amended by section 2, applies and which occurs before January 1, 1982, or which occurs in a proceeding in a bankruptcy case or similar judicial proceedings commencing before January 1, 1982, then—

''(A) section 108(b)(2) of the such Code (relating to reduction of tax attributes), as so amended, shall be applied without regard to subparagraphs (A), (B), (C), and (E) thereof, and

''(B) the basis of any property shall not be reduced under section 1017 of such Code (relating to reduction in basis in connection with discharges of indebtedness), as so amended, below the fair market value of such property on the date the debt is discharged.

''(b) FOR SECTION 3 (RELATING TO RULES RELATING TO TITLE 11 CASES FOR INDIVIDUALS).—The amendments made by section 3 [enacting sections 1398 and 1399 of this title and amending sections 443, 6012 and 6103 of this title] shall apply to any bankruptcy case commencing more than 90 days after the date of the enactment of this Act [Dec. 24, 1980].

''(c) FOR SECTION 4 (RELATING TO CORPORATE REORGANIZATION PROVISIONS).—

''(1) IN GENERAL.—The amendments made by section 4 [enacting section 370 of this title and amending sections 354, 355, 357, 368 and 381 of this title] shall apply to any bankruptcy case or similar judicial proceeding commencing after December 31, 1980.

''(2) EXCHANGES OF PROPERTY FOR ACCRUED INTEREST.—The amendments made by subsection (e) of section 4 [amending sections 354 and 355 of this title] (relating to treatment of property attributable to accrued interest) shall also apply to any exchange—

''(A) which occurs after December 31, 1980, and

''(B) which does not occur in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) commenced on or before December 31, 1980.

''(d) FOR SECTION 5 (RELATING TO MISCELLANEOUS CORPORATE AMENDMENTS).—

''(1) FOR SUBSECTION (a) (RELATING TO EXEMPTION FROM PERSONAL HOLDING COMPANY TAX).—The amendments made by subsection (a) of section 5 [amending section 542 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

''(2) FOR SUBSECTION (b) (RELATING TO REPEAL OF SPECIAL TREATMENT FOR CERTAIN RAILROAD REDEMPTIONS).—The amendments made by subsection (b) of section 5 [amending section 302 of this title] shall apply to stock which is issued after December 31, 1980 (other than stock issued pursuant to a plan of reorganization approved on or before that date).

''(3) FOR SUBSECTION (c) (RELATING TO APPLICATION OF 12-MONTH LIQUIDATION RULE).—The amendment made by subsection (c) of section 5 [amending section 337 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

''(4) FOR SUBSECTION (d) (RELATING TO PERMITTING BANKRUPTCY ESTATE TO BE SUBCHAPTER S SHAREHOLDER).—The amendment made by subsection (d) of section 5 [amending section 1371 of this title] shall apply to any bankruptcy case commenced on or after October 1, 1979.

''(5) FOR SUBSECTION (e) (RELATING TO CERTAIN TRANSFERS TO CONTROLLED CORPORATIONS).—The amendments made by subsection (e) of section 5 [amending section 351 of this title] shall apply as provided in subsection (a) of this section.

''(6) FOR SUBSECTION (f) (RELATING TO EFFECT OF DEBT DISCHARGE ON EARNINGS AND PROFITS).—The amendment made by subsection (f) of section 5 [amending section 312 of this title] shall apply as provided in subsection (a) of this section.

''(e) FOR SECTION 6 (RELATING TO CHANGES IN TAX PROCEDURES).—The amendments made by section 6 [enacting sections 6658 and 7464 of this title, amending sections 128, 354, 422, 1023, 3302, 6012, 6036, 6155, 6161, 6212, 6213, 6216, 6326 [now 6327], 6404, 6503, 6512, 6532, 6871, 6872, 6873, 7430, and 7508 of this title, repealing section 1018 of this title, and redesignating former section 7464 of this title as 7465] shall take effect on October 1, 1979, but shall not apply to any proceeding under the Bankruptcy Act [Title 11] commenced before October 1, 1979.

''(f) ELECTION TO SUBSTITUTE SEPTEMBER 30, 1979, FOR DECEMBER 31, 1980.—

''(1) IN GENERAL.—The debtor (or debtors) in a bankruptcy case or similar judicial proceeding may (with the approval of the court) elect to apply subsections (a), (c), and (d) by substituting 'September 30, 1979' for 'December 31, 1980' each place it appears in such subsections.

''(2) EFFECT OF ELECTION.—Any election made under paragraph (1) with respect to any proceeding shall apply to all parties to the proceeding.

''(3) REVOCATION ONLY WITH CONSENT.—Any election under this subsection may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(4) TIME AND MANNER OF ELECTION.—Any election under this subsection shall be made at such time, and in such manner, as the Secretary of the Treasury or his delegate may by regulations prescribe.

''(g) DEFINITIONS.—For purposes of this section—

''(1) BANKRUPTCY CASE.—The term 'bankruptcy case' means any case under title 11 of the United States Code (as recodified by Public Law 95–598).

''(2) SIMILAR JUDICIAL PROCEEDING.—The term 'similar judicial proceeding' means a receivership, foreclosure, or similar proceeding in a Federal or State court (as modified by section 368(a)(3)(D) of the Internal Revenue Code of 1986).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1951(b)(2)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 1(b) of Pub. L. 86–496 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1959, but only with respect to discharges occurring after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813 of 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.

Section 1951(b)(2)(B) of Pub. L. 94–455 provided that: ''If any discharge, cancellation, or modification of indebtedness of a railroad corporation occurs in a taxable year beginning after December 31, 1976, pursuant to an order of a court in a proceeding referred to in section 108(b)(A) or (B) which commenced before January 1, 1960, then, notwithstanding the amendments made by subparagraph (A) [amending this section] the provisions of subsection (b) of section 108 shall be considered as not repealed with respect to such discharge, cancellation, or modification of indebtedness.''

EXCLUSION OF CERTAIN CANCELLATIONS OF INDEBTEDNESS

Pub. L. 107–134, title I, §105, Jan. 23, 2002, 115 Stat. 2432, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

''(1) gross income shall not include any amount which (but for this section) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002; and

''(2) return requirements under section 6050P of such Code shall not apply to any discharge described in paragraph (1).

''(b) EFFECTIVE DATE.—This section shall apply to discharges made on or after September 11, 2001, and before January 1, 2002.''

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.

§ 109. Improvements by lessee on lessor's property

Gross income does not include income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(Aug. 16, 1954, ch. 736, 68A Stat. 33.)

§ 110. Qualified lessee construction allowances for short-term leases

(a) In general

Gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

(1) under a short-term lease of retail space, and

(2) for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space,

but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

(b) Consistent treatment by lessor

Qualified long-term real property constructed or improved in connection with any amount excluded from a lessee's income by reason of subsection (a) shall be treated as nonresidential real property of the lessor (including for purposes of section 168(i)(8)(B)).

(c) Definitions

For purposes of this section—

(1) Qualified long-term real property

The term ''qualified long-term real property'' means nonresidential real property which is part of, or otherwise present at, the retail space referred to in subsection (a) and which reverts to the lessor at the termination of the lease.

(2) Short-term lease

The term ''short-term lease'' means a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)).

(3) Retail space

The term ''retail space'' means real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

(d) Information required to be furnished to Secretary

Under regulations, the lessee and lessor described in subsection (a) shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary—

(1) information concerning the amounts received (or treated as a rent reduction) and expended as described in subsection (a), and

(2) any other information which the Secretary deems necessary to carry out the provisions of this section.

(Added Pub. L. 105–34, title XII, § 1213(a), Aug. 5, 1997, 111 Stat. 1000.)

PRIOR PROVISIONS

A prior section 110, act Aug. 16, 1954, ch. 736, 68A Stat. 33, related to income taxes paid by lessee corporations, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(6), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE

Section 1213(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section and amending sections 168 and 6724 of this title] shall apply to leases entered into after the date of the enactment of this Act [Aug. 5, 1997].''

§ 111. Recovery of tax benefit items

(a) Deductions

Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed by this chapter.

(b) Credits

(1) In general

If—

(A) a credit was allowable with respect to any amount for any prior taxable year, and

(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

(2) Exception where credit did not reduce tax

Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

(3) Exception for investment tax credit and foreign tax credit

This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

(c) Treatment of carryovers

For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery or adjustment takes place shall be treated as reducing tax imposed by this chapter.

(d) Special rules for accumulated earnings tax and for personal holding company tax

In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where any excluded amount under subsection (a) was not allowable as a deduction

for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531 or the tax under section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 33; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §2(c), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, §171(a), July 18, 1984, 98 Stat. 698; Pub. L. 99–514, title XVIII, §1812(a)(1), (2), Oct. 22, 1986, 100 Stat. 2833.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §1812(a)(1), substituted ''did not reduce the amount of tax imposed by this chapter'' for ''did not reduce income subject to tax''.

Subsec. (c). Pub. L. 99–514, §1812(a)(2), substituted ''reducing tax imposed by this chapter'' for ''reducing income subject to tax or reducing tax imposed by this chapter, as the case may be''.

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to recovery of tax benefit items for provisions relating to recovery of bad debts, prior taxes, and delinquency amounts.

1980—Subsec. (d). Pub. L. 96–589 added subsec. (d).

1976—Subsec. (b)(4). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 171(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to amounts recovered after December 31, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 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.

§112. Certain combat zone compensation of members of the Armed Forces

(a) Enlisted personnel

Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member—

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(b) Commissioned officers

Gross income does not include so much of the compensation as does not exceed the maximum enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(c) Definitions

For purposes of this section—

(1) The term ''commissioned officer'' does not include a commissioned warrant officer.

(2) The term ''combat zone'' means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term ''compensation'' does not include pensions and retirement pay.

(5) The term ''maximum enlisted amount'' means, for any month, the sum of—

(A) the highest rate of basic pay payable for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade applicable to enlisted members, and

(B) in the case of an officer entitled to special pay under section 310 of title 37, United States Code, for such month, the amount of such special pay payable to such officer for such month.

(d) Prisoners of war, etc.

(1) Members of the Armed Forces

Gross income does not include compensation received for active service as a member of the

Armed Forces of the United States for any month during any part of which such member is in a missing status (as defined in section 551(2) of title 37, United States Code) during the Vietnam conflict as a result of such conflict, other than a period with respect to which it is officially determined under section 552(c) of such title 37 that he is officially absent from his post of duty without authority.

(2) Civilian employees

Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this paragraph, the terms ''active service'', ''employee'', and ''missing status'' have the respective meanings given to such terms by section 5561 of title 5 of the United States Code.

(3) Period of conflict

For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.

(Aug. 16, 1954, ch. 736, 68A Stat. 34; Pub. L. 89–739, § 1, Nov. 2, 1966, 80 Stat. 1165; Pub. L. 92–279, § 1, Apr. 26, 1972, 86 Stat. 124; Pub. L. 93–597, § 2(a), (b), Jan. 2, 1975, 88 Stat. 1950; Pub. L. 94–569, § 3(b), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 104–117, § 1(d), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104–188, title I, § 1704(t)(4)(A), Aug. 20, 1996, 110 Stat. 1887.)

AMENDMENTS

1996—Pub. L. 104–188 substituted ''combat zone compensation'' for ''combat pay'' in section catchline.

Subsec. (b). Pub. L. 104–117, § 1(d)(1), substituted ''the maximum enlisted amount'' for ''$500'' in introductory provisions.

Subsec. (c)(5). Pub. L. 104–117, § 1(d)(2), added par. (5).

1976—Subsec. (a). Pub. L. 94–569 substituted ''after January 1978'' for ''beginning more than 2 years after the date of the enactment of this sentence'' after ''With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month''.

Subsec. (b). Pub. L. 94–569 substituted ''after January 1978'' for ''beginning more than 2 years after the date of enactment of this sentence'' after ''With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month''.

1975—Subsec. (a). Pub. L. 93–597, § 2(a)(3), inserted provision relating to the applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (a)(1). Pub. L. 93–597, § 2(a)(1), struck out ''during an induction period'' after ''served in a combat zone''.

Subsec. (a)(2). Pub. L. 93–597, § 2(a)(2), substituted ''; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone'' for ''during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section''.

Subsec. (b). Pub. L. 93–597, § 2(a)(3), inserted provision relating to applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (b)(1). Pub. L. 93–597, § 2(a)(1), struck out ''during an induction period'' after ''served in a combat zone''.

Subsec. (b)(2). Pub. L. 93–597, § 2(a)(2), substituted ''; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone'' for ''during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section''.

Subsec. (c)(5). Pub. L. 93–597, § 2(b), struck out par. (5) which defined ''induction period''.

1972—Subsec. (d). Pub. L. 92–279 added subsec. (d).

1966—Subsec. (b). Pub. L. 89–739 substituted ''$500'' for ''$200''.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2(c) of Pub. L. 93–597 provided that: ''The amendments made by this section [amending this section] shall take effect on July 1, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(a)(1) of Pub. L. 92–279 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending on or after February 28, 1961.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–739 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to compensation received in taxable years ending after December 31, 1965, for periods of active service after such date.''

SENSE OF CONGRESS REGARDING TAX TREATMENT OF MEMBERS RECEIVING SPECIAL PAY FOR DUTY SUBJECT TO HOSTILE FIRE OR IMMINENT DANGER

Pub. L. 106–398, § 1 [[div. A], title X, § 1089], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, provided that: ''It is the sense of Congress that members of the Armed Forces who receive special pay under section 310 of title 37, United States Code, for duty subject to hostile fire or imminent danger should receive the same treatment under Federal income tax laws as members serving in combat zones.''

SENSE OF CONGRESS REGARDING TREATMENT UNDER INTERNAL REVENUE CODE OF MEMBERS RECEIVING HOSTILE FIRE OR IMMINENT DANGER SPECIAL PAY DURING CONTINGENCY OPERATIONS

Pub. L. 106–65, div. A, title VI, § 677, Oct. 5, 1999, 113 Stat. 676, provided that: ''It is the sense of Congress that a member of the Armed Forces who is receiving special pay under section 310 of title 37, United States Code, while assigned to duty in support of a contingency operation should be treated under the Internal Revenue Code of 1986 in the same manner as a member of the Armed Forces serving in a combat zone (as defined in section 112 of the Internal Revenue Code of 1986).''

AVAILABILITY OF CERTAIN TAX BENEFITS FOR SERVICES AS PART OF OPERATION ALLIED FORCE

Pub. L. 106–21, § 1, Apr. 19, 1999, 113 Stat. 34, provided that:

''(a) GENERAL RULE.—For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

''(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

''(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

''(3) Section 692 (relating to income taxes of members of Armed Forces on death).

''(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

''(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

''(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

''(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

''(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

''(b) QUALIFIED HAZARDOUS DUTY AREA.—For purposes of this section, the term 'qualified hazardous duty area' means any area of the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, and the northern Ionian Sea (above the 39th parallel) during the period (which includes the date of the enactment of this Act [Apr. 19, 1999]) that any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay: duty subject to hostile fire or imminent danger) for services performed in such area.

''(c) SPECIAL RULE FOR SECTION 7508.—Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Allied Force outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which the entitlement referred to in subsection (b) is in effect, any area in which such services are performed.

''(d) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on March 24, 1999.

''(2) WITHHOLDING.—Subsection (a)(5) shall apply to remuneration paid after the date of the enactment of this Act [Apr. 19, 1999].''

TREATMENT OF CERTAIN INDIVIDUALS PERFORMING SERVICES IN CERTAIN HAZARDOUS DUTY AREAS; EFFECTIVE DATE

Section 1 of Pub. L. 104–117 provided that:

''(a) GENERAL RULE.—For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

''(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

''(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

''(3) Section 692 (relating to income taxes of members of Armed Forces on death).

''(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

''(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

''(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

''(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

''(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

''(b) QUALIFIED HAZARDOUS DUTY AREA.—For purposes of this section, the term 'qualified hazardous duty area' means Bosnia and Herzegovina, Croatia, or Macedonia, if as of the date of the enactment of this section [Mar. 20, 1996] any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger) for services performed in such country. Such term includes any such country only during the period such entitlement is in effect. Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Joint Endeavor outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which such entitlement is in effect, any area in which such services are performed.

''(c) EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.—[Amended section 3401 of this title.]

''(d) INCREASE IN COMBAT PAY EXCLUSION FOR OFFICERS TO HIGHEST AMOUNT APPLICABLE TO ENLISTED PERSONNEL.—

''(1) IN GENERAL.—[Amended this section.]

''(2) MAXIMUM ENLISTED AMOUNT.—[Amended this section.]

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of and amendments made by this section shall take effect on November 21, 1995.

''(2) WITHHOLDING.—Subsection (a)(5) and the amendment made by subsection (c) shall apply to remuneration paid after the date of the enactment of this Act [Mar. 20, 1996].''

REFUND OR CREDIT OF OVERPAYMENT; APPLICABLE PERIOD

Section 3(a)(2), (3) of Pub. L. 92–279, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) If refund or credit of any overpayment for any taxable year resulting from the application of the amendment made by the first section of this Act [amending this section] (including interest, additions to the tax, and additional amounts) is prevented at any time before the expiration of the applicable period specified in paragraph (3) by the operation of any law or rule of law, such refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such applicable period.

''(3) For purposes of paragraph (2), the applicable period for any individual with respect to any compensation is the period ending on whichever of the following days is the later:

''(A) the day which is one year after the date of the enactment of this Act [Apr. 26, 1972], or

''(B) the day which is 2 years after the date on which it is determined that the individual's missing status (within the meaning of section 112(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) has terminated for purposes of such section 112.''

EX. ORD. NO. 10585. TERMINATION OF COMBATANT ACTIVITIES IN KOREA

Ex. Ord. No. 10585, Jan. 1, 1955, 20 F.R. 17, provided:

By virtue of the authority vested in me by section 112(c)(3) of the Internal Revenue Code of 1954 [now I.R.C. 1986], January 31, 1955, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 10195 of December 20, 1950 (15 F.R. 9177).

DWIGHT D. EISENHOWER.

EX. ORD. NO. 11216. DESIGNATION OF VIETNAM AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 11216, Apr. 24, 1965, 30 F.R. 5817, provided:

Pursuant to the authority vested in me by section 112 of the Internal Revenue Code of 1954 [now I.R.C. 1986], I hereby designate, for the purposes of that section, as an area in which Armed Forces of the United States are and have been engaged in combat:

Vietnam, including the waters adjacent thereto within the following-described limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21° N Lat., 108°15′ E Long.; thence southward to 18° N Lat., 108°15′ E Long.; thence southeastward to 17°30 N Lat., 111° E Long.; thence southward to 11° N Lat., 111° E Long.; thence southwestward to 7° N Lat., 105° E Long.; thence westward to 7° N Lat., 103° E Long.; thence northward to 9°30′ N Lat., 103° E Long.; thence northeastward to 10°15′ N Lat., 104°27′ E Long.; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

The date of the commencing of combatant activities in such area is hereby designated as January 1, 1964.

LYNDON B. JOHNSON.

EX. ORD. NO. 12744. DESIGNATION OF ARABIAN PENINSULA AREAS, AIRSPACE, AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 12744, Jan. 21, 1991, 56 F.R. 2663, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I hereby designate, for purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—the Persian Gulf

—the Red Sea

—the Gulf of Oman

—that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude

—the Gulf of Aden

—the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

For the purposes of this order, the date of the commencing of combatant activities in such zone is hereby designated as January 17, 1991.

GEORGE BUSH.

EX. ORD. NO. 13002. TERMINATION OF COMBAT ZONE DESIGNATION IN VIETNAM AND WATERS ADJACENT THERETO

Ex. Ord. No. 13002, May 13, 1996, 61 F.R. 24665, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 112(c)(3)), June 30, 1996, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 11216 of April 24, 1965 [set out above].

WILLIAM J. CLINTON.

EX. ORD. NO. 13119. DESIGNATION OF FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA/MONTENEGRO), ALBANIA, THE AIRSPACE ABOVE, AND ADJACENT WATERS AS A COMBAT ZONE

Ex. Ord. No. 13119, April 13, 1999, 64 F.R. 18797, provided:

Pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for the purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—The Federal Republic of Yugoslavia (Serbia/Montenegro);

—Albania;

—the Adriatic Sea;

—the Ionian Sea north of the 39th parallel.

For the purposes of this order, I designate March 24, 1999, as the date of the commencement of combatant activities in such zone.

WILLIAM J. CLINTON.

EX. ORD. NO. 13239. DESIGNATION OF AFGHANISTAN AND THE AIRSPACE ABOVE AS A COMBAT ZONE

Ex. Ord. No. 13239, Dec. 12, 2001, 66 F.R. 64907, provided:

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for purposes of that section, Afghanistan, including the airspace above, as an area in which Armed Forces of the United States are and have been engaged in combat.

For purposes of this order, I designate September 19, 2001, as the date of the commencement of combatant activities in such zone.

GEORGE W. BUSH.

[§ 113. Repealed. Pub. L. 101–508, title XI, § 11801(a)(7), Nov. 5, 1990, 104 Stat. 1388–520]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to mustering-out payments for members of Armed Forces.

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.

[§ 114. Repealed. Pub. L. 108–357, title I, § 101(a), Oct. 22, 2004, 118 Stat. 1423]

Section, added Pub. L. 106–519, § 3(a), Nov. 15, 2000, 114 Stat. 2423, related to exclusion of extraterritorial income from gross income.

A prior section 114, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to sports programs conducted for American National Red Cross, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(8), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

TRANSITION PROVISIONS

Pub. L. 108–357, title I, § 101(d)–(f), Oct. 22, 2004, 118 Stat. 1423, 1424, as amended by Pub. L. 109–222, title V, § 513(b), May 17, 2006, 120 Stat. 366, provided that:

''(d) TRANSITIONAL RULE FOR 2005 AND 2006.—

''(1) IN GENERAL.—In the case of transactions during 2005 or 2006, the amount includible in gross income by reason of the amendments made by this section [amending sections 56, 275, 864, 903, and 999 of this title and repealing this section and sections 941 to 943 of this title] shall not exceed the applicable percentage of the amount which would have been so included but for this subsection.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be as follows:

''(A) For 2005, the applicable percentage shall be 20 percent.

''(B) For 2006, the applicable percentage shall be 40 percent.

''(e) REVOCATION OF ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—If, during the 1-year period beginning on the date of the enactment of this Act [Oct. 22, 2004], a corporation for which an election is in effect under section 943(e) of the Internal Revenue Code of 1986 revokes such election, no gain or loss shall be recognized with respect to property treated as transferred under clause (ii) of section 943(e)(4)(B) of such Code to the extent such property—

''(1) was treated as transferred under clause (i) thereof, or

''(2) was acquired during a taxable year to which such election applies and before May 1, 2003, in the ordinary course of its trade or business.

The Secretary of the Treasury (or such Secretary's delegate) may prescribe such regulations as may be necessary to prevent the abuse of the purposes of this subsection.

''[(f) Repealed. Pub. L. 109–222, title V, §513(b), May 17, 2006, 120 Stat. 366.]''

§115. Income of States, municipalities, etc.

Gross income does not include—

(1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia; or

(2) income accruing to the government of any possession of the United States, or any political subdivision thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 35; Pub. L. 94–455, title XIX, §1901(a)(19), Oct. 4, 1976, 90 Stat. 1766.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''(a) General rule'' before ''Gross income does not include'', struck out subsecs. (b) and (c) which related to contracts concerning public utilities made before Sept. 8, 1916, and contracts concerning bridge acquisition made before May 29, 1928, respectively, and in par. (1) of former subsec. (a), struck out ''or territory'' after ''accruing to a State''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

TAX TREATMENT OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUST

Pub. L. 109–59, title XI, §11146, Aug. 10, 2005, 119 Stat. 1966, provided that:

''(a) IN GENERAL.—If a State owns all of the outstanding stock of a corporation—

''(1) which is a real estate investment trust on the date of the enactment of this Act [Aug. 10, 2005],

''(2) which is a non-operating class III railroad, and

''(3) substantially all of the activities of which consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons for railroad transportation and for economic development purposes for the benefit of the State and its citizens, then, to the extent such activities are of a type which are an essential governmental function within the meaning of section 115 of the Internal Revenue Code of 1986, income derived from such activities by the corporation shall be treated as accruing to the State for purposes of section 115 of such Code.

''(b) GAIN OR LOSS NOT RECOGNIZED ON CONVERSION.—Notwithstanding section 337(d) of the Internal Revenue Code of 1986—

''(1) no gain or loss shall be recognized under section 336 or 337 of such Code, and

''(2) no change in basis of the property of such corporation shall occur, because of any change of status of a corporation to a tax-exempt entity by reason of the application of subsection (a).

''(c) TAX-EXEMPT FINANCING.—

''(1) IN GENERAL.—Any obligation issued by a corporation described in subsection (a) at least 95 percent of the net proceeds (as defined in section 150(a) of the Internal Revenue Code of 1986) of which are to be used to provide for the acquisition, construction, or improvement of railroad transportation infrastructure (including railroad terminal facilities)—

''(A) shall be treated as a State or local bond (within the meaning of section 103(c) of such Code), and

''(B) shall not be treated as a private activity bond (within the meaning of section 103(b)(1) of such Code) solely by reason of the ownership or use of such railroad transportation infrastructure by the corporation.

''(2) NO INFERENCE.—Except as provided in paragraph (1), nothing in this subsection shall be construed to affect the treatment of the private use of proceeds or property financed with obligations issued by the corporation for purposes of section 103 of the Internal Revenue Code of 1986 and part IV of subchapter B [probably means part IV of subchapter B of chapter 1] of such Code.

''(d) DEFINITIONS.—For purposes of this section:

''(1) REAL ESTATE INVESTMENT TRUST.—The term 'real estate investment trust' has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

''(2) NON-OPERATING CLASS III RAILROAD.—The term 'non-operating class III railroad' has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.), and the regulations thereunder.

''(3) STATE.—The term 'State' includes—

''(A) the District of Columbia and any possession of the United States, and

''(B) any authority, agency, or public corporation of a State.

''(e) APPLICABILITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a) through action of such corporation's board of directors.

''(2) EXCEPTION.—This section shall not apply to any State which—

''(A) becomes the owner of all of the voting stock of a corporation described in subsection (a) after December 31, 2003, or

''(B) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2006.''

[§116. Repealed. Pub. L. 99–514, title VI, §612(a), Oct. 22, 1986, 100 Stat. 2250]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 37; June 25, 1959, Pub. L. 86–69, §3(a)(2), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86–779, §10(f), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88–272, title II, §201(c), (d)(6)(C), 78 Stat. 32; Nov. 13, 1966, Pub. L. 89–809, title I, §103(g), 80 Stat. 1552; Oct. 4, 1976, Pub. L. 94–455, title X, §§1051(h)(2), 1053(d)(1), title XIX, §1901(a)(20), 90 Stat. 1647, 1649, 1766; Apr. 2, 1980, Pub. L. 96–223, title IV, §404(a), 94 Stat. 305; Aug. 13, 1981, Pub. L. 97–34, title III, §302(b)(2), 95 Stat. 272; July 18, 1984, Pub. L. 98–369, div. A, title V, §542(b), 98 Stat. 891, authorized partial exclusion of dividends received by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 301 of this title.

§117. Qualified scholarships

(a) General rule

Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

(b) Qualified scholarship

For purposes of this section—

(1) In general

The term ''qualified scholarship'' means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

(2) Qualified tuition and related expenses

For purposes of paragraph (1), the term ''qualified tuition and related expenses'' means—

(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

(c) Limitation

(1) In general

Except as provided in paragraph (2), subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

(2) Exceptions

Paragraph (1) shall not apply to any amount received by an individual under—

(A) the National Health Service Corps Scholarship Program under section 338A(g)(1)(A) of the Public Health Service Act, or

(B) the Armed Forces Health Professions Scholarship and Financial Assistance program under subchapter I of chapter 105 of title 10, United States Code.

(d) Qualified tuition reduction

(1) In general

Gross income shall not include any qualified tuition reduction.

(2) Qualified tuition reduction

For purposes of this subsection, the term ''qualified tuition reduction'' means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(h).

(3) Reduction must not discriminate in favor of highly compensated, etc.

Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

[(4) Repealed. Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830]

(5) Special rules for teaching and research assistants

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, paragraph (2) shall be applied as if it did not contain the phrase ''(below the graduate level)''.

(Aug. 16, 1954, ch. 736, 68A Stat. 38; Pub. L. 87–256, § 110(a), Sept. 21, 1961, 75 Stat. 535; Pub. L. 94–455, title XIX, § 1901(b)(8)(A), (c)(3), Oct. 4, 1976, 90 Stat. 1794, 1803; Pub. L. 96–541, § 5(a)(1), Dec. 17, 1980, 94 Stat. 3205; Pub. L. 98–369, div. A, title V, § 532(a), July 18, 1984, 98 Stat. 887; Pub. L. 99–514, title I, § 123(a), title XI, §§ 1114(b)(2), 1151(g)(2), Oct. 22, 1986, 100 Stat. 2112, 2450, 2506; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title IV, § 4001(b)(2), 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. 104–188, title I, § 1703(n)(14), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 107–16, title IV, § 413(a), June 7, 2001, 115 Stat. 64.)

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.

REFERENCES IN TEXT

Section 338A(g)(1)(A) of the Public Health Service Act, referred to in subsec. (c)(2)(A), is classified to section 254*l*(g)(1)(A) of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–16, §§ 413(a), 901, temporarily designated existing provisions as par. (1), inserted par. heading, substituted ''Except as provided in paragraph (2), subsections (a)'' for ''Subsections (a)'', and added par. (2). See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (d)(2)(B). Pub. L. 104–188 substituted ''section 132(h)'' for ''section 132(f)''.

1989—Subsec. (d)(4). Pub. L. 101–140, § 203(a)(2), amended par. (4) 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 subsec. (d) to read as if amendments by Pub. L. 99–514, § 1151(g)(2), which added par. (4), had not been enacted, see 1986 Amendment note below.

1988—Subsec. (d)(4). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may'' and ''who are'' for ''who may be''.

Subsec. (d)(5). Pub. L. 100–647, § 4001(b)(2), added par. (5).

1986—Pub. L. 99–514, § 123(a), in amending section generally, substituted ''Qualified scholarships'' for ''Scholarships and fellowship grants'' in section catchline.

Subsec. (a). Pub. L. 99–514, § 123(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of an individual, gross income does not include—

''(1) any amount received—

''(A) as a scholarship at an educational organization described in section 170(b)(1)(A)(ii), or

''(B) as a fellowship grant, including the value of contributed services and accommodations; and

''(2) any amount received to cover expenses for—

''(A) travel,

''(B) research,

''(C) clerical help, or

''(D) equipment,

which are incident to such a scholarship or to a fellowship grant, but only to the extent that the amount is so expended by the recipient.''

Subsec. (b). Pub. L. 99–514, §123(a), in amending subsec. (b) generally, substituted qualified scholarship provision for former limitations provision, which related in par. (1) to individuals who were candidates for degrees, and in par. (2) to individuals who were not candidates for degrees, describing in subpar. (A) conditions for exclusion and in subpar. (B) extent of exclusion, such detailed provision now covered in subsec. (c).

Subsec. (c). Pub. L. 99–514, §123(a), in amending subsec. (c) generally, substituted limitation provision for former provision relating to Federal grants for tuition and related expenses not includable merely because there was requirement of future service as Federal employee.

Subsec. (d). Pub. L. 99–514, §123(a), in amending subsec. (d) generally, substituted ''reduction'' for ''reductions'' in heading and inserted ''(within the meaning of section 414(q))'' after ''highly compensated employees'' in par. (3).

Subsec. (d)(3). Pub. L. 99–514, §1114(b)(2), struck out ''officer, owner, or'' after ''with respect to any'' and ''officers, owners, or'' after ''in favor of'' and inserted at end ''For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q).''

Subsec. (d)(4). Pub. L. 99–514, §1151(g)(2), added par. (4).

1984—Subsec. (d). Pub. L. 98–369 added subsec. (d).

1980—Subsec. (c). Pub. L. 96–541 added subsec. (c).

1976—Subsecs. (a)(1)(A), (b)(1), (2). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''scholarship at an''.

Subsec. (b)(2)(A)(iv). Pub. L. 94–455, §1901(c)(3), struck out ''a territory'' after ''or a State''.

Subsec. (b)(2)(B). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''degree at an''.

1961—Subsec. (b)(2)(A). Pub. L. 87–256 included cases where the grantor of the scholarship or fellowship grant is a foreign government, an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §413(b), June 7, 2001, 115 Stat. 64, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to amounts received in taxable years 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 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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.

Section 4001(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 127 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(2) 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(g)(2) 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.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 532(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to qualified tuition reductions (as defined in section 117(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for education furnished after June 30, 1985, in taxable years ending after such date.''

Provisions of subsec. (d) treated as in effect on and after Jan. 1, 1984, in case of education described in section 127(c)(8) of this title, see section 1(g)(5) of Pub. L. 98–611, set out as a note under section 127 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a)(2) of Pub. L. 96–541 provided: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(1) of Pub. L. 87–256 provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and sections 871 and 872 of this title] shall apply to taxable years beginning after December 31, 1961.''

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.

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.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(a) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 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.

TRANSITIONAL RULES FOR TREATMENT OF CERTAIN REDUCTIONS IN TUITION

Section 1853(f) of Pub. L. 99–514 provided that:

''(1) A tuition reduction plan shall be treated as meeting the requirements of section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] if—

''(A) such plan would have met the requirements of such section (as amended by this section but without regard to the lack of evidence that benefits under such plan were the subject of good faith bargaining) on the day on which eligibility to participate in the plan was closed,

''(B) at all times thereafter, the tuition reductions available under such plan are available on substantially the same terms to all employees eligible to participate in such plan, and

''(C) the eligibility to participate in such plan closed on June 30, 1972, June 30, 1974, or December 31, 1975.

''(2) For purposes of applying section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] to all tuition reduction plans of an employer with at least 1 such plan described in paragraph (1) of this subsection, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement that the Secretary of the Treasury or his delegate finds to be a collective bargaining agreement between employee representatives and 1 or more employers, if, with respect to plans other than plans described in paragraph (1), there is evidence that such benefits were the subject of good faith bargaining.

''(3) Any reduction in tuition provided with respect to a full-time course of education furnished at the graduate level before July 1, 1988, shall not be included in gross income if—

''(A) such reduction would not be included in gross income under the Internal Revenue Service regulations in effect on the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], and

''(B) such reduction is provided with respect to a student who was accepted for admission to such course of education before July 1, 1984, and began such course of education before June 30, 1985.''

NATIONAL RESEARCH SERVICE AWARDS

Pub. L. 95–600, title I, § 161(b), Nov. 6, 1978, 92 Stat. 2810, as amended by Pub. L. 96–167, § 9(b), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96–541, § 5(b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–248, title II, § 285, Sept. 3, 1982, 96 Stat. 569; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that any amount paid to, or on behalf of, an individual as a national research service award under former section 289*l*–1 of title 42 during calendar years 1974 through 1983 was to be treated as a scholarship or fellowship grant under this section.

SCHOLARSHIP PROGRAMS FOR MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93–483, § 4, Oct. 26, 1974, 88 Stat. 1458, as amended Pub. L. 94–455, title XXI, § 2130, Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95–171, § 5, Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title I, § 161(a), Nov. 6, 1978, 92 Stat. 2810; Pub. L. 95–615, title I, § 6, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96–167, § 9(a), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—Any amount received from appropriated funds as a scholarship, including the value of contributed services and accommodations, by a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program determined by the Secretary of the Treasury or his delegate to have substantially similar objectives) from an educational institution (as defined in section 151(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [see section 170(b)(1)(A)(ii) of this title] shall be treated as a scholarship under section 117 of such Code [this section], whether that member is receiving training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required of the member as a condition of receiving those payments.

''(b) DEFINITION OF UNIFORMED SERVICES.—For purposes of this section, the term 'uniformed service' has the meaning given it by section 101(3) of title 37, United States Code.

''(c) EFFECTIVE DATE.—The provisions of this section shall apply with respect to amounts received during calendar years 1973, 1974, and 1975, and, in the case of a member of a uniformed service receiving training after 1975 and before 1981 in programs described in subsection (a), with respect to amounts received after 1975 and before 1985.''

[Section 6 of Pub. L. 95–615, which reenacted § 4(c) of Pub. L. 93–483 without change, to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a note under section 61 of this title.]

§ 118. Contributions to the capital of a corporation

(a) General rule

In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

(b) Contributions in aid of construction, etc.

For purposes of subsection (a), except as provided in subsection (c), the term ''contribution to the capital of the taxpayer'' does not include any contribution in aid of construction or any other contribution as a customer or potential customer.

(c) Special rules for water and sewerage disposal utilities

(1) General rule

For purposes of this section, the term ''contribution to the capital of the taxpayer'' includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal services if—

(A) such amount is a contribution in aid of construction,

(B) in the case of contribution of property other than water or sewerage disposal facili-

ties, such amount meets the requirements of the expenditure rule of paragraph (2), and

(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for rate-making purposes.

(2) Expenditure rule

An amount meets the requirements of this paragraph if—

(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)—

(i) which is the property for which the contribution was made or is of the same type as such property, and

(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

(C) accurate records are kept of the amounts contributed and expenditures made, the expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

(3) Definitions

For purposes of this subsection—

(A) Contribution in aid of construction

The term ''contribution in aid of construction'' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

(B) Predominantly

The term ''predominantly'' means 80 percent or more.

(C) Regulated public utility

The term ''regulated public utility'' has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(4) Disallowance of deductions and credits; adjusted basis

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.

(d) Statute of limitations

If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (c), then—

(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

(A) the amount of the expenditure referred to in subparagraph (A) of subsection (c)(2),

(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2), and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Cross references

(1) For basis of property acquired by a corporation through a contribution to its capital, see section 362.

(2) For special rules in the case of contributions of indebtedness, see section 108(e)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 94–455, title XXI, §2120(a), Oct. 4, 1976, 90 Stat. 1912; Pub. L. 95–600, title III, §364(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96–589, §2(e)(2), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, §163(a), July 18, 1984, 98 Stat. 697; Pub. L. 99–514, title VIII, §824(a), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 104–188, title I, §1613(a)(1), (2), Aug. 20, 1996, 110 Stat. 1848–1850.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–188, §1613(a)(2), inserted ''except as provided in subsection (c),'' before ''the term''.

Subsecs. (c) to (e). Pub. L. 104–188, §1613(a)(1), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1986—Subsec. (b). Pub. L. 99–514, §824(a), added subsec. (b) and struck out former subsec. (b) relating to contributions in aid of construction, containing par. (1) general rule, par. (2) expenditure rule, par. (3) definitions, and par. (4) disallowance of deductions and investment credit; adjusted basis.

Subsecs. (c), (d). Pub. L. 99–514, §824(a), redesignated former subsec. (d) as (c) and struck out former subsec. (c), statute of limitations, which read as follows: ''If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (b), then—

''(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

''(A) the amount of the expenditure referred to in subparagraph (A) of subsection (b)(2),

''(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

''(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (b)(2); and

''(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.''

1984—Subsecs. (c), (d). Pub. L. 98–369 added subsec. (c) and redesignated former subsec. (c) as (d).

1980—Subsec. (c). Pub. L. 96–589 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b)(1). Pub. L. 95–600, §364(a)(1), (2), substituted in provisions preceding subpar. (A) ''electric energy, gas (through a local distribution system or transportation by pipeline), water,'' for ''water'' and in subpar. (B) ''electric energy, gas, steam, water,'' for ''water''.

Subsec. (b)(2)(A)(ii). Pub. L. 95–600, § 364(a)(3), substituted ''electric energy, gas, steam, water,'' for ''water''.

Subsec. (b)(3)(A). Pub. L. 95–600, § 364(a)(4), substituted ''line to an electric line, a gas main, a steam line, or a main water or sewer line'' for ''property to a main water or sewer line''.

Subsec. (b)(3)(C). Pub. L. 95–600, § 364(a)(5), substituted ''electric energy, gas, water,'' for ''water'' and inserted ''(including in the case of a gas transmission utility, the provision of gas services by sale for resale to the general public)'' after ''members of the general public''.

1976—Subsecs. (b), (c). Pub. L. 94–455, § 2120(a), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1613(a)(3) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section] shall apply to amounts received after June 12, 1996.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 824(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1008(j)(2), Nov. 10, 1988, 102 Stat. 3445, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 362 of this title] shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

''(2) TREATMENT OF CERTAIN WATER SUPPLY PROJECTS.—The amendments made by this section shall not apply to amounts which are paid by the New Jersey Department of Environmental Protection for construction of alternative water supply projects in zones of drinking water contamination and which are designated by such department as being taken into account under this paragraph. Not more than $4,631,000 of such amounts may be designated under the preceding sentence.

''(3) TREATMENT OF CERTAIN CONTRIBUTIONS BY TRANSPORTATION AUTHORITY.—The amendments made by this section shall not apply to contributions in aid of construction by a qualified transportation authority which were clearly identified in a master plan in existence on September 13, 1984, and which are designated by such authority as being taken into account under this paragraph. Not more than $68,000,000 of such contributions may be designated under the preceding sentence. For purposes of this paragraph, a qualified transportation authority is an entity which was created on February 20, 1967, and which was established by an interstate compact and consented to by Congress in Public Law 89–774, 80 Stat. 1324 (1966).

''(4) TREATMENT OF CERTAIN PARTNERSHIPS.—In the case of a partnership with a taxable year beginning May 1, 1986, if such partnership realized net capital gain during the period beginning on the 1st day of such taxable year and ending on May 29, 1986, pursuant to an underwriting agreement dated May 6, 1986, then such partnership may elect to treat each asset to which such net capital gain relates as having been distributed to the partners of such partnership in proportion to their distributive share of the capital gain or loss realized by the partnership with respect to such asset and to treat each such asset as having been sold by each partner on the date of the sale of the asset by the partnership. If such an election is made, the consideration received by the partnership in connection with the sale of such assets shall be treated as having been received by the partners in connection with the deemed sale of such assets. In the case of a tiered partnership, for purposes of this paragraph each partnership shall be treated as having realized net capital gain equal to its proportionate share of the net capital gain of each partnership in which it is a partner, and the election provided by this paragraph shall apply to each tier.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 163(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 6501 and 6511 of this title] shall apply to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends after December 31, 1984.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 364(b) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after January 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2120(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 362 of this title] apply to contributions made after January 31, 1976.''

§ 119. Meals or lodging furnished for the convenience of the employer

(a) Meals and lodging furnished to employee, his spouse, and his dependents, pursuant to employment

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) Special rules

For purposes of subsection (a)—

(1) Provisions of employment contract or State statute not to be determinative

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) Certain factors not taken into account with respect to meals

In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) Certain fixed charges for meals

(A) In general

If—

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) Application of subparagraph (A)

Subparagraph (A) shall apply—

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(4) Meals furnished to employees on business premises where meals of most employees are otherwise excludable

All meals furnished on the business premises of an employer to such employer's employees shall be treated as furnished for the convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.

(c) Employees living in certain camps

(1) In general

In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises of the employer.

(2) Camp

For purposes of this section, a camp constitutes lodging which is—

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) Lodging furnished by certain educational institutions to employees

(1) In general

In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) Exception in cases of inadequate rent

Paragraph (1) shall not apply to the extent of the excess of—

(A) the lesser of—

(i) 5 percent of the appraised value of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.

(3) Qualified campus lodging

For purposes of this subsection, the term ''qualified campus lodging'' means lodging to which subsection (a) does not apply and which is—

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

(4) Educational institution, etc.

For purposes of this subsection—

(A) In general

The term ''educational institution'' means—

(i) an institution described in section 170(b)(1)(A)(ii) (or an entity organized under State law and composed of public institutions so described), or

(ii) an academic health center.

(B) Academic health center

For purposes of subparagraph (A), the term ''academic health center'' means an entity—

(i) which is described in section 170(b)(1)(A)(iii),

(ii) which receives (during the calendar year in which the taxable year of the taxpayer begins) payments under subsection (d)(5)(B) or (h) of section 1886 of the Social Security Act (relating to graduate medical education), and

(iii) which has as one of its principal purposes or functions the providing and teaching of basic and clinical medical science and research with the entity's own faculty.

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 95–427, §4(a), Oct. 7, 1978, 92 Stat. 997; Pub. L. 95–615, title II, §205, Nov. 8, 1978, 92 Stat. 3107; Pub. L. 96–222, title I, §108(a)(1)(G), Apr. 1, 1980, 94 Stat. 225; Pub. L. 97–34, title I, §113, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, title XI, §1164(a), Oct. 22, 1986, 100 Stat. 2511; Pub. L. 100–647, title I, §1011B(d), Nov. 10, 1988, 102 Stat. 3489; Pub. L. 104–188, title I, §1123(a), Aug. 20, 1996, 110 Stat. 1768; Pub. L. 105–206, title V, §5002(a), July 22, 1998, 112 Stat. 788.)

REFERENCES IN TEXT

Section 1886(d)(5)(B) or (h) of the Social Security Act, referred to in subsec. (d)(4)(B)(ii), is classified to section 1395ww(d)(5)(B) or (h) of Title 42, The Public Health and Welfare.

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–206 added par. (4).

1996—Subsec. (d)(4). Pub. L. 104–188 amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''EDUCATIONAL INSTITUTION.—For purposes of this paragraph, the term 'educational institution' means an institution described in section 170(b)(1)(A)(ii).''

1988—Subsec. (d). Pub. L. 100–647 struck out ''(as of the close of the calendar year in which the taxable year begins)'' after ''appraised value'' in par. (2)(A)(i) and inserted at end ''The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.'' as concluding provision.

1986—Subsec. (d). Pub. L. 99–514 added subsec. (d).

1981—Subsec. (c). Pub. L. 97–34 added subsec. (c).

1980—Subsec. (a). Pub. L. 96–222 struck out ''General rule'' in subsec. (a) as in effect on the day before the date of enactment of the Foreign Earned Income Act of 1978 to correct a legislative oversight in the amendment of subsec. (a) of this section by section 205 of Pub. L. 95–615. The amendment by Pub. L. 95–615, however, was executed without reference to ''General rule'' as the probable intent of Congress, thereby requiring no change in text.

1978—Subsec. (a). Pub. L. 95–615 designated existing provisions as subsec. (a), added subsec. (a) heading, and substituted ''furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer'' for ''furnished to him by his employer for the convenience of the employer''.

Pub. L. 95–427 inserted provisions relating to factors not taken into account with respect to meals and certain fixed charges for meals.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title v, § 5002(b), July 22, 1998, 112 Stat. 789, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [July 22, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1123(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1164(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95–615, see section 108(a)(2)(A) of Pub. L. 96–222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95–427 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

STATUTE OF LIMITATIONS

Pub. L. 96–605, title I, § 107(b), Dec. 28, 1980, 94 Stat. 3524, provided that: ''In the case of any allowance received during calendar year 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 [section 3 of Pub. L. 95–427, set out below] shall be applied by substituting the date one year after the date of the enactment of this Act [Dec. 28, 1980] for 'April 15, 1979' each place it appears.''

TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW RECEIVED BY STATE POLICE OFFICERS BEFORE JANUARY 1, 1978

Section 3 of Pub. L. 95–427, as amended by Pub. L. 96–605, title I, § 107(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—If—

''(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

''(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

''(3) this section applies to such allowance,

then, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such allowance shall not be included in such individual's gross income.

''(b) ALLOWANCES TO WHICH SECTION APPLIES.—For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received—

''(1) after December 31, 1969, and before January 1, 1974, to the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

''(2) during the calendar year 1974, 1975, 1976, or 1977.

''(c) OTHER DEFINITIONS.—For purposes of this section—

''(1) STATE POLICE OFFICER.—The term 'State police officer' means any police officer (including a highway patrolman) employed by a State (or the District of Columbia) on a full-time basis with the power to arrest.

''(2) INCOME TAX RETURN.—The term 'income tax return' means the return of the taxes imposed by subtitle A of the Internal Revenue Code of 1986. If an individual filed before November 29, 1977, an amended return for any taxable year, such amended return shall be treated as the return for such taxable year.

''(d) LIMITATION ON DEDUCTION.—If any individual receives a subsistence allowance which is excluded from gross income under subsection (a), no deduction shall be allowed under any provision of chapter 1 of the Internal Revenue Code of 1986 for expenses in respect of which he has received such allowance, except to the extent that such expenses exceed the amount excludable from gross income under subsection (a) and the excess is otherwise allowed as a deduction under such chapter 1.

''(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of this section is prevented at any time on or before April 15, 1979, by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1979.''

§ 120. Amounts received under qualified group legal services plans

(a) Exclusion by employee for contributions and legal services provided by employer

Gross income of an employee, his spouse, or his dependents, does not include—

(1) amounts contributed by an employer on behalf of an employee, his spouse, or his dependents under a qualified group legal services plan (as defined in subsection (b)); or

(2) the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan (as defined in subsection (b)) to, or with respect to, an employee, his spouse, or his dependents.

No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.

(b) Qualified group legal services plan

For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).

(c) Requirements

(1) 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)).

(2) Eligibility

The plan 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 described in paragraph (1). For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan 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 group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Contribution limitation

Not more than 25 percent of the amounts contributed under the plan 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) Notification

The plan shall give notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of the status of a qualified group legal services plan.

(5) Contributions

Amounts contributed under the plan shall be paid only (A) to insurance companies, or to organizations or persons that provide personal legal services, or indemnification against the cost of personal legal services, in exchange for a prepayment or payment of a premium, (B) to organizations or trusts described in section 501(c)(20), (C) to organizations described in section 501(c) which are permitted by that section to receive payments from an employer for support of one or more qualified group legal services plan or plans, except that such organizations shall pay or credit the contribution to an organization or trust described in section 501(c)(20), (D) as prepayments to providers of legal services under the plan, or (E) a combination of the above.

(d) Other definitions and special rules

For purposes of this section—

(1) 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).

(2) 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 (1).

(3) Allocations

Allocations of amounts contributed under the plan shall be made in accordance with regulations prescribed by the Secretary and shall take into account the expected relative utilization of benefits to be provided from such contributions or plan assets and the manner in which any premium or other charge was developed.

(4) Dependent

The term ''dependent'' has the meaning given to it by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(5) Exclusive benefit

In the case of a plan to which contributions are made by more than one employer, in determining whether the plan is for the exclusive benefit of an employer's employees or their spouses or dependents, the employees of any employer who maintains the plan shall be considered to be the employees of each employer who maintains the plan.

(6) Attribution rules

For purposes of this section—

(A) 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)), and

(B) 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).

(7) Time of notice to Secretary

A plan shall not be a qualified group legal services plan for any period prior to the time notification was provided to the Secretary in accordance with subsection (c)(4), if such notice is given after the time prescribed by the Secretary by regulations for giving such notice.

(e) Termination

This section and section 501(c)(20) shall not apply to taxable years beginning after June 30, 1992.

(f) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(Added Pub. L. 94–455, title XXI, § 2134(a), Oct. 4, 1976, 90 Stat. 1926; amended Pub. L. 97–34, title VIII, § 802(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97–448, title I, § 108(a), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–612, § 1(a), (b)(3)(A), Oct. 31, 1984, 98 Stat. 3180, 3181; Pub. L. 99–514, title XI, §§ 1114(b)(3), 1151(c)(3), (g)(1), 1162(b), Oct. 22, 1986, 100 Stat. 2450, 2503, 2506, 2510; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title IV, § 4002(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, § 7102(a)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, § 11404(a), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, § 104(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 108–311, title II, § 207(10), Oct. 4, 2004, 118 Stat. 1177.)

PRIOR PROVISIONS

A prior section 120, act Aug. 16, 1954, ch. 736, 68A Stat. 39, related to statutory subsistence allowance received by police, prior to repeal by Pub. L. 85–866, title I, § 3(a), (c), Sept. 2, 1958, 72 Stat. 1607, effective with respect to taxable years ending after Sept. 30, 1958, but only with respect to amounts received as a statutory subsistence allowance for any day after Sept. 30, 1958.

AMENDMENTS

2004—Subsec. (d)(4). Pub. L. 108–311 inserted ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

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

1990—Subsec. (e). Pub. L. 101–508 substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (b). Pub. L. 101–140, § 203(a)(1), amended subsec. (b) to read as if amendments by Pub. L. 99–514, § 1151(c)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(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)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (e). Pub. L. 101–239 substituted ''taxable years beginning after September 30, 1990'' for ''taxable years ending after December 31, 1988''.

1988—Subsec. (a). Pub. L. 100–647, § 4002(b)(1), inserted at end ''No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.''

Subsec. (c)(2). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may'' and ''who are'' for ''who may be''.

Subsec. (e). Pub. L. 100–647, § 4002(a), substituted ''1988'' for ''1987''.

1986—Subsec. (b). Pub. L. 99–514, § 1151(c)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).''

Subsec. (c)(1). Pub. L. 99–514, § 1114(b)(3)(A), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders, self-employed individuals, or highly compensated''.

Subsec. (c)(2). Pub. L. 99–514, § 1151(g)(1), 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 plan 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 group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Subsec. (d)(1). Pub. L. 99–514, § 1114(b)(3)(B), struck out reference to self-employed individuals in heading, and substituted ''The'' for ''The term 'self-employed individual' means, and the'' in text.

Subsec. (e). Pub. L. 99–514, § 1162(b), substituted ''December 31, 1987'' for ''December 31, 1985''.

1984—Subsec. (e). Pub. L. 98–612, § 1(a), substituted ''December 31, 1985'' for ''December 31, 1984''.

Subsec. (f). Pub. L. 98–612, § 1(b)(3)(A), added subsec. (f).

1983—Subsec. (e). Pub. L. 97–448 substituted ''This section and section 501(c)(20) shall not apply'' for ''This section shall not apply''.

1981—Subsec. (e). Pub. L. 97–34 added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 104(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 11404(c) of Pub. L. 101–508 provided that: ''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.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7102(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1988.''

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.

Section 4002(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 125 of this title] shall apply to taxable years ending after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(3) 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)(3), (g)(1) 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.

Section 1162(c) of Pub. L. 99–514 provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending section 127 of this title] shall apply to taxable years beginning after December 31, 1985.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to years ending after December 31, 1985.

''(3) CAFETERIA PLAN WITH GROUP LEGAL BENEFITS.—If, within 60 days after the date of the enactment of this Act [Oct. 22, 1986], an employee elects under a cafeteria plan under section 125 of the Internal Revenue Code of 1986 coverage for group legal benefits to which section 120 of such Code applies, such election may, at the election of the taxpayer, apply to all legal services provided during 1986. The preceding sentence shall not apply to any plan which on August 16, 1986, offered such group legal benefits under such plan.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(d)(1) of Pub. L. 98–612 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1984.''

Amendment by section 1(b)(3)(A) of Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 2134(e) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, §703(b)(1), Nov. 6, 1978, 92 Stat. 2939; Pub. L. 97–34, title VIII, §802(b), Aug. 13, 1981, 95 Stat. 349; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1976.

''(2) NOTICE REQUIREMENT.—For purposes of section 120(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the time prescribed by the Secretary of the Treasury by regulations for giving the notice required by section 120(c)(4) of such Code shall not expire before the 90th day after the day on which regulations prescribed under such section 120(c)(4) first become final.

''(3) EXISTING PLANS.—

''(A) For purposes of section 120 of the Internal Revenue Code of 1986, a written group legal services plan which was in existence on June 4, 1976, shall be considered as satisfying the requirements of subsections (b) and (c) of such section 120 for the period ending with the compliance date (determined under subparagraph (B)).

''(B) COMPLIANCE DATE.—For purposes of this paragraph, the term 'compliance date' means—

''(i) the date occurring 180 days after the date of the enactment of this Act [Oct. 4, 1976], or

''(ii) if later, in the case of a plan which is maintained pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements, the earlier of December 31, 1981, or the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Oct. 4, 1976]).''

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.

EXTENSION OF EMPLOYER-PROVIDED GROUP LEGAL SERVICES

Section 104(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 the employer for coverage for the employee, his spouse, or his dependents, under a qualified group legal services plan for periods before July 1, 1992, shall be taken into account in determining the amount excluded under section 120 of the Internal Revenue Code of 1986 with respect to such employee for such taxable year.''

SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 1990

Section 7102(a)(2) of Pub. L. 101–239 provided that in the case of any taxable year beginning in 1990, only amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan for periods before October 1, 1990, would be taken into account in determining the amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, §11404(b), 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.

STUDY AND REPORT

Section 2134(d) of Pub. L. 94–455 provided that a complete study and investigation with respect to the desirability and feasibility of continuing the exclusion from income of certain prepaid group legal services benefits under section 120 of the Internal Revenue Code of 1954 be made by the Secretary of Labor and the Secretary of the Treasury, with a report to the President and the Congress not later than Dec. 31, 1980.

§ 121. Exclusion of gain from sale of principal residence

(a) Exclusion

Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) Limitations

(1) In general

The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed $250,000.

(2) Special rules for joint returns

In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

(A) $500,000 Limitation for certain joint returns

Paragraph (1) shall be applied by substituting ''$500,000'' for ''$250,000'' if—

(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

(B) Other joint returns

If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

(3) Application to only 1 sale or exchange every 2 years

(A) In general

Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

(B) Pre-May 7, 1997, sales not taken into account

Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(4)[1] Special rule for certain sales by surviving spouses

In the case of a sale or exchange of property by an unmarried individual whose spouse is deceased on the date of such sale, paragraph (1) shall be applied by substituting ''$500,000'' for ''$250,000'' if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

(4)[1] Exclusion of gain allocated to nonqualified use

(A) In general

Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

(B) Gain allocated to periods of nonqualified use

For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

(ii) the period such property was owned by the taxpayer.

(C) Period of nonqualified use

For purposes of this paragraph—

(i) In general

The term ''period of nonqualified use'' means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer's spouse or former spouse.

(ii) Exceptions

The term ''period of nonqualified use'' does not include—

(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer's spouse,

(II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

(D) Coordination with recognition of gain attributable to depreciation

For purposes of this paragraph—

(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.

(c) Exclusion for taxpayers failing to meet certain requirements

(1) In general

In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limita-

[1] So in original. Two pars. (4) have been enacted.

tion under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to—

(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

(B)(i) the shorter of—

(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence; or

(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

(ii) 2 years.

(2) Sales and exchanges to which subsection applies

This subsection shall apply to any sale or exchange if—

(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

(i) a failure to meet the ownership and use requirements of subsection (a), or

(ii) subsection (b)(3), and

(B) such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(d) Special rules

(1) Joint returns

If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

(2) Property of deceased spouse

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned and used such property shall include the period such deceased spouse owned and used such property before death.

(3) Property owned by spouse or former spouse

For purposes of this section—

(A) Property transferred to individual from spouse or former spouse

In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

(B) Property used by former spouse pursuant to divorce decree, etc.

Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)).

(4) Tenant-stockholder in cooperative housing corporation

For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(5) Involuntary conversions

(A) In general

For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

(B) Application of section 1033

In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) Property acquired after involuntary conversion

If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(6) Recognition of gain attributable to depreciation

Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

(7) Determination of use during periods of out-of-residence care

In the case of a taxpayer who—

(A) becomes physically or mentally incapable of self-care, and

(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(8) Sales of remainder interests

For purposes of this section—

(A) In general

At the election of the taxpayer, this section shall not fail to apply to the sale or ex-

change of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

(B) Exception for sales to related parties

Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

(9) Uniformed services, Foreign Service, and intelligence community

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty—

(i) as a member of the uniformed services,

(ii) as a member of the Foreign Service of the United States, or

(iii) as an employee of the intelligence community.

(B) Maximum period of suspension

The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

(C) Qualified official extended duty

For purposes of this paragraph—

(i) In general

The term ''qualified official extended duty'' means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

(ii) Uniformed services

The term ''uniformed services'' has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

(iii) Foreign Service of the United States

The term ''member of the Foreign Service of the United States'' has the meaning given the term ''member of the Service'' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

(iv) Employee of intelligence community

The term ''employee of the intelligence community'' means an employee (as defined by section 2105 of title 5, United States Code) of—

(I) the Office of the Director of National Intelligence,

(II) the Central Intelligence Agency,

(III) the National Security Agency,

(IV) the Defense Intelligence Agency,

(V) the National Geospatial-Intelligence Agency,

(VI) the National Reconnaissance Office,

(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

(IX) the Bureau of Intelligence and Research of the Department of State, or

(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

(v) Extended duty

The term ''extended duty'' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(D) Special rules relating to election

(i) Election limited to 1 property at a time

An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

(ii) Revocation of election

An election under subparagraph (A) may be revoked at any time.

(10) Property acquired in like-kind exchange

If a taxpayer acquires property in an exchange with respect to which gain is not recognized (in whole or in part) to the taxpayer under subsection (a) or (b) of section 1031, subsection (a) shall not apply to the sale or exchange of such property by such taxpayer (or by any person whose basis in such property is determined, in whole or in part, by reference to the basis in the hands of such taxpayer) during the 5-year period beginning with the date of such acquisition.

(11) Property acquired from a decedent

The exclusion under this section shall apply to property sold by—

(A) the estate of a decedent,

(B) any individual who acquired such property from the decedent (within the meaning of section 1022), and

(C) a trust which, immediately before the death of the decedent, was a qualified revocable trust (as defined in section 645(b)(1)) established by the decedent,

determined by taking into account the ownership and use by the decedent.

(12) Peace Corps

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be sus-

pended during any period that such individual or such individual's spouse is serving outside the United States—

(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

(B) Applicable rules

For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D)[2] shall apply.

(e) Denial of exclusion for expatriates

This section shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) applies to such individual.

(f) Election to have section not apply

This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

(g) Residences acquired in rollovers under section 1034

For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034[3] (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(6) in determining the holding period of such property) had been so owned and used.

(Added Pub. L. 88–272, title II, §206(a), Feb. 26, 1964, 78 Stat. 38; amended Pub. L. 94–455, title XIV, §1404(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1733, 1834; Pub. L. 95–600, title IV, §404(a)–(c)(2), Nov. 6, 1978, 92 Stat. 2869, 2870; Pub. L. 97–34, title I, §123(a), Aug. 13, 1981, 95 Stat. 197; Pub. L. 100–647, title VI, §6011(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 105–34, title III, §312(a), Aug. 5, 1997, 111 Stat. 836; Pub. L. 105–206, title VI, §6005(e)(1), (2), July 22, 1998, 112 Stat. 805; Pub. L. 107–16, title V, §542(c), June 7, 2001, 115 Stat. 84; Pub. L. 108–121, title I, §101(a), Nov. 11, 2003, 117 Stat. 1336; Pub. L. 108–357, title VIII, §840(a), Oct. 22, 2004, 118 Stat. 1597; Pub. L. 109–135, title IV, §§402(a)(3), 403(ee), Dec. 21, 2005, 119 Stat. 2610, 2631; Pub. L. 109–432, div. A, title IV, §417(a)–(d), Dec. 20, 2006, 120 Stat. 2965, 2966; Pub. L. 110–142, §7(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110–172, §11(a)(11)(A), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–245, title I, §§110(a), 113(a), (b), June 17, 2008, 122 Stat. 1633, 1635; Pub. L. 110–289, div. C, title III, §3092(a), July 30, 2008, 122 Stat. 2911.)

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.

[2] So in original.

[3] See References in Text note below.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (d)(9)(C)(ii), (iii), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (d)(9)(C)(iii), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

Section 1034 (as in effect on the day before the date of the enactment of this section), referred to in subsec. (g), probably means section 1034 of this title as in effect on the day before the date of enactment of Pub. L. 105–34 which amended this section generally and was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

CODIFICATION

Pub. L. 109–135, title IV, §403(ee)(1), (nn), Dec. 21, 2005, 119 Stat. 2631, 2632, which directed that subsec. (d) of this section be amended by redesignating the paragraph (10) relating to property acquired from a decedent as paragraph (11), effective as if included in the provisions to which such amendment relates of the American Jobs Creation Act of 2004, Pub. L. 108–357, was executed as the probable intent of Congress by redesignating as paragraph (11) the paragraph (10) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note, 2001, 2003, and 2005 Amendment notes, and Effective Date of 2005 Amendment note below.

Pub. L. 108–121, title I, §101(a), (b)(1), Nov. 11, 2003, 117 Stat. 1336, which directed that subsec. (d) of this section be amended by redesignating paragraph (9) as (10) and adding a new paragraph (9), effective as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, could not literally be executed insofar as it directed the redesignation because subsec. (d), as amended by Pub. L. 105–34, did not contain a paragraph (9). However, to reflect the probable intent of Congress, the amendment was executed by redesignating as paragraph (10) the paragraph (9) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note above and 2001, 2003, and 2005 Amendment notes and Effective Date of 2003 Amendment note below.

PRIOR PROVISIONS

A prior section 121 was renumbered section 140 of this title.

AMENDMENTS

2008—Subsec. (b)(4). Pub. L. 110–289 added par. (4) relating to exclusion of gain allocated to nonqualified use.

Subsec. (d)(9)(C)(vi). Pub. L. 110–245, §113(b), struck out heading and text of cl. (vi). Text read as follows: ''An employee of the intelligence community shall not be treated as serving on qualified extended duty unless such duty is at a duty station located outside the United States.''

Subsec. (d)(9)(E). Pub. L. 110–245, §113(a), struck out heading and text of subpar. (E). Text read as follows: ''Clause (iii) of subparagraph (A) shall not apply with respect to any sale or exchange after December 31, 2010.''

Subsec. (d)(12). Pub. L. 110–245, §110(a), added par. (12).

2007—Subsec. (b)(4). Pub. L. 110–142 added par. (4) relating to special rule for certain sales by surviving spouses.

Subsec. (d)(9)(E). Pub. L. 110–172 added subpar. (E).

2006—Subsec. (d)(9). Pub. L. 109–432, §417(d), substituted ''Uniformed services, Foreign Service, and intelligence community'' for ''Members of uniformed services and Foreign Service'' in heading.

Subsec. (d)(9)(A). Pub. L. 109–432, §417(a), substituted ''duty—

''(i) as a member of the uniformed services,

''(ii) as a member of the Foreign Service of the United States, or

''(iii) as an employee of the intelligence community.''

for ''duty as a member of the uniformed services or of the Foreign Service of the United States.''

Subsec. (d)(9)(C)(iv), (v). Pub. L. 109–432, § 417(b), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (d)(9)(C)(vi). Pub. L. 109–432, § 417(c), added cl. (vi).

2005—Subsec. (d)(10). Pub. L. 109–135, § 403(ee)(2), amended heading and text of par. (10) relating to property acquired in like-kind exchange generally. Prior to amendment, text read as follows: ''If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.''

Subsec. (d)(11). Pub. L. 109–135, § 403(ee)(1), redesignated par. (10), formerly par. (9), as temporarily added by Pub. L. 107–16, as (11). See Codification notes above and 2001 and 2003 Amendment notes and Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 109–135, § 402(a)(3), substituted ''section 1223(6)'' for ''section 1223(7)''.

2004—Subsec. (d)(10). Pub. L. 108–357 added par. (10) relating to property acquired in like-kind exchange.

2003—Subsec. (d)(9), (10). Pub. L. 108–121 added par. (9) and redesignated former par. (9), as temporarily added by Pub. L. 107–16, as (10). See Codification notes above and 2001 Amendment note and Effective and Termination Dates of 2001 Amendment note below.

2001—Subsec. (d)(9). Pub. L. 107–16, §§ 542(c), 901, temporarily added par. (9). See Codification notes above and Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2). Pub. L. 105–206, § 6005(e)(1), substituted ''Special rules for joint returns'' for ''$500,000 limitation for certain joint returns'' in heading and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall be applied by substituting '$500,000' for '$250,000' if—

''(A) a husband and wife make a joint return for the taxable year of the sale or exchange of the property,

''(B) either spouse meets the ownership requirements of subsection (a) with respect to such property,

''(C) both spouses meet the use requirements of subsection (a) with respect to such property, and

''(D) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).''

Subsec. (c)(1). Pub. L. 105–206, § 6005(e)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed—

''(A) the amount which bears the same ratio to the amount which would be so excluded under this section if such requirements had been met, as

''(B) the shorter of—

''(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

''(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange,

bears to 2 years.''

1997—Pub. L. 105–34 amended section catchline and text generally. Prior to amendment, section related to one-time exclusion of gain from sale of principal residence by individual who had attained age 55.

1988—Subsec. (d)(9). Pub. L. 100–647 added par. (9).

1981—Subsec. (b)(1). Pub. L. 97–34 substituted ''$125,000 ($62,500'' for ''$100,000 ($50,000''.

1978—Pub. L. 95–600, § 404(a), substituted ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' for ''Gain from sale or exchange of residence of individual who has attained age 65'' in section catchline.

Subsec. (a). Pub. L. 95–600, § 404(a), substituted ''55'' for ''65'', ''5-year'' for ''8-year'', and ''3 years'' for ''5 years''.

Subsec. (b). Pub. L. 95–600, § 404(a), in par. (1) substituted provisions respecting dollar limitations for amount of gain for provisions setting forth applicable limitations where the adjusted sales price exceeds $35,000 and added par. (3).

Subsec. (d)(2). Pub. L. 95–600, § 404(c)(1), substituted ''5-year period'' for ''8-year period''.

Subsec. (d)(5). Pub. L. 95–600, § 404(c)(2), substituted ''5-year period'' for ''8-year period'' and ''3 years'' for ''5 years''.

Subsec. (d)(8). Pub. L. 95–600, § 404(b), added par. (8).

1976—Subsec. (b)(1). Pub. L. 94–455, § 1404(a), substituted ''$35,000'' for ''$20,000'' in three places.

Subsecs. (c), (d)(5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, § 3092(b), July 30, 2008, 122 Stat. 2912, provided that: ''The amendment made by this section [amending this section] shall apply to sales and exchanges after December 31, 2008.''

Pub. L. 110–245, title I, § 110(b), June 17, 2008, 122 Stat. 1634, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2007.''

Pub. L. 110–245, title I, § 113(c), June 17, 2008, 122 Stat. 1635, provided that: ''The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, § 7(b), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendment made by this section [amending this section] shall apply to sales or exchanges after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 417(e), Dec. 20, 2006, 120 Stat. 2966, as amended by Pub. L. 110–172, § 11(a)(11)(B), Dec. 29, 2007, 121 Stat. 2485, provided that: ''The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(a)(3) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by section 403(ee) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 840(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 101(b), Nov. 11, 2003, 117 Stat. 1336, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall take effect as if

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 respect 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.

(b) Exception for highly compensated participants and key employees

(1) Highly compensated participants

In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Key employees

In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any benefit attributable to a plan for which the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, statutory nontaxable benefits shall be determined without regard to the second sentence of subsection (f).

(3) Year of inclusion

For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) or (2) shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends.

(c) Discrimination as to benefits or contributions

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where qualified benefits and total benefits (or employer contributions allocable to qualified benefits and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) Cafeteria plan defined

For purposes of this section—

(1) In general

The term ''cafeteria plan'' means a written plan under which—

(A) all participants are employees, and

(B) the participants may choose among 2 or more benefits consisting of cash and qualified benefits.

(2) Deferred compensation plans excluded

(A) In general

The term ''cafeteria plan'' does not include any plan which provides for deferred compensation.

(B) Exception for cash and deferred arrangements

Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan or rural cooperative plan (within the meaning of section 401(k)(7)) which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

(C) Exception for certain plans maintained by educational institutions

Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

(i) all contributions for such insurance must be made before retirement, and

(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance.

(D) Exception for health savings accounts

Subparagraph (A) shall not apply to a plan to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a health savings account established on behalf of the employee.

(e) Highly compensated participant and individual defined

For purposes of this section—

(1) Highly compensated participant

The term ''highly compensated participant'' means a participant who is—

(A) an officer,

(B) a shareholder owning more than 5 percent of the voting power or value of all classes of stock of the employer,

(C) highly compensated, or

(D) a spouse or dependent (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of an individual described in subparagraph (A), (B), or (C).

(2) Highly compensated individual

The term ''highly compensated individual'' means an individual who is described in subparagraphs[1] (A), (B), (C), or (D) of paragraph (1).

(f) Qualified benefits defined

For purposes of this section, the term ''qualified benefit'' means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 106(b), 117, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 and such term includes any other benefit permitted under regulations. Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance.

(g) Special rules

(1) Collectively bargained plan not considered discriminatory

For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

(2) Health benefits

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan which provides

[1] So in original. Probably should be ''subparagraph''.

health benefits shall not be treated as discriminatory if—

(A) contributions under the plan on behalf of each participant include an amount which—

(i) equals 100 percent of the cost of the health benefit coverage under the plan of the majority of the highly compensated participants similarly situated, or

(ii) equals or exceeds 75 percent of the cost of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(B) contributions or benefits under the plan in excess of those described in subparagraph (A) bear a uniform relationship to compensation.

(3) Certain participation eligibility rules not treated as discriminatory

For purposes of subparagraph (A) of subsection (b)(1), a classification shall not be treated as discriminatory if the plan—

(A) benefits a group of employees described in section 410(b)(2)(A)(i), and

(B) meets the requirements of clauses (i) and (ii):

(i) No employee is required to complete more than 3 years of employment with the employer or employers maintaining the plan as a condition of participation in the plan, and the employment requirement for each employee is the same.

(ii) Any employee who has satisfied the employment requirement of clause (i) and who is otherwise entitled to participate in the plan commences participation no later than the first day of the first plan year beginning after the date the employment requirement was satisfied unless the employee was separated from service before the first day of that plan year.

(4) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(h) Special rule for unused benefits in health flexible spending arrangements of individuals called to active duty

(1) In general

For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan or health flexible spending arrangement merely because such arrangement provides for qualified reservist distributions.

(2) Qualified reservist distribution

For purposes of this subsection, the term ''qualified reservist distribution'' means,[2] any distribution to an individual of all or a portion of the balance in the employee's account under such arrangement if—

(A) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(B) such distribution is made during the period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under such arrangement for the plan year which includes the date of such order or call.

(i) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(Added Pub. L. 95–600, title I, § 134(a), Nov. 6, 1978, 92 Stat. 2783; amended Pub. L. 96–222, title I, § 101(a)(6)(A), Apr. 1, 1980, 94 Stat. 196; Pub. L. 96–605, title II, §§ 201(b)(2), 226(a), Dec. 28, 1980, 94 Stat. 3527, 3529; Pub. L. 96–613, § 5(b)(2), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 98–369, div. A, title V, § 531(b)(1)–(4)(A), July 18, 1984, 98 Stat. 881, 882; Pub. L. 98–611, § 1(d)(3)(A), Oct. 31, 1984, 98 Stat. 3177; Pub. L. 98–612, § 1(b)(3)(B), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99–514, title XI, § 1151(d)(1), title XVIII, § 1853(b)(1), Oct. 22, 1986, 100 Stat. 2504, 2870; Pub. L. 100–647, title I, §§ 1011B(a)(11)–(13), 1018(t)(6), title IV, § 4002(b)(2), title VI, § 6051(b), Nov. 10, 1988, 102 Stat. 3484, 3485, 3589, 3643, 3696; Pub. L. 101–140, title II, § 203(a)(1), (3), (b)(2), Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101–239, title VII, § 7814(b), Dec. 19, 1989, 103 Stat. 2413; Pub. L. 101–508, title XI, § 11801(c)(3), Nov. 5, 1990, 104 Stat. 1388–523; Pub. L. 104–191, title III, §§ 301(d), 321(c)(1), Aug. 21, 1996, 110 Stat. 2051, 2058; Pub. L. 108–173, title XII, § 1201(i), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 108–311, title II, § 207(11), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–172, § 11(a)(12), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–245, title I, § 114(a), June 17, 2008, 122 Stat. 1636.)

CODIFICATION

Pub. L. 101–140, § 203(a)(1), amended this section to read as if the amendments made by section 1151(d)(1) of Pub. L. 99–514 (amending this section generally) had not been enacted. Subsequent to amendment by Pub. L. 99–514, this section was amended by Pub. L. 100–647 and Pub. L. 101–239. See 1989 and 1988 Amendment notes below.

PRIOR PROVISIONS

A prior section 125 was renumbered section 140 of this title.

AMENDMENTS

2008—Subsecs. (h) to (j). Pub. L. 110–245 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

2007—Subsec. (b)(2). Pub. L. 110–172 substituted ''second sentence'' for ''last sentence''.

2004—Subsec. (e)(1)(D). Pub. L. 108–311 inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

2003—Subsec. (d)(2)(D). Pub. L. 108–173, which directed the amendment of section 125(d)(2) by adding subpar. (D), was executed to this section, which is section 125(d)(2) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsec. (f). Pub. L. 104–191, § 321(c)(1), inserted at end ''Such term shall not include any product which

[2] So in original. The comma probably should not appear.

is advertised, marketed, or offered as long-term care insurance.''

Pub. L. 104–191, §301(d), inserted ''106(b),'' before ''117''.

1990—Subsec. (f). Pub. L. 101–508 substituted ''section 117,'' for ''section 117, 124,''.

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

Subsec. (d)(2). Pub. L. 101–140, §203(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'cafeteria plan' does not include any plan which provides for deferred compensation. The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.''

Subsec. (e)(2)(A). Pub. L. 101–239 substituted ''includible only because'' for ''includable only because'', see Codification note above.

Subsec. (g)(3)(A). Pub. L. 101–140, §203(a)(3), substituted ''section 410(b)(2)(A)(i)'' for ''subparagraph (B) of section 410(b)(1)''.

1988—Subsec. (a). Pub. L. 100–647, §1011B(a)(11)(A), amended subsec. (a) generally, see Codification note above. Prior to amendment, subsec. (a) read as follows: ''In the case of a cafeteria plan—

''(1) amounts shall not be included in gross income of a participant in such plan solely because, under the plan, the participant may choose among the benefits of the plan, and

''(2) if the plan fails to meet the requirements of subsection (b) for any plan year—

''(A) paragraph (1) shall not apply, and

''(B) notwithstanding any other provision of part III of this subchapter, any qualified benefits received under such cafeteria plan by a highly compensated employee for such plan year shall be included in the gross income of such employee for the taxable year with or within which such plan year ends.''

Subsec. (b)(1). Pub. L. 100–647, §1011B(a)(11)(B), substituted ''In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year'' for ''A plan shall be treated as failing to meet the requirements of this subsection'', see Codification note above.

Subsec. (b)(2). Pub. L. 100–647, §1011B(a)(11)(C), substituted ''subsection (a) shall not apply to any plan year'' for ''a plan shall be treated as failing to meet the requirements of this subsection'' in first sentence, see Codification note above.

Pub. L. 100–647, §1011B(a)(13)(B), substituted ''shall not include benefits which (without regard to this paragraph) are includible in gross income'' for ''shall be determined without regard to the last sentence of subsection (e)'', see Codification note above.

Subsec. (c)(1)(B). Pub. L. 100–647, §1011B(a)(12), amended subpar. (B) generally, see Codification note above. Prior to amendment, subpar. (B) read as follows: ''the participants may choose—

''(i) among 2 or more benefits consisting of cash and qualified benefits, or

''(ii) among 2 or more qualified benefits.''

Subsec. (c)(2)(B). Pub. L. 100–647, §1018(t)(6), inserted ''or rural electric cooperative plan (within the meaning of section 401(k)(7))'' after ''stock bonus plan'', see Codification note above.

Subsec. (c)(2)(C). Pub. L. 100–647, §6051(b), inserted at end ''In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made.'', see Codification note above.

Subsec. (e)(1). Pub. L. 100–647, §1011B(a)(13)(A), inserted ''and without regard to section 89(a)'' after ''subsection (a)'', see Codification note above.

Subsec. (e)(2)(A). Pub. L. 100–647, §4002(b)(2), inserted ''or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)'' after ''section 79'', see Codification note above.

1986—Pub. L. 99–514, §1151(d)(1), amended section generally, revising and restating as subsecs. (a) to (g) provisions of former subsecs. (a) to (i) so as to coincide with the coming into effect of section 89 of this title.

Subsecs. (c), (d)(1)(B). Pub. L. 99–514, §1853(b)(1)(A), substituted ''qualified benefits'' for ''statutory nontaxable benefits'' wherever appearing.

Subsec. (f). Pub. L. 99–514, §1853(b)(1)(B), substituted ''Qualified benefits defined'' for ''Statutory nontaxable benefits defined'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'statutory nontaxable benefit' means any benefit which, with the application of subsection (a) is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79.''

1984—Subsec. (b). Pub. L. 98–369, §531(b)(3), amended subsec. (b) generally, substituting ''and key employees'' for ''where plan is discriminatory'' in heading and ''Highly compensated participants'' for ''In general'' in par. (1) heading, adding par. (2), redesignating former par. (2) as (3), and inserting therein references to par. (2) and to taxable year of key employee.

Subsec. (c). Pub. L. 98–369, §531(b)(2)(B), inserted ''statutory'' before ''nontaxable benefits'' in two places.

Subsec. (d)(1). Pub. L. 98–369, §531(b)(1), substituted ''among 2 or more benefits consisting of cash and statutory nontaxable benefits'' for ''among two or more benefits'' in cl. (B) and struck out ''The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits.''

Subsec. (f). Pub. L. 98–369, §531(b)(2)(A), amended subsec. (f) generally, inserting ''Statutory'' in heading and ''statutory'' before ''nontaxable benefit'' in text, providing that the benefit be excluded by reason of an express provision of this chapter (other than section 117, 124, 127, or 132), and extending the benefit to include group term life insurance.

Subsec. (h). Pub. L. 98–611 and Pub. L. 98–612, made identical amendments, substituting cross reference provision for reporting requirements provisions.

Pub. L. 98–369, §531(b)(4)(A), added subsec. (h) relating to reporting requirements provisions. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 98–369, §531(b)(4)(A), redesignated subsec. (h) as (i).

1980—Subsec. (d)(2). Pub. L. 96–605, §226(a), inserted provision that the sentence excluding deferred compensation plans not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement, as defined in section 401(k)(2) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

Subsec. (g)(3)(B). Pub. L. 96–222 substituted ''employment requirement'' for ''service requirement'' in cls. (i) and (ii).

Subsec. (g)(4). Pub. L. 96–613, §5(b)(2), and Pub. L. 96–605, §201(b)(2), made identical amendments by substituting ''controlled groups, etc.'' for ''controlled groups'' in heading, and by substituting ''subsection (b), (c), or (m) of section 414'' for ''subsection (b) or (c) of section 414'' in text.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §114(b), June 17, 2008, 122 Stat. 1636, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of

Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(d) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(1) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by 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 sections 1011B(a)(11)–(13) and 1018(t)(6) 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 4002(b)(2) of Pub. L. 100–647 applicable to taxable years ending after Dec. 31, 1987, see section 4002(c) of Pub. L. 100–647, set out as a note under section 120 of this title.

Section 6051(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 89 of this title] shall take effect as if included in the amendments made by section 1151 of the Reform Act [Pub. L. 99–514, see Effective Date of 1986 Amendment note set out under section 79 of this title].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(d)(1) 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 1853(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

Amendment by Pub. L. 98–611 effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98–611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendments by section 201(b)(2) of Pub. L. 96–605 and section 5(b)(2) of Pub. L. 96–613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980 where amendments by section 201(b)(2) of Pub. L. 96–605 and section 5(b)(2) of Pub. L. 96–613 applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, set out as a note under section 414 of this title.

Section 226(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1980.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the 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 OF 1978 AMENDMENT

Section 134(c) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §101(a)(6)(B), Apr. 1, 1980, 94 Stat. 197, provided that: ''The amendments made by this section [enacting this section] shall apply to plan years beginning after December 31, 1978.''

SAVINGS PROVISION

For provisions that nothing in amendment 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.

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.

TREATMENT OF PRE-1989 ELECTIONS FOR DEPENDENT CARE ASSISTANCE UNDER CAFETERIA PLANS

Section 6063 of Pub. L. 100–647 provided that: ''For purposes of section 125 of the 1986 Code, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1989, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1988, and such assistance is includible in gross income under the provisions of the Family Support Act of 1988 [Pub. L. 100–485, see Tables for classification].''

For provision that for purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight, see section 10101(b)(2) of Pub. L. 100–203, as added by Pub. L. 100–647, set out as an Effective Date of 1987 Amendment note under section 21 of this title.

EXCEPTION FOR CERTAIN CAFETERIA PLANS AND BENEFITS

Section 531(b)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1853(b)(2), (3), Oct. 22, 1986, 100 Stat. 2870, 2871, provided that:

''(A) GENERAL TRANSITIONAL RULE.—Any cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules relating to section 125 under proposed Treasury regulations, and any benefit offered under such a cafeteria plan which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations, will not fail to be a cafeteria plan under section 125 or a nontaxable benefit under section 105, 106, 120, or 129 solely because of such failures. The preceding sentence

shall apply only with respect to cafeteria plans and benefits provided under cafeteria plans before the earlier of—

''(i) January 1, 1985, or

''(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

''(B) SPECIAL TRANSITION RULE FOR ADVANCE ELECTION BENEFIT BANKS.—Any benefit offered under a cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations because an employee was assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses, will not fail to be a nontaxable benefit under such applicable section solely because of such failure. The preceding sentence shall apply only with respect to benefits provided under cafeteria plans before the earlier of—

''(i) July 1, 1985, or

''(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

Except as provided in Treasury regulations, the special transition rule is available only for benefits with respect to which, after December 31, 1984, contributions are fixed before the period of coverage and taxable cash is not available until the end of such period of coverage.

''(C) PLANS FOR WHICH SUBSTANTIAL IMPLEMENTATION COSTS WERE INCURRED.—For purposes of this paragraph, any plan with respect to which substantial implementation costs had been incurred before February 10, 1984, shall be treated as in existence on February 10, 1984.

''(D) COLLECTIVE BARGAINING AGREEMENTS.—In the case of any cafeteria plan in existence on February 10, 1984, and maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to after July 18, 1984) shall be substituted for 'January 1, 1985' in subparagraph (A) and for 'July 1, 1985' in subparagraph (B). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section (or any requirement in the regulations under section 125 of the Internal Revenue Code of 1954 [now 1986] proposed on May 6, 1984) shall not be treated as a termination of such collective bargaining agreement.

''(E) SPECIAL RULE WHERE CONTRIBUTIONS OR REIMBURSEMENTS SUSPENDED.—For purposes of subparagraphs (A) and (B), a plan shall not be treated as not continuing to fail to satisfy the rules referred to in such subparagraphs with respect to any benefit provided in the form of a flexible spending arrangement merely because contributions or reimbursements (or both) with respect to such plan were suspended before January 1, 1985.''

§ 126. Certain cost-sharing payments

(a) General rule

Gross income does not include the excludable portion of payments received under—

(1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)).

(2) The rural abandoned mine program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

(3) The water bank program authorized by the Water Bank Act (16 U.S.C. 1301 et seq.).

(4) The emergency conservation measures program authorized by title IV of the Agricultural Credit Act of 1978.

(5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a).

(6) The great plains conservation program authorized by section 16[1] of the Soil Conservation and Domestic Policy Act (16 U.S.C. 590p(b)).

(7) The resource conservation and development program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a et seq.).

(8) The forestry incentives program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(9) Any small watershed program administered by the Secretary of Agriculture which is determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in paragraphs (1) through (8).

(10) Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(b) Excludable portion

For purposes of this section—

(1) In general

The term ''excludable portion'' means that portion (or all) of a payment made to any person under any program described in subsection (a) which—

(A) is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife, and

(B) is determined by the Secretary of the Treasury or his delegate as not increasing substantially the annual income derived from the property.

(2) Payments not chargeable to capital account

The term ''excludable portion'' does not include that portion of any payment which is properly associated with an amount which is allowable as a deduction for the taxable year in which such amount is paid or incurred.

(c) Election for section not to apply

(1) In general

The taxpayer may elect not to have this section (and section 1255) apply to any excludable portion (or portion thereof).

(2) Manner and time for making election

Any election under paragraph (1) shall be made in the manner prescribed by the Secretary by regulations and shall be made not later than the due date prescribed by law (including extensions) for filing the return of tax under this chapter for the taxable year in which the payment was received or accrued.

[1] See References in Text note below.

(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-

ing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(8) Benefits

(A) In general

A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees under all plans of the employer is at least 55 percent of the average benefits provided to highly compensated employees under all plans of the employer.

(B) Salary reduction agreements

For purposes of subparagraph (A), in the case of any benefits provided through a salary reduction agreement, a plan may disregard any employees whose compensation is less than $25,000. For purposes of this subparagraph, the term ''compensation'' has the meaning given such term by section 414(q)(4), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.

(9) Excluded employees

For purposes of paragraphs (3) and (8), there shall be excluded from consideration—

(A) subject to rules similar to the rules of section 410(b)(4), employees who have not attained the age of 21 and completed 1 year of service (as defined in section 410(a)(3)), and

(B) employees not included in a dependent care assistance program who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employees, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(e) Definitions and special rules

For purposes of this section—

(1) Dependent care assistance

The term ''dependent care assistance'' means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income

The term ''earned income'' shall have the meaning given such term in section 32(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) 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).

(4) 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 (3).

(5) 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).

(6) Utilization test not applicable

A dependent care assistance program shall not be held or considered to fail to meet any requirements of subsection (d) (other than paragraphs (4) and (8) thereof) merely because of utilization rates for the different types of assistance made available under the program.

(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 the gross income of the employee by reason of this section.

(8) Treatment of onsite facilities

In the case of an onsite facility maintained by an employer, except to the extent provided in regulations, the amount of dependent care assistance provided to an employee excluded with respect to any dependent shall be based on—

(A) utilization of the facility by a dependent of the employee, and

(B) the value of the services provided with respect to such dependent.

(9) Identifying information required with respect to service provider

No amount paid or incurred by an employer for dependent care assistance provided to an employee shall be excluded from the gross income of such employee unless—

(A) the name, address, and taxpayer identification number of the person performing the services are included on the return to which the exclusion relates, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return to which the exclusion relates.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(Added Pub. L. 97–34, title I, §124(e)(1), Aug. 13, 1981, 95 Stat. 198; amended Pub. L. 97–448, title I,

§ 101(e), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title IV, § 474(r)(6), July 18, 1984, 98 Stat. 839; Pub. L. 99–514, title I, § 104(b)(1), title XI, §§ 1114(b)(4), 1151(c)(5), (f), (g)(4), 1163(a), (b), Oct. 22, 1986, 100 Stat. 2104, 2450, 2503, 2506, 2507, 2510; Pub. L. 100–485, title VII, § 703(c)(2), Oct. 13, 1988, 102 Stat. 2427; Pub. L. 100–647, title I, § 1011B(a)(14), (15), (18), (30), (31)(A), (c)(1), (2)(A), title III, § 3021(a)(14), Nov. 10, 1988, 102 Stat. 3485, 3487–3489, 3631; Pub. L. 101–140, title II, §§ 203(a)(1), (2), 204(a)(1)–(3)(C), Nov. 8, 1989, 103 Stat. 830, 832; Pub. L. 101–239, title VII, § 7811(h)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 104–188, title I, § 1431(c)(1)(B), Aug. 20, 1996, 110 Stat. 1803; Pub. L. 108–311, title II, § 207(12), Oct. 4, 2004, 118 Stat. 1177.)

CODIFICATION

Pub. L. 101–140, § 203(a)(1), amended this section to read as if the amendments made by section 1151(c)(5)(A) of Pub. L. 99–514 (amending subsec. (d)(1)) had not been enacted. Subsequent to amendment by Pub. L. 99–514, subsec. (d)(1) was amended by Pub. L. 100–647. See 1988 Amendment note below.

PRIOR PROVISIONS

A prior section 129 was renumbered section 140 of this title.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–311 substituted ''152(f)(1)'' for ''151(c)(3)''.

1996—Subsec. (d)(8)(B). Pub. L. 104–188 substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

1989—Subsec. (a). Pub. L. 101–239 struck out at end ''For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).''

Subsec. (d)(1). Pub. L. 101–140, § 204(a)(3)(B), substituted ''paragraphs (2) through (8)'' for ''paragraphs (2) through (7)''.

Pub. L. 101–140, § 204(a)(1), inserted at end ''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.''

Pub. L. 101–140, § 203(a)(1), amended par. (1) to read as if the amendments by Pub. L. 99–514, § 1151(c)(5)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(3). Pub. L. 101–140, § 204(a)(2)(B), struck out at end ''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 dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Pub. L. 101–140, § 203(a)(2), amended par. (3) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(A)(i), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (3) to read as if amendments by Pub. L. 99–514, § 1151(g)(4), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(6). Pub. L. 101–140, § 203(a)(1), amended par. (6) to read as if amendments by Pub. L. 99–514, § 1151(c)(5)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(7). Pub. L. 101–140, § 204(a)(3)(A), redesignated par. (7) as (8).

Pub. L. 101–140, § 203(a)(1), amended par. (7) to read as if amendments by Pub. L. 99–514, § 1151(c)(5)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 101–140, § 204(a)(3)(A), redesignated par. (7) as (8).

Pub. L. 101–140, § 203(a)(2), amended par. (8) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(A)(ii), had not been enacted, see 1988 Amendment note below.

Subsec. (d)(9). Pub. L. 101–140, § 204(a)(2)(A), added par. (9).

Subsec. (e)(6). Pub. L. 101–140, § 204(a)(3)(C), substituted ''(8)'' for ''(7)''.

1988—Subsec. (a)(2). Pub. L. 100–647, § 1011B(c)(2)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The aggregate amount excluded from the gross income of the taxpayer under this section for any taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).''

Subsec. (d)(1)(B). Pub. L. 100–647, § 1011B(a)(30), substituted ''(7)'' for ''(6)'', see Codification note above.

Subsec. (d)(3). Pub. L. 100–647, § 1011B(a)(31)(A)(i), struck out at end ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).''

Subsec. (d)(7). Pub. L. 100–647, § 1011B(a)(14), redesignated par. (8) as (7).

Subsec. (d)(7)(A). Pub. L. 100–647, § 1011B(a)(15)(A), inserted ''under all plans of the employer'' after second and third reference to ''employees''.

Subsec. (d)(7)(B). Pub. L. 100–647, § 3021(a)(14), struck out ''(within the meaning of section 414(q)(7))'' after ''whose compensation'' and inserted at end ''For purposes of this subparagraph, the term 'compensation' has the meaning given such term by section 414(q)(7), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.''

Pub. L. 100–647, § 1011B(a)(15)(B), (C), substituted ''a plan may disregard'' for ''there shall be disregarded'' and ''414(q)(7)'' for ''415(q)(7)''.

Subsec. (d)(8). Pub. L. 100–647, § 1011B(a)(31)(A)(ii), added par. (8). Former par. (8) redesignated (7).

Subsec. (e)(6). Pub. L. 100–647, § 1011B(a)(18), inserted ''(other than paragraphs (4) and (7) thereof)'' after ''subsection (d)''.

Subsec. (e)(8). Pub. L. 100–647, § 1011B(c)(1), in introductory provisions, inserted ''maintained by an employer'' after ''onsite facility'' and ''of dependent care assistance provided to an employee'' after ''the amount'', in subpar. (A), inserted ''of the facility by a dependent of the employee'' after ''utilization'', and in subpar. (B), inserted ''with respect to such dependent'' after ''provided''.

Subsec. (e)(9). Pub. L. 100–485 added par. (9).

1986—Subsec. (a). Pub. L. 99–514, § 1163(a), substituted ''Exclusion'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''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).''

Subsec. (c)(1). Pub. L. 99–514, § 104(b)(1)(A), substituted ''section 151(c)'' for ''section 151(e)''.

Subsec. (c)(2). Pub. L. 99–514, § 104(b)(1)(B), substituted ''section 151(c)(3)'' for ''section 151(e)(3)''.

Subsec. (d)(1). Pub. L. 99–514, § 1151(c)(5)(A), added par. (1) and struck out former par. (1) which read as follows: ''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 (7) of this subsection.''

Subsec. (d)(2). 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. (d)(3). Pub. L. 99–514, § 1151(g)(4), 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 dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Subsec. (d)(6), (7). Pub. L. 99–514, §1151(c)(5)(B), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''NOTIFICATION OF ELIGIBLE EMPLOYEES.—Reasonable notification of the availability and terms of the program shall be provided to eligible employees.''

Subsec. (d)(8). Pub. L. 99–514, §1151(f), added par. (8).

Subsec. (e)(8). Pub. L. 99–514, §1163(b), added par. (8).

1984—Subsec. (b)(2). Pub. L. 98–369, §474(r)(6)(A), substituted ''section 21(d)(2)'' for ''section 44A(e)(2)''.

Subsec. (e)(1). Pub. L. 98–369, §474(r)(6)(B), substituted ''section 21(b)(2)'' for ''section 44A(c)(2)''.

Subsec. (e)(2). Pub. L. 98–369, §474(r)(6)(C), substituted ''section 32(c)(2)'' for ''section 43(c)(2)''.

1983—Subsec. (d)(1). Pub. L. 97–448, §101(e)(1)(C), substituted ''paragraphs (2) through (7)'' for ''paragraphs (2) through (6)''.

Subsec. (d)(2). Pub. L. 97–448, §101(e)(1)(A), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 97–448, §101(e)(1)(A), (B), redesignated former par. (2) as (3) and substituted ''employees described in paragraph (2), or their dependents'' for ''employees who are officers, owners, or highly compensated, or their dependents''. Former par. (3) redesignated (4).

Subsec. (d)(4) to (7). Pub. L. 97–448, §101(e)(1)(A), redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e)(7). Pub. L. 97–448, §101(e)(2), substituted ''shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee'' for ''shall be allowed under any other section of this chapter for any amount excluded from income''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by 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 section 203(a)(1), (2) of 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.

Section 204(a)(3)(D) of Pub. L. 101–140 provided that: ''Section 129(d)(8) (as redesignated by subparagraph (A)) shall apply to plan years beginning after December 31, 1989.''

Section 204(d)(1), (2) of Pub. L. 101–140 provided that:

''(1) The amendments made by subsections (a)(1), (a)(2), and (b)(2) [amending this section and section 414 of this title] shall apply to years beginning after December 31, 1988.

''(2) The amendments made by subsection (a)(3) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1011B(a)(14), (15), (18), (30), (31)(A), (c)(1) 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.

Section 1011B(c)(2)(C) of Pub. L. 100–647 provided that:

''(i) Except as provided in this subparagraph, the amendments made by this paragraph [amending this section and section 6051 of this title] shall apply to taxable years beginning after December 31, 1987.

''(ii) A taxpayer may elect to have the amendment made by subparagraph (A) [amending this section] apply to taxable years beginning in 1987.

''(iii) In the case of a taxpayer not making an election under clause (ii), any dependent care assistance provided in a taxable year beginning in 1987 with respect to which reimbursement was not received in such taxable year shall be treated as provided in the taxpayer's first taxable year beginning after December 31, 1987.''

Section 3021(d) of Pub. L. 100–647 provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and sections 89, 410, 4976, 6039D, and 6652 of this title] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see Effective Date note below]; except that the amendment made by subsection (a)(8) [amending section 89 of this title] shall apply to testing years beginning after December 31, 1989.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending sections 89 and 414 of this title] shall apply to years beginning after December 31, 1986.''

Amendment by Pub. L. 100–485 applicable to taxable years beginning after Dec. 31, 1988, see section 703(d) of Pub. L. 100–485, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

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)(5), (f), (g)(4) 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.

Section 1163(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out

as an Effective Date of 1981 Amendment note under section 21 of this title.

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.

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, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 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.

§ 130. Certain personal injury liability assignments

(a) In general

Any amount received for agreeing to a qualified assignment shall not be included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

(b) Treatment of qualified funding asset

In the case of any qualified funding asset—

(1) the basis of such asset shall be reduced by the amount excluded from gross income under subsection (a) by reason of the purchase of such asset, and

(2) any gain recognized on a disposition of such asset shall be treated as ordinary income.

(c) Qualified assignment

For purposes of this section, the term ''qualified assignment'' means any assignment of a liability to make periodic payments as damages (whether by suit or agreement), or as compensation under any workmen's compensation act, on account of personal injury or sickness (in a case involving physical injury or physical sickness)—

(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, or the workmen's compensation claim, and

(2) if—

(A) such periodic payments are fixed and determinable as to amount and time of payment,

(B) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments,

(C) the assignee's obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

(D) such periodic payments are excludable from the gross income of the recipient under paragraph (1) or (2) of section 104(a).

The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.

(d) Qualified funding asset

For purposes of this section, the term ''qualified funding asset'' means any annuity contract issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

(1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,

(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,

(3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and

(4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment.

(Added Pub. L. 97–473, title I, §101(b)(1), Jan. 14, 1983, 96 Stat. 2605; amended Pub. L. 99–514, title X, §1002(a), Oct. 22, 1986, 100 Stat. 2388; Pub. L. 100–647, title VI, §6079(b)(1), Nov. 10, 1988, 102 Stat. 3709; Pub. L. 105–34, title IX, §962(a), Aug. 5, 1997, 111 Stat. 891.)

PRIOR PROVISIONS

A prior section 130 was renumbered section 140 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, §962(a)(1), inserted '', or as compensation under any workmen's compensation act,'' after ''(whether by suit or agreement)'' in introductory provisions.

Subsec. (c)(1). Pub. L. 105–34, §962(a)(2), inserted ''or the workmen's compensation claim,'' after ''agreement,''.

Subsec. (c)(2)(D). Pub. L. 105–34, §962(a)(3), substituted ''paragraph (1) or (2) of section 104(a)'' for ''section 104(a)(2)''.

1988—Subsec. (c). Pub. L. 100–647, in par. (2), redesignated subpars. (D) and (E) as (C) and (D), respectively, struck out former subpar. (C) which provided that the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor, and as concluding provisions, inserted at end ''The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which

there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.''

1986—Subsec. (c). Pub. L. 99–514 inserted ''(in a case involving physical injury or physical sickness)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 962(b) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to claims under workmen's compensation acts filed after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6079(b)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to assignments after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1002(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to assignments entered into after December 31, 1986, in taxable years ending after such date.''

EFFECTIVE DATE

Section 101(c) of Pub. L. 97–473 provided that: ''The amendments made by this section [enacting this section and amending section 104 of this title] shall apply to taxable years ending after December 31, 1982.''

§131. Certain foster care payments

(a) General rule

Gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments.

(b) Qualified foster care payment defined

For purposes of this section—

(1) In general

The term ''qualified foster care payment'' means any payment made pursuant to a foster care program of a State or political subdivision thereof—

(A) which is paid by—

(i) a State or political subdivision thereof, or

(ii) a qualified foster care placement agency, and

(B) which is—

(i) paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or

(ii) a difficulty of care payment.

(2) Qualified foster individual

The term ''qualified foster individual'' means any individual who is living in a foster family home in which such individual was placed by—

(A) an agency of a State or political subdivision thereof, or

(B) a qualified foster care placement agency.

(3) Qualified foster care placement agency

The term ''qualified foster care placement agency'' means any placement agency which is licensed or certified by—

(A) a State or political subdivision thereof, or

(B) an entity designated by a State or political subdivision thereof,

for the foster care program of such State or political subdivision to make foster care payments to providers of foster care.

(4) Limitation based on number of individuals over the age of 18

In the case of any foster home in which there is a qualified foster care individual who has attained age 19, foster care payments (other than difficulty of care payments) for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 5 such qualified foster individuals.

(c) Difficulty of care payments

For purposes of this section—

(1) Difficulty of care payments

The term ''difficulty of care payments'' means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

(A) are compensation for providing the additional care of a qualified foster individual which is—

(i) required by reason of a physical, mental, or emotional handicap of such individual with respect to which the State has determined that there is a need for additional compensation, and

(ii) provided in the home of the foster care provider, and

(B) are designated by the payor as compensation described in subparagraph (A).

(2) Limitation based on number of individuals

In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than—

(A) 10 qualified foster individuals who have not attained age 19, and

(B) 5 qualified foster individuals not described in subparagraph (A).

(Added Pub. L. 97–473, title I, §102(a), Jan. 14, 1983, 96 Stat. 2606; amended Pub. L. 99–514, title XVII, §1707(a), Oct. 22, 1986, 100 Stat. 2781; Pub. L. 107–147, title IV, §404(a)–(c), Mar. 9, 2002, 116 Stat. 41.)

PRIOR PROVISIONS

A prior section 131 was renumbered section 140 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–147, §404(a), amended provisions preceding subpar. (B) generally. Prior to amendment, text of such provisions read as follows: ''The term 'qualified foster care payment' means any amount—

''(A) which is paid by a State or political subdivision thereof or by a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and''.

Subsec. (b)(2)(B). Pub. L. 107–147, §404(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of an individual who has not attained age 19, an organization which is licensed

by a State (or political subdivision thereof) as a placement agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (b)(3), (4). Pub. L. 107–147, § 404(c), added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.''

Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, par. (1) ''In general'' read as follows: ''The term 'qualified foster care payment' means any amount—

''(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

''(B) which is—

''(i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

''(ii) a difficulty of care payment.''

and par. (2) ''Qualified foster child'' read as follows: ''The term 'qualified foster child' means any individual who—

''(A) has not attained age 19, and

''(B) is living in a foster family home in which such individual was placed by—

''(i) an agency of a State or political subdivision thereof, or

''(ii) an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (c). Pub. L. 99–514, in amending subsec. (c) generally, in par. (1)(A), substituted references to ''qualified foster individual'', ''such individual'', and ''foster care provider'' for references to ''qualified foster child'', ''such child'', and ''foster parent'', respectively, and in par. (2) substituted ''more than (A) 10 qualified foster individuals who have not attained age 19, and (B) 5 qualified foster individuals not described in subparagraph (A)'' for ''more than 10 qualified foster children''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 404(d), Mar. 9, 2002, 116 Stat. 42, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1707(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1985.''

EFFECTIVE DATE

Section 102(c) of Pub. L. 97–473 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978.''

§ 132. Certain fringe benefits

(a) Exclusion from gross income

Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,

(2) qualified employee discount,

(3) working condition fringe,

(4) de minimis fringe,

(5) qualified transportation fringe,

(6) qualified moving expense reimbursement,

(7) qualified retirement planning services, or

(8) qualified military base realignment and closure fringe.

(b) No-additional-cost service defined

For purposes of this section, the term ''no-additional-cost service'' means any service provided by an employer to an employee for use by such employee if—

(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) Qualified employee discount defined

For purposes of this section—

(1) Qualified employee discount

The term ''qualified employee discount'' means any employee discount with respect to qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) Gross profit percentage

(A) In general

The term ''gross profit percentage'' means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sale price of such property.

(B) Determination of gross profit percentage

Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) Employee discount defined

The term ''employee discount'' means the amount by which—

(A) the price at which the property or services are provided by the employer to an employee for use by such employee, is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) Qualified property or services

The term ''qualified property or services'' means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peforming[1] services.

[1] So in original. Probably should be ''performing''.

(d) Working condition fringe defined

For purposes of this section, the term ''working condition fringe'' means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) De minimis fringe defined

For purposes of this section—

(1) In general

The term ''de minimis fringe'' means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(2) Treatment of certain eating facilities

The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees. For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.

(f) Qualified transportation fringe

(1) In general

For purposes of this section, the term ''qualified transportation fringe'' means any of the following provided by an employer to an employee:

(A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.

(B) Any transit pass.

(C) Qualified parking.

(D) Any qualified bicycle commuting reimbursement.

(2) Limitation on exclusion

The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

(A) $100 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1),

(B) $175 per month in the case of qualified parking, and

(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.

In the case of any month beginning on or after the date of the enactment of this sentence and before January 1, 2011, subparagraph (A) shall be applied as if the dollar amount therein were the same as the dollar amount in effect for such month under subparagraph (B).

(3) Cash reimbursements

For purposes of this subsection, the term ''qualified transportation fringe'' includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1). The preceding sentence shall apply to a cash reimbursement for any transit pass only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

(4) No constructive receipt

No amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe (other than a qualified bicycle commuting reimbursement) and compensation which would otherwise be includible in gross income of such employee.

(5) Definitions

For purposes of this subsection—

(A) Transit pass

The term ''transit pass'' means any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is—

(i) on mass transit facilities (whether or not publicly owned), or

(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

(B) Commuter highway vehicle

The term ''commuter highway vehicle'' means any highway vehicle—

(i) the seating capacity of which is at least 6 adults (not including the driver), and

(ii) at least 80 percent of the mileage use of which can reasonably be expected to be—

(I) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

(II) on trips during which the number of employees transported for such purposes is at least ½ of the adult seating capacity of such vehicle (not including the driver).

(C) Qualified parking

The term ''qualified parking'' means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near

property used by the employee for residential purposes.

(D) Transportation provided by employer

Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

(E) Employee

For purposes of this subsection, the term ''employee'' does not include an individual who is an employee within the meaning of section 401(c)(1).

(F) Definitions related to bicycle commuting reimbursement

(i) Qualified bicycle commuting reimbursement

The term ''qualified bicycle commuting reimbursement'' means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

(ii) Applicable annual limitation

The term ''applicable annual limitation'' means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

(iii) Qualified bicycle commuting month

The term ''qualified bicycle commuting month'' means, with respect to any employee, any month during which such employee—

(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).

(6) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 1999, the dollar amounts contained in subparagraphs (A) and (B) of paragraph (2) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1998'' for ''calendar year 1992''.

In the case of any taxable year beginning in a calendar year after 2002, clause (ii) shall be applied by substituting ''calendar year 2001'' for ''calendar year 1998'' for purposes of adjusting the dollar amount contained in paragraph (2)(A).

(B) Rounding

If any increase determined under subparagraph (A) is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5.

(7) Coordination with other provisions

For purposes of this section, the terms ''working condition fringe'' and ''de minimis fringe'' shall not include any qualified transportation fringe (determined without regard to paragraph (2)).

(g) Qualified moving expense reimbursement

For purposes of this section, the term ''qualified moving expense reimbursement'' means any amount received (directly or indirectly) by an individual from an employer as a payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 if directly paid or incurred by the individual. Such term shall not include any payment for (or reimbursement of) an expense actually deducted by the individual in a prior taxable year.

(h) Certain individuals treated as employees for purposes of subsections (a)(1) and (2)

For purposes of paragraphs (1) and (2) of subsection (a)—

(1) Retired and disabled employees and surviving spouse of employee treated as employee

With respect to a line of business of an employer, the term ''employee'' includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) Spouse and dependent children

(A) In general

Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) Dependent child

For purposes of subparagraph (A), the term ''dependent child'' means any child (as defined in section 152(f)(1)) of the employee—

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased and who has not attained age 25.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(3) Special rule for parents in the case of air transportation

Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.

(i) Reciprocal agreements

For purposes of paragraph (1) of subsection (a), any service provided by an employer to an em-

ployee of another employer shall be treated as provided by the employer of such employee if—

(1) such service is provided pursuant to a written agreement between such employers, and

(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement.

(j) Special rules

(1) Exclusions under subsection (a)(1) and (2) apply to highly compensated employees only if no discrimination

Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.

(2) Special rule for leased sections of department stores

(A) In general

For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) Leased section of department store

For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) Auto salesmen

(A) In general

For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) Qualified automobile demonstration use

For purposes of subparagraph (A), the term ''qualified automobile demonstration use'' means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) On-premises gyms and other athletic facilities

(A) In general

Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) On-premises athletic facility

For purposes of this paragraph, the term ''on-premises athletic facility'' means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (h)).

(5) Special rule for affiliates of airlines

(A) In general

If—

(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(B) Qualified affiliate

For purposes of this paragraph, the term ''qualified affiliate'' means any corporation which is predominantly engaged in airline-related services.

(C) Airline-related services

For purposes of this paragraph, the term ''airline-related services'' means any of the following services provided in connection with air transportation:

(i) Catering.

(ii) Baggage handling.

(iii) Ticketing and reservations.

(iv) Flight planning and weather analysis.

(v) Restaurants and gift shops located at an airport.

(vi) Such other similar services provided to the airline as the Secretary may prescribe.

(D) Affiliated group

For purposes of this paragraph, the term ''affiliated group'' has the meaning given such term by section 1504(a).

(6) Highly compensated employee

For purposes of this section, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(7) Air cargo

For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service.

(8) Application of section to otherwise taxable educational or training benefits

Amounts paid or expenses incurred by the employer for education or training provided to

the employee which are not excludable from gross income under section 127 shall be excluded from gross income under this section if (and only if) such amounts or expenses are a working condition fringe.

(k) Customers not to include employees

For purposes of this section (other than subsection (c)(2)), the term ''customers'' shall only include customers who are not employees.

(*l*) Section not to apply to fringe benefits expressly provided for elsewhere

This section (other than subsections (e) and (g)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(m) Qualified retirement planning services

(1) In general

For purposes of this section, the term ''qualified retirement planning services'' means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

(2) Nondiscrimination rule

Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

(3) Qualified employer plan

For purposes of this subsection, the term ''qualified employer plan'' means a plan, contract, pension, or account described in section 219(g)(5).

(n) Qualified military base realignment and closure fringe

For purposes of this section—

(1) In general

The term ''qualified military base realignment and closure fringe'' means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009).

(2) Limitation

With respect to any property, such term shall not include any payment referred to in paragraph (1) to the extent that the sum of all of such payments related to such property exceeds the maximum amount described in subsection (c) of such section (as in effect on such date).

(*o*) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98–369, div. A, title V, § 531(a)(1), July 18, 1984, 98 Stat. 877; amended Pub. L. 99–272, title XIII, § 13207(a)(1), (b)(1), Apr. 7, 1986, 100 Stat. 319; Pub. L. 99–514, title XI, §§ 1114(b)(5), 1151(e)(2)(A), (g)(5), title XVIII, §§ 1853(a), 1899A(5), Oct. 22, 1986, 100 Stat. 2451, 2506, 2507, 2870, 2958; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title VI, § 6066(a), Nov. 10, 1988, 102 Stat. 3488, 3702; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§ 7101(b), 7841(d)(7), (19), Dec. 19, 1989, 103 Stat. 2304, 2428, 2429; Pub. L. 102–486, title XIX, § 1911(a)–(c), Oct. 24, 1992, 106 Stat. 3012–3014; Pub. L. 103–66, title XIII, §§ 13101(b), 13201(b)(3)(F), 13213(d)(1), (2), (3)(B), (C), Aug. 10, 1993, 107 Stat. 420, 459, 474; Pub. L. 105–34, title IX, § 970(a), title X, § 1072(a), Aug. 5, 1997, 111 Stat. 897, 948; Pub. L. 105–178, title IX, § 9010(a)(1), (b)(1), (2), (c)(1), (2), June 9, 1998, 112 Stat. 507, 508; Pub. L. 107–16, title VI, § 665(a), (b), June 7, 2001, 115 Stat. 143; Pub. L. 108–121, title I, § 103(a), (b), Nov. 11, 2003, 117 Stat. 1337; Pub. L. 108–311, title II, § 207(13), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–343, div. B, title II, § 211(a)–(d), Oct. 3, 2008, 122 Stat. 3840, 3841; Pub. L. 111–5, div. B, title I, § 1151(a), Feb. 17, 2009, 123 Stat. 333; Pub. L. 111–92, § 14(a), Nov. 6, 2009, 123 Stat. 2995.)

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.

REFERENCES IN TEXT

The date of the enactment of this sentence, referred to in subsec. (f)(2), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (n)(1), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

PRIOR PROVISIONS

A prior section 132 was renumbered section 140 of this title.

AMENDMENTS

2009—Subsec. (f)(2). Pub. L. 111–5 inserted concluding provisions.

Subsec. (n)(1). Pub. L. 111–92, § 14(a)(1), substituted ''the American Recovery and Reinvestment Tax Act of 2009)'' for ''this subsection) to offset the adverse effects on housing values as a result of a military base realignment or closure''.

Subsec. (n)(2). Pub. L. 111–92, § 14(a)(2), struck out ''clause (1) of'' before ''subsection (c)''.

2008—Subsec. (f)(1)(D). Pub. L. 110–343, § 211(a), added subpar. (D).

Subsec. (f)(2)(C). Pub. L. 110–343, § 211(b), added subpar. (C).

Subsec. (f)(4). Pub. L. 110–343, § 211(d), inserted ''(other than a qualified bicycle commuting reimbursement)'' after ''qualified transportation fringe''.

Subsec. (f)(5)(F). Pub. L. 110–343, § 211(c), added subpar. (F).

2004—Subsec. (h)(2)(B). Pub. L. 108–311 substituted ''152(f)(1)'' for ''151(c)(3)'' in introductory provisions.

2003—Subsec. (a)(8). Pub. L. 108–121, § 103(a), added par. (8).

Subsecs. (n), (*o*). Pub. L. 108–121, § 103(b), added subsec. (n) and redesignated former subsec. (n) as (*o*).

2001—Subsec. (a)(7). Pub. L. 107–16, § 665(a), added par. (7).

Subsecs. (m), (n). Pub. L. 107–16, § 665(b), added subsec. (m) and redesignated former subsec. (m) as (n).

1998—Subsec. (f)(2)(A). Pub. L. 105–178, § 9010(c)(1), substituted ''$100'' for ''$65''.

Pub. L. 105–178, § 9010(b)(2)(A), substituted ''$65'' for ''$60''.

Subsec. (f)(2)(B). Pub. L. 105–178, § 9010(b)(2)(B), substituted ''$175'' for ''$155''.

Subsec. (f)(4). Pub. L. 105–178, §9010(a)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''Subsection (a)(5) shall not apply to any qualified transportation fringe unless such benefit is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee. This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation.''

Subsec. (f)(6). Pub. L. 105–178, §9010(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any taxable year beginning in a calendar year after 1993, the dollar amounts contained in paragraph (2)(A) and (B) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins.

If any increase determined under the preceding sentence is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5.''

Subsec. (f)(6)(A). Pub. L. 105–178, §9010(c)(2), inserted concluding provisions.

1997—Subsec. (e)(2). Pub. L. 105–34, §970(a), inserted at end of concluding provisions ''For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.''

Subsec. (f)(4). Pub. L. 105–34, §1072(a), inserted at end ''This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation.''

1993—Subsec. (a)(6). Pub. L. 103–66, §13213(d)(1), added par. (6).

Subsec. (f)(6)(B). Pub. L. 103–66, §13201(b)(3)(F), struck out before period at end '', determined by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof''.

Subsecs. (g), (h). Pub. L. 103–66, §13213(d)(2), added subsec. (g) and redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 103–66, §13213(d)(2), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(8). Pub. L. 103–66, §13101(b), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''Amounts which would be excludible from gross income under section 127 but for subsection (a)(2) thereof or the last sentence of subsection (c)(1) thereof shall be excluded from gross income under this section if (and only if) such amounts are a working condition fringe.''

Subsec. (j). Pub. L. 103–66, §13213(d)(2), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(4)(B)(iii). Pub. L. 103–66, §13213(d)(3)(B), substituted ''subsection (h)'' for ''subsection (f)''.

Subsec. (k). Pub. L. 103–66, §13213(d)(2), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 103–66, §13213(d)(2), (3)(C), redesignated subsec. (k) as (*l*) and substituted ''subsections (e) and (g)'' for ''subsection (e)''. Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 103–66, §13213(d)(2), redesignated subsec. (*l*) as (m).

1992—Subsec. (a)(5). Pub. L. 102–486, §1911(a), added par. (5).

Subsecs. (f) to (h). Pub. L. 102–486, §1911(b), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 102–486, §1911(b), (c), redesignated subsec. (h) as (i), redesignated pars. (5) to (9) as (4) to (8), respectively, and struck out former par. (4), ''Parking'', which read as follows: ''The term 'working condition fringe' includes parking provided to an employee on or near the business premises of the employer.'' Former subsec. (i) redesignated (j).

Subsecs. (j) to (*l*). Pub. L. 102–486, §1911(b), redesignated subsecs. (i) to (k) as (j) to (*l*), respectively.

1989—Subsec. (f)(2)(B). Pub. L. 101–239, §7841(d)(19), substituted ''section 151(c)(3)'' for ''section 151(e)(3)'' in introductory provisions.

Subsec. (h)(1). Pub. L. 101–239, §7841(d)(7), substituted ''to highly compensated employees'' for ''to officers, etc.,'' in heading.

Pub. L. 101–140, §203(a)(2), amended par. (1) 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. (1) to read as if amendments by Pub. L. 99–514, §1151(g)(5), had not been enacted, see 1986 Amendment note below.

Subsec. (h)(9). Pub. L. 101–239, §7101(b), added par. (9).

1988—Subsec. (h)(1). Pub. L. 100–647, §1011B(a)(31)(B), substituted ''there shall'' for ''there may be'' and ''who are'' for ''who may be'' in last sentence.

Subsec. (h)(8). Pub. L. 100–647, §6066(a), added par. (8).

1986—Subsec. (c)(3)(A). Pub. L. 99–514, §1853(a)(2), substituted ''are provided by the employer to an employee for use by such employee'' for ''are provided to the employee by the employer''.

Subsec. (e)(2). Pub. L. 99–514, §1114(b)(5)(A), struck out ''officer, owner, or'' before ''highly compensated employee'' and ''officers, owners, or'' before ''highly compensated employees'' in last sentence.

Subsec. (f)(2)(B)(ii). Pub. L. 99–514, §1853(a)(1), substituted ''are deceased and who has not attained age 25'' for ''are deceased''.

Subsec. (f)(3). Pub. L. 99–272, §13207(a)(1), added par. (3).

Subsec. (g). Pub. L. 99–514, §1151(e)(2)(A), in amending subsec. (g) generally, designated par. (2) as the entire subsection, struck out former subsec. heading, ''Special rules relating to employer'', struck out ''For purposes of this section—'', and struck out par. (1) which read as follows: ''All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.''

Subsec. (h)(1). Pub. L. 99–514, §1151(g)(5), inserted ''For purposes of this paragraph and subsection (e), there may be excluded from consideration employees who may be excluded from consideration under section 89(h).''

Pub. L. 99–514, §1114(b)(5)(A), struck out ''officer, owner, or'' before ''highly compensated employee'' and ''officers, owners, or'' before ''highly compensated employees''.

Subsec. (h)(3)(B)(i). Pub. L. 99–514, §1899A(5), substituted ''such use is'' for ''such use in''.

Subsec. (h)(6). Pub. L. 99–272, §13207(b)(1), added par. (6).

Subsec. (h)(7). Pub. L. 99–514, §1114(b)(5)(B), added par. (7).

Subsec. (i). Pub. L. 99–514, §1853(a)(3), substituted ''subsection (c)(2)'' for ''subsection (c)(2)(B)''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §14(b), Nov. 6, 2009, 123 Stat. 2996, provided that: ''The amendments made by this act [probably should be ''this section'', amending this section] shall apply to payments made after February 17, 2009.''

Pub. L. 111–5, div. B, title I, §1151(b), Feb. 17, 2009, 123 Stat. 333, provided that: ''The amendment made by this section [amending this section] shall apply to months beginning on or after the date of the enactment of this section [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §211(e), Oct. 3, 2008, 122 Stat. 3841, provided that: ''The amendments made by

this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 103(c), Nov. 11, 2003, 117 Stat. 1338, provided that: ''The amendments made by this section [amending this section] shall apply to payments made after the date of the enactment of this Act [Nov. 11, 2003].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 665(c), June 7, 2001, 115 Stat. 143, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title IX, § 9010(a)(2), June 9, 1998, 112 Stat. 507, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Pub. L. 105–178, title IX, § 9010(b)(3), June 9, 1998, 112 Stat. 508, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1998.''

Pub. L. 105–178, title IX, § 9010(c)(3), June 9, 1998, 112 Stat. 508, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 970(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1072(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13101(c)(2) of Pub. L. 103–66 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

Amendment by section 13201(b)(3)(F) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

Amendment by section 13213(d)(1), (2), (3)(B) and (C) of Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1911(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section] shall apply to benefits provided after December 31, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 7101(b) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1988, see section 7101(c) of Pub. L. 101–239, set out as a note under section 127 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.

Section 6066(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transportation furnished after December 31, 1987, in taxable years ending after such date.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1114(b)(5) 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(e)(2)(A), (g)(5) 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 1853(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 13207(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by this subsection [amending this section] shall take effect on January 1, 1985.''

Section 13207(b)(2) of Pub. L. 99–272 provided that: ''The amendment made by this subsection [amending this section] shall take effect on January 1, 1985.''

EFFECTIVE DATE

Section 531(i) of Pub. L. 98–369, formerly § 531(h), as redesignated by Pub. L. 99–272, title XIII, § 13207(d), Apr. 7, 1986, 100 Stat. 320, provided that: ''The amendments made by this section [enacting this section and section 4977 of this title, amending sections 61, 125, 3121, 3231, 3306, 3401, 3501, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, redesignating former section 132 of this title as 133, and enacting provisions set out as notes under this section and section 125 of this title] shall take effect on January 1, 1985.''

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.

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.

CERTAIN RECORDKEEPING REQUIREMENTS

Section 1567 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—For purposes of sections 132 and 274 of the Internal Revenue Code of 1954 [now 1986], use of an automobile by a special agent of the Internal Revenue Service shall be treated in the same manner as use of an automobile by an officer of any other law enforcement agency.

''(b) EFFECTIVE DATE.—The provisions of this section shall take effect on January 1, 1985.''

TREATMENT OF CERTAIN LEASED OPERATIONS OF DEPARTMENT STORES

Section 1853(e) of Pub. L. 99–514 provided that: ''For purposes of section 132(h)(2)(B) [now 132(j)(2)(B)] of the Internal Revenue Code of 1954 [now 1986], a leased section of a department store which, in connection with the offering of beautician services, customarily makes sales of beauty aids in the ordinary course of business shall be treated as engaged in over-the-counter sales of property.''

TRANSITIONAL RULE FOR DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING AIRLINE

Section 13207(c) of Pub. L. 99–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, as of September 12, 1984—

''(1) an individual—

''(A) was an employee (within the meaning of section 132 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], including subsection (f) [now (h)] thereof) of one member of an affiliated group (as defined in section 1504 of such Code), hereinafter referred to as the 'first corporation', and

''(B) was eligible for no-additional-cost service in the form of air transportation provided by another member of such affiliated group, hereinafter referred to as the 'second corporation',

''(2) at least 50 percent of the individuals performing service for the first corporation were or had been employees of, or had previously performed services for, the second corporation, and

''(3) the primary business of the affiliated group was air transportation of passengers,

then, for purposes of applying paragraphs (1) and (2) of section 132(a) of the Internal Revenue Code of 1986, with respect to no-additional-cost services and qualified employee discounts provided after December 31, 1984, for such individual by the second corporation, the first corporation shall be treated as engaged in the same air transportation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation shall also be treated as an employee of the first corporation.''

SPECIAL RULE FOR SERVICES RELATED TO PROVIDING AIR TRANSPORTATION

Section 531(g) of Pub. L. 98–369, as added by Pub. L. 99–272, title XIII, § 13207(d), Apr. 7, 1986, 100 Stat. 320; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If—

''(A) an individual performs services for a qualified air transportation organization, and

''(B) such services are performed primarily for persons engaged in providing air transportation and are of the kind which (if performed on September 12, 1984) would qualify such individual for no-additional-cost services in the form of air transportation,

then, with respect to such individual, such qualified air transportation organization shall be treated as engaged in the line of business of providing air transportation.

''(2) QUALIFIED AIR TRANSPORTATION ORGANIZATION.—For purposes of paragraph (1), the term 'qualified air transportation organization' means any organization—

''(A) if such organization (or a predecessor) was in existence on September 12, 1984,

''(B) if—

''(i) such organization is described in section 501(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and the membership of such organization is limited to entities engaged in the transportation by air of individuals or property for compensation or hire, or

''(ii) such organization is a corporation all the stock of which is owned entirely by entities referred to in clause (i), and

''(C) if such organization is operated in furtherance of the activities of its members or owners.''

DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING RETAIL DEPARTMENT STORES

Section 531(f) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(1) as of October 5, 1983, the employees of one member of an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at the retail department stores operated by another member of such affiliated group, and

''(2) the primary business of the affiliated group is the operation of retail department stores,

then, for purpose of applying section 132(a)(2) of the Internal Revenue Code of 1986, with respect to discounts provided for such employees at the retail department stores operated by such other member, the employer shall be treated as engaged in the same line of business as such other member.''

[§ 133. Repealed. Pub. L. 104–188, title I, § 1602(a), Aug. 20, 1996, 110 Stat. 1833]

Section, added Pub. L. 98–369, div. A, title V, § 543(a), July 18, 1984, 98 Stat. 891; amended Pub. L. 99–514, title XI, § 1173(b)(1)(A), (2), title XVIII, § 1854(c)(2)(A), (C), (D), Oct. 22, 1986, 100 Stat. 2515, 2879; Pub. L. 100–647, title I, § 1011B(h)(1), (2), Nov. 10, 1988, 102 Stat. 3490; Pub. L. 101–239, title VII, § 7301(a)–(c), Dec. 19, 1989, 103 Stat. 2346, 2347, prior to repeal, read as follows:

§ 133. Interest on certain loans used to acquire employer securities

(a) IN GENERAL

Gross income does not include 50 percent of the interest received by—

(1) a bank (within the meaning of section 581),

(2) an insurance company to which subchapter L applies,

(3) a corporation actively engaged in the business of lending money, or

(4) a regulated investment company (as defined in section 851),

with respect to a securities acquisition loan.

(b) SECURITIES ACQUISITION LOAN

(1) IN GENERAL

For purposes of this section, the term ''securities acquisition loan'' means—

(A) any loan to a corporation or to an employee stock ownership plan to the extent that the proceeds are used to acquire employer securities for the plan, or

(B) any loan to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of such loan and such securities are allocable to accounts of plan participants within 1 year of the date of such loan.

For purposes of this paragraph, the term ''employer securities'' has the meaning given such term by section 409(*l*). The term ''securities acquisition loan'' shall not include a loan with a term greater than 15 years.

(2) LOANS BETWEEN RELATED PERSONS

The term ''securities acquisition loan'' shall not include—

(A) any loan made between corporations which are members of the same controlled group of corporations, or

(B) any loan made between an employee stock ownership plan and any person that is—

(i) the employer of any employees who are covered by the plan; or

(ii) a member of a controlled group of corporations which includes such employer.

For purposes of this paragraph, subparagraphs (A) and (B) shall not apply to any loan which, but for such subparagraphs, would be a securities acquisition loan if such loan was not originated by the employer of any employees who are covered by the plan or by any member of the controlled group of corporations which includes such employer, except that this section shall not apply to any interest received on such loan during such time as such loan is held by such employer (or any member of such controlled group).

(3) TERMS APPLICABLE TO CERTAIN SECURITIES ACQUISITION LOANS

A loan to a corporation shall not fail to be treated as a securities acquisition loan merely because the proceeds of such loan are lent to an employee stock ownership plan sponsored by such corporation (or by any member of the controlled group of corporations which includes such corporation) if such loan includes—

(A) repayment terms which are substantially similar to the terms of the loan of such corporation from a lender described in subsection (a), or

(B) repayment terms providing for more rapid repayment of principal or interest on such loan, but only if allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).

(4) CONTROLLED GROUP OF CORPORATIONS

For purposes of this paragraph, the term ''controlled group of corporations'' has the meaning given such term by section 409(*l*)(4).

(5) TREATMENT OF REFINANCINGS

The term ''securities acquisition loan'' shall include any loan which—

(A) is (or is part of a series of loans) used to refinance a loan described in subparagraph (A) or (B) of paragraph (1), and

(B) meets the requirements of paragraphs (2) and (3).

(6) PLAN MUST HOLD MORE THAN 50 PERCENT OF STOCK AFTER ACQUISITION OR TRANSFER

(A) IN GENERAL

A loan shall not be treated as a securities acquisition loan for purposes of this section unless, immediately after the acquisition or transfer referred to in subparagraph (A) or (B) of paragraph (1), respectively, the employee stock ownership plan owns more than 50 percent of—

(i) each class of outstanding stock of the corporation issuing the employer securities, or

(ii) the total value of all outstanding stock of the corporation.

(B) FAILURE TO RETAIN MINIMUM STOCK INTEREST

(i) IN GENERAL

Subsection (a) shall not apply to any interest received with respect to a securities acquisition loan which is allocable to any period during which the employee stock ownership plan does not own stock meeting the requirements of subparagraph (A).

(ii) EXCEPTION

To the extent provided by the Secretary, clause (i) shall not apply to any period if, within 90 days of the first date on which the failure occurred (or such longer period not in excess of 180 days as the Secretary may prescribe), the plan acquires stock which results in its meeting the requirements of subparagraph (A).

(C) STOCK

For purposes of subparagraph (A)—

(i) IN GENERAL

The term ''stock'' means stock other than stock described in section 1504(a)(4).

(ii) TREATMENT OF CERTAIN RIGHTS

The Secretary may provide that warrants, options, contracts to acquire stock, convertible debt interests and other similar interests be treated as stock for 1 or more purposes under subparagraph (A).

(D) AGGREGATION RULE

For purposes of determining whether the requirements of subparagraph (A) are met, an employee stock ownership plan shall be treated as owning stock in the corporation issuing the employer securities which is held by any other employee stock ownership plan which is maintained by—

(i) the employer maintaining the plan, or

(ii) any member of a controlled group of corporations (within the meaning of section 409(*l*)(4)) of which the employer described in clause (i) is a member.

(7) VOTING RIGHTS OF EMPLOYER SECURITIES

A loan shall not be treated as a securities acquisition loan for purposes of this section unless—

(A) the employee stock ownership plan meets the requirements of section 409(e)(2) with respect to all employer securities acquired by, or transferred to, the plan in connection with such loan (without regard to whether or not the employer has a registration-type class of securities), and

(B) no stock described in section 409(*l*)(3) is acquired by, or transferred to, the plan in connection with such loan unless—

(i) such stock has voting rights equivalent to the stock to which it may be converted, and

(ii) the requirements of subparagraph (A) are met with respect to such voting rights.

(c) EMPLOYEE STOCK OWNERSHIP PLAN

For purposes of this section, the term ''employee stock ownership plan'' has the meaning given to such term by section 4975(e)(7).

(d) APPLICATION WITH SECTION 483 AND ORIGINAL ISSUE DISCOUNT RULES

In applying section 483 and subpart A of part V of subchapter P to any obligation to which this section applies, appropriate adjustments shall be made to the applicable Federal rate to take into account the exclusion under subsection (a).

(e) PERIOD TO WHICH INTEREST EXCLUSION APPLIES

(1) IN GENERAL

In the case of—

(A) an original securities acquisition loan, and

(B) any securities acquisition loan (or series of such loans) used to refinance the original securities acquisition loan,

subsection (a) shall apply only to interest accruing during the excludable period with respect to the original securities acquisition loan.

(2) EXCLUDABLE PERIOD

For purposes of this subsection, the term ''excludable period'' means, with respect to any original securities acquisition loan—

(A) IN GENERAL

The 7-year period beginning on the date of such loan.

(B) LOANS DESCRIBED IN SUBSECTION (b)(1)(A)

If the term of an original securities acquisition loan described in subsection (b)(1)(A) is greater than 7 years, the term of such loan. This subparagraph shall not apply to a loan described in subsection (b)(3)(B).

(3) ORIGINAL SECURITIES ACQUISITION LOAN

For the purposes of this subsection, the term ''original securities acquisition loan'' means a securities acquisition loan described in subparagraph (A) or (B) of subsection (b)(1).

PRIOR PROVISIONS

A prior section 133 was renumbered section 140 of this title.

EFFECTIVE DATE OF REPEAL

Section 1602(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending sections 291, 812, 852, 4978, 6047, and 7872 of this title and repealing this section and section 4978B of this title] shall apply to loans made after the date of the enactment of this Act [Aug. 20, 1996].

''(2) REFINANCINGS.—The amendments made by this section shall not apply to loans made after the date of the enactment of this Act to refinance securities acquisition loans (determined without regard to section 133(b)(1)(B) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act) [set out above] made on or before such date or to refinance loans described in this paragraph if—

''(A) the refinancing loans meet the requirements of section 133 of such Code (as so in effect),

''(B) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and

''(C) the term of such refinancing loan does not extend beyond the last day of the term of the original securities acquisition loan.

For purposes of this paragraph, the term 'securities acquisition loan' includes a loan from a corporation to an employee stock ownership plan described in section 133(b)(3) of such Code (as so in effect).

''(3) EXCEPTION.—Any loan made pursuant to a binding written contract in effect before June 10, 1996, and at all times thereafter before such loan is made, shall be treated for purposes of paragraphs (1) and (2) as a loan made on or before the date of the enactment of this Act.''

§ 134. Certain military benefits

(a) General rule

Gross income shall not include any qualified military benefit.

(b) Qualified military benefit

For purposes of this section—

(1) In general

The term ''qualified military benefit'' means any allowance or in-kind benefit (other than personal use of a vehicle) which—

(A) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services, and

(B) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date (other than a provision of this title).

(2) No other benefit to be excludable except as provided by this title

Notwithstanding any other provision of law, no benefit shall be treated as a qualified military benefit unless such benefit—

(A) is a benefit described in paragraph (1), or

(B) is excludable from gross income under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(3) Limitations on modifications

(A) In general

Except as provided in subparagraphs (B) and (C) and paragraphs (4) and (5), no modification or adjustment of any qualified military benefit after September 9, 1986, shall be taken into account.

(B) Exception for certain adjustments to cash benefits

Subparagraph (A) shall not apply to any adjustment to any qualified military benefit payable in cash which—

(i) is pursuant to a provision of law or regulation (as in effect on September 9, 1986), and

(ii) is determined by reference to any fluctuation in cost, price, currency, or other similar index.

(C) Exception for death gratuity adjustments made by law

Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.

(4) Clarification of certain benefits

For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).

(5) Travel benefits under operation hero miles

The term ''qualified military benefit'' includes a travel benefit provided under section 2613 of title 10, United States Code (as in effect on the date of the enactment of this paragraph).

(6) Certain State payments

The term ''qualified military benefit'' includes any bonus payment by a State or political subdivision thereof to any member or former member of the uniformed services of the United States or any dependent of such member only by reason of such member's service in an[1] combat zone (as defined in section 112(c)(2), determined without regard to the parenthetical).

(Added Pub. L. 99–514, title XI, § 1168(a), Oct. 22, 1986, 100 Stat. 2512; amended Pub. L. 100–647, title I, § 1011B(f)(1), (2)(A), (3), Nov. 10, 1988, 102 Stat. 3489, 3490; Pub. L. 108–121, title I, §§ 102(b)(1), (2), 106(a), (b)(1), Nov. 11, 2003, 117 Stat. 1337–1339; Pub. L. 108–375, div. A, title V, § 585(b)(1), (2)(A), Oct. 28, 2004, 118 Stat. 1931, 1932; Pub. L. 110–245, title I, § 112(a), June 17, 2008, 122 Stat. 1635.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(4), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 108–375, which was approved Oct. 28, 2004.

PRIOR PROVISIONS

A prior section 134 was renumbered section 140 of this title.

AMENDMENTS

2008—Subsec. (b)(6). Pub. L. 110–245 added par. (6).

2004—Subsec. (b)(3)(A). Pub. L. 108–375, § 585(b)(2)(A), substituted ''paragraphs (4) and (5)'' for ''paragraph (4)''.

Subsec. (b)(5). Pub. L. 108–375, § 585(b)(1), added par. (5).

2003—Subsec. (b)(3)(A). Pub. L. 108–121, § 106(b)(1), inserted ''and paragraph (4)'' after ''subparagraphs (B) and (C)''.

Pub. L. 108–121, § 102(b)(2), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

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

Subsec. (b)(3)(C). Pub. L. 108–121, § 102(b)(1), added subpar. (C).

Subsec. (b)(4). Pub. L. 108–121, § 106(a), added par. (4).

1988—Subsec. (b)(1). Pub. L. 100–647, § 1011B(f)(2)(A), inserted ''(other than personal use of a vehicle)'' after ''in-kind benefit'' in introductory text.

Subsec. (b)(1)(B). Pub. L. 100–647, § 1011B(f)(1), substituted '', regulation, or administrative practice'' for ''or regulation thereunder''.

Subsec. (b)(3)(A). Pub. L. 100–647, § 1011B(f)(3), struck out ''under any provision of law or regulation described in paragraph (1)'' after ''September 9, 1986,''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, § 112(b), June 17, 2008, 122 Stat. 1635, provided that: ''The amendment made by this section [amending this section] shall apply to payments made before, on, or after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, § 585(b)(3), Oct. 28, 2004, 118 Stat. 1932, provided that: ''The amendments made by this subsection [amending this section and sections 3121, 3306, and 3401 of this title] shall apply to travel benefits provided after the date of the enactment of this Act [Oct. 28, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 102(b)(3), Nov. 11, 2003, 117 Stat. 1337, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to deaths occurring after September 10, 2001.''

Pub. L. 108–121, title I, § 106(c), Nov. 11, 2003, 117 Stat. 1339, provided that: ''The amendments made by this section [amending this section and sections 3121, 3306, and 3401 of this title] shall apply to taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011B(f)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1011B(f)(1), (3) 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.

EFFECTIVE DATE

Section 1168(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011B(f)(4), Nov. 10, 1988, 102 Stat. 3490, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1984.''

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

Pub. L. 108–121, title I, § 106(d), Nov. 11, 2003, 117 Stat. 1339, provided that: ''No inference may be drawn from the amendments made by this section [amending this section and sections 3121, 3306, and 3401 of this title] with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2003.''

§ 135. Income from United States savings bonds used to pay higher education tuition and fees

(a) General rule

In the case of an individual who pays qualified higher education expenses during the taxable year, no amount shall be includible in gross income by reason of the redemption during such year of any qualified United States savings bond.

(b) Limitations

(1) Limitation where redemption proceeds exceed higher education expenses

(A) In general

If—

(i) the aggregate proceeds of qualified United States savings bonds redeemed by the taxpayer during the taxable year exceed

(ii) the qualified higher education expenses paid by the taxpayer during such taxable year,

the amount excludable from gross income under subsection (a) shall not exceed the applicable fraction of the amount excludable from gross income under subsection (a) without regard to this subsection.

(B) Applicable fraction

For purposes of subparagraph (A), the term ''applicable fraction'' means the fraction the numerator of which is the amount described in subparagraph (A)(ii) and the denominator of which is the amount described in subparagraph (A)(i).

(2) Limitation based on modified adjusted gross income

(A) In general

If the modified adjusted gross income of the taxpayer for the taxable year exceeds $40,000 ($60,000 in the case of a joint return), the amount which would (but for this paragraph) be excludable from gross income under subsection (a) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so excludable as such excess bears to $15,000 ($30,000 in the case of a joint return).

(B) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 1990, the $40,000 and $60,000 amounts contained in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 1989'' for ''calendar year 1992'' in subparagraph (B) thereof.

(C) Rounding

If any amount as adjusted under subparagraph (B) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50 (or if such amount is a multiple of $25, such amount shall be rounded to the next highest multiple of $50).

(c) Definitions

For purposes of this section—

(1) Qualified United States savings bond

The term ''qualified United States savings bond'' means any United States savings bond issued—

(A) after December 31, 1989,

(B) to an individual who has attained age 24 before the date of issuance, and

(C) at discount under section 3105 of title 31, United States Code.

(2) Qualified higher education expenses

(A) In general

The term ''qualified higher education expenses'' means tuition and fees required for the enrollment or attendance of—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution.

(B) Exception for education involving sports, etc.

Such term shall not include expenses with respect to any course or other education involving sports, games, or hobbies other than as part of a degree program.

(C) Contributions to qualified tuition program and Coverdell education savings accounts

Such term shall include any contribution to a qualified tuition program (as defined in section 529) on behalf of a designated beneficiary (as defined in such section), or to a Coverdell education savings account (as defined in section 530) on behalf of an account beneficiary, who is an individual described in subparagraph (A); but there shall be no increase in the investment in the contract for purposes of applying section 72 by reason of any portion of such contribution which is not includible in gross income by reason of this subparagraph.

(3) Eligible educational institution

The term ''eligible educational institution'' has the meaning given such term by section 529(e)(5).

(4) Modified adjusted gross income

The term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year determined—

(A) without regard to this section and sections 137, 199, 221, 222, 911, 931, and 933, and

(B) after the application of sections 86, 469, and 219.

(d) Special rules

(1) Adjustment for certain scholarships and veterans benefits

The amount of qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the sum of the amounts received with respect to such individual for the taxable year as—

(A) a qualified scholarship which under section 117 is not includable in gross income,

(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code,

(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for educational expenses, or attributable to attendance at an eligible educational institution, which is exempt from income taxation by any law of the United States, or

(D) a payment, waiver, or reimbursement of qualified higher education expenses under a qualified tuition program (within the meaning of section 529(b)).

(2) Coordination with other higher education benefits

The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by—

(A) the amount of such expenses which are taken into account in determining the credit allowed to the taxpayer or any other person under section 25A with respect to such expenses; and

(B) the amount of such expenses which are taken into account in determining the exclusions under sections 529(c)(3)(B) and 530(d)(2).

(3) No exclusion for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(4) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring record keeping and information reporting.

(Added Pub. L. 100–647, title VI, §6009(a), Nov. 10, 1988, 102 Stat. 3688; amended Pub. L. 101–239, title VII, §7816(c)(2), Dec. 19, 1989, 103 Stat. 2420; Pub. L. 101–508, title XI, §§11101(d)(1)(E), 11702(h), Nov. 5, 1990, 104 Stat. 1388–405, 1388–516; Pub. L. 104–188, title I, §§1703(d), 1806(b)(1), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1875, 1898, 1902; Pub. L. 105–34, title II, §§201(d), 211(c), 213(e)(2), Aug. 5, 1997, 111 Stat. 805, 811, 817; Pub. L. 105–206, title VI, §6004(c)(1), (d)(4), (9), July 22, 1998, 112 Stat. 793–795; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §§401(g)(2)(B), 402(a)(4)(A), (B), (b)(2)(A), 431(c)(1), June 7, 2001, 115 Stat. 59–62, 68; Pub. L. 107–22, §1(b)(1)(B), (3)(B), July 26, 2001, 115 Stat. 197; 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 Amendments note below.

PRIOR PROVISIONS

A prior section 135 was renumbered section 140 of this title.

AMENDMENTS

2004—Subsec. (c)(4)(A). Pub. L. 108–357 inserted ''199,'' before ''221''.

2001—Subsec. (c)(2)(C). Pub. L. 107–22, in heading substituted ''Coverdell education savings'' for ''education individual retirement'' and in text substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Pub. L. 107–16, § 402(a)(4)(A), (B), substituted ''qualified tuition'' for ''qualified State tuition'' in heading and text.

Subsec. (c)(4)(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. (d)(1)(D). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (d)(2)(A). Pub. L. 107–16, §§ 401(g)(2)(B), 901, temporarily substituted ''allowed'' for ''allowable''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2)(B). Pub. L. 107–16, § 402(b)(2)(A), substituted ''the exclusions under sections 529(c)(3)(B) and 530(d)(2)'' for ''the exclusion under section 530(d)(2)''.

1998—Subsec. (c)(2)(C). Pub. L. 105–206, § 6004(d)(9), inserted ''and education individual retirement accounts'' after ''program'' in heading and substituted ''section 72'' for ''section 529(c)(3)(A)'' in text.

Subsec. (c)(3). Pub. L. 105–206, § 6004(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'eligible educational institution' means—

''(A) an institution described in section 1201(a) or subparagraph (C) or (D) of section 481(a)(1) of the Higher Education Act of 1965 (as in effect on October 21, 1988), and

''(B) an area vocational education school (as defined in subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act) which is in any State (as defined in section 521(27) of such Act), as such sections are in effect on October 21, 1988.''

Subsec. (c)(4)(A). Pub. L. 105–277 inserted ''221,'' after ''137,''.

Subsec. (d)(2). Pub. L. 105–206, § 6004(d)(4), substituted ''other higher education benefits'' for ''higher education credit'' in heading and amended text of par. (2) generally. Prior to amendment, text read as follows: ''The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses.''

1997—Subsec. (c)(2)(C). Pub. L. 105–34, § 213(e)(2), inserted '', or to an education individual retirement account (as defined in section 530) on behalf of an account beneficiary,'' after ''(as defined in such section)''.

Pub. L. 105–34, § 211(c), added subpar. (C).

Subsec. (d)(2) to (4). Pub. L. 105–34, § 201(d), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1996—Subsec. (b)(2)(B)(ii). Pub. L. 104–188, § 1703(d), inserted '', determined by substituting 'calendar year 1989' for 'calendar year 1992' in subparagraph (B) thereof'' before period at end.

Subsec. (c)(4)(A). Pub. L. 104–188, § 1807(c)(2), inserted ''137,'' before ''911''.

Subsec. (d)(1)(D). Pub. L. 104–188, § 1806(b)(1), added subpar. (D).

1990—Subsec. (b)(2)(B). Pub. L. 101–508, § 11702(h)(1), substituted ''the $40,000 and $60,000 amounts'' for ''each dollar amount'' in introductory provisions.

Subsec. (b)(2)(B)(ii). Pub. L. 101–508, § 11101(d)(1)(E), struck out before period at end '', determined by substituting 'calendar year 1989' for 'calendar year 1987' in subparagraph (B) thereof''.

Subsec. (b)(2)(C). Pub. L. 101–508, § 11702(h)(2), struck out ''(A) or'' after ''subparagraph''.

1989—Subsec. (d)(1). Pub. L. 101–239 substituted ''subsection (a) with respect to'' for ''subsection (a) respect to''.

EFFECTIVE DATE OF 2004 AMENDMENT

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.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(g)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A), (B), (b)(2)(A) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 72 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 sections 401(g)(2)(B) and 431(c)(1) of 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 AMENDMENTS

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.

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

Amendment by section 201(d) of Pub. L. 105–34 applicable to expenses paid after Dec. 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date, see section 201(f) of Pub. L. 105–34, set out as an Effective Date note under section 25A of this title.

Amendment by section 211(c) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 211(f) of Pub. L. 105–34, set out as a note under section 529 of this title.

Amendment by section 213(e)(2) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(d) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

Amendment by section 1806(b)(1) of Pub. L. 104–188 applicable to taxable years ending after Aug. 20, 1996, with transition rules applicable where States or agencies or instrumentalities thereof maintain on such date programs under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, designated beneficiaries, see section 1806(c) of Pub. L. 104–188, set out as an Effective Date note under section 529 of this title.

Amendment by section 1807(c)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996,

see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(E) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11702(h) of Pub. L. 101–508 effective 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 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 86 of this title.

PROMOTION OF PUBLIC AWARENESS OF PROGRAM

Section 6009(b) of Pub. L. 100–647 provided that: ''The Secretary of the Treasury or his delegate shall take such actions as may be necessary to make the general public aware of the program established by this section [enacting this section, amending sections 86, 219, and 469 of this title, renumbering former section 135 of this title as section 136 of this title, and enacting provisions set out as notes below and under section 86 of this title].''

PARENTAL ASSISTANCE WITH TUITION STAMP STUDY

Section 6009(e) of Pub. L. 100–647 directed Secretary of the Treasury or his delegate, after consultation with Secretary of Education or his delegate, to conduct a study of feasibility of using stamps or similar programs to encourage and facilitate savings by parents towards purchase of Series EE bonds eligible for exclusion and to submit, not later than Dec. 31, 1989, results of such study, together with any recommendations deemed appropriate, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

§136. Energy conservation subsidies provided by public utilities

(a) Exclusion

Gross income shall not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure.

(b) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure to the extent of the amount excluded under subsection (a) for any subsidy which was provided with respect to such expenditure. The adjusted basis of any property shall be reduced by the amount excluded under subsection (a) which was provided with respect to such property.

(c) Energy conservation measure

(1) In general

For purposes of this section, the term ''energy conservation measure'' means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit.

(2) Other definitions

For purposes of this subsection—

(A) Dwelling unit

The term ''dwelling unit'' has the meaning given such term by section 280A(f)(1).

(B) Public utility

The term ''public utility'' means a person engaged in the sale of electricity or natural gas to residential, commercial, or industrial customers for use by such customers. For purposes of the preceding sentence, the term ''person'' includes the Federal Government, a State or local government or any political subdivision thereof, or any instrumentality of any of the foregoing.

(d) Exception

This section shall not apply to any payment to or from a qualified cogeneration facility or qualifying small power production facility pursuant to section 210 of the Public Utility Regulatory Policy Act of 1978.

(Added Pub. L. 102–486, title XIX, §1912(a), Oct. 24, 1992, 106 Stat. 3014; amended Pub. L. 104–188, title I, §1617(a), (b), Aug. 20, 1996, 110 Stat. 1858.)

REFERENCES IN TEXT

Section 210 of the Public Utility Regulatory Policy Act of 1978, referred to in subsec. (d), probably means section 210 of the Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, which is classified to section 824a–3 of Title 16, Conservation.

PRIOR PROVISIONS

A prior section 136 was renumbered section 140 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1617(b)(1), reenacted heading without change and amended text generally, substituting present provisions for former provisions which consisted of general exclusion in par. (1) and limitation for exclusion on nonresidential property in par. (2).

Subsec. (c)(1). Pub. L. 104–188, §1617(a), substituted ''energy demand with respect to a dwelling unit.'' for ''energy demand—

''(A) with respect to a dwelling unit, and

''(B) on or after January 1, 1995, with respect to property other than dwelling units.

The purchase and installation of specially defined energy property shall be treated as an energy conservation measure described in subparagraph (B).''

Subsec. (c)(2). Pub. L. 104–188, §1617(b)(2), struck out ''and special rules'' after ''definitions'' in heading, redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which related to ''specially defined energy property''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1617(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to amounts received after December 31, 1996, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter.''

EFFECTIVE DATE

Section 1912(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [enacting this sec-

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

(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''.

AMENDMENTS

2008—Subsec. (c)(2). Pub. L. 110–343 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''a Presidentially declared disaster (as defined in section 1033(h)(3)),''.

2005—Subsec. (d). Pub. L. 109–7, §1(a)(2)(A), substituted ''qualified disaster relief payments and qualified disaster mitigation payments'' for ''a qualified disaster relief payment''.

Subsec. (e). Pub. L. 109–7, §1(a)(2)(B), substituted '', (f), and (g)'' for ''and (f)''.

Subsecs. (g), (h). Pub. L. 109–7, §1(a)(1), added subsecs. (g) and (h).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–7, §1(c)(1), Apr. 15, 2005, 119 Stat. 22, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to amounts received before, on, or after the date of the enactment of this Act [Apr. 15, 2005].''

EFFECTIVE DATE

Pub. L. 107–134, title I, §111(c), Jan. 23, 2002, 115 Stat. 2433, provided that: ''The amendments made by this section [enacting this section and renumbering former section 139 as section 140 of this title] shall apply to taxable years ending on or after September 11, 2001.''

§ 139A. Federal subsidies for prescription drug plans

Gross income shall not include any special subsidy payment received under section 1860D–22 of the Social Security Act. This section shall not be taken into account for purposes of determining whether any deduction is allowable with respect to any cost taken into account in determining such payment.

(Added Pub. L. 108–173, title XII, §1202(a), Dec. 8, 2003, 117 Stat. 2480.)

REFERENCES IN TEXT

Section 1860D–22 of the Social Security Act, referred to in text, is classified to section 1395w–132 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 8, 2003, see section 1202(d) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 56 of this title.

§ 139B. Benefits provided to volunteer firefighters and emergency medical responders

(a) In general

In the case of any member of a qualified volunteer emergency response organization, gross income shall not include—

(1) any qualified State and local tax benefit, and

(2) any qualified payment.

(b) Denial of double benefits

In the case of any member of a qualified volunteer emergency response organization—

(1) the deduction under 164 shall be determined with regard to any qualified State and local tax benefit, and

(2) expenses paid or incurred by the taxpayer in connection with the performance of services as such a member shall be taken into account under section 170 only to the extent such expenses exceed the amount of any qualified payment excluded from gross income under subsection (a).

(c) Definitions

For purposes of this section—

(1) Qualified State and local tax benefit

The term ''qualified state and local tax benefit'' means any reduction or rebate of a tax described in paragraph (1), (2), or (3) of section 164(a) provided by a State or political division thereof on account of services performed as a member of a qualified volunteer emergency response organization.

(2) Qualified payment

(A) In general

The term ''qualified payment'' means any payment (whether reimbursement or otherwise) provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization.

(B) Applicable dollar limitation

The amount determined under subparagraph (A) for any taxable year shall not exceed $30 multiplied by the number of months during such year that the taxpayer performs such services.

(3) Qualified volunteer emergency response organization

The term ''qualified volunteer emergency response organization'' means any volunteer organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.

(d) Termination

This section shall not apply with respect to taxable years beginning after December 31, 2010.

(Added Pub. L. 110–142, §5(a), Dec. 20, 2007, 121 Stat. 1805.)

EFFECTIVE DATE

Pub. L. 110–142, §5(c), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2007.''

§ 139C. COBRA premium assistance

In the case of an assistance eligible individual (as defined in section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009[1]), gross income does not include any premium reduction provided under subsection (a) of such section.[1]

(Added Pub. L. 111–5, div. B, title III, §3001(a)(15)(A), Feb. 17, 2009, 123 Stat. 465.)

[1] See References in Text note below.

REFERENCES IN TEXT

The Health Insurance Assistance for the Unemployed Act of 2009, referred to in text, was the name of title III of div. B in both the introduced and House engrossed versions of H.R. 1 in the 111th Congress. H.R. 1 was enacted into law as Pub. L. 111–5, but as enacted, it did not include any provision known as the Health Insurance Assistance for the Unemployed Act of 2009 and did not contain a section 3002.

EFFECTIVE DATE

Section applicable to taxable years ending after Feb. 17, 2009, see section 3001(a)(15)(C) of Pub. L. 111–5, set out as a Premium Assistance for COBRA Benefits note under section 6432 of this title.

§140. Cross references to other Acts

(a) For exemption of—

(1) Allowances and expenditures to meet losses sustained by persons serving the United States abroad, due to appreciation of foreign currencies, see section 5943 of title 5, United States Code.

(2) Amounts credited to the Maritime Administration under section 9(b)(6) of the Merchant Ship Sales Act of 1946, see section 9(c)(1) of that Act (50 U.S.C. App. 1742).[1]

(3) Benefits under laws administered by the Veterans' Administration, see section 5301 of title 38, United States Code.

(4) Earnings of ship contractors deposited in special reserve funds, see section 53507 of title 46, United States Code.

(5) Income derived from Federal Reserve banks, including capital stock and surplus, see section 7 of the Federal Reserve Act (12 U.S.C. 531).

(6) Special pensions of persons on Army and Navy medal of honor roll, see 38 U.S.C. 1562(a)–(c).

(b) For extension of military income tax-exemption benefits to commissioned officers of Public Health Service in certain circumstances, see section 212 of the Public Health Service Act (42 U.S.C. 213).

(Aug. 16, 1954, ch. 736, 68A Stat. 39, §121; Aug. 1, 1956, ch. 837, title V, §501(t), 70 Stat. 885; Pub. L. 85–56, title XXII, §2201(25), June 17, 1957, 71 Stat. 160; Pub. L. 85–857, §13(t), Sept. 2, 1958, 72 Stat. 1266; renumbered §122, Pub. L. 88–272, title II, §206(a), Feb. 26, 1964, 78 Stat. 38; renumbered §123, Pub. L. 89–365, §1(a)(1), Mar. 8, 1966, 80 Stat. 32; renumbered §124, Pub. L. 91–172, title IX, §901(a), Dec. 30, 1969, 83 Stat. 709; amended Pub. L. 94–455, title XIX, §1901(a)(21), Oct. 4, 1976, 90 Stat. 1766; renumbered §125, Pub. L. 95–618, title II, §242(a), Nov. 9, 1978, 92 Stat. 3193; renumbered §126, renumbered §127, renumbered §128, Pub. L. 95–600, title I, §§134(a), 164(a), title V, 543(a), Nov. 6, 1978, 92 Stat. 2783, 2811, 2888; amended Pub. L. 96–222, title I, §101(a)(3), Apr. 1, 1980, 94 Stat. 195; Pub. L. 96–589, §6(i)(1), Dec. 24, 1980, 94 Stat. 3410; renumbered §129, renumbered §130, Pub. L. 97–34, title I, §124(e)(1), title III, §301(a), Aug. 13, 1981, 95 Stat. 198, 267; renumbered §131, renumbered §132, Pub. L. 97–473, title I, §§101(b)(1), 102(a), Jan. 14, 1983, 96 Stat. 2605, 2606; renumbered §133, renumbered §134 and amended Pub. L. 98–369, div. A, title V, §§531(a)(1), 543(a), div. B, title VI, §2661(*o*)(2), July 18, 1984, 98 Stat. 877, 891, 1159; renumbered §135, Pub. L. 99–514, title XI, §1168(a), Oct. 22, 1986, 100 Stat. 2512; renumbered §136, Pub. L. 100–647, title VI, §6009(a), Nov. 10, 1988, 102 Stat. 3688; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; renumbered §137, Pub. L. 102–486, title XIX, §1912(a), Oct. 24, 1992, 106 Stat. 3014; renumbered §138, Pub. L. 104–188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; renumbered §139, Pub. L. 105–33, title IV, §4006(a), Aug. 5, 1997, 111 Stat. 331; renumbered §140, Pub. L. 107–134, title I, §111(a), Jan. 23, 2002, 115 Stat. 2432; Pub. L. 109–304, §17(e)(2), Oct. 6, 2006, 120 Stat. 1708.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742), referred to in subsec. (a)(2), was repealed by Pub. L. 94–412, title V, §501(g), Sept. 14, 1976, 90 Stat. 1258.

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–304 substituted ''section 53507 of title 46, United States Code'' for ''section 607(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1177)''.

2002—Pub. L. 107–134 renumbered section 139 of this title as this section.

1997—Pub. L. 105–33 renumbered section 138 of this title as this section.

1996—Pub. L. 104–188 renumbered section 137 of this title as this section.

1992—Pub. L. 102–486 renumbered section 136 of this title as this section.

1991—Subsec. (a)(3). Pub. L. 102–40 substituted ''5301'' for ''3101''.

Subsec. (a)(6). Pub. L. 102–83 substituted ''1562(a)–(c)'' for ''562(a)–(c)''.

1988—Pub. L. 100–647 renumbered section 135 of this title as this section.

1986—Pub. L. 99–514 renumbered section 134 of this title as this section.

1984—Pub. L. 98–369, §§531(a)(1), 543(a), successively renumbered sections 132 and 133 of this title as this section.

Subsec. (a)(6) to (8). Pub. L. 98–369, §2661(*o*)(2), struck out par. (6) relating to railroad retirement annuities and pensions, struck out par. (7) relating to railroad unemployment benefits, and redesignated par. (8) as (6).

1983—Pub. L. 97–473 successively renumbered sections 130 and 131 of this title as this section.

1981—Pub. L. 97–34 successively renumbered sections 128 and 129 of this title as this section.

1980—Subsec. (a). Pub. L. 96–589 redesignated pars. (2) to (9) as (1) to (8), respectively. Former par. (1), relating to section 1079 of title 11 for adjustments of indebtedness under wage earners' plans, was struck out.

Subsec. (a)(8). Pub. L. 96–222 substituted ''benefits which are not includible in gross income under section 85,'' for ''benefits, see''.

1978—Pub. L. 95–600 successively renumbered sections 125, 126, and 127 of this title as this section.

Pub. L. 95–618 renumbered section 124 of this title as this section.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(21), struck out pars. (4), (5), (6), (9), (10), (11), (12), (13), and (17) relating to: benefits under World War Adjustment Compensation Act; benefits under World War Veteran's Act 1924; dividends and interest derived from certain preferred stock by Reconstruction Finance Corporation; income derived from Ogdensburg bridge; income derived from Owensburg bridge and ferries; income from Saint Clair River bridge and ferries; leave compensation payments under section 6 of Armed Forces Leave Act of 1946; mustering-out payments under Mustering-Out Payment Act of 1944; and gain derived from sale or other disposition of Treasury Bills issued after June 17, 1930, under the Second Liberty Bond Act, respectively, renumbered pars. (7), (8), (14), (15), (16), and (18) as pars. (5), (6), (7), (8), (9), and (4), respectively, struck out references to Statutes at Large, and updated cross references to the United States Code.

Subsec. (b). Pub. L. 94–455, §1901(a)(21), struck out ''58 Stat. 689;'' after ''Health Service Act''.

1969—Pub. L. 91–172 renumbered section 123 of this title as this section.

1966—Pub. L. 89–365 renumbered section 122 of this title as this section.

1964—Pub. L. 88–272 renumbered section 121 of this title as this section.

1958—Subsec. (a)(18). Pub. L. 85–857 substituted ''section 3101 of title 38, United States Code'' for ''section 1001 of the Veterans' Benefits Act of 1957''.

1957—Subsec. (a)(18). Pub. L. 85–56 substituted provisions relating to benefits under laws administered by Veterans' Administration, for provisions which related to dependency and indemnity compensation.

1956—Subsec. (a). Act Aug. 1, 1956, added par. (18) relating to dependency and indemnity compensation.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661(*o*)(2) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11 commenced before Oct. 1, 1979, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the 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 OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

Subpart
A. Private activity bonds.
B. Requirements applicable to all State and local bonds.
C. Definitions and special rules.

AMENDMENTS

1986—Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2603, in amending part IV generally, substituted ''TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS'' for ''DETERMINATION OF MARITAL STATUS'' as heading for part IV and added part analysis.

1977—Pub. L. 95–30, title I, § 101(e)(2), May 23, 1977, 91 Stat. 134, substituted ''DETERMINATION OF MARITAL STATUS'' for ''STANDARD DEDUCTION FOR INDIVIDUALS'' as heading for part IV.

SUBPART A—PRIVATE ACTIVITY BONDS

Sec.
141. Private activity bond; qualified bond.
142. Exempt facility bond.
143. Mortgage revenue bonds: qualified mortgage and qualified veterans' mortgage bond.[1]
144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond.
145. Qualified 501(c)(3) bond.
146. Volume cap.
147. Other requirements applicable to certain private activity bonds.

AMENDMENTS

1986—Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2603, in amending part IV generally, added subpart heading and analysis and struck out item 143 ''Determination of marital status''.

1977—Pub. L. 95–30, title I, § 101(e)(2), May 23, 1977, 91 Stat. 134, struck out items 141 ''Standard deduction'', 142 ''Individuals not eligible for standard deduction'', 144 ''Election of standard deduction'', and 145 ''Cross reference''.

§ 141. Private activity bond; qualified bond

(a) Private activity bond

For purposes of this title, the term ''private activity bond'' means any bond issued as part of an issue—

(1) which meets—

(A) the private business use test of paragraph (1) of subsection (b), and

(B) the private security or payment test of paragraph (2) of subsection (b), or

(2) which meets the private loan financing test of subsection (c).

(b) Private business tests

(1) Private business use test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if more than 10 percent of the proceeds of the issue are to be used for any private business use.

(2) Private security or payment test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly—

(A) secured by any interest in—

(i) property used or to be used for a private business use, or

(ii) payments in respect of such property, or

(B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

(3) 5 percent test for private business use not related or disproportionate to government use financed by the issue

(A) In general

An issue shall be treated as meeting the tests of paragraphs (1) and (2) if such tests would be met if such paragraphs were applied—

(i) by substituting ''5 percent'' for ''10 percent'' each place it appears, and

[1] So in original. Does not conform to section catchline.