

“(iii) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.”

Subsec. (c)(2). Pub. L. 109-135, § 403(a)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.”

Subsec. (c)(4)(A)(ii), (iii). Pub. L. 109-135, § 403(a)(5), added cls. (ii) and (iii) and struck out former cls. (ii) and (iii) which read as follows:

“(ii) construction performed in the United States, or
“(iii) engineering or architectural services performed in the United States for construction projects in the United States.”

Subsec. (c)(4)(B)(iii). Pub. L. 109-135, § 403(a)(6), added cl. (iii).

Subsec. (c)(4)(C), (D). Pub. L. 109-135, § 403(a)(7), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 109-135, § 403(a)(8), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) relating to general application of section to pass-thru entities and application of wage limitation.

Subsec. (d)(3). Pub. L. 109-135, § 403(a)(9), amended heading and text of par. (3) generally. Prior to amendment, text related to deductions allowed to patrons of agricultural and horticultural cooperatives.

Subsec. (d)(4)(B)(i). Pub. L. 109-135, § 403(a)(10), substituted “more than 50 percent” for “50 percent” and “at least 80 percent” for “80 percent”.

Subsec. (d)(6). Pub. L. 109-135, § 403(a)(11)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, the deduction under subsection (a) shall be 9 percent of the lesser of—

“(A) qualified production activities income (determined without regard to part IV of subchapter A), or
“(B) alternative minimum taxable income (determined without regard to this section) for the taxable year.

In the case of an individual, subparagraph (B) shall be applied by substituting ‘adjusted gross income’ for ‘alternative minimum taxable income’. For purposes of the preceding sentence, adjusted gross income shall be determined in the same manner as provided in paragraph (2).”

Subsec. (d)(7). Pub. L. 109-135, § 403(a)(12), added par. (7). Former par. (7) redesignated (8).

Subsec. (d)(8). Pub. L. 109-135, § 403(a)(12), (13), redesignated par. (7) as (8) and inserted before period at end “, including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i)”.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title IV, § 401(c), Oct. 3, 2008, 122 Stat. 3851, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.”

Pub. L. 110-343, div. C, title III, § 312(b), Oct. 3, 2008, 122 Stat. 3869, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.”

Amendment by section 502(c) of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2007, see section 502(e)(2) of Pub. L. 110-343, set out as a note under section 181 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, § 401(b), Dec. 20, 2006, 120 Stat. 2953, provided that: “The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.”

Pub. L. 109-222, title V, § 514(c), May 17, 2006, 120 Stat. 367, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 17, 2006].”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, subject to transition rule, see section 102(e) of Pub. L. 108-357, as amended, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

Sec. 211.	Allowance of deductions.
212.	Expenses for production of income.
213.	Medical, dental, etc., expenses.
[214.]	Repealed.]
215.	Alimony, etc., payments.
216.	Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.
217.	Moving expenses.
[218.]	Repealed.]
219.	Retirement savings.
220.	Archer MSAs.
221.	Interest on education loans.
222.	Qualified tuition and related expenses.
223.	Health savings accounts.
224.	Cross reference.

AMENDMENTS

2003—Pub. L. 108-173, title XII, § 1201(j), Dec. 8, 2003, 117 Stat. 2479, added items 223 and 224 and struck out former item 223 “Cross reference”.

2001—Pub. L. 107-16, title IV, § 431(c)(4), June 7, 2001, 115 Stat. 68, added items 222 and 223 and struck out former item 222 “Cross reference”.

2000—Pub. L. 106-554, § 1(a)(7) [title II, § 202(b)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A-629, substituted “Archer MSAs” for “Medical savings accounts” in item 220.

1997—Pub. L. 105-34, title II, § 202(d), Aug. 5, 1997, 111 Stat. 809, added items 221 and 222 and struck out former item 221 “Cross reference”.

1996—Pub. L. 104-191, title III, § 301(i), Aug. 21, 1996, 110 Stat. 2052, added items 220 and 221 and struck out former item 220 “Cross reference”.

1990—Pub. L. 101-508, title XI, § 11802(e)(3), Nov. 5, 1990, 104 Stat. 1388-530, added item 220 and struck out former items 220 “Jury duty pay remitted to employer” and 221 “Cross references”.

1988—Pub. L. 100-647, title VI, § 6007(c), Nov. 10, 1988, 102 Stat. 3687, added item 220 and redesignated former item 220 as 221.

1986—Pub. L. 99-514, title I, §§ 131(b)(3), 135(b)(2), title III, § 301(b)(5)(B), Oct. 22, 1986, 100 Stat. 2113, 2116, 2217, added item 220, struck out items 221 “Deduction for two-earner married couples” and 222 “Adoption expenses”, substituted “reference” for “references” in item 223, and struck out item 223 “Cross reference”.

1981—Pub. L. 97-34, title I, §§ 103(c)(3), 125(b), title III, § 311(h)(11), Aug. 13, 1981, 95 Stat. 188, 201, 282, repealed item 220 “Retirement savings for certain married individuals”, added items 221 and 222 and redesignated former item 221 as 223.

1978—Pub. L. 95-600, title I, § 113(a)(2)(A), Nov. 6, 1978, 92 Stat. 2778, struck out item 218 “Contributions to candidates for public office”.

1976—Pub. L. 94-455, title V, § 504(b)(2), Oct. 4, 1976, 90 Stat. 1565, struck out item 214 “Expenses for household

and dependent care services necessary for gainful employment”.

Pub. L. 94-455, title XV, §1501(c), Oct. 4, 1976, 90 Stat. 1737, added item 220 and redesignated former item 220 as 221.

1974—Pub. L. 93-406, title II, §2002(h)(1), Sept. 2, 1974, 88 Stat. 970, added item 219 and redesignated former item 219 as 220.

1971—Pub. L. 92-178, title II, §210(b), title VII, §702(c), Dec. 10, 1971, 85 Stat. 520, 562, substituted “Expenses for household and dependent care services necessary for gainful employment” for “expenses for care of certain dependents” in item 214, added item 218, and redesignated former item 218 as 219.

1964—Pub. L. 88-272, title II, §213(a)(2), Feb. 26, 1964, 78 Stat. 52, added item 217 and redesignated former item 217 as 218.

1962—Pub. L. 87-834, §28(b), Oct. 16, 1962, 76 Stat. 1068, substituted “Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder” for “Amounts representing taxes and interest paid to cooperative housing corporation” in item 216.

§ 211. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (section 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 95-30, title I, §102(b)(3), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95-30 substituted “section 63” for “section 63(a)”.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

§ 212. Expenses for production of income

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—

(1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection, or refund of any tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 69.)

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94-12, see section 208(c) of Pub. L. 94-12, set out as a note under section 44 of this title.

§ 213. Medical, dental, etc., expenses

(a) Allowance of deduction

There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for med-

ical care 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), to the extent that such expenses exceed 7.5 percent of adjusted gross income.

(b) Limitation with respect to medicine and drugs

An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) Special rule for decedents

(1) Treatment of expenses paid after death

For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation

Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) Definitions

For purposes of this section—

(1) The term “medical care” means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)).

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).

(2) AMOUNTS PAID FOR CERTAIN LODGING AWAY FROM HOME TREATED AS PAID FOR MEDICAL CARE.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a

licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed \$50 for each night for each individual.

(3) **PRESCRIBED DRUG.**—The term “prescribed drug” means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) **PHYSICIAN.**—The term “physician” has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) **SPECIAL RULE IN THE CASE OF CHILD OF DIVORCED PARENTS, ETC.**—Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A), (B), and (C) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A), (B), and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(9) **COSMETIC SURGERY.**—

(A) **IN GENERAL.**—The term “medical care” does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

(B) **COSMETIC SURGERY DEFINED.**—For purposes of this paragraph, the term “cosmetic surgery” means any procedure which is directed at improving the patient’s appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

(10) **ELIGIBLE LONG-TERM CARE PREMIUMS.**—

(A) **IN GENERAL.**—For purposes of this section, the term “eligible long-term care premiums” means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	\$ 200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500

(B) **INDEXING.**—

(i) **IN GENERAL.**—In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of \$10, such increase shall be rounded to the nearest multiple of \$10.

(ii) **MEDICAL CARE COST ADJUSTMENT.**—For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

(I) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

(II) such component for August of 1996.

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

(11) **CERTAIN PAYMENTS TO RELATIVES TREATED AS NOT PAID FOR MEDICAL CARE.**—An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—

(A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or

(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term “relative” means an individual bearing a relation-

ship to the individual which is described in any of subparagraphs (A) through (G) of section 152(d)(2). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance.

(e) Exclusion of amounts allowed for care of certain dependents

Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 85-866, title I, §§ 16, 17(a), (b), Sept. 2, 1958, 72 Stat. 1613, 1614; Pub. L. 86-470, § 3(a), May 14, 1960, 74 Stat. 133; Pub. L. 87-863, § 1(a), (b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88-272, title II, § 211(a), Feb. 26, 1964, 78 Stat. 49; Pub. L. 89-97, title I, § 106(a)-(d)(1), July 30, 1965, 79 Stat. 336, 337; Pub. L. 94-455, title V, § 504(c)(1), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1565, 1834; Pub. L. 97-248, title II, § 202(a)-(b)(3)(B), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98-369, div. A, title IV, §§ 423(b)(1), (3), 474(r)(9), 482(a), (b)(1), title VII, § 711(b), July 18, 1984, 98 Stat. 800, 841, 847, 848, 943; Pub. L. 99-514, title I, § 133, Oct. 22, 1986, 100 Stat. 2116; Pub. L. 101-508, title XI, §§ 1111(d)(1), 11342(a), Nov. 5, 1990, 104 Stat. 1388-412, 1388-471; Pub. L. 103-66, title XIII, § 13131(d)(3), Aug. 10, 1993, 107 Stat. 435; Pub. L. 104-191, title III, § 322(a)-(b)(2)(A), (C), (3), (4), Aug. 21, 1996, 110 Stat. 2060-2062; Pub. L. 108-311, title II, § 207(17), (18), Oct. 4, 2004, 118 Stat. 1177.)

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 Social Security Act, referred to in subsec. (d)(1)(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Social Security Act is classified generally to part B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-311, § 207(17), inserted “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

Subsec. (d)(11). Pub. L. 108-311, § 207(18), substituted “subparagraphs (A) through (G) of section 152(d)(2)” for “paragraphs (1) through (8) of section 152(a)” in concluding provisions.

1996—Subsec. (d)(1). Pub. L. 104-191, § 322(b)(2)(A), inserted concluding provisions “In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).”

Subsec. (d)(1)(B). Pub. L. 104-191, § 322(a), struck out “or” at end.

Subsec. (d)(1)(C). Pub. L. 104-191, § 322(a), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(1)(D). Pub. L. 104-191, § 322(b)(1), inserted before period “or for any qualified long-term care insurance contract (as defined in section 7702B(b))”.

Pub. L. 104-191, § 322(a), redesignated subpar. (C) as (D).

Subsec. (d)(6). Pub. L. 104-191, § 322(b)(3)(A), substituted “subparagraphs (A), (B), and (C)” for “subparagraphs (A) and (B)” in introductory provisions.

Subsec. (d)(6)(A). Pub. L. 104-191, § 322(b)(3)(B), substituted “paragraph (1)(D)” for “paragraph (1)(C)”.

Subsec. (d)(7). Pub. L. 104-191, § 322(b)(4), substituted “subparagraphs (A), (B), and (C)” for “subparagraphs (A) and (B)”.

Subsec. (d)(10), (11). Pub. L. 104-191, § 322(b)(2)(C), added pars. (10) and (11).

1993—Subsec. (f). Pub. L. 103-66 struck out heading and text of subsec. (f). Text read as follows: “The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32.”

1990—Subsec. (d)(9). Pub. L. 101-508, § 11342(a), added par. (9).

Subsec. (f). Pub. L. 101-508, § 1111(d)(1), added subsec. (f).

1986—Subsec. (a). Pub. L. 99-514 substituted “7.5 percent” for “5 percent”.

1984—Subsec. (d)(2), (3). Pub. L. 98-369, § 482(a), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 98-369, § 482(a), redesignated par. (3) as (4). Former par. (4), as added by Pub. L. 98-369, § 423(b)(1), redesignated (5).

Pub. L. 98-369, § 423(b)(1), added par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 98-369, § 482(a), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98-369, § 423(b)(1), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98-369, § 711(b), substituted “paragraph (4)” for “paragraph (2)”.

Subsec. (d)(6). Pub. L. 98-369, § 482(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 98-369, § 423(b)(1), (3), redesignated former par. (5) as (6) and substituted therein “limitations of paragraph (5)” for “limitations of paragraph (4)”. Former par. (6) redesignated (7).

Subsec. (d)(7). Pub. L. 98-369, § 482(a), (b)(1), redesignated par. (6) as (7) and substituted therein “paragraph (6)” for “paragraph (5)”. Former par. (7) redesignated (8).

Pub. L. 98-369, § 423(b)(1), redesignated former par. (6) as (7).

Subsec. (d)(8). Pub. L. 98-369, § 482(a), redesignated par. (7) as (8).

Subsec. (e). Pub. L. 98-369, § 474(r)(9), substituted “section 21” for “section 44A”.

1982—Subsec. (a). Pub. L. 97-248, § 202(a), substituted provisions that there shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 5 percent of adjusted gross income, for provision allowing as deductions the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeded 3 percent of the adjusted gross income, and an amount (not in excess of \$150) equal to one-half of the expenses paid during the taxable year for insurance which constituted medical care for the taxpayer, his spouse, and dependents.

Subsec. (b). Pub. L. 97-248, § 202(b)(1), amended subsec. (b) generally, substituting provision that an amount paid during the taxable year for medicine or a drug shall be taken into account under subsec. (a) only if such medicine or drug is a prescribed drug or is insulin for former provision that amounts paid during the taxable year for medicine and drugs which (but for this subsection) would have been taken into account in computing the deduction under subsec. (a) would be taken into account only to the extent that the aggregate of such amounts exceeded 1 percent of the adjusted gross income.

Subsec. (c). Pub. L. 97-248, § 202(b)(3)(B), redesignated subsec. (c) as (c). Former subsec. (c) was repealed by Pub. L. 89-97.

Subsec. (d). Pub. L. 97-248, §202(b)(2), (3)(A), (B), redesignated subsec. (e) as (d), added pars. (2) and (3), and redesignated former pars. (2), (3), and (4) as (4), (5), and (6), respectively. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 97-248, §202(b)(3)(B), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1976—Subsec. (d)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f). Pub. L. 94-455, §504(c)(1), substituted “a credit under section 44A” for “a deduction under section 214” after “allowed as”.

1965—Subsec. (a). Pub. L. 89-97, §106(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There shall be allowed as a deduction the following amounts of the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152):

“(1) If neither the taxpayer nor his spouse has attained the age of 65 before the close of the taxable year—

“(A) the amount of such expenses for the care of any dependent who—

“(i) is the mother or father of the taxpayer or of his spouse, and

“(ii) has attained the age of 65 before the close of the taxable year, and

“(B) the amount by which such expenses for the care of the taxpayer, his spouse, and such dependents (other than any dependent described in subparagraph (A)) exceed 3 percent of the adjusted gross income.

“(2) If either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year—

“(A) the amount of such expenses for the care of the taxpayer and his spouse.

“(B) the amount of such expenses for the care of any dependent described in paragraph (1)(A), and

“(C) the amount by which such expenses for the care of such dependents (other than any dependent described in paragraph (1)(A)) exceed 3 percent of the adjusted gross income.”

Subsec. (b). Pub. L. 89-97, §106(b), struck out second sentence which read: “The preceding sentence shall not apply to amounts paid for the care of—

“(1) the taxpayer and his spouse, if either of them has attained the age of 65 before the close of the taxable year, or

“(2) any dependent described in subsection (a)(1)(A).”

Subsec. (c). Pub. L. 89-97, §106(d)(1), struck out subsec. (c) relating to maximum limitations on medical and dental expenses under this section.

Subsec. (e). Pub. L. 89-97, §106(c), struck out from par. (1)(A) “including amounts paid for accident or health insurance” after “function of the body”, added pars. (1)(C), (2), and (3), and renumbered former par. (2) as (4).

Subsec. (g). Pub. L. 89-97, §106(d)(1), struck out provisions relating to maximum limitation if taxpayer or spouse has attained age 65 and is disabled, special rule, amounts taken into account, meaning of disabled, and determination of status.

1964—Subsec. (b). Pub. L. 88-272 excluded persons attaining age 65 before the close of the taxable year from the limitation, whether they are the taxpayer and his spouse, or the mother or father of the taxpayer and his spouse.

1962—Subsec. (c). Pub. L. 87-863, §1(a), substituted “\$5,000” for “\$2,500”, “\$10,000” for “\$5,000”, and “\$20,000” for “\$10,000”.

Subsec. (g). Pub. L. 87-863, §1(b), substituted “\$20,000” for “\$15,000” in three places, and “\$40,000” for “\$30,000”.

1960—Subsec. (a). Pub. L. 86-470 authorized a taxpayer to deduct medical care expenses for dependent parents of the taxpayer or his spouse who have attained the age of 65 before the close of the taxable year without applying the three percent limitation.

1958—Subsec. (c). Pub. L. 85-866, §17(b), substituted “Except as provided in subsection (g), the” for “The”.

Subsec. (d)(2)(A). Pub. L. 85-866, §16, struck out “claimed or” before “allowed”.

Subsec. (g). Pub. L. 85-866, §17(A), added subsec. (g).

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. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 322(c) of Pub. L. 104-191, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103-66, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1111(d)(1) of Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 1111(f) of Pub. L. 101-508, set out as a note under section 32 of this title.

Section 11342(b) of Pub. L. 101-508 provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(b) of 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.

Amendment by section 474(r)(9) 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 482(c) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section and section 152 of this title] shall apply to taxable years beginning after December 31, 1983.”

Amendment by section 711(b) 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 AMENDMENT

Section 202(c) of Pub. L. 97-248 provided that:

“(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and section 105 of this title] shall apply to taxable years beginning after December 31, 1983.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 504(c)(1) 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.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 106(e) of Pub. L. 89-97 provided that: “The amendments made by this section [amending this section and sections 72, 79, 401, and 405 of this title] shall

apply to taxable years beginning after December 31, 1966.”

EFFECTIVE DATE OF 1964 AMENDMENT

Section 211(b) of Pub. L. 88-272 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.”

EFFECTIVE DATE OF 1962 AMENDMENT

Section 1(c) of Pub. L. 87-863 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1961.”

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3(b) of Pub. L. 86-470 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1959.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 16 of Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 17(c) of Pub. L. 85-866 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1957.”

[§ 214. Repealed. Pub. L. 94-455, title V, § 504(b)(1), Oct. 4, 1976, 90 Stat. 1565]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 70; Apr. 2, 1963, Pub. L. 88-4, §1, 77 Stat. 4; Feb. 26, 1964, Pub. L. 88-272, title II, §212(a), 78 Stat. 49; Dec. 10, 1971, Pub. L. 92-178, title II, §210(a), 85 Stat. 518; Mar. 29, 1975, Pub. L. 94-12, title II, §206, 89 Stat. 32, provided for allowance of deduction for household and dependent care services necessary for gainful employment; defined “qualifying individual”, “employment-related expenses”, “maintaining a household”; limitation on deductible amount; income limitation; and special rules and regulations applicable in the determination and allowance of deduction.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

§ 215. Alimony, etc., payments

(a) General rule

In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual’s taxable year.

(b) Alimony or separate maintenance payments defined

For purposes of this section, the term “alimony or separate maintenance payment” means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

(c) Requirement of identification number

The Secretary may prescribe regulations under which—

- (1) any individual receiving alimony or separate maintenance payments is required to furnish such individual’s taxpayer identification number to the individual making such payments, and

- (2) the individual making such payments is required to include such taxpayer identification number on such individual’s return for the taxable year in which such payments are made.

(d) Coordination with section 682

No deduction shall be allowed under this section with respect to any payment if, by reason of section 682 (relating to income of alimony trusts), the amount thereof is not includible in such individual’s gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 71; Pub. L. 98-369, div. A, title IV, §422(b), July 18, 1984, 98 Stat. 797.)

AMENDMENTS

1984—Pub. L. 98-369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a) a general rule as to allowance of deduction for amounts includible under section 71 in the gross income of the wife, payment of which was made within husband’s taxable year, and prohibited any deduction with respect to any payment where by reason of section 71(d) or 682 the amount thereof was not includible in husband’s gross income; and subsec. (b) cross reference to definitions of husband and wife in section 7701(a)(17).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification; and amendment of subsec. (c) by Pub. L. 98-369 applicable to payments made after Dec. 31, 1984, see section 422(e) of Pub. L. 98-369, set out as a note under section 71 of this title.

§ 216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder

(a) Allowance of deduction

In the case of a tenant-stockholder (as defined in subsection (b)(2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder’s proportionate share of—

- (1) the real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or

- (2) the interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation on its indebtedness contracted—

(A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or

(B) in the acquisition of the land on which the houses (or apartment building) are situated.

(b) Definitions

For purposes of this section—

(1) Cooperative housing corporation

The term “cooperative housing corporation” means a corporation—

(A) having one and only one class of stock outstanding;

(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation;

(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation; and

(D) meeting 1 or more of the following requirements for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred:

(i) 80 percent or more of the corporation's gross income for such taxable year is derived from tenant-stockholders.

(ii) At all times during such taxable year, 80 percent or more of the total square footage of the corporation's property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use.

(iii) 90 percent or more of the expenditures of the corporation paid or incurred during such taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation's property for the benefit of the tenant-stockholders.

(2) Tenant-stockholder

The term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

(3) Tenant-stockholder's proportionate share

(A) In general

Except as provided in subparagraph (B), the term "tenant-stockholder's proportionate share" means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

(B) Special rule where allocation of taxes or interest reflect cost to corporation of stockholder's unit

(i) In general

If, for any taxable year—

(I) each dwelling unit owned or leased by a cooperative housing corporation is separately allocated a share of such corporation's real estate taxes described in subsection (a)(1) or a share of such corporation's interest described in subsection (a)(2), and

(II) such allocations reasonably reflect the cost to such corporation of such taxes, or of such interest, attributable to the tenant-stockholder's dwelling unit (and such unit's share of the common areas),

then the term "tenant-stockholder's proportionate share" means the shares determined in accordance with the allocations described in subclause (II).

(ii) Election by corporation required

Clause (i) shall apply with respect to any cooperative housing corporation only if such corporation elects its application. Such an election, once made, may be revoked only with the consent of the Secretary.

(4) Stock owned by governmental units

For purposes of this subsection, in determining whether a corporation is a cooperative housing corporation, stock owned and apartments leased by the United States or any of its possessions, a State or any political subdivision thereof, or any agency or instrumentality of the foregoing empowered to acquire shares in a cooperative housing corporation for the purpose of providing housing facilities, shall not be taken into account.

(5) Prior approval of occupancy

For purposes of this section, in the following cases there shall not be taken into account the fact that (by agreement with the cooperative housing corporation) the person or his nominee may not occupy the house or apartment without the prior approval of such corporation:

(A) In any case where a person acquires stock of a cooperative housing corporation by operation of law.

(B) In any case where a person other than an individual acquires stock of a cooperative housing corporation.

(C) In any case where the original seller acquires any stock of the cooperative housing corporation from the corporation not later than 1 year after the date on which the apartments or houses (or leaseholds therein) are transferred by the original seller to the corporation.

(6) Original seller defined

For purposes of paragraph (5), the term "original seller" means the person from whom the corporation has acquired the apartments or houses (or leaseholds therein).

(c) Treatment as property subject to depreciation

(1) In general

So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject

to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under section 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.

(2) Deduction limited to adjusted basis in stock
(A) In general

The amount of any deduction for depreciation allowable under section 167(a) to a tenant-stockholder with respect to any stock for any taxable year by reason of paragraph (1) shall not exceed the adjusted basis of such stock as of the close of the taxable year of the tenant-stockholder in which such deduction was incurred.

(B) Carryforward of disallowed amount

The amount of any deduction which is not allowed by reason of subparagraph (A) shall, subject to the provisions of subparagraph (A), be treated as a deduction allowable under section 167(a) in the succeeding taxable year.

(d) Disallowance of deduction for certain payments to the corporation

No deduction shall be allowed to a stockholder in a cooperative housing corporation for any amount paid or accrued to such corporation during any taxable year (in excess of the stockholder's proportionate share of the items described in subsections (a)(1) and (a)(2)) to the extent that, under regulations prescribed by the Secretary, such amount is properly allocable to amounts paid or incurred at any time by the corporation which are chargeable to the corporation's capital account. The stockholder's adjusted basis in the stock in the corporation shall be increased by the amount of such disallowance.

(e) Distributions by cooperative housing corporations

Except as provided in regulations no gain or loss shall be recognized on the distribution by a cooperative housing corporation of a dwelling unit to a stockholder in such corporation if such distribution is in exchange for the stockholder's stock in such corporation and such dwelling unit is used as his principal residence (within the meaning of section 121).

(Aug. 16, 1954, ch. 736, 68A Stat. 71; Pub. L. 87-834, § 28(a), Oct. 16, 1962, 76 Stat. 1068; Pub. L. 91-172, title IX, § 913(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), title XXI, § 2101(b), (f)(1), Oct. 4, 1976, 90 Stat. 1834, 1899; Pub. L. 95-600, title V, § 531(a), Nov. 6, 1978, 92 Stat. 2886; Pub. L. 96-222, title I, § 105(a)(6), Apr. 1, 1980, 94 Stat. 219; Pub. L. 99-514, title VI, § 644(a)-(d), Oct. 22, 1986, 100 Stat. 2285, 2286; Pub. L. 100-647, title VI, § 6282(a), Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101-508, title XI, § 11702(i), Nov. 5, 1990, 104 Stat. 1388-516; Pub. L. 105-34, title III, § 312(d)(4), Aug. 5, 1997, 111 Stat. 840; Pub. L. 110-142, § 4(a), Dec. 20, 2007, 121 Stat. 1804.)

AMENDMENTS

2007—Subsec. (b)(1)(D). Pub. L. 110-142 amended subpar. (D) generally. Prior to amendment, subpar. (D)

read as follows: “80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders.”

1997—Subsec. (e). Pub. L. 105-34 substituted “such dwelling unit is used as his principal residence (within the meaning of section 121)” for “such exchange qualifies for nonrecognition of gain under section 1034(f)”.

1990—Subsec. (e). Pub. L. 101-508 substituted “corporations” for “associations” in heading and “corporation” for “association” after “housing” in text.

1988—Subsec. (e). Pub. L. 100-647 added subsec. (e).

1986—Subsec. (b)(2). Pub. L. 99-514, § 644(a)(1), substituted “a person” and “such person” for “an individual” and “such individual”, respectively.

Subsec. (b)(3). Pub. L. 99-514, § 644(d), added heading and amended text generally. Prior to amendment, text read as follows: “The term ‘tenant-stockholder’s proportionate share’ means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).”

Subsec. (b)(5). Pub. L. 99-514, § 644(a)(2), substituted “Prior approval of occupancy” for “Stock acquired through foreclosure by lending institution” in heading and amended text generally. Prior to amendment, text read as follows: “If a bank or other lending institution acquires by foreclosure (or by instrument in lieu of foreclosure) the stock of a tenant-stockholder, and a lease or the right to occupy an apartment or house to which such stock is appurtenant, such bank or other lending institution shall be treated as a tenant-stockholder for a period not to exceed three years from the date of acquisition. The preceding sentence shall apply even though, by agreement with the cooperative housing corporation, the bank (or other lending institution) or its nominee may not occupy the house or apartment without the prior approval of such corporation.”

Subsec. (b)(6). Pub. L. 99-514, § 644(a)(2), amended par. (6) generally, substituting provisions defining “original seller” for purposes of par. (5) for provisions relating to stock owned by person from whom corporation acquired its property, subpar. (A) thereof providing for general rule, subpar. (B) providing that stock acquisition must take place not later than 1 year after transfer of dwelling units, subpar. (C) providing that original seller must have right to occupy apartment or house, and subpar. (D) defining “original seller” for purposes of former par. (6).

Subsec. (c). Pub. L. 99-514, § 644(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.”

Subsec. (d). Pub. L. 99-514, § 644(c), added subsec. (d). 1980—Subsec. (b)(6)(A). Pub. L. 96-222, § 105(a)(6)(A), added subpar. (A). Former subpar. (A), which required the original seller who acquired stock of the corporation from the corporation by purchase or foreclosure to be treated as a tenant-stockholder for a period not to exceed 3 years from the date of acquisition, was struck out.

Subsec. (b)(6)(B) to (D). Pub. L. 96-222, § 105(a)(6)(A), (B), added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), and, in subpar. (D) as so redesignated, inserted provisions requiring that the estate of the original seller succeed to, and take into account, the tax treatment of the original seller under this paragraph.

1978—Subsec. (b)(6). Pub. L. 95-600, added par. (6).
 1976—Subsec. (b)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(5). Pub. L. 94-455, §2101(f), added par. (5).
 Subsec. (c). Pub. L. 94-455, §§1906(b)(13)(A), 2101(b), struck out “or his delegate” after “Secretary” and inserted at end “The preceding sentence shall not be construed to limit or deny a deduction for depreciation under 167(a) by a cooperative housing corporation with respect to property owned by such corporation and leased to tenant-stockholders.”

1969—Subsec. (b)(4). Pub. L. 91-172 added par. (4).

1962—Pub. L. 87-834 substituted “Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholders” for “Amounts representing taxes and interest paid to cooperative housing corporation” in section catchline, and added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-142, §4(b), Dec. 20, 2007, 121 Stat. 1804, provided that: “The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 20, 2007].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105-34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by 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 1988 AMENDMENT

Section 6282(b) of Pub. L. 100-647 provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 631 of the Tax Reform Act of 1986 [section 631 of Pub. L. 99-514, see Tables for classification].”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 644(f) of Pub. L. 99-514 provided that:
 “(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

“(2) SUBSECTION (e).—

“(A) Except as provided in subparagraph (B), subsection (e) [set out below] shall apply to taxable years beginning before January 1, 1986.

“(B) Subsection (e)(7) [set out below] shall apply to amounts paid or incurred, and property acquired, in taxable years beginning, after December 31, 1985.”

EFFECTIVE DATE OF 1980 AMENDMENT

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 531(b) of Pub. L. 95-600 provided that: “The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Nov. 6, 1978].”

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2101(f)(2) of Pub. L. 94-455 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to stock acquired by banks or other lending institutions after the date of the enactment of this Act [Oct. 4, 1976].”

EFFECTIVE DATE OF 1969 AMENDMENT

Section 913(b) of Pub. L. 91-172 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.”

EFFECTIVE DATE OF 1962 AMENDMENT

Section 28(c) of Pub. L. 87-834 provided that: “The amendments made by subsection (a) [amending this section] shall be effective with respect to taxable years beginning after December 31, 1961.”

TREATMENT OF AMOUNTS RECEIVED IN CONNECTION WITH REFINANCING OF INDEBTEDNESS OF CERTAIN COOPERATIVE HOUSING CORPORATIONS; TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE

Section 644(e) of Pub. L. 99-514 provided that:

“(1) PAYMENT OF CLOSING COSTS AND CREATION OF RESERVE EXCLUDED FROM GROSS INCOME.—For purposes of the Internal Revenue Code of 1954 [now 1986], no amount shall be included in the gross income of a qualified cooperative housing corporation by reason of the payment or reimbursement by a city housing development agency or corporation of amounts for—

“(A) closing costs, or

“(B) the creation of reserves for the qualified cooperative housing corporation, in connection with a qualified refinancing.

“(2) INCOME FROM RESERVE FUND TREATED AS MEMBER INCOME.—

“(A) IN GENERAL.—Income from a qualified refinancing-related reserve shall be treated as derived from its members for purposes of—

“(i) section 216 of the Internal Revenue Code of 1954 [now 1986] (relating to deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder), and

“(ii) section 277 of such Code (relating to deductions incurred by certain membership organizations in transactions with members).

“(B) NO INFERENCE.—Nothing in the provisions of this paragraph shall be construed to infer that a change in law is intended with respect to the treatment of deductions under section 277 of the Internal Revenue Code of 1954 [now 1986] with respect to cooperative housing corporations, and any determination of such issue shall be made as if such provisions had not been enacted.

“(3) TREATMENT OF CERTAIN INTEREST CLAIMED AS DEDUCTION.—Any amount—

“(A) claimed (on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986]) as a deduction by a qualified cooperative housing corporation for interest for any taxable year beginning before January 1, 1986, on a second mortgage loan made by a city housing development agency or corporation in connection with a qualified refinancing, and

“(B) reported (before April 16, 1986) by the qualified cooperative housing corporation to its tenant-stockholders as interest described in section 216(a)(2) of such Code,

shall be treated for purposes of such Code as if such amount were paid by such qualified cooperative housing corporation during such taxable year.

“(4) QUALIFIED COOPERATIVE HOUSING CORPORATION.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified cooperative housing corporation’ means any corporation if—

“(i) such corporation is, after the application of paragraphs (1) and (2), a cooperative housing corporation (as defined in section 216(b) of the Internal Revenue Code of 1954 [now 1986]),

“(ii) such corporation is subject to a qualified limited-profit housing companies law, and

“(iii) such corporation either—

“(I) filed for incorporation on July 22, 1965, or

“(II) filed for incorporation on March 5, 1964.

“(B) QUALIFIED LIMITED-PROFIT HOUSING COMPANIES LAW.—For purposes of subparagraph (A), the term ‘qualified limited-profit housing companies law’ means any limited-profit housing companies law which limits the resale price for a tenant-stockholder’s stock in a cooperative housing corporation to the sum of his basis for such stock plus his proportionate share of part or all of the amortization of any mortgage on the building owned by such corporation.

“(5) QUALIFIED REFINANCING.—For purposes of this subsection, the term ‘qualified refinancing’ means any refinancing—

“(A) which occurred—

“(i) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(I) on September 20, 1978, or

“(ii) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(II) on November 21, 1978, and

“(B) in which a qualified cooperative housing corporation refinanced a first mortgage loan made to such corporation by a city housing development agency with a first mortgage loan made by a city housing development corporation and insured by an agency of the Federal Government and a second mortgage loan made by such city housing development agency, in the process of which a reserve was created (as required by such Federal agency) and closing costs were paid or reimbursed by such city housing development agency or corporation.

“(6) QUALIFIED REFINANCING-RELATED RESERVE.—For purposes of this subsection, the term ‘qualified refinancing-related reserve’ means any reserve of a qualified cooperative housing corporation with respect to the creation of which no amount was included in the gross income of such corporation by reason of paragraph (a).

“(7) TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE.—

“(A) IN GENERAL.—With respect to any payment from a qualified refinancing-related reserve out of amounts excluded from gross income by reason of paragraph (1)—

“(i) no deduction shall be allowed under chapter 1 of such Code, and

“(ii) the basis of any property acquired with such payment (determined without regard to this subparagraph) shall be reduced by the amount of such payment.

“(B) ORDERING RULES.—For purposes of subparagraph (A), payments from a reserve shall be treated as being made—

“(i) first from amounts excluded from gross income by reason of paragraph (1) to the extent thereof, and

“(ii) then from other amounts in the reserve.”

§ 217. Moving expenses

(a) Deduction allowed

There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

(b) Definition of moving expenses

(1) In general

For purposes of this section, the term “moving expenses” means only the reasonable expenses—

(A) of moving household goods and personal effects from the former residence to the new residence, and

(B) of traveling (including lodging) from the former residence to the new place of residence.

Such term shall not include any expenses for meals.

(2) Individuals other than taxpayer

In the case of any individual other than the taxpayer, expenses referred to in paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer’s household.

(c) Conditions for allowance

No deduction shall be allowed under this section unless—

(1) the taxpayer’s new principal place of work—

(A) is at least 50 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least 50 miles from his former residence, and

(2) either—

(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

(d) Rules for application of subsection (c)(2)

(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

(A) death or disability, or

(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

(3) If—

(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross in-

come for the first such subsequent taxable year.

[(e) Repealed. Pub. L. 103-66, title XIII, § 13213(a)(2)(A), Aug. 10, 1993, 107 Stat. 473]

(f) Self-employed individual

For purposes of this section, the term “self-employed individual” means an individual who performs personal services—

- (1) as the owner of the entire interest in an unincorporated trade or business, or
- (2) as a partner in a partnership carrying on a trade or business.

(g) Rules for members of the Armed Forces of the United States

In the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station—

- (1) the limitations under subsection (c) shall not apply;
- (2) any moving and storage expenses which are furnished in kind (or for which reimbursement or an allowance is provided, but only to the extent of the expenses paid or incurred) to such member, his spouse, or his dependents, shall not be includible in gross income, and no reporting with respect to such expenses shall be required by the Secretary of Defense or the Secretary of Transportation, as the case may be; and
- (3) if moving and storage expenses are furnished in kind (or if reimbursement or an allowance for such expenses is provided) to such member’s spouse and his dependents with regard to moving to a location other than the one to which such member moves (or from a location other than the one from which such member moves), this section shall apply with respect to the moving expenses of his spouse and dependents—

(A) as if his spouse commenced work as an employee at a new principal place of work at such location; and

(B) without regard to the limitations under subsection (c).

(h) Special rules for foreign moves

(1) Allowance of certain storage fees

In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

- (A) of moving household goods and personal effects to and from storage, and
- (B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer’s principal place of work.

(2) Foreign move

For purposes of this subsection, the term “foreign move” means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(3) United States defined

For purposes of this subsection and subsection (i), the term “United States” includes the possessions of the United States.

(i) Allowance of deductions in case of retirees or decedents who were working abroad

(1) In general

In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement of work by the taxpayer as an employee at a new principal place of work located within the United States, and

(B) the limitations of subsection (c)(2) shall not apply.

(2) Qualified retiree moving expenses

For purposes of paragraph (1), the term “qualified retiree moving expenses” means any moving expenses—

(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

(3) Qualified survivor moving expenses

For purposes of paragraph (1), the term “qualified survivor moving expenses” means moving expenses—

(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent’s death) was the residence of such decedent and the individual paying or incurring the expense.

(j) Regulations

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

(Added Pub. L. 88-272, title II, § 213(a)(1), Feb. 26, 1964, 78 Stat. 50; amended Pub. L. 91-172, title II, § 231(a), Dec. 30, 1969, 83 Stat. 577; Pub. L. 94-455, title V, § 506 (a)–(c), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1568, 1834; Pub. L. 95-615, title II, § 204, Nov. 8, 1978, 92 Stat. 3106; Pub. L. 103-66, title XIII, § 13213(a)(1)–(2)(D), (b), Aug. 10, 1993, 107 Stat. 473, 474.)

PRIOR PROVISIONS

A prior section 217 was renumbered section 224 of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-66, § 13213(a)(1), amended subsec. (b) generally, restating former par. (1)(A) and (B) as par. (1) and former par. (3)(C) as par. (2) and striking out former par. (1)(C) to (E) which included certain traveling, meals, lodging, and residence sale, purchase, and lease expenses in the term “moving expenses”, par. (2) which defined “qualified residence

sale, purchase, or lease expenses", and par. (3)(A) and (B) which placed dollar limits on the amount allowed to be deducted as moving expenses.

Subsec. (c)(1). Pub. L. 103-66, §13213(b), substituted "50 miles" for "35 miles" in subpars. (A) and (B).

Subsec. (e). Pub. L. 103-66, §13213(a)(2)(A), struck out heading and text of subsec. (e). Text read as follows: "The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d)(3)."

Subsec. (f). Pub. L. 103-66, §13213(a)(2)(B), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

"(1) DEFINITION.—For purposes of this section, the term 'self-employed individual' means an individual who performs personal services—

"(A) as the owner of the entire interest in an unincorporated trade or business, or

"(B) as a partner in a partnership carrying on a trade or business.

"(2) RULE FOR APPLICATION OF SUBSECTIONS (b)(1)(C) AND (D).—For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work."

Subsec. (g)(3). Pub. L. 103-66, §13213(a)(2)(C), inserted "and" at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "for purposes of subsection (b)(3), as if such place of work was within the same general location as the member's new principal place of work, and"

Subsec. (h). Pub. L. 103-66, §13213(a)(2)(D), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out heading and text of former par. (1). Text read as follows: "In the case of a foreign move—

"(A) subsection (b)(1)(D) shall be applied by substituting '90 consecutive days' for '30 consecutive days'.

"(B) subsection (b)(3)(A) shall be applied by substituting '\$4,500' for '\$1,500' and by substituting '\$6,000' for '\$3,000', and

"(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: 'In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting "\$2,250" for "\$4,500", and by substituting "\$3,000" for "\$6,000'."

1978—Subsecs. (h) to (j). Pub. L. 95-615 added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

1976—Subsec. (b)(3)(A). Pub. L. 94-455, §506(b)(1), (2), substituted "\$1,500" for "\$1,000" after "(1) shall not exceed" and "\$3,000" for "\$2,500" after "lease expenses shall not exceed".

Subsec. (b)(3)(B). Pub. L. 94-455, §506(b)(3), substituted "\$750" for "\$1,500" for "\$500" for "\$1,000" after "applied by substituting" and "\$1,500" for "\$3,000" for "\$1,250" for "\$2,500" after "and by substituting".

Subsec. (c)(1)(A), (B). Pub. L. 94-455, §506(a), substituted "35" for "50" after "at least".

Subsecs. (g), (h). Pub. L. 94-455, §§506(c), 1906(b)(13)(A), added subsec. (g), redesignated former subsec. (g) as (h) and struck out "or his delegate" after "Secretary".

1969—Pub. L. 91-172 substantially reenacted existing provisions and extended the coverage to self-employed persons working at the new location for 78 weeks, made it a requirement that the new principal place of work be located 50 miles from the former residence, and redefined the deduction to include costs of house-hunting trips, temporary living expenses prior to locating a new

home, and expenses of selling an old home or buying a new one.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to 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 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 an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 506(d) of Pub. L. 94-455 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 231(d) of Pub. L. 91-172, as amended by Pub. L. 91-642, §2, Dec. 31, 1970, 84 Stat. 1880; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting section 82 of this title and amending this section and sections 1001 and 1016 of this title] shall apply to taxable years beginning after December 31, 1969, except that—

"(1) section 217 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply to any item to the extent that the taxpayer received or accrued reimbursement or other expense allowance for such item in a taxable year beginning on or before December 31, 1969, which was not included in his gross income; and

"(2) the amendments made by this section shall not apply (at the election of the taxpayer made at such time and manner as the Secretary of the Treasury or his delegate prescribes) with respect to moving expenses paid or incurred before January 1, 1971, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969."

EFFECTIVE DATE

Section applicable to expenses incurred after Dec. 31, 1963, in taxable years ending after such date, see section 213(d) of Pub. L. 88-272, set out as an Effective Date of 1964 Amendment note under section 62 of this title.

MOVING EXPENSES OF MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93-490, §2, Oct. 26, 1974, 88 Stat. 1466, authorized the Secretary of the Treasury, applicable with respect to taxable years ending before January 1, 1976, to:

(1) enter into an agreement with the Secretary concerned under which the Secretary concerned would not be required to withhold tax on, or to report, moving expense reimbursements made to members of the armed forces;

(2) permit any taxpayer who was a member of the armed forces not to include in adjusted gross income the amount of any reimbursement in kind of moving expenses made by the Secretary concerned; and

(3) permit any taxpayer who was a member of the armed forces to deduct any amount paid by him as moving expenses in connection with any move required by the Secretary concerned, in excess of any reimbursement received for such expenses, without regard to the provisions of subsec. (c) of this section, to the extent it was otherwise deductible under this section.

[§ 218. Repealed. Pub. L. 95-600, title I, § 113(a)(1), Nov. 6, 1978, 92 Stat. 2778]

Section, added Pub. L. 92-178, title VII, §702(a), Dec. 10, 1971, 85 Stat. 561; amended Pub. L. 93-625, §§11(d),

12(b), Jan. 3, 1975, 88 Stat. 2120; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to contributions to candidates for public office.

A prior section 218 was renumbered section 224 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to contributions the payment of which is made after Dec. 31, 1978, in taxable years beginning after such date, see section 113(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 24 of this title.

§ 219. Retirement savings

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year.

(b) Maximum amount of deduction

(1) In general

The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

- (A) the deductible amount, or
(B) an amount equal to the compensation includible in the individual's gross income for such taxable year.

(2) Special rule for employer contributions under simplified employee pensions

This section shall not apply with respect to an employer contribution to a simplified employee pension.

(3) Plans under section 501(c)(18)

Notwithstanding paragraph (1), the amount allowable as a deduction under subsection (a) with respect to any contributions on behalf of an employee to a plan described in section 501(c)(18) shall not exceed the lesser of—

- (A) \$7,000, or
(B) an amount equal to 25 percent of the compensation (as defined in section 415(c)(3)) includible in the individual's gross income for such taxable year.

(4) Special rule for simple retirement accounts

This section shall not apply with respect to any amount contributed to a simple retirement account established under section 408(p).

(5) Deductible amount

For purposes of paragraph (1)(A)—

(A) In general

The deductible amount shall be determined in accordance with the following table:

Table with 2 columns: For taxable years beginning in, The deductible amount is. Rows: 2002 through 2004 (\$3,000), 2005 through 2007 (\$4,000), 2008 and thereafter (\$5,000).

(B) Catch-up contributions for individuals 50 or older

(i) In general

In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for such taxable year shall be increased by the applicable amount.

(ii) Applicable amount

For purposes of clause (i), the applicable amount shall be the amount determined in accordance with the following table:

Table with 2 columns: For taxable years beginning in, The applicable amount is. Rows: 2002 through 2005 (\$500), 2006 and thereafter (\$1,000).

(C) Catchup contributions for certain individuals

(i) In general

In the case of an applicable individual who elects to make a qualified retirement contribution in addition to the deductible amount determined under subparagraph (A)—

- (I) the deductible amount for any taxable year shall be increased by an amount equal to 3 times the applicable amount determined under subparagraph (B) for such taxable year, and
(II) subparagraph (B) shall not apply.

(ii) Applicable individual

For purposes of this subparagraph, the term "applicable individual" means, with respect to any taxable year, any individual who was a qualified participant in a qualified cash or deferred arrangement (as defined in section 401(k)) of an employer described in clause (iii) under which the employer matched at least 50 percent of the employee's contributions to such arrangement with stock of such employer.

(iii) Employer described

An employer is described in this clause if, in any taxable year preceding the taxable year described in clause (ii)—

- (I) such employer (or any controlling corporation of such employer) was a debtor in a case under title 11 of the United States Code, or similar Federal or State law, and
(II) such employer (or any other person) was subject to an indictment or conviction resulting from business transactions related to such case.

(iv) Qualified participant

For purposes of clause (ii), the term "qualified participant" means any applicable individual who was a participant in the cash or deferred arrangement described in such clause on the date that is 6 months before the filing of the case described in clause (iii).

(v) Termination

This subparagraph shall not apply to taxable years beginning after December 31, 2009.

(D) Cost-of-living adjustment

(i) In general

In the case of any taxable year beginning in a calendar year after 2008, the \$5,000 amount under subparagraph (A) 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 cal-

endar year in which the taxable year begins, determined by substituting “calendar year 2007” for “calendar year 1992” in subparagraph (B) thereof.

(ii) Rounding rules

If any amount after adjustment under clause (i) is not a multiple of \$500, such amount shall be rounded to the next lower multiple of \$500.

(c) Special rules for certain married individuals

(1) In general

In the case of an individual to whom this paragraph applies for the taxable year, the limitation of paragraph (1) of subsection (b) shall be equal to the lesser of—

(A) the dollar amount in effect under subsection (b)(1)(A) for the taxable year, or

(B) the sum of—

(i) the compensation includible in such individual’s gross income for the taxable year, plus

(ii) the compensation includible in the gross income of such individual’s spouse for the taxable year reduced by—

(I) the amount allowed as a deduction under subsection (a) to such spouse for such taxable year,

(II) the amount of any designated non-deductible contribution (as defined in section 408(o)) on behalf of such spouse for such taxable year, and

(III) the amount of any contribution on behalf of such spouse to a Roth IRA under section 408A for such taxable year.

(2) Individuals to whom paragraph (1) applies

Paragraph (1) shall apply to any individual if—

(A) such individual files a joint return for the taxable year, and

(B) the amount of compensation (if any) includible in such individual’s gross income for the taxable year is less than the compensation includible in the gross income of such individual’s spouse for the taxable year.

(d) Other limitations and restrictions

(1) Beneficiary must be under age 70½

No deduction shall be allowed under this section with respect to any qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual’s taxable year for which the contribution was made.

(2) Recontributed amounts

No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16).

(3) Amounts contributed under endowment contract

In the case of an endowment contract described in section 408(b), no deduction shall be allowed under this section for that portion of the amounts paid under the contract for the taxable year which is properly allocable, under regulations prescribed by the Secretary, to the cost of life insurance.

(4) Denial of deduction for amount contributed to inherited annuities or accounts

No deduction shall be allowed under this section with respect to any amount paid to an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)(ii)).

(e) Qualified retirement contribution

For purposes of this section, the term “qualified retirement contribution” means—

(1) any amount paid in cash for the taxable year by or on behalf of an individual to an individual retirement plan for such individual’s benefit, and

(2) any amount contributed on behalf of any individual to a plan described in section 501(c)(18).

(f) Other definitions and special rules

(1) Compensation

For purposes of this section, the term “compensation” includes earned income (as defined in section 401(c)(2)). The term “compensation” does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation. The term “compensation” shall include any amount includible in the individual’s gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2). For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6). The term compensation¹ includes any differential wage payment (as defined in section 3401(h)(2)).

(2) Married individuals

The maximum deduction under subsection (b) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(4) Reports

The Secretary shall prescribe regulations which prescribe the time and the manner in which reports to the Secretary and plan participants shall be made by the plan administrator of a qualified employer or government plan receiving qualified voluntary employee contributions.

(5) Employer payments

For purposes of this title, any amount paid by an employer to an individual retirement plan shall be treated as payment of compensation to the employee (other than a self-employed individual who is an employee within

¹ So in original. Probably should be set off by quotation marks.

the meaning of section 401(c)(1) includible in his gross income in the taxable year for which the amount was contributed, whether or not a deduction for such payment is allowable under this section to the employee.

(6) Excess contributions treated as contribution made during subsequent year for which there is an unused limitation

(A) In general

If for the taxable year the maximum amount allowable as a deduction under this section for contributions to an individual retirement plan exceeds the amount contributed, then the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

- (i) the amount of such excess, or
- (ii) the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

(B) Amount contributed

For purposes of this paragraph, the amount contributed—

- (i) shall be determined without regard to this paragraph, and
- (ii) shall not include any rollover contribution.

(C) Special rule where excess deduction was allowed for closed year

Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section for a prior taxable year for which the period for assessing deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(7) Special rule for compensation earned by members of the Armed Forces for service in a combat zone.

For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.

(8) Election not to deduct contributions

For election not to deduct contributions to individual retirement plans, see section 408(o)(2)(B)(ii).

(g) Limitation on deduction for active participants in certain pension plans

(1) In general

If (for any part of any plan year ending with or within a taxable year) an individual or the individual's spouse is an active participant, each of the dollar limitations contained in subsections (b)(1)(A) and (c)(1)(A) for such taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

(2) Amount of reduction

(A) In general

The amount determined under this paragraph with respect to any dollar limitation

shall be the amount which bears the same ratio to such limitation as—

- (i) the excess of—
 - (I) the taxpayer's adjusted gross income for such taxable year, over
 - (II) the applicable dollar amount, bears to
- (ii) \$10,000 (\$20,000 in the case of a joint return for a taxable year beginning after December 31, 2006).

(B) No reduction below \$200 until complete phase-out

No dollar limitation shall be reduced below \$200 under paragraph (1) unless (without regard to this subparagraph) such limitation is reduced to zero.

(C) Rounding

Any amount determined under this paragraph which is not a multiple of \$10 shall be rounded to the next lowest \$10.

(3) Adjusted gross income; applicable dollar amount

For purposes of this subsection—

(A) Adjusted gross income

Adjusted gross income of any taxpayer shall be determined—

- (i) after application of sections 86 and 469, and
- (ii) without regard to sections 135, 137, 199, 221, 222, and 911 or the deduction allowable under this section.

(B) Applicable dollar amount

The term "applicable dollar amount" means the following:

- (i) In the case of a taxpayer filing a joint return:

For taxable years beginning in:	The applicable dollar amount is:
1998	\$50,000
1999	\$51,000
2000	\$52,000
2001	\$53,000
2002	\$54,000
2003	\$60,000
2004	\$65,000
2005	\$70,000
2006	\$75,000
2007 and thereafter	\$80,000.

- (ii) In the case of any other taxpayer (other than a married individual filing a separate return):

For taxable years beginning in:	The applicable dollar amount is:
1998	\$30,000
1999	\$31,000
2000	\$32,000
2001	\$33,000
2002	\$34,000
2003	\$40,000
2004	\$45,000
2005 and thereafter	\$50,000.

- (iii) In the case of a married individual filing a separate return, zero.

(4) Special rule for married individuals filing separately and living apart

A husband and wife who—

(A) file separate returns for any taxable year, and

(B) live apart at all times during such taxable year,

shall not be treated as married individuals for purposes of this subsection.

(5) Active participant

For purposes of this subsection, the term “active participant” means, with respect to any plan year, an individual—

(A) who is an active participant in—

(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) an annuity plan described in section 403(a),

(iii) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing,

(iv) an annuity contract described in section 403(b),

(v) a simplified employee pension (within the meaning of section 408(k)), or

(vi) any simple retirement account (within the meaning of section 408(p)), or

(B) who makes deductible contributions to a trust described in section 501(c)(18).

The determination of whether an individual is an active participant shall be made without regard to whether or not such individual's rights under a plan, trust, or contract are non-forfeitable. An eligible deferred compensation plan (within the meaning of section 457(b)) shall not be treated as a plan described in subparagraph (A)(iii).

(6) Certain individuals not treated as active participants

For purposes of this subsection, any individual described in any of the following subparagraphs shall not be treated as an active participant for any taxable year solely because of any participation so described:

(A) Members of reserve components

Participation in a plan described in subparagraph (A)(iii) of paragraph (5) by reason of service as a member of a reserve component of the Armed Forces (as defined in section 10101 of title 10), unless such individual has served in excess of 90 days on active duty (other than active duty for training) during the year.

(B) Volunteer firefighters

A volunteer firefighter—

(i) who is a participant in a plan described in subparagraph (A)(iii) of paragraph (5) based on his activity as a volunteer firefighter, and

(ii) whose accrued benefit as of the beginning of the taxable year is not more than an annual benefit of \$1,800 (when expressed as a single life annuity commencing at age 65).

(7) Special rule for spouses who are not active participants

If this subsection applies to an individual for any taxable year solely because their spouse is an active participant, then, in applying this subsection to the individual (but not their spouse)—

(A) the applicable dollar amount under paragraph (3)(B)(i) shall be \$150,000; and

(B) the amount applicable under paragraph (2)(A)(ii) shall be \$10,000.

(8) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amount in the last row of the table contained in paragraph (3)(B)(i), the dollar amount in the last row of the table contained in paragraph (3)(B)(ii), and the dollar amount contained in paragraph (7)(A), shall each 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, determined by substituting “calendar year 2005” for “calendar year 1992” in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$1,000.

(h) Cross reference

For failure to provide required reports, see section 6652(g).

(Added Pub. L. 93-406, title II, §2002(a)(1), Sept. 2, 1974, 88 Stat. 958; amended Pub. L. 94-455, title XV, §§1501(b)(4), 1503(a), title XIX, §§1901(a)(32), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1738, 1769, 1834; Pub. L. 95-600, title I, §§152(c), 156(c)(3), 157(a)(1), (b)(1), title VII, §703(c)(1), Nov. 6, 1978, 92 Stat. 2798, 2803, 2939; Pub. L. 96-222, title I, §101(a)(10)(D), (14)(B), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 97-34, title III, §§311(a), 312(c)(1), 313(b)(2), Aug. 13, 1981, 95 Stat. 274, 284, 286; Pub. L. 97-248, title II, §243(b)(2), Sept. 3, 1982, 96 Stat. 523; Pub. L. 97-448, title I, §103(c)(1), (2), (3)(A), (4), (5), (12)(A), Jan. 12, 1983, 96 Stat. 2375-2377; Pub. L. 98-369, div. A, title I, §147(c), title IV, §§422(d)(1), 491(d)(6)-(8), title V, §529(a), (b), title VII, §713(d)(2), July 18, 1984, 98 Stat. 687, 798, 849, 877, 957; Pub. L. 99-514, title III, §301(b)(4), title XI, §§1101(a), (b)(1), (2)(A), 1102(f), 1103(a), 1108(g)(2), (3), 1109(b), title XV, §1501(d)(1)(B), title XVIII, §1875(c)(4), (6)(B), Oct. 22, 1986, 100 Stat. 2217, 2411, 2413, 2417, 2434, 2435, 2740, 2894, 2895; Pub. L. 100-647, title I, §1011(a)(1), title VI, §6009(c)(2), Nov. 10, 1988, 102 Stat. 3456, 3690; Pub. L. 101-239, title VII, §§7816(c)(1), 7841(c)(1), Dec. 19, 1989, 103 Stat. 2420, 2428; Pub. L. 102-318, title V, §521(b)(4), July 3, 1992, 106 Stat. 310; Pub. L. 103-337, div. A, title XVI, §1677(c), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 104-188, title I, §§1421(b)(1), 1427(a)-(b)(2), 1807(c)(3), Aug. 20, 1996, 110 Stat. 1795, 1802, 1902; Pub. L. 105-34, title III, §§301(a), (b), 302(c), Aug. 5, 1997, 111 Stat. 824, 825, 829; Pub. L. 105-206, title VI, §§6005(a), 6018(f)(2), July 22, 1998, 112 Stat. 796, 823; Pub. L. 105-277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681-908; Pub. L. 106-554, §1(a)(7) [title III, §316(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-644;

Pub. L. 107-16, title IV, §431(c)(1), title VI, §§601(a), 641(e)(2), June 7, 2001, 115 Stat. 68, 94, 120; Pub. L. 108-357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 109-227, §2(a), May 29, 2006, 120 Stat. 385; Pub. L. 109-280, title VIII, §§831(a), 833(b), Aug. 17, 2006, 120 Stat. 1002, 1004; Pub. L. 110-245, title I, §105(b)(2), June 17, 2008, 122 Stat. 1629.)

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 and Internal Revenue Notices listed in a table under section 401 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 219 was renumbered section 224 of this title.

AMENDMENTS

2008—Subsec. (f)(1). Pub. L. 110-245 inserted at end “The term compensation includes any differential wage payment (as defined in section 3401(h)(2)).”

2006—Subsec. (b)(5)(C), (D). Pub. L. 109-280, §831(a), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (f)(7), (8). Pub. L. 109-227 added par. (7) and redesignated former par. (7) as (8).

Subsec. (g)(8). Pub. L. 109-280, §833(b), added par. (8).

2004—Subsec. (g)(3)(A)(ii). Pub. L. 108-357 inserted “199,” before “221”.

2001—Subsec. (b)(1)(A). Pub. L. 107-16, §601(a)(1), substituted “the deductible amount” for “\$2,000”.

Subsec. (b)(5). Pub. L. 107-16, §601(a)(2), added par. (5).

Subsec. (d)(2). Pub. L. 107-16, §641(e)(2), substituted “408(d)(3), or 457(e)(16)” for “or 408(d)(3)”.

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

2000—Subsec. (c)(1)(B)(ii)(II), (III). Pub. L. 106-554 added subcl. (II) and redesignated former subcl. (II) as (III).

1998—Subsec. (g)(1). Pub. L. 105-206, §6005(a)(1)(A), inserted “or the individual’s spouse” after “individual”.

Subsec. (g)(2)(A)(ii). Pub. L. 105-206, §6005(a)(2), made technical amendment to directory language of Pub. L. 105-34, §301(a)(2). See 1997 Amendment note below.

Subsec. (g)(3)(A)(ii). Pub. L. 105-277 inserted “221,” after “137.”

Pub. L. 105-206, §6018(f)(2), made technical amendment to directory language of Pub. L. 104-188, §1807(c)(3). See 1996 Amendment note below.

Subsec. (g)(7). Pub. L. 105-206, §6005(a)(1)(B), added par. (7) and struck out heading and text of former par. (7). Text read as follows: “In the case of an individual who is an active participant at no time during any plan year ending with or within the taxable year but whose spouse is an active participant for any part of any such plan year—

“(A) the applicable dollar amount under paragraph (3)(B)(i) with respect to the taxpayer shall be \$150,000, and

“(B) the amount applicable under paragraph (2)(A)(ii) shall be \$10,000.”

1997—Subsec. (c)(1)(B)(ii). Pub. L. 105-34, §302(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “the compensation includible in the gross income of such individual’s spouse for the taxable year reduced by the amount allowed as a deduction under subsection (a) to such spouse for such taxable year.”

Subsec. (g)(1). Pub. L. 105-34, §301(b)(1), struck out “or the individual’s spouse” after “an individual”.

Subsec. (g)(2)(A)(ii). Pub. L. 105-34, §301(a)(2), as amended by Pub. L. 105-206, §6005(a)(2), inserted “\$20,000 in the case of a joint return for a taxable year beginning after December 31, 2006” after “\$10,000”.

Subsec. (g)(3)(B). Pub. L. 105-34, §301(a)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “The term ‘applicable dollar amount’ means—

“(i) in the case of a taxpayer filing a joint return, \$40,000,

“(ii) in the case of any other taxpayer (other than a married individual filing a separate return), \$25,000, and

“(iii) in the case of a married individual filing a separate return, zero.”

Subsec. (g)(7). Pub. L. 105-34, §301(b)(2), added par. (7). 1996—Subsec. (b)(4). Pub. L. 104-188, §1421(b)(1)(A), added par. (4).

Subsec. (c). Pub. L. 104-188, §1427(a), amended subsec. (c) generally, substituting present provisions for former provisions relating to special rules for certain married individuals which set out general provisions in par. (1) and a limitation in par. (2).

Subsec. (f)(2). Pub. L. 104-188, §1427(b)(1), substituted “subsection (b)” for “subsections (b) and (c)”.

Subsec. (g)(1). Pub. L. 104-188, §1427(b)(2), substituted “(c)(1)(A)” for “(c)(2)”.

Subsec. (g)(3)(A)(ii). Pub. L. 104-188, §1807(c)(3), as amended by Pub. L. 105-206, §6018(f)(2), inserted “, 137,” before “and 911”.

Subsec. (g)(5)(A)(vi). Pub. L. 104-188, §1421(b)(1)(B), added cl. (vi).

1994—Subsec. (g)(6)(A). Pub. L. 103-337 substituted “section 10101 of title 10” for “section 261(a) of title 10”.

1992—Subsec. (d)(2). Pub. L. 102-318 substituted “402(c)” for “402(a)(5), 402(a)(7)”.

1989—Subsec. (f)(1). Pub. L. 101-239, §7841(c)(1), inserted at end “For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6).”

Subsec. (g)(3)(A)(ii). Pub. L. 101-239, §7816(c)(1), made technical correction to directory language of Pub. L. 100-647, §6009(c)(2), see 1988 Amendment note below.

1988—Subsec. (g)(3)(A)(ii). Pub. L. 100-647, §6009(c)(2), as amended by Pub. L. 101-239, §7816(c)(1), substituted “sections 135 and 911” for “section 911”.

Subsec. (g)(4). Pub. L. 100-647, §1011(a)(1), inserted “and living apart” after “filing separately” in heading and amended text generally. Prior to amendment, text read as follows: “In the case of a married individual filing a separate return for any taxable year, paragraph (1) shall be applied without regard to whether such individual’s spouse is an active participant for any plan year ending with or within such taxable year.”

1986—Subsec. (b)(2). Pub. L. 99-514, §1108(g)(2), amended par. (2) generally, substituting provision that this section shall not apply with respect to an employer contribution to a simplified employee pension for former provisions consisting of subpars. (A), (B), and (C) which set out detailed limits on deductibility of employer contributions.

Subsec. (b)(2)(C). Pub. L. 99-514, §1875(c)(6)(B), substituted “the dollar limitation in effect under section 415(c)(1)(A)” for “the \$15,000 amount specified in subparagraph (A)(ii)”.

Subsec. (b)(3). Pub. L. 99-514, §1109(b), added par. (3).

Pub. L. 99-514, §1101(b)(2)(A), struck out par. (3), special rule for individual retirement plans, which read as follows: “If the individual has paid any qualified voluntary employee contributions for the taxable year, the amount of the qualified retirement contributions (other than employer contributions to a simplified employee pension) which are paid for the taxable year to an individual retirement plan and which are allowable as a deduction under subsection (a) for such taxable year shall not exceed—

“(A) the amount determined under paragraph (1) for such taxable year, reduced by

“(B) the amount of the qualified voluntary employee contributions for the taxable year.”

Subsec. (c)(1)(B). Pub. L. 99-514, § 1103(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “whose spouse has no compensation (determined without regard to section 911) for such taxable year.”

Subsec. (c)(2)(B). Pub. L. 99-514, § 1108(g)(3), struck out “(determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))” after “for the taxable year”.

Subsec. (e). Pub. L. 99-514, § 1101(b)(1), amended subsec. (e) generally, revising the definition of “qualified retirement contribution”.

Subsec. (f)(1). Pub. L. 99-514, § 301(b)(4), which directed that par. (1) be amended by substituting “paragraph (6)” for “paragraph (7)”, could not be executed because prior amendment by Pub. L. 99-514, § 1875(c)(4), see below, struck out language which included phrase “paragraph (7)”.

Pub. L. 99-514, § 1875(c)(4), struck out “reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62” after “(as defined in section 401(c)(2))”.

Subsec. (f)(3). Pub. L. 99-514, § 1101(a)(2), in amending par. (3) generally, reenacted existing provision without its subpar. “(A) Individual retirement plans” designation, and struck out subpar. (B) relating to time when contributions deemed made with respect to qualified employer or government plans.

Subsec. (f)(7). Pub. L. 99-514, § 1102(f), added par. (7).

Subsec. (g). Pub. L. 99-514, § 1101(a)(1), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99-514, § 1501(d)(1)(B), which directed that subsec. (g) be amended by substituting “6652(g)” for “6652(h)”, was executed by making the substitution in subsec. (h) to reflect the probable intent of Congress and the prior redesignation of former subsec. (g) as (h) by Pub. L. 99-514, § 1101(a)(1).

Pub. L. 99-514, § 1101(a)(1), redesignated former subsec. (g) as (h).

1984—Subsec. (b)(2)(A)(ii). Pub. L. 98-369, § 713(d)(2), substituted “not in excess of the limitation in effect under section 415(c)(1)(A)” for “not in excess of \$15,000”.

Subsec. (b)(4). Pub. L. 98-369, § 529(b), struck out par. (4) which related to a deduction for qualified retirement savings of certain divorced individuals.

Subsec. (b)(4)(B). Pub. L. 98-369, § 422(d)(1), substituted “gross income under section 71 (relating to alimony and separate maintenance payments) by reason of a payment under a decree of divorce or separate maintenance or a written agreement incident to such a decree” for “gross income under paragraph (1) of section 71(a) (relating to decree of divorce or separate maintenance)”.

Subsec. (d)(2). Pub. L. 98-369, § 491(d)(6), substituted “or 408(d)(3)” for “405(d)(3), 408(d)(3), or 409(b)(3)(C)”.

Subsec. (e)(1). Pub. L. 98-369, § 491(d)(7), struck out concluding provision that for the purposes of the preceding sentence, the term “individual retirement plan” includes retirement bonds described in section 409 only if the bond was not redeemed within 12 months of its issuance.

Subsec. (e)(3). Pub. L. 98-369, § 491(d)(8), struck out subpar. (C) which included a qualified bond purchase plan described in section 405(a) within term “qualified employer plan”, and redesignated subpar. (D) as (C).

Subsec. (f)(1). Pub. L. 98-369, § 529(a), inserted provision that “compensation” shall include any amount includible in the individual’s gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2).

Subsec. (f)(3)(A). Pub. L. 98-369, § 147(c), substituted “not including” for “including”.

1983—Subsec. (b)(2)(A). Pub. L. 97-448, § 103(c)(12)(A), inserted a close parenthesis after “allowable under paragraph (1)” in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 97-448, § 103(c)(1), substituted “the amount allowable as a deduction under subsection

(a) for the taxable year (determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))” for “the amount allowed as a deduction under subsection (a) for the taxable year”.

Subsec. (d)(1). Pub. L. 97-448, § 103(c)(2), substituted “Beneficiary must be under age 70½” for “Individuals who have attained age 70½” as par. (1) heading and, in text, substituted “qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual’s taxable year for which the contribution was made” for “qualified retirement contribution which is made for a taxable year of an individual if such individual has attained age 70½ before the close of such taxable year”.

Subsec. (e)(3)(D), (E). Pub. L. 97-448, § 103(c)(3)(A), redesignated subpar. (E) as (D). Former subpar. (D), which related to simplified employee pension (within the meaning of section 408(k)), was struck out.

Subsec. (f)(1). Pub. L. 97-448, § 103(c)(4), substituted “earned income (as defined in section 401(c)(2)) reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62” for “earned income as defined in section 401(c)(2)” and inserted provision that “compensation” does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation.

Subsec. (f)(3)(B). Pub. L. 97-448, § 103(c)(5), substituted “if the contribution is made on account of the taxable year which includes such last day and by April 15 of the calendar year” for “if the contribution is made by April 15 of the calendar year”.

1982—Subsec. (d)(4). Pub. L. 97-248 added par. (4).

1981—Subsec. (a). Pub. L. 97-34, § 311(a), amended subsec. (a) generally, substituting in heading “Allowance of deduction” for “Deduction allowed” and in text “shall be allowed” for “is allowed”, allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year, eliminated part of first sentence for allowance as a deduction amounts paid in cash for the taxable year by or on behalf of the individual for his benefit—(1) to an individual retirement annuity described in section 408(a), (2) for an individual retirement annuity described in section 408(b), or (3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance), covered in subsec. (e)(1) and (5) of this section, and eliminated second sentence respecting employer payments, covered in subsec. (f)(5) of this section.

Subsec. (b). Pub. L. 97-34, § 311(a), in heading substituted “Maximum amount of deduction” for “Limitations and restrictions”.

Subsec. (b)(1). Pub. L. 97-34, § 311(a), amended par. (1) generally, substituting “In general” for “Maximum deduction” in heading and in text provision for allowance of a deduction not to exceed the lesser of (A) \$2,000, or (B) an amount equal to the compensation includible in the individual’s gross income for such taxable year, for provision for an amount not to exceed amount equal to 15 percent of the compensation includible in gross income for the taxable year, or \$1,500, whichever is less.

Subsec. (b)(2)(A)(ii), (C). Pub. L. 97-34, § 312(c)(1), substituted “\$15,000” for “\$7,500”.

Pub. L. 97-34, § 311(a), redesignated par. (7) as (2), substituted in heading “rules for employer contributions under” for “rules in case of”, substituted in subpar. (A) introductory text “an employee shall be allowed as a deduction under subsection (a) (in addition to the amount allowable under paragraph (1) an amount equal to the lesser of” for “the limitation under paragraph (1) shall be the lesser of”, inserted in subpar. (A)(i) “from such employer” before “includible” and substituted therein “without regard” for “with regard”, substituted in subpar. (A)(ii) “the amount contributed by such employer to the simplified employee pension and included in gross income (but not in excess of \$7,500” for “the sum of—(I) the amount contributed by the employer to the simplified employee pension and included

in gross income (but not in excess of \$7,500), and (II) \$1,500, reduced (but not below zero) by the amount described in subclause (I)", and substituted in subpar. (B) "Paragraph (1) of this subsection and paragraph (1) of subsection (d)" for "Paragraphs (2) and (3)". Former subsec. (b)(2) provisions which disallowed any deduction under subsec. (a) for an individual for the taxable year if for any part of such year (A) he was an active participant in (i) a plan described in section 401(a), (ii) an annuity plan described in section 403(a), (iii) a qualified bond purchase plan described in section 405(a), or (iv) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing, or (B) amounts were contributed by his employer for an annuity contract described in section 403(b), are now covered by subsec. (e)(3) and (4) of this section.

Subsec. (b)(3) to (5). Pub. L. 97-34, §311(a), added pars. (3) and (4). Former pars. (3) to (5) redesignated subsec. (d)(1) to (3).

Subsec. (b)(6). Pub. L. 97-34, §311(a), struck out par. (6) which set forth alternative deduction provisions which disallowed a deduction for the taxable year if the individual claimed the deduction allowed by section 220 for the taxable year.

Subsec. (b)(7). Pub. L. 97-34, §311(a), redesignated par. (7) as (2).

Subsec. (c). Pub. L. 97-34, §311(a), added subsec. (c). Former subsec. (c)(1) to (3) and (5) redesignated subsec. (f)(1), (2), (3)(A), and (6). Former subsec. (c)(4), which provided for participation in governmental plans by certain individuals, with subpars. (A) and (B) covering members of reserve components and volunteer firefighters, was struck out.

Subsec. (d). Pub. L. 97-34, §311(a), in heading redesignated former subsec. (b) heading as subsec. (d) heading and inserted "Other" before "limitations".

Subsec. (d)(1). Pub. L. 97-34, §311(a), redesignated former subsec. (b)(3) as par. (1), substituted as heading "Individuals who have attained age 70½" for "Contributions after age 70½" and in text "shall be allowed under this section" for "is allowed under subsection (a)", "qualified retirement contribution" for "payment described in subsection (a)", and "made for a taxable year of an individual if such individual has attained" for "made during the taxable year of an individual who has attained".

Subsec. (d)(2). Pub. L. 97-34, §313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97-34, §311(a), redesignated former subsec. (b)(4) as par. (2) and substituted "shall be allowed" for "is allowed".

Subsec. (d)(3). Pub. L. 97-34, §311(a), redesignated former subsec. (b)(5) as par. (3) and, as so redesignated, substituted "shall be allowed under this section" for "is allowed under subsection (a)" and "year which is properly allocable" for "year properly allocable".

Subsec. (e). Pub. L. 97-34, §311(a), added subsec. (e) incorporating former provisions of subsecs. (a) and (b)(2) as pars. (1), and (3) and (4) and, among other changes, inserted provisions relating to a qualified employee pension.

Subsec. (f)(1). Pub. L. 97-34, §311(a), redesignated former subsec. (c)(1) as par. (1).

Subsec. (f)(2). Pub. L. 97-34, §311(a), redesignated former subsec. (c)(2) as par. (2) and, as so redesignated, substituted "deduction under subsections (b) and (c)" for "deduction under subsection (b)(1)", and struck out provision that for purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a).

Subsec. (f)(3). Pub. L. 97-34, §311(a), redesignated former subsec. (c)(3) as subpar. (A) and, as so redesignated, added subpar. (A) heading "Individual retirement plans", and "to an individual retirement plan" before "on the last day" in text, and added subpar. (B).

Subsec. (f)(4). Pub. L. 97-34, §311(a), added par. (4).

Subsec. (f)(5). Pub. L. 97-34, §311(a), redesignated former provisions of subsec. (a) as par. (5), added par.

(5) heading "Employer payments", substituted "to an individual retirement plan shall be treated as payment of compensation to the employee" for "to such a retirement account, or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee", and "in the taxable year for which the amount was contributed" after "gross income", and struck out "after the application of subsection (b)" after "under this section to the employee".

Subsec. (f)(6). Pub. L. 97-34, §311(a), redesignated former subsec. (c)(5) as par. (6), inserted "for contributions to an individual retirement plan" after "under this section" in subpar. (A), and struck out in subpar. (C) "or section 220" after "under this section".

Subsec. (g). Pub. L. 97-34, §311(a), added subsec. (g).

1980—Subsec. (b)(4). Pub. L. 96-222, §101(a)(14)(B), inserted "402(a)(7)," after "section 402(a)(5)".

Subsec. (b)(7). Pub. L. 96-222, §101(a)(10)(D), amended par. (7) generally, including provision requiring that paragraph (3) not apply with respect to employer contribution to a simplified employee pension.

1978—Subsec. (b)(4). Pub. L. 95-600, §156(c)(3), inserted "403(b)(8)" after "403(a)(4)".

Subsec. (b)(7). Pub. L. 95-600, §152(c), added par. (7).

Subsec. (c)(3). Pub. L. 95-600, §157(a)(1), substituted "not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)" for "not later than 45 days after the end of such taxable year".

Subsec. (c)(4). Pub. L. 95-600, §703(c)(1), substituted "subsection (b)(2)(A)(iv)" for "subsection (b)(3)(A)(iv)" wherever appearing.

Subsec. (c)(5). Pub. L. 95-600, §157(b)(1), added par. (5).

1976—Subsec. (a). Pub. L. 94-455, §1501(b)(4)(B), substituted "for" for "during" after "paid in cash".

Subsec. (b)(2)(A)(iv). Pub. L. 94-455, §1901(a)(32), substituted "subdivision" for "division" after "State or political".

Subsec. (b)(5). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(6). Pub. L. 94-455, §1501(b)(4)(B), added par. (6).

Subsec. (c)(2). Pub. L. 94-455, §1501(b)(4)(C), inserted "For purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a)" after "community property laws".

Subsec. (c)(3). Pub. L. 94-455, §1501(b)(4)(D), added par. (3).

Subsec. (c)(4). Pub. L. 94-455, §1503(a), added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-245, title I, §105(b)(3), June 17, 2008, 122 Stat. 1629, provided that: "The amendments made by this subsection [amending this section and section 414 of this title] shall apply to years beginning after December 31, 2008."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title VIII, §831(b), Aug. 17, 2006, 120 Stat. 1003, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

Amendment by section 833(b) of Pub. L. 109-280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109-280, set out as a note under section 25B of this title.

Pub. L. 109-227, §2(b), May 29, 2006, 120 Stat. 385, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003."

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 AMENDMENT

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.

Pub. L. 107-16, title VI, §601(c), June 7, 2001, 115 Stat. 95, provided that: "The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 2001."

Amendment by section 641(e)(2) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

Amendment by section 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 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which such amendment relates, see section §1(a)(7) [title III, §316(e)] of Pub. L. 106-554, set out as a note under section 51 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 section 6018(f)(2) of Pub. L. 105-206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which such amendment relates, see section 6018(h) of Pub. L. 105-206, set out as a note under section 23 of this title.

Amendment by section 6005(a) of 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 301(c) of Pub. L. 105-34 provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Section 302(f) of Pub. L. 105-34 provided that: "The amendments made by this section [enacting section 408A of this title and amending this section and sections 408 and 4973 of this title] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(1) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

Section 1427(c) of Pub. L. 104-188 provided that: "The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 1996."

Amendment by section 1807(c)(3) 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 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7816(c)(1) 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.

Section 7841(c)(2) of Pub. L. 101-239 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contributions after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(a)(2) of Pub. L. 100-647 provided that:

"(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1987.

"(B) A taxpayer may elect to have the amendment made by paragraph (1) apply to any taxable year beginning in 1987."

Amendment by section 6009(c)(2) of Pub. L. 100-647 applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100-647, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

Amendment by section 1101(a), (b)(1), (2)(A) of Pub. L. 99-514 applicable to contributions for taxable years beginning after Dec. 31, 1986, see section 1101(c) of Pub. L. 99-514, set out as a note under section 72 of this title.

Section 1102(g) of Pub. L. 99-514 provided that: "The amendments made by this section [amending this section and sections 408, 3405, 4973, and 6693 of this title] shall apply to contributions and distributions for taxable years beginning after December 31, 1986."

Section 1103(b) of Pub. L. 99-514 provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning before, on, or after December 31, 1985."

Section 1108(h) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1011(f)(7), Nov. 10, 1988, 102 Stat. 3463, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 404, 408, 415, 3121, and 3306 of this title] shall apply to years beginning after December 31, 1986.

"(2) INTEGRATION RULES.—Subparagraphs (D) and (E) of section 408(k)(3) of the Internal Revenue Code of 1954 (as in effect before the amendments made by this section) shall continue to apply for years beginning after December 31, 1986, and before January 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by this section) may not be integrated under such subparagraphs."

Section 1109(c) of Pub. L. 99-514 provided that: "The amendments made by this section [amending this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1501(d)(1)(B) of Pub. L. 99-514, applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99-514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1875(c)(4), (6)(B) of Pub. L. 99-514 effective as if included in the amendments made by section 238 of Pub. L. 97-248, which amended sections 401, 404, 408, 415, and 1379 of this title, see section 1875(c)(12) of Pub. L. 99-514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 147(d) of Pub. L. 98-369 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 408 of this title] shall apply to contributions made after December 31, 1984.

“(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 6693 of this title] shall apply to failures occurring after the date of the enactment of this Act [July 18, 1984].”

Amendment by section 422(d)(1) of Pub. L. 98-369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98-369, set out as a note under section 71 of this title.

Amendment by section 491(d)(6)–(8) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Section 529(c) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.”

Amendment by section 713(d)(2) 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 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 OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to with respect to individuals dying after Dec. 31, 1983, see section 243(c) of Pub. L. 97-248, as amended, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 311(i) of Pub. L. 97-34, as amended by Pub. L. 97-448, title I, §103(c)(11), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 62, 72, 402, 403, 408, 409, 415, 2039, 2503, 2517, 3401, 4973, 6047, and 6652 of this title and repealing section 220 of this title] shall apply to taxable years beginning after December 31, 1981.

“(2) TRANSITIONAL RULE.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any amount allowed as a deduction under section 220 of such Code (as in effect before its repeal by this Act) shall be treated as if it were allowed by section 219 of such Code.

“(3) CERTAIN BOND ROLLOVER PROVISIONS.—The amendment made by subsection (g)(3) [amending section 409 of this title] shall apply to taxable years beginning after December 31, 1974.

“(4) SECTION 415 AMENDMENTS.—The amendments made by subsections (g)(4) and (h)(3) [amending section 415 of this title] shall apply to years after December 31, 1981.

“(5) ESTATE AND GIFT TAX PROVISIONS.—

“(A) ESTATE TAX.—The amendments made by subsections (d)(1) and (h)(4) [amending section 2039 of this title] shall apply to the estates of decedents dying after December 31, 1981.

“(B) GIFT TAX.—The amendments made by subsections (d)(2) and (h)(5) [amending sections 2503 and 2517 of this title] shall apply to transfers after December 31, 1981.”

Amendment by section 312(c)(1) of Pub. L. 97-34 applicable to plans which include employees within the

meaning of section 401(c)(1) of this title with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97-34, set out as a note under section 72 of this title.

Section 313(c) of Pub. L. 97-34 provided that: “The amendments made by this section [amending this section and sections 405, 408, 2039, and 4973 of this title] shall apply to redemptions after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.”

EFFECTIVE DATE OF 1980 AMENDMENT

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

Amendment by section 152(c) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95-600, set out as a note under section 408 of this title.

Amendment by section 156(c)(3) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600 set out as a note under section 403 of this title.

Section 157(a)(3) of Pub. L. 95-600 provided that: “The amendments made by this subsection [amending this section and section 220 of this title] shall apply to taxable years beginning after December 31, 1977.”

Section 157(b)(4)(A) of Pub. L. 95-600 provided that: “The amendments made by this subsection [amending this section and sections 220 and 4973 of this title] shall apply to the determination of deductions for taxable years beginning after December 31, 1975.”

Section 703(c)(5) of Pub. L. 95-600 provided that: “The amendments made by this subsection [amending this section and sections 220 and 408 of this title] shall apply to taxable years beginning after December 31, 1976.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(4) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94-455, set out as an Effective Date note under section 62 of this title.

Section 1503(b) of Pub. L. 94-455 provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.”

Amendment by section 1901(a)(32) 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 an Effective Date of 1976 Amendment note under section 2 of this title.

EFFECTIVE DATE

Section 2002(i)(1) of Pub. L. 93-406 provided that: “The amendments made by subsections (a), (b), and (c) [of section 2002 of Pub. L. 93-406, enacting this section and sections 408 and 409 of this title and amending section 62 of this title] apply to taxable years beginning after December 31, 1974.”

CONTRIBUTIONS FOR TAXABLE YEARS ENDING BEFORE MAY 29, 2006

Pub. L. 109-227, §2(c), May 29, 2006, 120 Stat. 385, provided that:

“(1) IN GENERAL.—In the case of any taxpayer with respect to whom compensation was excluded from gross income under section 112 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 2003, and ending before the date of the enactment of this Act [May 29, 2006], any contribution to an individual retirement plan made on account of such taxable year and not later than the last day of the 3-year period beginning on the date of the enactment of this Act shall be treated, for purposes of such Code, as having been made on the last day of such taxable year.

“(2) WAIVER OF LIMITATIONS.—

“(A) CREDIT OR REFUND.—If the credit or refund of any overpayment of tax resulting from a contribution to which paragraph (1) applies is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date that such contribution is made (determined without regard to paragraph (1)).

“(B) ASSESSMENT OF DEFICIENCY.—The period for assessing a deficiency attributable to a contribution to which paragraph (1) applies shall not expire before the close of the 3-year period beginning on the date that such contribution is made. 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.

“(3) INDIVIDUAL RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ‘individual retirement plan’ has the meaning given such term by section 7701(a)(37) of such Code.”

CLARIFICATION OF TREATMENT OF FEDERAL JUDGES

Pub. L. 100-203, title X, §10103, Dec. 22, 1987, 101 Stat. 1330-386, as amended by Pub. L. 100-647, title II, §2004(c), Nov. 10, 1988, 102 Stat. 3599, provided that:

“(a) GENERAL RULE.—A Federal judge—

“(1) shall be treated as an active participant in a plan established for its employees by the United States for purposes of section 219(g) of the Internal Revenue Code of 1986, and

“(2) shall be treated as an employee for purposes of chapter 1 of such Code.

“(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.”

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, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 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, 1994, see section 523 of Pub. L. 102-318, 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.

TRANSITIONAL RULES FOR ALLOWABLE DEDUCTIONS FOR FIRST TAXABLE YEAR BEGINNING IN 1978

Section 157(b)(4)(B) of Pub. L. 95-600, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 219(c)(5) or 220(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before January 1, 1978, such amount shall be allowable

only for the taxpayer’s first taxable year beginning in 1978.”

§ 220. Archer MSAs

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to an Archer MSA of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is the amount equal to $\frac{1}{12}$ of—

(A) in the case of an individual who has self-only coverage under the high deductible health plan as of the first day of such month, 65 percent of the annual deductible under such coverage, and

(B) in the case of an individual who has family coverage under the high deductible health plan as of the first day of such month, 75 percent of the annual deductible under such coverage.

(3) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) of this paragraph) shall be divided equally between them unless they agree on a different division.

(4) Deduction not to exceed compensation

(A) Employees

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (I) of subsection (c)(1)(A)(iii) shall not exceed such individual’s wages, salaries, tips, and other employee compensation which are attributable to such individual’s employment by the employer referred to in such subclause.

(B) Self-employed individuals

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (II) of subsection (c)(1)(A)(iii) shall not exceed such individual’s earned income (as defined in section 401(c)(1)) derived by the taxpayer from the trade or business with respect to which the high deductible health plan is established.

(C) Community property laws not to apply

The limitations under this paragraph shall be determined without regard to community property laws.

(5) Coordination with exclusion for employer contributions

No deduction shall be allowed under this section for any amount paid for any taxable year to an Archer MSA of an individual if—

(A) any amount is contributed to any Archer MSA of such individual for such year which is excludable from gross income under section 106(b), or

(B) if such individual's spouse is covered under the high deductible health plan covering such individual, any amount is contributed for such year to any Archer MSA of such spouse which is so excludable.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(c) Definitions

For purposes of this section—

(1) Eligible individual**(A) In general**

The term “eligible individual” means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month,

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan, and

(iii)(I) the high deductible health plan covering such individual is established and maintained by the employer of such individual or of the spouse of such individual and such employer is a small employer, or

(II) such individual is an employee (within the meaning of section 401(c)(1)) or the spouse of such an employee and the high deductible health plan covering such individual is not established or maintained by any employer of such individual or spouse.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance, and

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

(C) Continued eligibility of employee and spouse establishing Archer MSAs

If, while an employer is a small employer—

(i) any amount is contributed to an Archer MSA of an individual who is an employee of such employer or the spouse of such an employee, and

(ii) such amount is excludable from gross income under section 106(b) or allowable as a deduction under this section,

such individual shall not cease to meet the requirement of subparagraph (A)(iii)(I) by reason of such employer ceasing to be a small employer so long as such employee continues to be an employee of such employer.

(D) Limitations on eligibility

For limitations on number of taxpayers who are eligible to have Archer MSAs, see subsection (i).

(2) High deductible health plan**(A) In general**

The term “high deductible health plan” means a health plan—

(i) in the case of self-only coverage, which has an annual deductible which is not less than \$1,500 and not more than \$2,250,

(ii) in the case of family coverage, which has an annual deductible which is not less than \$3,000 and not more than \$4,500, and

(iii) the annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) \$3,000 for self-only coverage, and

(II) \$5,500 for family coverage.

(B) Special rules**(i) Exclusion of certain plans**

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(ii) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care if the absence of a deductible for such care is required by State law.

(3) Permitted insurance

The term “permitted insurance” means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

(i) liabilities incurred under workers' compensation laws,

(ii) tort liabilities,

(iii) liabilities relating to ownership or use of property, or

(iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Small employer

(A) In general

The term “small employer” means, with respect to any calendar year, any employer if such employer employed an average of 50 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Certain growing employers retain treatment as small employer

The term “small employer” includes, with respect to any calendar year, any employer if—

(i) such employer met the requirement of subparagraph (A) (determined without regard to subparagraph (B)) for any preceding calendar year after 1996,

(ii) any amount was contributed to the Archer MSA of any employee of such employer with respect to coverage of such employee under a high deductible health plan of such employer during such preceding calendar year and such amount was excludable from gross income under section 106(b) or allowable as a deduction under this section, and

(iii) such employer employed an average of 200 or fewer employees on business days during each preceding calendar year after 1996.

(D) Special rules

(i) Controlled groups

For purposes of this paragraph, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

(ii) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(5) Family coverage

The term “family coverage” means any coverage other than self-only coverage.

(d) Archer MSA

For purposes of this section—

(1) Archer MSA

The term “Archer MSA” means a trust created or organized in the United States as a medical savings account exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the

written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5), no contribution will be accepted—

(i) unless it is in cash, or

(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds 75 percent of the highest annual limit deductible permitted under subsection (c)(2)(A)(ii) for such calendar year.

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses

(A) In general

The term “qualified medical expenses” means, with respect to an account holder, amounts paid by such holder for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise.

(B) Health insurance may not be purchased from account

(i) In general

Subparagraph (A) shall not apply to any payment for insurance.

(ii) Exceptions

Clause (i) shall not apply to any expense for coverage under—

(I) a health plan during any period of continuation coverage required under any Federal law,

(II) a qualified long-term care insurance contract (as defined in section 7702B(b)), or

(III) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law.

(C) Medical expenses of individuals who are not eligible individuals

Subparagraph (A) shall apply to an amount paid by an account holder for medical care of an individual who is not described in clauses (i) and (ii) of subsection (c)(1)(A) for the month in which the expense for such care is incurred only if no amount is contributed (other than a rollover contribution)

to any Archer MSA of such account holder for the taxable year which includes such month. This subparagraph shall not apply to any expense for coverage described in subclause (I) or (III) of subparagraph (B)(ii).

(3) Account holder

The term “account holder” means the individual on whose behalf the Archer MSA was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts

(1) In general

An Archer MSA is exempt from taxation under this subtitle unless such account has ceased to be an Archer MSA. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to Archer MSAs, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is used exclusively to pay qualified medical expenses of any account holder shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be included in the gross income of such holder.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any Archer MSA of an individual, paragraph (2) shall not apply to distributions from the Archer MSAs of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day pre-

scribed by law (including extensions of time) for filing such individual’s return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term “excess contribution” means any contribution (other than a rollover contribution) which is neither excludable from gross income under section 106(b) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account holder for any taxable year in which there is a payment or distribution from an Archer MSA of such holder which is includible in gross income under paragraph (2) shall be increased by 15 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the account holder becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after medicare eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on which the account holder attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from an Archer MSA to the account holder to the extent the amount received is paid into an Archer MSA or a health savings account (as defined in section 223(d)) for the benefit of such holder not later than the 60th day after the day on which the holder receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from an Archer MSA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from an Archer MSA which was not includible in the individual’s gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment

or distribution out of an Archer MSA for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in an Archer MSA to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as an Archer MSA with respect to which such spouse is the account holder.

(8) Treatment after death of account holder

(A) Treatment if designated beneficiary is spouse

If the account holder's surviving spouse acquires such holder's interest in an Archer MSA by reason of being the designated beneficiary of such account at the death of the account holder, such Archer MSA shall be treated as if the spouse were the account holder.

(B) Other cases

(i) In general

If, by reason of the death of the account holder, any person acquires the account holder's interest in an Archer MSA in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be an Archer MSA as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such holder, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's gross income for the last taxable year of such holder.

(ii) Special rules

(I) Reduction of inclusion for pre-death expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

In the case of any taxable year beginning in a calendar year after 1998, each dollar amount in subsection (c)(2) 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 such taxable year begins by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any increase under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.

(h) Reports

The Secretary may require the trustee of an Archer MSA to make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(i) Limitation on number of taxpayers having Archer MSAs

(1) In general

Except as provided in paragraph (5), no individual shall be treated as an eligible individual for any taxable year beginning after the cut-off year unless—

(A) such individual was an active MSA participant for any taxable year ending on or before the close of the cut-off year, or

(B) such individual first became an active MSA participant for a taxable year ending after the cut-off year by reason of coverage under a high deductible health plan of an MSA-participating employer.

(2) Cut-off year

For purposes of paragraph (1), the term "cut-off year" means the earlier of—

(A) calendar year 2007, or

(B) the first calendar year before 2007 for which the Secretary determines under subsection (j) that the numerical limitation for such year has been exceeded.

(3) Active MSA participant

For purposes of this subsection—

(A) In general

The term "active MSA participant" means, with respect to any taxable year, any individual who is the account holder of any Archer MSA into which any contribution was made which was excludable from gross income under section 106(b), or allowable as a deduction under this section, for such taxable year.

(B) Special rule for cut-off years before 2007

In the case of a cut-off year before 2007—

(i) an individual shall not be treated as an eligible individual for any month of such year or an active MSA participant under paragraph (1)(A) unless such individual is, on or before the cut-off date, covered under a high deductible health plan, and

(ii) an employer shall not be treated as an MSA-participating employer unless the employer, on or before the cut-off date, offered coverage under a high deductible health plan to any employee.

(C) Cut-off date

For purposes of subparagraph (B)—

(i) In general

Except as otherwise provided in this subparagraph, the cut-off date is October 1 of the cut-off year.

(ii) Employees with enrollment periods after October 1

In the case of an individual described in subclause (I) of subsection (c)(1)(A)(iii), if the regularly scheduled enrollment period for health plans of the individual's employer occurs during the last 3 months of the cut-off year, the cut-off date is December 31 of the cut-off year.

(iii) Self-employed individuals

In the case of an individual described in subclause (II) of subsection (c)(1)(A)(iii), the cut-off date is November 1 of the cut-off year.

(iv) Special rules for 1997

If 1997 is a cut-off year by reason of subsection (j)(1)(A)—

(I) each of the cut-off dates under clauses (i) and (iii) shall be 1 month earlier than the date determined without regard to this clause, and

(II) clause (ii) shall be applied by substituting "4 months" for "3 months".

(4) MSA-participating employer

For purposes of this subsection, the term "MSA-participating employer" means any small employer if—

(A) such employer made any contribution to the Archer MSA of any employee during the cut-off year or any preceding calendar year which was excludable from gross income under section 106(b), or

(B) at least 20 percent of the employees of such employer who are eligible individuals for any month of the cut-off year by reason of coverage under a high deductible health plan of such employer each made a contribution of at least \$100 to their Archer MSAs for any taxable year ending with or within the cut-off year which was allowable as a deduction under this section.

(5) Additional eligibility after cut-off year

If the Secretary determines under subsection (j)(2)(A) that the numerical limit for the calendar year following a cut-off year described in paragraph (2)(B) has not been exceeded—

(A) this subsection shall not apply to any otherwise eligible individual who is covered under a high deductible health plan during the first 6 months of the second calendar year following the cut-off year (and such individual shall be treated as an active MSA participant for purposes of this subsection if a contribution is made to any Archer MSA with respect to such coverage), and

(B) any employer who offers coverage under a high deductible health plan to any employee during such 6-month period shall be treated as an MSA-participating employer for purposes of this subsection if the

requirements of paragraph (4) are met with respect to such coverage.

For purposes of this paragraph, subsection (j)(2)(A) shall be applied for 1998 by substituting "750,000" for "600,000".

(j) Determination of whether numerical limits are exceeded**(1) Determination of whether limit exceeded for 1997**

The numerical limitation for 1997 is exceeded if, based on the reports required under paragraph (4), the number of Archer MSAs established as of—

(A) April 30, 1997, exceeds 375,000, or

(B) June 30, 1997, exceeds 525,000.

(2) Determination of whether limit exceeded for 1998, 1999, 2001, 2002, 2004, 2005, or 2006**(A) In general**

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is exceeded if the sum of—

(i) the number of MSA returns filed on or before April 15 of such calendar year for taxable years ending with or within the preceding calendar year, plus

(ii) the Secretary's estimate (determined on the basis of the returns described in clause (i)) of the number of MSA returns for such taxable years which will be filed after such date,

exceeds 750,000 (600,000 in the case of 1998). For purposes of the preceding sentence, the term "MSA return" means any return on which any exclusion is claimed under section 106(b) or any deduction is claimed under this section.

(B) Alternative computation of limitation

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is also exceeded if the sum of—

(i) 90 percent of the sum determined under subparagraph (A) for such calendar year, plus

(ii) the product of 2.5 and the number of Archer MSAs established during the portion of such year preceding July 1 (based on the reports required under paragraph (4)) for taxable years beginning in such year,

exceeds 750,000.

(C) No limitation for 2000 or 2003

The numerical limitation shall not apply for 2000 or 2003.

(3) Previously uninsured individuals not included in determination**(A) In general**

The determination of whether any calendar year is a cut-off year shall be made by not counting the Archer MSA of any previously uninsured individual.

(B) Previously uninsured individual

For purposes of this subsection, the term "previously uninsured individual" means, with respect to any Archer MSA, any indi-

vidual who had no health plan coverage (other than coverage referred to in subsection (c)(1)(B)) at any time during the 6-month period before the date such individual's coverage under the high deductible health plan commences.

(4) Reporting by MSA trustees

(A) In general

Not later than August 1 of 1997, 1998, 1999, 2001, 2002, 2004, 2005, and 2006, each person who is the trustee of an Archer MSA established before July 1 of such calendar year shall make a report to the Secretary (in such form and manner as the Secretary shall specify) which specifies—

- (i) the number of Archer MSAs established before such July 1 (for taxable years beginning in such calendar year) of which such person is the trustee,
- (ii) the name and TIN of the account holder of each such account, and
- (iii) the number of such accounts which are accounts of previously uninsured individuals.

(B) Additional report for 1997

Not later than June 1, 1997, each person who is the trustee of an Archer MSA established before May 1, 1997, shall make an additional report described in subparagraph (A) but only with respect to accounts established before May 1, 1997.

(C) Penalty for failure to file report

The penalty provided in section 6693(a) shall apply to any report required by this paragraph, except that—

- (i) such section shall be applied by substituting “\$25” for “\$50”, and
- (ii) the maximum penalty imposed on any trustee shall not exceed \$5,000.

(D) Aggregation of accounts

To the extent practicable, in determining the number of Archer MSAs on the basis of the reports under this paragraph, all Archer MSAs of an individual shall be treated as 1 account and all accounts of individuals who are married to each other shall be treated as 1 account.

(5) Date of making determinations

Any determination under this subsection that a calendar year is a cut-off year shall be made by the Secretary and shall be published not later than October 1 of such year.

(Added Pub. L. 104-191, title III, § 301(a), Aug. 21, 1996, 110 Stat. 2037; amended Pub. L. 105-33, title IV, § 4006(b)(2), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105-34, title XVI, § 1602(a)(2), (3), Aug. 5, 1997, 111 Stat. 1093, 1094; Pub. L. 106-554, § 1(a)(7) [title II, §§ 201(a), (b), 202(a)(4), (b)(2)(B), (3)-(8), (10), (11)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, 2763A-629; Pub. L. 107-147, title VI, § 612(a), (b), Mar. 9, 2002, 116 Stat. 61; Pub. L. 108-173, title XII, § 1201(c), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 108-311, title II, § 207(19), title III, § 322(a), (b), Oct. 4, 2004, 118 Stat. 1178, 1183; Pub. L. 109-432, div. A, title I, § 117(a), (b), Dec. 20, 2006, 120 Stat. 2941.)

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 Social Security Act, referred to in subsecs. (b)(7) and (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1811 of the Act is classified to section 1395c 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 220 was renumbered 224 of this title. Another prior section 220, added Pub. L. 100-647, title VI, § 6007(a), Nov. 10, 1988, 102 Stat. 3687, related to jury duty pay remitted to employer, prior to repeal by Pub. L. 101-508, title XI, § 11802(e)(2), Nov. 5, 1990, 104 Stat. 1388-530.

Another prior section 220, added Pub. L. 94-455, title XV, § 1501(a), Oct. 4, 1976, 90 Stat. 1734; amended Pub. L. 95-600, title I, §§ 156(c)(3), 157(a)(2), (b)(2), title VII, § 703(c)(2), (3), Nov. 6, 1978, 92 Stat. 2803, 2804, 2939; Pub. L. 96-222, title I, § 101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204, related to retirement savings for certain married individuals, prior to repeal by Pub. L. 97-34, title III, § 311(e), Aug. 13, 1981, 95 Stat. 280, applicable to taxable years beginning after Dec. 31, 1981, and deductions allowed under section 220 of this title, as in effect prior to its repeal, treated as deductions under section 219 of this title.

AMENDMENTS

2006—Subsec. (i)(2), (3)(B). Pub. L. 109-432, § 117(a), substituted “2007” for “2005” wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 109-432, § 117(b)(1), substituted “2004, 2005, or 2006” for “or 2004” in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(4)(A). Pub. L. 109-432, § 117(b)(2), substituted “2004, 2005, and 2006” for “and 2004” in introductory provisions.

2004—Subsec. (d)(2)(A). Pub. L. 108-311, § 207(19), inserted “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

Subsec. (i)(2), (3)(B). Pub. L. 108-311, § 322(a), substituted “2005” for “2003” wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 108-311, § 322(b)(1)(B), substituted “2002, or 2004” for “or 2002” in heading.

Subsec. (j)(2)(A), (B). Pub. L. 108-311, § 322(b)(1)(A), substituted “2002, or 2004” for “or 2002” in introductory provisions.

Subsec. (j)(2)(C). Pub. L. 108-311, § 322(b)(3), amended heading and text of subpar. (C) generally. Prior to amendment text read as follows: “The numerical limitation shall not apply for 2000.”

Subsec. (j)(4)(A). Pub. L. 108-311, § 322(b)(2), substituted “2002, and 2004” for “and 2002” in introductory provisions.

2003—Subsec. (f)(5)(A). Pub. L. 108-173 inserted “or a health savings account (as defined in section 223(d))” after “paid into an Archer MSA”.

2002—Subsec. (i)(2). Pub. L. 107-147, § 612(a), substituted “2003” for “2002” in subpars. (A) and (B).

Subsec. (i)(3)(B). Pub. L. 107-147, § 612(a), substituted “2003” for “2002” in heading and introductory provisions.

Subsec. (j)(2). Pub. L. 107-147, § 612(b)(1), substituted “1998, 1999, 2001, or 2002” for “1998, 1999, or 2001” wherever appearing in heading and text.

Subsec. (j)(4)(A). Pub. L. 107-147, § 612(b)(2), substituted “2001, and 2002” for “and 2001”.

2000—Pub. L. 106-554, § 1(a)(7) [title II, § 202(b)(8)], substituted “Archer MSAs” for “Medical savings accounts” in section catchline.

Subsecs. (a), (b)(5). 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)(4)], substituted “Archer MSA” for “medical savings account” wherever appearing.

Subsec. (c)(1)(C). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(7)], substituted “Archer MSAs” for “medical savings accounts” in heading.

Subsec. (c)(1)(C)(i). 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)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (c)(1)(D). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (c)(4)(C)(ii). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (d). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(4)], substituted “Archer MSA” for “Medical savings account” in heading.

Subsec. (d)(1). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(5)], substituted “Archer MSA” for “Medical savings account” in heading.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4), (b)(3)], in introductory provisions, substituted “Archer MSA” for “medical savings account” and inserted “as a medical savings account” after “United States”.

Subsec. (d)(2)(C), (3). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (e)(1). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10), (11)], substituted “An Archer MSA is exempt” for “A Archer MSA is exempt” and “ceased to be an Archer MSA” for “ceased to be a Archer MSA”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account” in two places.

Subsec. (e)(2). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (f). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA” wherever appearing.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4), (b)(2)(B)], substituted “Archer MSA” for “medical savings account” wherever appearing and “Archer MSAs” for “medical savings accounts” in introductory provisions of par. (3)(A).

Subsec. (h). 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)(4)], substituted “Archer MSA” for “medical savings account”.

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

Subsec. (i)(2)(A), (B). Pub. L. 106-554, §1(a)(7) [title II, §201(a)], substituted “2002” for “2000”.

Subsec. (i)(3)(A). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (i)(3)(B). Pub. L. 106-554, §1(a)(7) [title II, §201(a)], substituted “2002” for “2000” in heading and introductory provisions.

Subsec. (i)(4)(A). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (i)(4)(B). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (i)(5)(A). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (j)(1). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts” in introductory provisions.

Subsec. (j)(2). Pub. L. 106-554, §1(a)(7) [title II, §201(b)(1)(A)], substituted “1998, 1999, or 2001” for “1998

or 1999” in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(2)(A). Pub. L. 106-554, §1(a)(7) [title II, §201(b)(1)(B)], substituted “750,000 (600,000 in the case of 1998)” for “600,000 (750,000 in the case of 1999)” in concluding provisions.

Subsec. (j)(2)(B)(ii). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (j)(2)(C). Pub. L. 106-554, §1(a)(7) [title II, §201(b)(1)(C)], added subpar. (C).

Subsec. (j)(3)(A), (B). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (j)(4)(A). 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, §§201(b)(2), 202(a)(4)], in introductory provisions, substituted “1999, and 2001” for “and 1999” and “Archer MSA” for “medical savings account”.

Subsec. (j)(4)(A)(i). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (j)(4)(B). 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)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (j)(4)(D). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts” in two places.

1997—Subsec. (b)(7). Pub. L. 105-33 added par. (7).

Subsec. (c)(3). Pub. L. 105-34, §1602(a)(2), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: “Medicare supplemental insurance.”

Subsec. (d)(2)(C). Pub. L. 105-34, §1602(a)(3), substituted “described in clauses (i) and (ii) of subsection (c)(1)(A)” for “an eligible individual”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(19) of 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.

Pub. L. 108-311, title III, §322(c), Oct. 4, 2004, 118 Stat. 1183, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 2004.”

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 2002 AMENDMENT

Pub. L. 107-147, title VI, §612(c), Mar. 9, 2002, 116 Stat. 61, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 2002.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(7) [title II, §201(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].”

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

Amendment by Pub. L. 105-33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of

Pub. L. 105-33, set out as an Effective Date note under section 138 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

TIME FOR FILING REPORTS, ETC.

Pub. L. 109-432, div. A, title I, § 117(c), Dec. 20, 2006, 120 Stat. 2942, provided that:

“(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2005, or August 1, 2006, as the case may be, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Dec. 20, 2006].

“(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2005 or calendar year 2006, as the case may be, shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2005 or 2006 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.”

Pub. L. 108-311, title III, § 322(d), Oct. 4, 2004, 118 Stat. 1183, provided that:

“(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2004, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Oct. 4, 2004].

“(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2004 shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2004 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.”

MONITORING OF PARTICIPATION IN MEDICAL SAVINGS ACCOUNTS

Section 301(k) of Pub. L. 104-191 provided that: “The Secretary of the Treasury or his delegate shall—

“(1) during 1997, 1998, 1999, and 2000, regularly evaluate the number of individuals who are maintaining medical savings accounts and the reduction in revenues to the United States by reason of such accounts, and

“(2) provide such reports of such evaluations to Congress as such Secretary determines appropriate.”

STUDY OF EFFECTS OF MEDICAL SAVINGS ACCOUNTS ON SMALL GROUP MARKET

Section 301(l) of Pub. L. 104-191 provided that: “The Comptroller General of the United States shall enter into a contract with an organization with expertise in health economics, health insurance markets, and actuarial science to conduct a comprehensive study regarding the effects of medical savings accounts in the small group market on—

- “(1) selection, including adverse selection,
“(2) health costs, including any impact on premiums of individuals with comprehensive coverage,
“(3) use of preventive care,
“(4) consumer choice,
“(5) the scope of coverage of high deductible plans purchased in conjunction with such accounts, and
“(6) other relevant items.

A report on the results of the study conducted under this subsection shall be submitted to the Congress no later than January 1, 1999.”

§ 221. Interest on education loans

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

(b) Maximum deduction

(1) In general

Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable year shall not exceed the amount determined in accordance with the following table:

Table with 2 columns: 'In the case of taxable years beginning in:' and 'The dollar amount is:'. Rows for years 1998, 1999, 2000, and 2001 or thereafter with corresponding dollar amounts.

(2) Limitation based on modified adjusted gross income

(A) In general

The amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount determined under subparagraph (B).

(B) Amount of reduction

The amount determined under this subparagraph is the amount which bears the same ratio to the amount which would be so taken into account as—

- (i) the excess of—
(I) the taxpayer’s modified adjusted gross income for such taxable year, over
(II) \$50,000 (\$100,000 in the case of a joint return), bears to
(ii) \$15,000 (\$30,000 in the case of a joint return).

(C) Modified adjusted gross income

The term “modified adjusted gross income” means adjusted gross income determined—

- (i) without regard to this section and sections 199, 222, 911, 931, and 933, and
(ii) after application of sections 86, 135, 137, 219, and 469.

(c) Dependents not eligible for deduction

No deduction shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual’s taxable year begins.

(d) Definitions

For purposes of this section—

(1) Qualified education loan

The term “qualified education loan” means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses—

- (A) which are incurred on behalf of the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

(C) which are attributable to education furnished during a period during which the recipient was an eligible student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term “qualified education loan” shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5).

(2) Qualified higher education expenses

The term “qualified higher education expenses” means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087*ll*, as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution, reduced by the sum of—

(A) the amount excluded from gross income under section 127, 135, 529, or 530 by reason of such expenses, and

(B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).

For purposes of the preceding sentence, the term “eligible educational institution” has the same meaning given such term by section 25A(f)(2), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

(3) Eligible student

The term “eligible student” has the meaning given such term by section 25A(b)(3).

(4) Dependent

The term “dependent” has the meaning given such term by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(e) Special rules

(1) Denial of double benefit

No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year.

(3) Marital status

Marital status shall be determined in accordance with section 7703.

(f) Inflation adjustments

(1) In general

In the case of a taxable year beginning after 2002, the \$50,000 and \$100,000 amounts in sub-

section (b)(2) shall each 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, determined by substituting “calendar year 2001” for “calendar year 1992” in subparagraph (B) thereof.

(2) Rounding

If any amount as adjusted under paragraph (1) is not a multiple of \$5,000, such amount shall be rounded to the next lowest multiple of \$5,000.

(Added Pub. L. 105-34, title II, §202(a), Aug. 5, 1997, 111 Stat. 806; amended Pub. L. 105-206, title VI, §6004(b), July 22, 1998, 112 Stat. 792; Pub. L. 105-277, div. J, title IV, §4003(a)(2)(A), (3), Oct. 21, 1998, 112 Stat. 2681-908; Pub. L. 107-16, title IV, §§402(b)(2)(B), 412(a)(1), (b)(1), (2), 431(c)(2), June 7, 2001, 115 Stat. 62-64, 68; Pub. L. 108-311, title II, §207(20), title IV, §408(b)(5), Oct. 4, 2004, 118 Stat. 1178, 1192; Pub. L. 108-357, title I, §102(d)(2), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 109-135, title IV, §412(t), Dec. 21, 2005, 119 Stat. 2638.)

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.

REFERENCES IN TEXT

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

PRIOR PROVISIONS

A prior section 221 was renumbered section 224 of this title.

Another prior section 221, added Pub. L. 97-34, title I, §103(a), Aug. 13, 1981, 95 Stat. 187; amended Pub. L. 97-448, title III, §305(d)(4), Jan. 12, 1983, 96 Stat. 2400, related to deduction for two-earner married couples, prior to repeal by Pub. L. 99-514, title I, §131(a), Oct. 22, 1986, 100 Stat. 2113, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2005—Subsec. (d)(2). Pub. L. 109-135 substituted “the Taxpayer Relief Act of 1997” for “this Act”.

2004—Subsec. (b)(2)(C)(i). Pub. L. 108-357 inserted “199,” before “222”.

Subsec. (d)(4). Pub. L. 108-311, §207(20), inserted “(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)” after “section 152”.

Subsec. (f)(1). Pub. L. 108-311, §408(b)(5), amended directory language of Pub. L. 107-16, §412(b)(2). See 2001 Amendment note below.

2001—Subsec. (b)(2)(B)(i), (ii). Pub. L. 107-16, §§412(b)(1), 901, temporarily amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

“(i) the excess of—

“(I) the taxpayer’s modified adjusted gross income for such taxable year, over

“(II) \$40,000 (\$60,000 in the case of a joint return),

bears to

“(ii) \$15,000.”

See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(C)(i). Pub. L. 107-16, §§ 431(c)(2), 901, temporarily inserted “222,” before “911”. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d). Pub. L. 107-16, §§ 412(a)(1), 901, temporarily redesignated subsec. (e) as (d), and struck out heading and text of former subsec. (d). Text read as follows: “A deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan. Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.” See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (e). Pub. L. 107-16, §§ 412(a)(1), 901, temporarily redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (e)(2)(A). Pub. L. 107-16, § 402(b)(2)(B), inserted “529,” after “135.”

Subsec. (f). Pub. L. 107-16, §§ 412(a)(1), 901, temporarily redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f)(1). Pub. L. 107-16, §§ 412(b)(2), 901, as amended by Pub. L. 108-311, § 408(b)(5), temporarily substituted “\$50,000 and \$100,000 amounts” for “\$40,000 and \$60,000 amounts”. See above and Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 107-16, §§ 412(a)(1), 901, temporarily redesignated former subsec. (g) as (f). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2)(C). Pub. L. 105-277, § 4003(a)(2)(A)(iii), struck out concluding provisions which read as follows: “For purposes of sections 86, 135, 137, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.”

Subsec. (b)(2)(C)(i). Pub. L. 105-277, § 4003(a)(2)(A)(i), struck out “135, 137,” after “sections”.

Subsec. (b)(2)(C)(ii). Pub. L. 105-277, § 4003(a)(2)(A)(ii), inserted “135, 137,” after “sections 86.”

Subsec. (d). Pub. L. 105-206, § 6004(b)(2), inserted at end “Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.”

Subsec. (e)(1). Pub. L. 105-277, § 4003(a)(3), inserted before period at end “or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5)”.

Pub. L. 105-206, § 6004(b)(1), inserted “by the taxpayer solely” after “incurred” in introductory provisions.

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 section 207(20) of 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 AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 402(b)(2)(B) 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.

Pub. L. 107-16, title IV, § 412(a)(3), June 7, 2001, 115 Stat. 64, provided that: “The amendments made by this

subsection [amending this section and section 6050S of this title] shall apply with respect to any loan interest paid after December 31, 2001, in taxable years ending after such date.”

Pub. L. 107-16, title IV, § 412(b)(3), June 7, 2001, 115 Stat. 64, provided that: “The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2001.”

Amendment by section 431(c)(2) 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 412(a)(1), (b)(1), (2) and 431(c)(2) 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(i) 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

Section applicable to any qualified education loan (as defined in subsec. (e)(1) of this section) incurred on, before, or after Aug. 5, 1997, but only with respect to any loan interest payment due and paid after Dec. 31, 1997, and to the portion of the 60-month period referred to in subsec. (d) of this section after Dec. 31, 1997, see section 202(e) of Pub. L. 105-34, set out as an Effective Date of 1997 Amendment note under section 62 of this title.

§ 222. Qualified tuition and related expenses

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified tuition and related expenses paid by the taxpayer during the taxable year.

(b) Dollar limitations

(1) In general

The amount allowed as a deduction under subsection (a) with respect to the taxpayer for any taxable year shall not exceed the applicable dollar limit.

(2) Applicable dollar limit

(A) 2002 and 2003

In the case of a taxable year beginning in 2002 or 2003, the applicable dollar limit shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed \$65,000 (\$130,000 in the case of a joint return), \$3,000, and—

(ii) in the case of any other taxpayer, zero.

(B) After 2003

In the case of any taxable year beginning after 2003, the applicable dollar amount shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed \$65,000 (\$130,000 in the case of a joint return), \$4,000,

(ii) in the case of a taxpayer not described in clause (i) whose adjusted gross income for the taxable year does not exceed \$80,000 (\$160,000 in the case of a joint return), \$2,000, and

(iii) in the case of any other taxpayer, zero.

(C) Adjusted gross income

For purposes of this paragraph, adjusted gross income shall be determined—

(i) without regard to this section and sections 199, 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, 221, and 469.

(c) No double benefit

(1) In general

No deduction shall be allowed under subsection (a) for any expense for which a deduction is allowed to the taxpayer under any other provision of this chapter.

(2) Coordination with other education incentives

(A) Denial of deduction if credit elected

No deduction shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses with respect to an individual if the taxpayer or any other person elects to have section 25A apply with respect to such individual for such year.

(B) Coordination with exclusions

The total amount of qualified tuition and related expenses shall be reduced by the amount of such expenses taken into account in determining any amount excluded under section 135, 529(c)(1), or 530(d)(2). For purposes of the preceding sentence, the amount taken into account in determining the amount excluded under section 529(c)(1) shall not include that portion of the distribution which represents a return of any contributions to the plan.

(3) Dependents

No deduction shall be allowed under subsection (a) to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) Definitions and special rules

For purposes of this section—

(1) Qualified tuition and related expenses

The term “qualified tuition and related expenses” has the meaning given such term by section 25A(f). Such expenses shall be reduced in the same manner as under section 25A(g)(2).

(2) Identification requirement

No deduction shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of the individual on the return of tax for the taxable year.

(3) Limitation on taxable year of deduction

(A) In general

A deduction shall be allowed under subsection (a) for qualified tuition and related expenses for any taxable year only to the extent such expenses are in connection with enrollment at an institution of higher education during the taxable year.

(B) Certain prepayments allowed

Subparagraph (A) shall not apply to qualified tuition and related expenses paid during a taxable year if such expenses are in connection with an academic term beginning during such taxable year or during the first 3 months of the next taxable year.

(4) No deduction 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 the taxpayer's spouse file a joint return for the taxable year.

(5) Nonresident aliens

If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2009.

(Added Pub. L. 107-16, title IV, § 431(a), June 7, 2001, 115 Stat. 66; amended Pub. L. 108-357, title I, § 102(d)(3), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 109-432, div. A, title I, § 101(a), (b), Dec. 20, 2006, 120 Stat. 2933; Pub. L. 110-343, div. C, title II, § 202(a), Oct. 3, 2008, 122 Stat. 3864.)

TERMINATION OF SECTION

For termination of section by section 901 of Pub. L. 107-16, see Effective and Termination Dates note below.

PRIOR PROVISIONS

A prior section 222 was renumbered section 224 of this title.

Another prior section 222, added Pub. L. 97-34, title I, § 125(a), Aug. 13, 1981, 95 Stat. 201; amended Pub. L. 97-448, title I, § 101(f), Jan. 12, 1983, 96 Stat. 2367, related to deduction of adoption expenses, prior to repeal by Pub. L. 99-514, title I, §§ 135(a), 151(a), Oct. 22, 1986, 100 Stat. 2116, 2121, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110-343 substituted “December 31, 2009” for “December 31, 2007”.

2006—Subsec. (b)(2)(B). Pub. L. 109-432, § 101(b), substituted “After 2003” for “2004 and 2005” in heading and “any taxable year beginning after 2003” for “a taxable

year beginning in 2004 or 2005” in introductory provisions.

Subsec. (e). Pub. L. 109-432, §101(a), substituted “2007” for “2005”.

2004—Subsec. (b)(2)(C)(i). Pub. L. 108-357 inserted “199,” before “911”.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title II, §202(b), Oct. 3, 2008, 122 Stat. 3864, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title I, §101(c), Dec. 20, 2006, 120 Stat. 2933, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.”

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

Section applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 62 of this title.

Section 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 it had never been enacted, see section 901 of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

§ 223. Health savings accounts

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by or on behalf of such individual to a health savings account of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is 1/12 of—

(A) in the case of an eligible individual who has self-only coverage under a high deductible health plan as of the first day of such month, \$2,250.

(B) in the case of an eligible individual who has family coverage under a high deductible health plan as of the first day of such month, \$4,500.

(3) Additional contributions for individuals 55 or older

(A) In general

In the case of an individual who has attained age 55 before the close of the taxable

year, the applicable limitation under subparagraphs (A) and (B) of paragraph (2) shall be increased by the additional contribution amount.

(B) Additional contribution amount

For purposes of this section, the additional contribution amount is the amount determined in accordance with the following table:

For taxable years beginning in:	The additional contribution amount is:
2004	\$500
2005	\$600
2006	\$700
2007	\$800
2008	\$900
2009 and thereafter	\$1,000.

(4) Coordination with other contributions

The limitation which would (but for this paragraph) apply under this subsection to an individual for any taxable year shall be reduced (but not below zero) by the sum of—

(A) the aggregate amount paid for such taxable year to Archer MSAs of such individual,

(B) the aggregate amount contributed to health savings accounts of such individual which is excludable from the taxpayer's gross income for such taxable year under section 106(d) (and such amount shall not be allowed as a deduction under subsection (a)), and

(C) the aggregate amount contributed to health savings accounts of such individual for such taxable year under section 408(d)(9) (and such amount shall not be allowed as a deduction under subsection (a)).

Subparagraph (A) shall not apply with respect to any individual to whom paragraph (5) applies.

(5) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) and without regard to any additional contribution amount under paragraph (3))—

(i) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

(ii) after such reduction, shall be divided equally between them unless they agree on a different division.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(8) Increase in limit for individuals becoming eligible individuals after the beginning of the year**(A) In general**

For purposes of computing the limitation under paragraph (1) for any taxable year, an individual who is an eligible individual during the last month of such taxable year shall be treated—

(i) as having been an eligible individual during each of the months in such taxable year, and

(ii) as having been enrolled, during each of the months such individual is treated as an eligible individual solely by reason of clause (i), in the same high deductible health plan in which the individual was enrolled for the last month of such taxable year.

(B) Failure to maintain high deductible health plan coverage**(i) In general**

If, at any time during the testing period, the individual is not an eligible individual, then—

(I) gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual is increased by the aggregate amount of all contributions to the health savings account of the individual which could not have been made but for subparagraph (A), and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount of such increase.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term “testing period” means the period beginning with the last month of the taxable year referred to in subparagraph (A) and ending on the last day of the 12th month following such month.

(c) Definitions and special rules

For purposes of this section—

(1) Eligible individual**(A) In general**

The term “eligible individual” means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month, and

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance,

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care, and

(iii) for taxable years beginning after December 31, 2006, coverage under a health flexible spending arrangement during any period immediately following the end of a plan year of such arrangement during which unused benefits or contributions remaining at the end of such plan year may be paid or reimbursed to plan participants for qualified benefit expenses incurred during such period if—

(I) the balance in such arrangement at the end of such plan year is zero, or

(II) the individual is making a qualified HSA distribution (as defined in section 106(e)) in an amount equal to the remaining balance in such arrangement as of the end of such plan year, in accordance with rules prescribed by the Secretary.

(2) High deductible health plan**(A) In general**

The term “high deductible health plan” means a health plan—

(i) which has an annual deductible which is not less than—

(I) \$1,000 for self-only coverage, and

(II) twice the dollar amount in subclause (I) for family coverage, and

(ii) the sum of the annual deductible and the other annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) \$5,000 for self-only coverage, and

(II) twice the dollar amount in subclause (I) for family coverage.

(B) Exclusion of certain plans

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(C) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1871 of the Social Security Act, except as otherwise provided by the Secretary).

(D) Special rules for network plans

In the case of a plan using a network of providers—

(i) Annual out-of-pocket limitation

Such plan shall not fail to be treated as a high deductible health plan by reason of having an out-of-pocket limitation for services provided outside of such network which exceeds the applicable limitation under subparagraph (A)(ii).

(ii) Annual deductible

Such plan's annual deductible for services provided outside of such network shall not be taken into account for purposes of subsection (b)(2).

(3) Permitted insurance

The term "permitted insurance" means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

- (i) liabilities incurred under workers' compensation laws,
- (ii) tort liabilities,
- (iii) liabilities relating to ownership or use of property, or
- (iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Family coverage

The term "family coverage" means any coverage other than self-only coverage.

(5) Archer MSA

The term "Archer MSA" has the meaning given such term in section 220(d).

(d) Health savings account

For purposes of this section—

(1) In general

The term "health savings account" means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5) or section 220(f)(5), no contribution will be accepted—

- (i) unless it is in cash, or
- (ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds the sum of—

(I) the dollar amount in effect under subsection (b)(2)(B), and

(II) the dollar amount in effect under subsection (b)(3)(B).

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses**(A) In general**

The term "qualified medical expenses" means, with respect to an account beneficiary, amounts paid by such beneficiary for medical care (as defined in section 213(d)¹ for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise.

(B) Health insurance may not be purchased from account

Subparagraph (A) shall not apply to any payment for insurance.

(C) Exceptions

Subparagraph (B) shall not apply to any expense for coverage under—

(i) a health plan during any period of continuation coverage required under any Federal law,

(ii) a qualified long-term care insurance contract (as defined in section 7702B(b)),

(iii) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law, or

(iv) in the case of an account beneficiary who has attained the age specified in section 1811 of the Social Security Act, any health insurance other than a medicare supplemental policy (as defined in section 1882 of the Social Security Act).

(3) Account beneficiary

The term "account beneficiary" means the individual on whose behalf the health savings account was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(d), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts**(1) In general**

A health savings account is exempt from taxation under this subtitle unless such ac-

¹ So in original. Probably should be followed by a second closing parenthesis.

count has ceased to be a health savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to health savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account beneficiary shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of a health savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary shall be included in the gross income of such beneficiary.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any health savings account of an individual, paragraph (2) shall not apply to distributions from the health savings accounts of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term "excess contribution" means any contribution (other than a rollover contribution described in paragraph (5) or section 220(f)(5)) which is neither excludable from gross income under section 106(d) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account beneficiary for any taxable year in which there is a payment or distribution from a health savings account of such bene-

ficiary which is includible in gross income under paragraph (2) shall be increased by 10 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after Medicare eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on which the account beneficiary attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from a health savings account to the account beneficiary to the extent the amount received is paid into a health savings account for the benefit of such beneficiary not later than the 60th day after the day on which the beneficiary receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from a health savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from a health savings account which was not includible in the individual's gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment or distribution out of a health savings account for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in a health savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the account beneficiary.

(8) Treatment after death of account beneficiary

(A) Treatment if designated beneficiary is spouse

If the account beneficiary's surviving spouse acquires such beneficiary's interest in a health savings account by reason of

being the designated beneficiary of such account at the death of the account beneficiary, such health savings account shall be treated as if the spouse were the account beneficiary.

(B) Other cases

(i) In general

If, by reason of the death of the account beneficiary, any person acquires the account beneficiary's interest in a health savings account in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be a health savings account as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such beneficiary, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such beneficiary, in such beneficiary's gross income for the last taxable year of such beneficiary.

(ii) Special rules

(I) Reduction of inclusion for predeath expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

(1) In general

Each dollar amount in subsections (b)(2) and (c)(2)(A) 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 such taxable year begins determined by substituting for "calendar year 1992" in subparagraph (B) thereof—

(i) except as provided in clause (ii), "calendar year 1997", and

(ii) in the case of each dollar amount in subsection (c)(2)(A), "calendar year 2003".

In the case of adjustments made for any taxable year beginning after 2007, section 1(f)(4) shall be applied for purposes of this paragraph by substituting "March 31" for "August 31", and the Secretary shall publish the adjusted amounts under subsections (b)(2) and (c)(2)(A) for taxable years beginning in any calendar year no later than June 1 of the preceding calendar year.

(2) Rounding

If any increase under paragraph (1) is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.

(h) Reports

The Secretary may require—

(1) the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary determines appropriate, and

(2) any person who provides an individual with a high deductible health plan to make such reports to the Secretary and to the account beneficiary with respect to such plan as the Secretary determines appropriate.

The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(Added Pub. L. 108-173, title XII, §1201(a), Dec. 8, 2003, 117 Stat. 2469; amended Pub. L. 109-135, title IV, §404(c), Dec. 21, 2005, 119 Stat. 2634; Pub. L. 109-432, div. A, title III, §§302(b), 303(a), (b), 304, 305(a), 307(b), Dec. 20, 2006, 120 Stat. 2949, 2950, 2953.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

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

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(7), (c)(2)(C), (d)(2)(C)(iv), (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 1811, 1871, and 1882 of the Act are classified to sections 1395c, 1395hh, and 1395ss, respectively, 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 223 was renumbered section 224 of this title.

AMENDMENTS

2006—Subsec. (b)(2)(A). Pub. L. 109-432, §303(a)(1), substituted "\$2,250." for "the lesser of—

"(i) the annual deductible under such coverage, or
"(ii) \$2,250, or".

Subsec. (b)(2)(B). Pub. L. 109-432, §303(a)(2), substituted "\$4,500." for "the lesser of—

"(i) the annual deductible under such coverage, or
"(ii) \$4,500."

Subsec. (b)(4)(C). Pub. L. 109-432, §307(b), added subparagraph. (C).

Subsec. (b)(8). Pub. L. 109-432, §305(a), added par. (8).
Subsec. (c)(1)(B)(iii). Pub. L. 109-432, §302(b), added cl. (iii).

Subsec. (d)(1)(A)(ii)(I). Pub. L. 109-432, §303(b), substituted "subsection (b)(2)(B)" for "subsection (b)(2)(B)(ii)".

Subsec. (g)(1). Pub. L. 109-432, §304, inserted concluding provisions.

2005—Subsec. (d)(2)(A). Pub. L. 109-135 inserted "determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title III, §302(c)(2), Dec. 20, 2006, 120 Stat. 2949, provided that: "The amendment

made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].”

Pub. L. 109-432, div. A, title III, §303(c), Dec. 20, 2006, 120 Stat. 2950, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.”

Pub. L. 109-432, div. A, title III, §305(b), Dec. 20, 2006, 120 Stat. 2951, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.”

Pub. L. 109-432, div. A, title III, §307(c), Dec. 20, 2006, 120 Stat. 2953, provided that: “The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 2006.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provisions of the Working Families Tax Relief Act of 2004, Pub. L. 108-311, to which such amendment relates, see section 404(d) of Pub. L. 109-135, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as an Effective Date of 2003 Amendment note under section 62 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

- 2010—Revenue Procedure 2009-29.
- 2009—Revenue Procedure 2008-29.
- 2008—Revenue Procedure 2007-36.

§ 224. Cross reference

For deductions in respect of a decedent, see section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 72, §217; renumbered §218, Pub. L. 88-272, title II, §213(a)(1), Feb. 26, 1964, 78 Stat. 50; renumbered §219, Pub. L. 92-178, title VII, §702(a), Dec. 10, 1971, 85 Stat. 561; renumbered §220, Pub. L. 93-406, title II, §202(a)(1), Sept. 2, 1974, 88 Stat. 958; renumbered §221, Pub. L. 94-455, title XV, §1501(a), Oct. 4, 1976, 90 Stat. 1734; renumbered §222, renumbered §223, Pub. L. 97-34, title I, §§103(a), 125(a), Aug. 13, 1981, 95 Stat. 187, 201; renumbered §220 and amended Pub. L. 99-514, title I, §135(b)(1), title III, §301(b)(5)(A), Oct. 22, 1986, 100 Stat. 2116, 2217; renumbered §221, Pub. L. 100-647, title VI, §6007(a), Nov. 10, 1988, 102 Stat. 3687; renumbered §220, Pub. L. 101-508, title XI, §11802(e)(2), Nov. 5, 1990, 104 Stat. 1388-530; renumbered §221, Pub. L. 104-191, title III, §301(a), Aug. 21, 1996, 110 Stat. 2037; renumbered §222, Pub. L. 105-34, title II, §202(a), Aug. 5, 1997, 111 Stat. 806; renumbered §223, Pub. L. 107-16, title IV, §431(a), June 7, 2001, 115 Stat. 66; renumbered §224, Pub. L. 108-173, title XII, §1201(a), Dec. 8, 2003, 117 Stat. 2469.)

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.

AMENDMENTS

2003—Pub. L. 108-173 renumbered section 223 of this title as this section.

2001—Pub. L. 107-16, §§431(a), 901, temporarily renumbered section 222 as this section. See Effective and Termination Dates of 2001 Amendment note below.

1997—Pub. L. 105-34 renumbered section 221 of this title as this section.

1996—Pub. L. 104-191 renumbered section 220 of this title as this section.

1990—Pub. L. 101-508 renumbered section 221 of this title as this section.

1986—Pub. L. 99-514, §135(b)(1), renumbered section 223 of this title as this section.

Pub. L. 99-514, §301(b)(5)(A), amended section generally, substituting “reference” for “references” in section catchline, striking out par. (1) which referred to section 1202 for deduction for long-term capital gains in the case of a taxpayer other than a corporation, and striking out par. (2) designation.

1981—Pub. L. 97-34 successively renumbered sections 221 and 222 of this title as this section.

1976—Pub. L. 94-455 renumbered section 220 of this title as this section.

1974—Pub. L. 93-406 renumbered section 219 of this title as this section.

1971—Pub. L. 92-178 renumbered section 218 of this title as this section.

1964—Pub. L. 88-272 renumbered section 217 of this title as this section.

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 AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by 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 1986 AMENDMENT

Amendment by section 301(b)(5)(A) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11802(e)(2) 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.

PART VIII—SPECIAL DEDUCTIONS FOR CORPORATIONS

Sec. 241. [242. 243. 244. 245. 246. 246A. 247. 248. 249.	Allowance of special deductions. Repealed.] Dividends received by corporations. Dividends received on certain preferred stock. Dividends received from certain foreign corporations. Rules applying to deductions for dividends received. Dividends received deduction reduced where portfolio stock is debt financed. Dividends paid on certain preferred stock of public utilities. Organizational expenditures. Limitation on deduction of bond premium on repurchase.
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