§ 127. Educational assistance programs

(a) Exclusion from gross income

(1) In general

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

(2) §5,250 maximum exclusion

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

(b) Educational assistance program

(1) In general

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

(2) Eligibility

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

(3) Principal shareholders or owners

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

(4) Other benefits as an alternative

A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required

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

(6) Notification of employees

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

(c) Definitions; special rules

For purposes of this section—

(1) Educational assistance

The term “educational assistance” means—

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

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment), but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term “educational assistance” also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee

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

(3) Employer

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

(4) Attribution rules

(A) Ownership of stock

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

(B) Interest in unincorporated trade or business

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

(5) Certain tests not applicable

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

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

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

(6) Relationship to current law

This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or re-
(7) Disallowance of excluded amounts as credit or deduction

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

(d) Cross reference

For reporting and recordkeeping requirements, see section 6038D.


AMENDMENT OF SECTION

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

PRIOR PROVISIONS

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

AMENDMENTS

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

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


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

1996—Subsec. (c)(1). Pub. L. 104–188, §1290(b), in closing provisions, inserted before period at end “, and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree”.

Subsec. (d). Pub. L. 104–188, §1290(a), in closing provisions, inserted before period at end “, and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree”.

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


1990—Subsec. (c)(1). Pub. L. 100–508, §11403(a), amended par. (1) to read as if amendments by Pub. L. 99–514, §1151(c)(4)(A), had not been enacted, see 1986 Amendment note below.


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


Subsec. (c)(8). Pub. L. 101–140, §203(a)(1), inserted at end “The term ‘educational assistance’ also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.”


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

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


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

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

Section 99-514, §1114(b)(4), substituted “highly compensated employees (within the meaning of section 414(q))” for “officers, owners, or highly compensated,”.

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


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

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

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


EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

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


EFFECTIVE DATE OF 1999 AMENDMENT


EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1202(c)(1), (2) of Pub. L. 104-188 provided that: “(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.

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

EFFECTIVE DATE OF 1993 AMENDMENT

Section 1310(c)(1) of Pub. L. 103-66 provided that: “The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after June 30, 1992.”

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11403(d) of Pub. L. 101-508 provided that: “(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.

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

EFFECTIVE DATE OF 1989 AMENDMENTS

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

Amendment by section 781(a) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by Pub. L. 101-149 effective as if included in section 1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-149, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

Amendment by section 1182(a) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1985, see section 1182(c) of Pub. L. 99-514, set out as a note under section 120 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(g) of Pub. L. 98-611, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2065, provided that: “(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6039D of this title and amending this section and sections 125, 3231, and 6652 of this title] shall apply to taxable years beginning after December 31, 1983.

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

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

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

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

(a) Exclusion

(1) In general

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

(2) Limitation of exclusion

(A) In general

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

(B) Year of inclusion

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

(C) Marital status

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

(b) Earned income limitation

(1) In general

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

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

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

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

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

(2) Special rule for certain spouses

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

(c) Payments to related individuals

No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee...