

EFFECTIVE DATE OF 1984 AMENDMENT

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

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

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

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

Section 626(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, Sec. 2, title XIII, Sec. 1317(22), title XVIII, Sec. 1869(c)(5), Oct. 22, 1986, 100 Stat. 2095, 2698, 2890; Pub. L. 100–647, title I, Sec. 1013(g)(24), Nov. 10, 1988, 102 Stat. 3554, provided that:

"(1) In general. – Except as otherwise provided in this

subsection the amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of enactment of this Act [July 18, 1984].

"(2) Exceptions for certain student loan programs. –

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

Program Amount of
Allowable
Obligations

Colorado Student Obligation Bond Authority \$60 million

Connecticut Higher Education Supplementary Loan \$15.5
Authority million

District of Columbia \$50 million

Illinois Higher Education Authority \$70 million

State of Iowa \$16 million

Louisiana Public Facilities Authority \$75 million

Maine Health and Higher Education Facilities \$5 million
Authority

Maryland Higher Education Supplemental Loan Progra \$24 million

Massachusetts College Student Loan Authority \$90 million

Minnesota Higher Education Coordinating Board \$60 million

New Hampshire Higher Education and Health \$39 million

Facilities Authority

New York Dormitory Authority \$120 million

Pennsylvania Higher Education Assistance Agency \$300 million

Georgia Private Colleges and University Authority \$31 million

Wisconsin State Building Commission \$60 million

South Dakota Health and Educational Facilities \$6 million

Authority

"(B) Pennsylvania higher education assistance agency. –

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

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

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

"(A) the amount of the refunding obligations may not exceed 101

percent of the aggregate face amount of the refunded obligations,

and

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

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

"(A) in the same manner in which,

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

"(C) for the same purposes for which,

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

"(6) Certain bonds for renewable energy property. – The amendments made by this section [amending this section] shall not apply to any obligations described in section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [Pub. L. 96–223, set out as a note below].

"(7) Exception for certain downtown redevelopment project. – The

amendments made by this section [amending this section] shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if –

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

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

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

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

Section 631 of Pub. L. 98–369, as amended by Pub. L. 99–514, Sec. 2, title XIII, Secs. 1316(j), 1317(43), title XVIII, Sec.

1872(a)–(c)(1), Oct. 22, 1986, 100 Stat. 2095, 2670, 2708, 2891, 2892; Pub. L. 100–647, title I, Sec. 1013(f)(8), (g)(40), Nov. 10, 1988, 102 Stat. 3549, 3557, provided that:

"(a) Private Activity Bond Cap. –

"(1) In general. – Except as otherwise provided in this subsection, the amendment made by section 621 [amending this section] shall apply to obligations issued after December 31, 1983.

"(2) Inducement resolution before June 19, 1984. – The

amendment made by section 621 shall not apply to any issue of obligations if –

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

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

"(3) Certain projects preliminarily approved before October 19, 1983, given approval. – If –

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

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

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

such issuing authority shall allocate its share of the limitation under section 103(n) of such Code for the calendar year during which the obligations were to be issued pursuant to such resolution (or other approval) first to such project. If the amount of obligations required by all projects which meet the requirements of the preceding sentence exceeds the issuing authority's share of the limitation under section 103(n) of such Code, priority under the preceding sentence shall be provided

first to those projects for which substantial expenditures were incurred before October 19, 1983. If any issuing authority fails to meet the requirements of this paragraph, the limitation under section 103(n) of such Code for the issuing authority for the calendar year following such failure shall be reduced by the amount of obligations with respect to which such failure occurred.

"(3) [(4)] Exception for certain bonds for a convention center and resource recovery project. – In the case of any city, if –

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

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

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

"(b) Property Financed With Tax-Exempt Bonds Required To Be Depreciated on Straight-Line Basis. –

"(1) In general. – Except as otherwise provided in this section, the amendments made by section 628(b) [amending section 168 of this title] shall apply to property placed in service

after December 31, 1983, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after October 18, 1983.

"(2) Exceptions. –

"(A) Construction or binding agreement. – The amendments made by section 628(b) shall not apply with respect to facilities –

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

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

"(B) Refunding. –

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

"(ii) Significant expenditures. – In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1984, the amendments made by section 628(b) shall not apply with respect to such facilities to the extent

such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before October 19, 1983.

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

"(c) Other Provisions Relating to Tax-Exempt Bonds. –

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

"(2) Obligations invested in federally insured deposits. – Notwithstanding any other provision of this section, clause (ii) of section 103(h)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle) shall apply to obligations issued after April 14, 1983; except that such clause shall not apply to any obligation issued pursuant to a binding contract in effect on March 4, 1983.

"(3) Exceptions. –

"(A) Construction or binding agreement. – The amendments (and provisions) referred to in paragraph (1) shall not apply to

obligations with respect to facilities –

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

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

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

"(B) Facilities. – Subparagraph (C) of subsection (b)(2) shall apply for purposes of subparagraph (A) of this paragraph.

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

"(4) Repeal of advance refunding of qualified public facilities. – The amendment made by section 628(g) [amending this section] shall apply to refunding obligations issued after the date of the enactment of this Act [July 18, 1984]; except that if substantially all the proceeds of the refunded issue were used to provide airports or docks, such amendment shall only apply to refunding obligations issued after December 31, 1984. In the case

of refunding obligations not to exceed \$100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting 'the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988]' for 'December 31, 1984' and the amendments made by section 1301 of the Tax Reform Act of 1986 [section 1301 of Pub. L. 99-514, enacting sections 141 to 150 and 7703 of this title, amending this section and sections 2, 22, 25, 32, 86, 105, 152, 153, 163, 194, 269A, 414, 879, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing section 103A of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall not apply. In the case of refunding obligations not exceeding \$100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting 'December 31, 1987' for 'December 31, 1984' and the Internal Revenue Code of 1986 shall be applied without regard to section 149(d)(2)..[sic]

"(5) Special rule for health club facilities. – In the case of any health club facility, with respect to the amendment made by section 627(c) [amending this section] –

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

"(B) paragraph (3) shall be applied by substituting 'April

13, 1984' for 'October 19, 1983' each place it appears.

"(d) Provisions of This Subtitle Not To Apply to Certain

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

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

"(2) Any property described in paragraph (4), (8), or (17) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title] but only if the obligation is issued before January 1, 1985, and only if before June 19, 1984, the issuer had evidenced an intent to issue obligations exempt from taxation under the Internal Revenue Code of 1986 in connection with such property.

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

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

"(A) a State public authority created pursuant to State legislation which took effect on June 18, 1973, took formal

action before October 19, 1983, to commit development funds for such facility.

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

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

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

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

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

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

"(e) Determination of Significant Expenditure. –

"(1) In general. – For purposes of this section, the term 'significant expenditures' means expenditures which equal or exceed the lesser of –

"(A) \$15,000,000, or

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

"(2) Certain grants treated as expenditures. – For purposes of paragraph (1), the amount of any UDAG grant preliminarily approved on May 5, 1981, or April 4, 1983, shall be treated as an expenditure with respect to the facility for which such grant was so approved.

"(f) Exceptions for Certain Other Amendments. – If –

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

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

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

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

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

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

[Section 1872(a)(2)(B) of Pub. L. 99–514 provided that the

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

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

"(1) Composite issues; small issue exemption. – The amendments made by subsections (a) and (b) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

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

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

"(4) Certain facilities. – The amendment made by subsection (e) [amending this section] shall apply to obligations issued after December 31, 1982."

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

"(1) Public approval. – The amendment made by subsection (a) [amending this section] shall apply to obligations issued after

December 31, 1982, other than obligations issued solely to refund any obligation which –

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

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

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

Section 217(e) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title VII, Sec. 712(h), July 18, 1984, 98 Stat. 947; Pub.

L. 99–514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982]. For purposes of applying section 168(f)(8)(D)(v) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by subsection (c) [amending this section] shall apply to agreements entered into after the date of the enactment of this Act."

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

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

"(1) In general. – Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title] shall apply to obligations issued after the

date of the enactment of this Act [Sept. 3, 1982].

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

Section 310(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, Sec. 306(b)(2), 96 Stat. 2405; Pub. L. 98–216, Sec. 6(b), Feb. 14, 1984, 98 Stat. 8; Pub. L. 99–514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) In general. – Except as otherwise provided in this subsection, the amendments made by this section [enacting section 4701 of this title and section 757c–5 of former Title 31, Money and Finance, and amending this section and sections 103A, 163, 165, 312, and 1232 of this title] shall apply to obligations issued after December 31, 1982.

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

"(3) Exception for certain warrants, etc. – The amendments made by subsection (b) [enacting section 4701 of this title and amending this section and sections 163, 165, 312, and 1232 of this title] shall not apply to any obligations issued after December 31, 1982, on the exercise of a warrant or the conversion of a convertible obligation if such warrant or obligation was offered or sold

outside the United States without registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and was issued before August 10, 1982. A rule similar to the rule of the preceding sentence shall also apply in the case of any regulations issued under section 163(f)(2)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) except that the date on which such regulations take effect shall be substituted for 'August 10, 1982'.

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

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

EFFECTIVE DATE OF 1980 AMENDMENTS

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

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

1979."

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

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

EFFECTIVE DATE OF 1978 AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

a note under section 6013 of this title.

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

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

EFFECTIVE DATE OF 1975 AMENDMENTS

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

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

EFFECTIVE DATE OF 1971 AMENDMENT

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

EFFECTIVE DATE OF 1969 AMENDMENT

Section 601(b) of Pub. L. 91–172 provided that: "The amendments

made by subsection (a) [amending this section] shall apply with respect to obligations issued after October 9, 1969."

EFFECTIVE DATE OF 1968 AMENDMENT

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

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

–TRANS–

TRANSFER OF FUNCTIONS

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

–MISC2–

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

L. 97–473

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

VALIDATION OF SINKING FUND REGULATIONS

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

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

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

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

BONDS ISSUED TO REFUND SUBSECTION (O)(3) OBLIGATIONS

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101–1147 and 1171–1177] or title XVIII [Secs. 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN GUARANTEES BY FARMERS HOME ADMINISTRATION

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

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

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

TREATMENT OF CERTAIN OBLIGATIONS USED TO FINANCE SOLID WASTE DISPOSAL FACILITY

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

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

"(2) Solid waste disposal facility. – A solid waste disposal facility is described in this paragraph if such facility is described in section 103(b)(4)(E) of such Code and –

"(A) if –

"(i) a public State authority created pursuant to State legislation which took effect on July 1, 1980, took formal

action before October 19, 1983, to commit development funds for such facility,

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

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

"(B) if –

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

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

"(C) if –

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

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

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

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

"(D) if –

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

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

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

"(3) Limitations. –

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

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

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

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

TRANSITIONAL RULE FOR LIMIT ON SMALL ISSUE EXCEPTION

Section 1866 of Pub. L. 99–514, as amended by Pub. L. 100–647,
title I, Sec. 1018(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3584,

provided that: "The amendment made by section 623 of the Tax Reform

Act of 1984 [section 623 of Pub. L. 98–369, amending this section] shall not apply to any obligation (or series of obligations) issued to refund another tax–exempt IDB to which the amendment made by such section 623 did not apply if –

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

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

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

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

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

EXCEPTION FROM 1984 AMENDMENT FOR DOWNTOWN MUSKOGEE REVITALIZATION PROJECT

Section 1867(b) of Pub. L. 99–514 provided that: "The amendment made by section 624 of the Tax Reform Act of 1984 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] shall not apply to obligations issued with respect to the Downtown Muskogee Revitalization Project for which a UDAG grant was preliminarily approved on May 5, 1981, if –

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

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

TRANSITIONAL RULES

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

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

the meaning of section 103(b)(3) of such Code) if –

"(A) such obligations are not industrial development bonds

(within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 [now 1986]),

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

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

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

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

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

"(A) substantially all of the proceeds of the issue are to be used to finance –

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

"(ii) the acquisition of any interest in real property (by a governmental unit having the power to exercise eminent domain),

the preparation of such property for new use, or the transfer of such interest to a private developer, or

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

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

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

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

"(4) Eastern maine electric cooperative. – The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to obligations issued by Massachusetts Municipal Wholesale Electric Company Project No. 6 if –

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

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

"(C) such obligation is issued after such date to provide

additional financing for such project except that the aggregate amount of obligations to which this subparagraph applies shall not exceed \$45,000,000.

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

TREATMENT OF OBLIGATIONS TO FINANCE ST. JOHNS RIVER POWER PARK

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

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

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

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

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

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

"(B) Description of project. – The project described in this subparagraph in the St. Johns River Power Park system in Florida

which was authorized by legislation enacted by the Florida

Legislature in February of 1982."

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

Section 629 of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec.

2, title XIII, Sec. 1316(g)(8)(B), Oct. 22, 1986, 100 Stat. 2095,

2670, provided that:

"(a) Certain Public Utilities. – For purposes of applying section
103(b)(3) of the Internal Revenue Code [of 1986] with respect to –

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

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

the term 'exempt person' shall include a regulated public utility
having any customer service area within a State served by a public
power authority which was required as a condition of a Federal
Power Commission license specified by an Act of Congress enacted
prior to the enactment of section 107 of the Revenue and
Expenditure Control Act of 1968 (Public Law 90-364) [June 28, 1968]

to contract to sell power to one such utility and which is
authorized by State law to sell power to other such utilities, but
only with respect to the purchase by any such utility and resale to
its customers of any output of any electrical generation facility
or any portion thereof or any use of any electrical transmission
facility or any portion thereof financed by such power authority

and owned by it or by such State, and provided that by agreement between such power authority and any such utility there shall be no markup in the resale price charged by such utility of that component of the resale price which represents the price paid by such utility for such output or use. The preceding sentence shall be applied by inserting 'and a rural electric cooperative utility' after 'regulated public utility' but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility.

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

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

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

"(c) Special Rules for Subsection (a). –

"(1) Obligations subject to cap. – Any obligation described in subsection (a) shall be treated as a private activity bond for purposes of section 103(n) of the Internal Revenue Code of 1986.

"(2) Limitation on amount of obligations to which subsection (a)(1) applies – The aggregate amount of obligations to which subsection (a)(1) applies shall not exceed \$911,000,000.

"(3) Limitation on purposes. – Subsection (a)(1) shall only apply to obligations issued as part of an issue substantially all the proceeds of which are used to provide 1 or more of the following:

"(A) Cable facilities.

"(B) Small hydroelectric facilities.

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

"(D) Improvements to existing generating facilities.

"(E) Transmission lines.

"(F) Electric generating facilities."

TREATMENT OF CERTAIN RESIDENTIAL REAL PROPERTY AS RESIDENTIAL RENTAL PROPERTY

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

PUBLIC APPROVAL REQUIREMENT IN THE CASE OF PUBLIC AIRPORT

Section 628(f) of Pub. L. 98–369, as amended by Pub. L. 99–514,

Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If –

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

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

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport for purposes of

subsection (k) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to public approval for industrial development bonds)."

SMALL ISSUE LIMIT IN CASE OF CERTAIN URBAN DEVELOPMENT ACTION GRANTS

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

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

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

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

STUDENT LOAN BONDS

Section 625 of Pub. L. 98–369, as amended by Pub. L. 99–514, Sec. 2, title XVIII, Sec. 1868, Oct. 22, 1986, 100 Stat. 2095, 2888, provided that:

"(a) Arbitrage Regulations. –

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

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

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

"(2) Definitions. – For purposes of this subsection –

"(A) Qualified student loan bond. – The term 'qualified student loan bond' has the meaning given to such term by section 103(o)(3) of the Internal Revenue Code of 1986 (as amended by this Act).

"(B) Arbitrage bond. – The term 'arbitrage bond' has the meaning given to such term by section 103(c)(2).

"(3) Effective date. –

"(A) In general. – Except as otherwise provided in this paragraph, any regulations prescribed by the Secretary under paragraph (1) shall apply to obligations issued after the qualified date.

"(B) Qualified date. –

"(i) In general. – For purposes of this paragraph, the term 'qualified date' means the earlier of –

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

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

"(ii) Publication of regulations. – Notwithstanding clause (i), the qualified date shall not be a date which is prior to the date that is 6 months after the date on which the regulations prescribed under paragraph (1) are published in the Federal Register.

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

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

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

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

student loans.

"(b) Arbitrage Limitation on Student Loan Bonds Which Are Not Qualified Student Loan Bonds. – Under regulations prescribed by the Secretary of the Treasury or his delegate, any student loan bond (other than a qualified student loan bond) issued after December 31, 1985, shall be treated as an obligation not described in subsection (a)(1) or (2) of section 103 of the Internal Revenue Code of 1986 unless the issue of which such obligation is a part meets requirements similar to those of sections 103(c)(6) and 103A(i) of such Code.

"(c) Issuance of Student Loan Bonds Which Are Not Tax-Exempt. – Any issuer who may issue obligations described in section 103(a) of the Internal Revenue Code of 1986 may elect to issue student loan bonds which are not described in such section 103(a) of such Code without prejudice to –

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

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

"(d) Federal Executive Branch Jurisdiction Over Tax-Exempt Status. – For purposes of Federal law, any determination by the executive branch of the Federal Government of whether interest on any obligation is exempt from taxation under the Internal Revenue Code of 1986 shall be exclusively within the jurisdiction of the Department of the Treasury.

"(e) Study on Tax-Exempt Student Loan Bonds. –

"(1) In general. – The Comptroller General of the United States and the Director of the Congressional Budget Office, shall conduct studies of –

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

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

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

OBLIGATIONS ISSUED TO PROVIDE SOLID WASTE-ENERGY PRODUCING FACILITIES

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

"(1) General rule. – For purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any obligation issued by an authority for 2 or more political subdivisions of a State which is part of an issue substantially all of the proceeds of which are to be used to provide solid waste-energy producing

facilities shall be treated as an obligation of a political subdivision of a State which meets the requirements of section 103(b)(4)(E) of such Code (relating to solid waste disposal, etc., facilities). Nothing in the preceding sentence shall be construed to override the limitations of section 103(c) of such Code (relating to arbitrage bonds).

"(2) Solid waste–energy producing facilities. – For purposes of paragraph (1), the term 'solid waste–energy producing facilities' means any solid waste disposal facility and any facility for the production of steam and electrical energy if –

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

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

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

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

"(4) Obligations must be in registered form. – This subsection

shall not apply to any obligation which is not issued in registered form."

ALCOHOL-PRODUCING FACILITIES

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

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

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

"(i) went into full production in 1977,

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

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

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

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

"(3) Termination. – This subsection shall not apply to obligations issued after December 31, 1985."

HYDROELECTRIC GENERATING FACILITIES

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

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

"(A) the facility shall be treated as a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) without regard to clause (ii) of section 48(1)(13)(B) of such Code (relating to maximum generating capacity), and

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

"(2) Facilities to which paragraph (1) applies. – A facility is described in this paragraph if –

"(A) it would be a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) if clause (ii) of section 48(1)(13)(B) did not apply,

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

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

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

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

power production at such first dam began in 1961, and

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

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

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

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

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

STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY

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

"(a) Certain State Obligations for Renewable Energy Property. –

"(1) In general. – Paragraph (1) of subsection (b) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation issued as part of an issue

substantially all of the proceeds of which are to be used to provide renewable energy property, if –

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

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

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

"(i) \$500,000,000 or

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

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

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

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

"(b) Effective Date. – Subsection (a) shall apply with respect to obligations issued after the date of enactment of this Act [Apr. 2,

1980]."

DISPOSITION OF AMOUNTS GENERATED BY ADVANCE REFUNDING OF CERTAIN
GOVERNMENTAL OBLIGATIONS

Section 337 of Pub. L. 95–600, as amended by Pub. L. 96–222,

title I, Sec. 103(a)(8), Apr. 1, 1980, 94 Stat. 212; Pub. L.

99–514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) General Rule. – The payment to a charitable organization of a refund profit held in a trust fund or escrow arrangement, or held by an underwriter or other person under a qualified agreement in accordance with that agreement –

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

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

"(b) Rule for Governments Which Have Already Paid Arbitrage Profits to the United States. – In the case of a State or local government which, before January 1, 1977 –

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

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

which accounted to the United States for refund profit by direct payment to the United States, or by the purchase of low–interest

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

"(c) Definitions. – For purposes of this section –

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

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

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

"(4) Low-interest United States obligations. – The term

'low-interest United States obligations' means United States obligations which bear an interest rate lower than the highest rate of interest borne by public debt securities generally available for purchase at the time such obligations were purchased."

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

Section 107(b)(2) of Pub. L. 90-364, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"Section 103(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) [subsec. (b)(1), formerly subsec. (c)(1) of this section], shall not apply with respect to any obligation issued before January 1, 1969, if before May 1, 1968 –

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

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

"(C) any person (other than a governmental unit) who will use the proceeds to be derived from the sale of such obligation or

the property to be acquired or improved with such proceeds has expended (or has entered into a binding contract to expend) for purposes which are related to the use of such proceeds or property, an amount equal to or in excess of 20 percent of such proceeds; or

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

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29, 42, 45, 45D, 48, 57, 142, 143, 144, 145, 148, 149, 150, 168, 265, 465, 593, 643, 646, 667, 772, 811, 832, 834, 842, 851, 871, 1275, 1276, 1278, 1400L, 4940, 4942, 6049, 7478, 7518, 7701, 7871 of this title; title 7 section 608c; title 12 sections 1441a, 1831q; title 15 sections 77c, 78c; title 16 sections 839f, 2708; title 19 section 2345; title 45 section 1207; title 46 App. section 1177; title 48 sections 1574, 1670.

–End–

–CITE–

26 USC [Sec. 103A 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

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

–MISC1–

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

EFFECTIVE DATE OF REPEAL

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

–End–

–CITE–

26 USC Sec. 104 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 104. Compensation for injuries or sickness

–STATUTE–

(a) In general

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

- (1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;
- (2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;
- (3) amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);
- (4) amounts received as a pension, annuity, or similar

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

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

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

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

(1) In general

Subsection (a)(4) shall not apply in the case of any individual

who is not described in paragraph (2).

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

An individual is described in this paragraph if –

(A) on or before September 24, 1975, he was entitled to

receive any amount described in subsection (a)(4),

(B) on September 24, 1975, he was a member of any

organization (or reserve component thereof) referred to in

subsection (a)(4) or under a binding written commitment to

become such a member,

(C) he receives an amount described in subsection (a)(4) by

reason of a combat–related injury, or

(D) on application therefor, he would be entitled to receive

disability compensation from the Veterans' Administration.

(3) Special rules for combat–related injuries

For purposes of this subsection, the term "combat–related

injury" means personal injury or sickness –

(A) which is incurred –

(i) as a direct result of armed conflict,

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

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

In the case of an individual who is not described in subparagraph

(A) or (B) of paragraph (2), except as provided in paragraph (4),

the only amounts taken into account under subsection (a)(4) shall

be the amounts which he receives by reason of a combat–related

injury.

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

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

(c) Application of prior law in certain cases

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

(1) which is a wrongful death action, and

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

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

(d) Cross references

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

(2) For exclusion of part of disability retirement pay from

the application of subsection (a)(4) of this section, see section 1403 of title 10, United States Code (relating to career compensation laws).

–SOURCE–

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

–REFTEXT–

REFERENCES IN TEXT

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

–MISC1–

AMENDMENTS

2002 – Subsec. (a)(5). Pub. L. 107–134 substituted "a terroristic or military action (as defined in section 692(c)(2))." for "a violent attack which the Secretary of State determines to be a

terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States."

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

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

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

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

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

1983 – Subsec. (a)(2). Pub. L. 97–473 substituted "whether by

suit or agreement and whether as lump sums or as periodic payments"

for "whether by suit or agreement".

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

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

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

Subsecs. (b), (c). Pub. L. 94–455, Sec. 505(b), added subsec.

(b), redesignated former subsec. (b) as (c) and, as so

redesignated, Sec. 1901(a)(18)(B), substituted "1403 of title 10,

United States Code (relating to career compensation laws)" for

"402(h) of the Career Compensation Act of 1949 (37 U.S.C. 272(h))".

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

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

–CHANGE–

CHANGE OF NAME

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

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

-MISC2-

EFFECTIVE DATE OF 2002 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENTS

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

1996."

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

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

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

"(2) Exception. – The amendment made by subsection (a) shall not apply to any amount received –

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

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

Relations and Intercourse.

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

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

EFFECTIVE DATE OF 1962 AMENDMENT

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

EFFECTIVE DATE OF 1960 AMENDMENT

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

-TRANS-

TRANSFER OF FUNCTIONS

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

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

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 105, 130, 5891, 6051, 7701 of this title; title 10 section 1403.

–End–

–CITE–

26 USC Sec. 105 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 105. Amounts received under accident and health plans

–STATUTE–

(a) Amounts attributable to employer contributions

Except as otherwise provided in this section, amounts received by an employee through accident or health insurance for personal

injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

(b) Amounts expended for medical care

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152). Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

(c) Payments unrelated to absence from work

Gross income does not include amounts referred to in subsection

(a) to the extent such amounts –

(1) constitute payment for the permanent loss or loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, his spouse, or a dependent (as defined in section 152), and

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

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

(e) Accident and health plans

For purposes of this section and section 104 –

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

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

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

(f) Rules for application of section 213

For purposes of section 213(a) (relating to medical, dental, etc., expenses) amounts excluded from gross income under subsection

(c) or (d) shall not be considered as compensation (by insurance or otherwise) for expenses paid for medical care.

(g) Self-employed individual not considered an employee

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

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

(1) In general

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

individual.

(2) Prohibition of discrimination

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

- (A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and
- (B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

(3) Nondiscriminatory eligibility classifications

(A) In general

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

- (i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or
- (ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated individuals.

(B) Exclusion of certain employees

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

- (i) employees who have not completed 3 years of service;
- (ii) employees who have not attained age 25;

- (iii) part-time or seasonal employees;
- (iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and
- (v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

(5) Highly compensated individual defined

For purposes of this subsection, the term "highly compensated individual" means an individual who is –

- (A) one of the 5 highest paid officers,
- (B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or
- (C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not

participants).

(6) Self-insured medical reimbursement plan

The term "self-insured medical reimbursement plan" means a plan of an employer to reimburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

(7) Excess reimbursement of highly compensated individual

For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is –

(A) in the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph

(2)(B)), the amount reimbursed under the plan to the employee with respect to such benefit, and

(B) in the case of benefits (other than benefits described in subparagraph (A) (!1) paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction –

(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and

(ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year.

In determining the fraction under subparagraph (B), there shall not be taken into account any reimbursement which is attributable to a benefit described in subparagraph (A).

(8) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(9) Regulations

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

(10) Time of inclusion

Any amount paid for a plan year that is included in income by reason of this subsection shall be treated as received or accrued in the taxable year of the participant in which the plan year ends.

(i) Sick pay under Railroad Unemployment Insurance Act

Notwithstanding any other provision of law, gross income includes benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness; except to the extent such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 87–792, Sec. 7(e), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–272, title II, Sec. 205(a), Feb. 26, 1964, 78 Stat. 38; Pub. L. 94–455, title V, Sec. 505(a), title XIX, Sec. 1901(c)(2), Oct. 4, 1976, 90 Stat. 1566, 1803; Pub.

L. 95–600, title III, Sec. 366(a), title VII, Sec. 701(c)(1), Nov. 6, 1978, 92 Stat. 2855, 2899; Pub. L. 96–222, title I, Sec. 103(a)(13)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96–605, title II, Sec. 201(b)(1), Dec. 28, 1980, 94 Stat. 3527; Pub. L. 96–613, Sec. 5(b)(1), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 97–34, title I, Secs. 103(c)(2), 111(b)(4), Aug. 13, 1981, 95 Stat. 188, 194; Pub. L. 97–248, title II, Sec. 202(b)(3)(C), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98–21, title I, Sec. 122(b), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–76, title II, Sec. 241(a), Aug. 12, 1983, 97 Stat. 430; Pub. L. 98–369, div. A, title IV, Sec. 423(b)(2), July 18, 1984, 98 Stat. 800; Pub. L. 99–514, title XI, Sec. 1151(c)(2), title XIII, Sec. 1301(j)(9), Oct. 22, 1986, 100 Stat. 2503, 2658; Pub. L. 101–140, title II, Sec. 203(a)(1), Nov. 8, 1989, 103 Stat. 830.)

–REFTEXT–

REFERENCES IN TEXT

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (i), is classified to section 352(a) of Title 45, Railroads.

–MISC1–

AMENDMENTS

1989 – Subsecs. (h), (i). Pub. L. 101–140 amended subsecs. (h) and (i) to read as if amendments by Pub. L. 99–514, Sec. 1151(c)(2), had not been enacted, see 1986 Amendment note below.

1986 – Subsec. (d)(5)(C). Pub. L. 99–514, Sec. 1301(j)(9), which directed that subpar. (C) be amended by substituting "section

7703(a)" for "section 143(a)", could not be executed because subsec. (d) was previously repealed by Pub. L. 98–21. See 1983 Amendment note below.

Subsecs. (h), (i). Pub. L. 99–514, Sec. 1151(c)(2), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan.

1984 – Subsec. (b). Pub. L. 98–369 inserted "Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection."

1983 – Subsec. (d). Pub. L. 98–21 struck out subsec. (d) which provided that no deduction or credit would be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsec. (a).

Subsec. (i). Pub. L. 98–76 added subsec. (i).

1982 – Subsec. (b). Pub. L. 97–248 substituted "section 213(d)" for "section 213(e)".

1981 – Subsec. (d)(3). Pub. L. 97–34, Sec. 103(c)(2), substituted "this subsection and section 221" for "this subsection" in parenthetical provision.

Subsec. (h)(3)(B)(v). Pub. L. 97–34, Sec. 111(b)(4), substituted "section 911(d)(2)" for "section 911(b)".

1980 – Subsec. (h)(3)(A). Pub. L. 96–222, Sec. 103(a)(13)(B), substituted "highly compensated individuals" for "highly compensated participants".

Subsec. (h)(7)(A). Pub. L. 96–222, Sec. 103(a)(13)(C),

substituted "highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B))" for "a highly compensated individual but not to a broad cross-section of employees".

Subsec. (h)(8). Pub. L. 96-613 and Pub. L. 96-605 made identical amendments by substituting in heading "controlled groups, etc." for "controlled groups", and by substituting in text "subsection (b), (c), or (m) of section 414" for "subsection (b) or (c) of section 414".

1978 – Subsec. (d)(4). Pub. L. 95-600, Sec. 701 (c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (5)(A) and (C).

Subsec. (d)(5). Pub. L. 95-600, Sec. 701(c)(1), added heading and subpar. (B), redesignated former par. (4) as subpars. (A) and (C), adding subpar. (C) heading and substituting "section 143(a)" for "section 143"; and redesignated former par. (6) as subpar. (D), inserting "defined" in heading.

Subsec. (d)(6), (7). Pub. L. 95-600, Sec. 701(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5)(D).

Subsec. (h). Pub. L. 95-600, Sec. 366(a), added subsec. (h).

1976 – Subsec. (d). Pub. L. 94-455, Sec. 505(a), substituted provisions relating to an exclusion of up to \$5,200 a year for taxpayers retiring on disability prior to age 65; dollar-for-dollar phase out of exclusion for adjusted annual gross income (including disability income) in excess of \$15,000; requirement that married couple must file joint return; defined "permanent and total

disability" and "joint return"; and inserted special rule for coordination with section 72 of this title for provisions relating to wage continuation plans.

Subsec. (e)(2). Pub. L. 94-455, Sec. 1901(c)(2), struck out "a territory" after "of a State".

1964 – Subsec. (d). Pub. L. 88-272 substituted provisions stating that "The preceding sentence shall not apply to amounts attributable to the first 30" days if the amounts exceed 75 percent of regular weekly wages, and if they do not exceed said 75 percent, the first sentence of this subsection shall not apply to the extent the amounts exceed \$75 weekly and shall not apply to amounts attributable to the first 7 calendar days unless the employee is hospitalized for injury or sickness for at least 1 day in such period, for provisions stating that said "preceding sentence" did not apply in cases of sickness, to amounts attributable to the first 7 days unless the employee was hospitalized for sickness for at least 1 day during such period.

1962 – Subsec. (g). Pub. L. 87-792 added subsec. (g).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-140 effective as if included in section 1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(c)(2) of Pub. L. 99-514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99-514, as

amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(9) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 241(b) of Pub. L. 98-76 provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1983, in taxable years ending after such date."

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under subsec. (d)(6) as in effect the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21 set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1983, see section 202(c) of Pub. L. 97-248, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see sections 103(d) and 115 of Pub. L. 97-34, set out as notes under sections 62 and 911, respectively, of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendments by Pub. L. 96-605 and 96-613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980, where amendments applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96-605 and section 5(c) of Pub. L. 96-613, set out as a note under section 414 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 366(b) of Pub. L. 95-600, as amended by Pub. L. 96-222, title I, Sec. 103(a)(13)(D), Apr. 1, 1980, 94 Stat. 213, provided that: "The amendment made by this section [amending this section] shall apply to amounts reimbursed after December 31, 1979. For purposes of applying such amendment, there shall not be taken into account any amount reimbursed before January 1, 1980."

Section 701(c)(3) of Pub. L. 95-600, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) The amendments made by paragraphs (1) and (2)(A) [amending

this section and provisions set out as a note under this section] shall take effect as if included in section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as such section was amended by section 505(a) of the Tax Reform Act of 1976.

"(B) The amendments made by paragraph (2)(B) [amending provisions set out as notes under this section] shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977 [Pub. L. 95-30, title III, Sec. 301, May 23, 1977, 91 Stat. 152]."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 505(f) of Pub. L. 94-455, as added by Pub. L. 95-30, title III, Sec. 301(a), May 23, 1977, 91 Stat. 151, provided that:

"The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976."

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

EFFECTIVE DATE OF 1964 AMENDMENT

Section 205(b) of Pub. L. 88-272 provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts attributable to periods of absence commencing after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a

note under section 22 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101-136 to be used to implement or enforce section 1151 of Pub. L. 99-514 or the amendments made by such section, see section 528 of Pub. L. 101-136, set out as a note under section 89 of this title.

REVOCATION OF ELECTION

Pub. L. 95-30, title III, Sec. 301(c), May 23, 1977, 91 Stat. 151, as amended by Pub. L. 95-600, title VII, Sec. 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Any election made under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] for a taxable year beginning in 1976 may be revoked (in such manner as may be prescribed by regulations) at any time before the expiration of the period for assessing a deficiency with respect to such taxable year (determined without regard to subsection (d) of this section) [set out below]."

PERIOD FOR ASSESSING DEFICIENCY

Pub. L. 95-30, title III, Sec. 301(d), May 23, 1977, 91 Stat. 152, provided that: "In the case of any revocation made under subsection (c) [set out above], the period for assessing a deficiency with respect to any taxable year affected by the revocation shall not expire before the date which is 1 year after the date of the making of the revocation, and, notwithstanding any

law or rule of law, such deficiency, to the extent attributable to such revocation, may be assessed at any time during such 1-year period."

EFFECTIVE DATE OF CHANGES IN EXCLUSION FOR SICK PAY

Pub. L. 95-30, title III, Sec. 301(e), May 23, 1977, 91 Stat.

152, as amended by Pub. L. 95-600, title VII, Sec. 701(c)(2)(B),

Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99-514, Sec. 2, Oct. 22, 1986,

100 Stat. 2095, provided that: "The amendments made by this section

[enacting and amending provisions set out as notes under this section] shall take effect on October 4, 1976, but shall not apply

—

"(1) with respect to any taxpayer who makes or has made an election under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] (as such sections were in effect before the enactment of this Act [May 23, 1977]) for a taxable year beginning in 1976, if such election is not revoked under subsection (c) of this section [set out above], and

"(2) with respect to any taxpayer (other than a taxpayer described in paragraph (1)) who has an annuity starting date at the beginning of a taxable year beginning in 1976 by reason of the amendments made by section 505 of the Tax Reform Act of 1976 [amending this section and section 104 of this title and enacting provisions set out as notes under this section] (as in effect before the enactment of this Act [May 23, 1977]), unless such person elects (in such manner as the Secretary of the Treasury or

his delegate may by regulations prescribe) to have such amendments apply."

SPECIAL RULE FOR EXISTING PERMANENT AND TOTAL DISABILITY CASES

Section 505(c) of Pub. L. 94-455, as amended by Pub. L. 95-30, title III, Sec. 301(b)(1), (2), May 23, 1977, 91 Stat. 151; Pub. L. 95-600, title VII, Sec. 701(c)(2)(A), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of any individual who –

"(1) retired before January 1, 1977,

"(2) either retired on disability or was entitled to retire on disability, and

"(3) on January 1, 1976, or January 1, 1977, was permanently and totally disabled (within the meaning of section 105(d)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), such individual shall be deemed to have met the requirements of section 105(d)(1)(B) of such Code (as amended by subsection (a) of this section)."

SPECIAL RULE FOR COORDINATION WITH SECTION 72 OF THIS TITLE

Section 505(d) of Pub. L. 94-455, as amended by Pub. L. 95-30, title III, Sec. 301(b)(3)-(5), May 23, 1977, 91 Stat. 151; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of an individual who –

"(1) retired on disability before January 1, 1977, and

"(2) on December 31, 1975, or December 31, 1976, was entitled to exclude any amount with respect to such retirement disability from gross income under section 105(d) of the Internal Revenue

Code of 1986 [formerly I.R.C. 1954],
for purposes of section 72 the annuity starting date shall not be
deemed to occur before the beginning of the taxable year in which
the taxpayer attains age 65, or before the beginning of an earlier
taxable year for which the taxpayer makes an irrevocable election
not to seek the benefits of such section 105(d) for such year and
all subsequent years."

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 51A, 213, 3401,
6039D, 7701, 7871 of this title.

–FOOTNOTE–

(11) So in original. Probably should be followed by a closing
parenthesis.

–End–

–CITE–

26 USC Sec. 106 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 106. Contributions by employer to accident and health plans

–STATUTE–

(a) General rule

Except as otherwise provided in this section, gross income of an employee does not include employer–provided coverage under an accident or health plan.

(b) Contributions to Archer MSAs

(1) In general

In the case of an employee who is an eligible individual, amounts contributed by such employee's employer to any Archer MSA of such employee shall be treated as employer–provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 220(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) No constructive receipt

No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

(3) Special rule for deduction of employer contributions

Any employer contribution to an Archer MSA, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

(4) Employer MSA contributions required to be shown on return

Every individual required to file a return under section 6012 for the taxable year shall include on such return the aggregate amount contributed by employers to the Archer MSAs of such

individual or such individual's spouse for such taxable year.

(5) MSA contributions not part of COBRA coverage

Paragraph (1) shall not apply for purposes of section 4980B.

(6) Definitions

For purposes of this subsection, the terms "eligible individual" and "Archer MSA" have the respective meanings given to such terms by section 220.

(7) Cross reference

For penalty on failure by employer to make comparable contributions to the Archer MSAs of comparable employees, see section 4980E.

(c) Inclusion of long-term care benefits provided through flexible spending arrangements

(1) In general

Effective on and after January 1, 1997, gross income of an employee shall include employer-provided coverage for qualified long-term care services (as defined in section 7702B(c)) to the extent that such coverage is provided through a flexible spending or similar arrangement.

(2) Flexible spending arrangement

For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which –

(A) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

(B) the maximum amount of reimbursement which is reasonably

available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 99–272, title X, Sec. 10001(b), Apr. 7, 1986, 100 Stat. 223; Pub. L. 99–514, title XI, Secs. 1114(b)(1), 1151(j)(2), Oct. 22, 1986, 100 Stat. 2450, 2508; Pub. L. 100–647, title I, Sec. 1018(t)(7)(A), title III, Sec. 3011(b)(1), Nov. 10, 1988, 102 Stat. 3589, 3624; Pub. L. 101–239, title VII, Sec. 7862(c)(1)(A), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 104–191, title III, Secs. 301(c)(1), 321(c)(2), Aug. 21, 1996, 110 Stat. 2048, 2058; Pub. L. 106–554, Sec. 1(a)(7) [title II, Sec. 202(a)(2), (b)(2)(A), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629.)

–REFTEXT–

REFERENCES IN TEXT

COBRA, referred to in the heading for subsec. (b)(5), probably means the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82, as amended. For complete classification of this Act to the Code, see Tables.

–MISC1–

AMENDMENTS

2000 – Subsec. (b). Pub. L. 106–554 Sec. 1(a)(7) [title II, Sec. 202(b)(6)], substituted "Archer MSAs" for "medical savings

accounts" in heading.

Subsec. (b)(1). Pub. L. 106–554 Sec. 1(a)(7) [title II, Sec. 202(a)(2)], substituted "Archer MSA" for "medical savings account".

Subsec. (b)(3). Pub. L. 106–554 Sec. 1(a)(7) [title II, Sec. 202(b)(10)], substituted "an Archer MSA" for "a Archer MSA".

Pub. L. 106–554 Sec. 1(a)(7) [title II, Sec. 202(a)(2)], substituted "Archer MSA" for "medical savings account".

Subsec. (b)(4). Pub. L. 106–554, Sec. 1(a)(7) [title II, Sec. 202(b)(2)(A)], substituted "Archer MSAs" for "medical savings accounts".

Subsec. (b)(6). Pub. L. 106–554 Sec. 1(a)(7) [title II, Sec. 202(a)(2)], substituted "Archer MSA" for "medical savings account".

Subsec. (b)(7). Pub. L. 106–554, Sec. 1(a)(7) [title II, Sec. 202(b)(2)(A)], substituted "Archer MSAs" for "medical savings accounts".

1996 – Pub. L. 104–191, Sec. 301(c)(1), amended text generally.

Prior to amendment, text read as follows: "Gross income of an employee does not include employer–provided coverage under an accident or health plan."

Subsec. (c). Pub. L. 104–191, Sec. 321(c)(2), added subsec. (c).

1989 – Subsec. (b)(2). Pub. L. 101–239 amended subsec. (b)(2) as it existed prior to general amendment by Pub. L. 100–647 by striking out the last sentence which read as follows: "Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 (relating to employers under common control) shall apply for purposes of subparagraph (A)." See Effective Date of 1989

Amendment note below.

1988 – Pub. L. 100–647, Sec. 3011(b)(1), amended section generally, substituting a single undesignated par. for former subsec. (a) providing that gross income does not include employer–provided coverage under an accident or health plan and subsec. (b) providing for an exception for highly compensated individuals where a plan fails to provide certain continuation coverage.

Subsec. (b)(1). Pub. L. 100–647, Sec. 1018(t)(7)(A), substituted "any employer–provided coverage" for "any amount contributed by an employer" and "under a group" for "to a group".

1986 – Pub. L. 99–272 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

Subsec. (a). Pub. L. 99–514, Sec. 1151(j)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness."

Subsec. (b)(1). Pub. L. 99–514, Sec. 1114(b)(1), substituted "highly compensated employee (within the meaning of section 414(q))" for "highly compensated individual (within the meaning of section 105(h)(5))".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(c)(1) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(2) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7862(c)(1)(C) of Pub. L. 101–239 provided that: "The amendments made by this paragraph [amending this section and section 1161 of Title 29, Labor] shall apply to years beginning after December 31, 1986."

Section 7863 of Pub. L. 101–239 provided that: "Except as otherwise provided in this subpart any amendment made by this subpart [subpart A (Secs. 7861–7863) of part V of title VII of Pub. L. 101–239, amending this section and sections 162, 411, 417, and 4980B of this title and sections 1052 to 1055, 1161, 1162, 1167, 1398, and 1461 of Title 29, Labor, enacting provisions set out as notes under this section and sections 162, 417, 1167, 4980, and 4980B of this title, and amending provisions set out as notes under sections 401 and 411 of this title and sections 1001 and 1054 of Title 29], shall take effect as if included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(t)(7)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3011(b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1114(b)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(j)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Section 10001(e) of Pub. L. 99–272 provided that:

"(1) General rule. – The amendments made by this section [amending this section and section 162 of this title] shall apply to plan years beginning on or after July 1, 1986.

"(2) Special rule for collective bargaining agreements. – In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of –

"(A) the date on which the last of the collective bargaining

agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

"(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101-136 to be used to implement or enforce section 1151 of Pub. L. 99-514 or the amendments made by such section, see section 528 of Pub. L. 101-136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101-1147 and 1171-1177] or title XVIII [Secs. 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.

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51A, 104, 125, 220, 414, 3231, 3306, 3401, 4973, 6039D, 7701 of this title; title 29 section 1167.

–End–

–CITE–

26 USC Sec. 107 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 107. Rental value of parsonages

–STATUTE–

In the case of a minister of the gospel, gross income does not include –

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental

value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 107–181, Sec. 2(a), May 20, 2002, 116 Stat. 583.)

–MISC1–

AMENDMENTS

2002 – Par. (2). Pub. L. 107–181 inserted "and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities" before period at end.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–181, Sec. 2(b), May 20, 2002, 116 Stat. 583, provided that:

"(1) In general. – The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.

"(2) Returns positions. – The amendment made by this section also shall apply to any taxable year beginning before January 1, 2002, for which the taxpayer –

"(A) on a return filed before April 17, 2002, limited the exclusion under section 107 of the Internal Revenue Code of 1986 as provided in such amendment, or

"(B) filed a return after April 16, 2002.

"(3) Other years before 2002. – Except as provided in paragraph (2), notwithstanding any prior regulation, revenue ruling, or other

guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section 107 of such Code by this Act for any taxable year beginning before January 1, 2002."

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 265, 1402 of this title; title 42 section 411.

–End–

–CITE–

26 USC Sec. 108 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 108. Income from discharge of indebtedness

–STATUTE–

(a) Exclusion from gross income

(1) In general

Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer

if –

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm

indebtedness, or

(D) in the case of a taxpayer other than a C corporation, the

indebtedness discharged is qualified real property business

indebtedness.

(2) Coordination of exclusions

(A) Title 11 exclusion takes precedence

Subparagraphs (B), (C), and (D) of paragraph (1) shall not

apply to a discharge which occurs in a title 11 case.

(B) Insolvency exclusion takes precedence over qualified farm

exclusion and qualified real property business exclusion

Subparagraphs (C) and (D) of paragraph (1) shall not apply to

a discharge to the extent the taxpayer is insolvent.

(3) Insolvency exclusion limited to amount of insolvency

In the case of a discharge to which paragraph (1)(B) applies,

the amount excluded under paragraph (1)(B) shall not exceed the

amount by which the taxpayer is insolvent.

(b) Reduction of tax attributes

(1) In general

The amount excluded from gross income under subparagraph (A),

(B), or (C) of subsection (a)(1) shall be applied to reduce the

tax attributes of the taxpayer as provided in paragraph (2).

(2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to

in paragraph (1) shall be made in the following tax attributes in

the following order:

(A) NOL

Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) General business credit

Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) Minimum tax credit

The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) Capital loss carryovers

Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) Basis reduction

(i) In general

The basis of the property of the taxpayer.

(ii) Cross reference

For provisions for making the reduction described in clause

(i), see section 1017.

(F) Passive activity loss and credit carryovers

Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) Foreign tax credit carryovers

Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) Amount of reduction

(A) In general

Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) Credit carryover reduction

The reductions described in subparagraphs (B), (C), and (G) shall be 33 1/3 cents for each dollar excluded by subsection

(a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33 1/3 cents for each dollar excluded by subsection (a).

(4) Ordering rules

(A) Reductions made after determination of tax for year

The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

(B) Reductions under subparagraph (A) or (D) of paragraph (2)

The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) Reductions under subparagraphs (B) and (G) of paragraph (2)

The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

(5) Election to apply reduction first against depreciable property

(A) In general

The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) Limitation

The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) Other tax attributes not reduced

Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) Treatment of discharge of qualified real property business indebtedness

(1) Basis reduction

(A) In general

The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of

the depreciable real property of the taxpayer.

(B) Cross reference

For provisions making the reduction described in subparagraph

(A), see section 1017.

(2) Limitations

(A) Indebtedness in excess of value

The amount excluded under subparagraph (D) of subsection

(a)(1) with respect to any qualified real property business

indebtedness shall not exceed the excess (if any) of –

(i) the outstanding principal amount of such indebtedness

(immediately before the discharge), over

(ii) the fair market value of the real property described

in paragraph (3)(A) (as of such time), reduced by the

outstanding principal amount of any other qualified real

property business indebtedness secured by such property (as

of such time).

(B) Overall limitation

The amount excluded under subparagraph (D) of subsection

(a)(1) shall not exceed the aggregate adjusted bases of

depreciable real property (determined after any reductions

under subsections (b) and (g)) held by the taxpayer immediately

before the discharge (other than depreciable real property

acquired in contemplation of such discharge).

(3) Qualified real property business indebtedness

The term "qualified real property business indebtedness" means

indebtedness which –

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness.

Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) Qualified acquisition indebtedness

For purposes of paragraph (3)(B), the term "qualified acquisition indebtedness" means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) Meaning of terms; special rules relating to certain provisions

(1) Indebtedness of taxpayer

For purposes of this section, the term "indebtedness of the taxpayer" means any indebtedness –

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) Title 11 case

For purposes of this section, the term "title 11 case" means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) Insolvent

For purposes of this section, the term "insolvent" means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

[(4) Repealed. Pub. L. 99–514, title VIII, Sec. 822(b)(3)(A), Oct. 22, 1986, 100 Stat. 2373]

(5) Depreciable property

The term "depreciable property" has the same meaning as when used in section 1017.

(6) Certain provisions to be applied at partner level

In the case of a partnership, subsections (a), (b), (c), and

(g) shall be applied at the partner level.

(7) Special rules for S corporation

(A) Certain provisions to be applied at corporate level

In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) Reduction in carryover of disallowed losses and deductions

In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) Coordination with basis adjustments under section 1367(b)(2)

For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) Reductions of tax attributes in title 11 cases of individuals to be made by estate

In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding

sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) Time for making election, etc.

(A) Time

An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) Revocation only with consent

An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) Manner

An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) Cross reference

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) General rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)

For purposes of this title –

(1) No other insolvency exception

Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) Income not realized to extent of lost deductions

No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) Adjustments for unamortized premium and discount

The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) Acquisition of indebtedness by person related to debtor

(A) Treated as acquisition by debtor

For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) Members of family

For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any

spouse of the individual's children or grandchildren.

(C) Entities under common control treated as related

For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) Purchase–money debt reduction for solvent debtor treated as price reduction

If –

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur –

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness, then such reduction shall be treated as a purchase price adjustment.

(6) Indebtedness contributed to capital

Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital –

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the

indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) Recapture of gain on subsequent sale of stock

(A) In general

If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245 –

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor –

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange, shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) Special rule for cash basis taxpayers

In the case of any creditor who computes his taxable income

under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) Stock of parent corporation

For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) Treatment of successor corporation

For purposes of this paragraph, the term "debtor corporation" includes a successor corporation.

(E) Partnership rule

Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) Indebtedness satisfied by corporation's stock

For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock.

(9) Discharge of indebtedness income not taken into account in determining whether entity meets REIT qualifications

Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) Indebtedness satisfied by issuance of debt instrument

(A) In general

For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) Issue price

For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274.

For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) Student loans

(1) In general

In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad

class of employers.

(2) Student loan

For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by –

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation –

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made –

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and

under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term "student loan" includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) Exception for discharges on account of services performed for certain lenders

Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(g) Special rules for discharge of qualified farm indebtedness

(1) Discharge must be by qualified person

(A) In general

Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) Qualified person

For purposes of subparagraph (A), the term "qualified person" has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) Qualified farm indebtedness

For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if –

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets

(A) In general

The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of –

(i) the adjusted tax attributes of the taxpayer, and
(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) Adjusted tax attributes

For purposes of subparagraph (A), the term "adjusted tax attributes" means the sum of the tax attributes described in subparagraphs (A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account \$3 for each \$1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph

(F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) Qualified property

For purposes of this paragraph, the term "qualified property" means any property which is used or is held for use in a trade or business or for the production of income.

(D) Coordination with insolvency exclusion

For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 32; June 29, 1956, ch. 463, Sec. 5, 70 Stat. 403; Pub. L. 88–496, Sec. 1(a), June 8, 1960, 74 Stat. 164; Pub. L. 94–455, title XIX, Secs. 1906(b)(13)(A), 1951(b)(2)(A), Oct. 4, 1976, 90 Stat. 1834, 1836; Pub. L. 96–589, Sec. 2(a), Dec. 24, 1980, 94 Stat. 3389; Pub. L. 97–354, Sec. 3(e), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, Sec. 102(h)(1), title III, Sec. 304(d), Jan. 12, 1983, 96 Stat. 2372, 2398; Pub. L. 98–369, div. A, title I, Sec. 59(a), (b)(1), title IV, Sec. 474(r)(5), title VII, Sec. 721(b)(2), title X, Sec. 1076(a), July 18, 1984, 98 Stat. 576, 839, 966, 1053; Pub. L. 99–514, title I, Sec. 104(b)(2), title II, Sec. 231(d)(3)(D), title IV, Sec. 405(a), title VI, Sec. 621(e)(1), title VIII, Secs. 805(c)(2)–(4), 822(a), (b)(1)–(3), title XI, Sec. 1171(b)(4), title

XVIII, Sec. 1847(b)(7), Oct. 22, 1986, 100 Stat. 2105, 2179, 2224, 2266, 2362, 2373, 2513, 2856; Pub. L. 100–647, title I, Sec. 1004(a)(1)–(4), (6), Nov. 10, 1988, 102 Stat. 3385, 3387; Pub. L. 101–508, title XI, Secs. 11325(a)(1), (b), 11813(b)(6), Nov. 5, 1990, 104 Stat. 1388–466, 1388–551; Pub. L. 103–66, title XIII, Secs. 13150(a)–(c)(5), 13226(a)(1), (2)(B), (b)(1)–(3), Aug. 10, 1993, 107 Stat. 446–448, 487, 488; Pub. L. 104–188, title I, Sec. 1703(n)(2), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title II, Sec. 225(a), Aug. 5, 1997, 111 Stat. 820; Pub. L. 105–206, title VI, Sec. 6004(f), July 22, 1998, 112 Stat. 795; Pub. L. 107–147, title IV, Sec. 402(a), Mar. 9, 2002, 116 Stat. 40.)

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AMENDMENTS

2002 – Subsec. (d)(7)(A). Pub. L. 107–147 inserted ", including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section" before period at end.

1998 – Subsec. (f)(2). Pub. L. 105–206, Sec. 6004(f)(1), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "The term 'student loan' includes any loan made by an educational organization so described or by an organization exempt from tax under section 501(a) to refinance a loan meeting the requirements of the preceding sentence."

Subsec. (f)(3). Pub. L. 105–206, Sec. 6004(f)(2), struck out "(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))" after

"paragraph (2)(D)".

1997 – Subsec. (f)(2). Pub. L. 105–34, Sec. 225(a)(1), added subpar. (D) and concluding provisions and struck out former subpar. (D) which read as follows: "any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization."

Subsec. (f)(2)(B). Pub. L. 105–34, Sec. 225(a)(1), struck out "or" at end.

Subsec. (f)(3). Pub. L. 105–34, Sec. 225(a)(2), added par. (3).

1996 – Subsec. (d)(9)(A). Pub. L. 104–188 substituted "paragraph (3)(C)" for "paragraph (3)(B)".

1993 – Subsec. (a)(1)(D). Pub. L. 103–66, Sec. 13150(a), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 103–66, Sec. 13150(c)(1), substituted ", (C), and (D)" for "and (C)".

Subsec. (a)(2)(B). Pub. L. 103–66, Sec. 13150(c)(2), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

Subsec. (b)(2)(C) to (E). Pub. L. 103–66, Sec. 13226(b)(1), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 103–66, Sec. 13226(b)(2), added subpar. (F). Former subpar. (F) redesignated (G).

Pub. L. 103–66, Sec. 13226(b)(1), redesignated subpar. (E) as

(F).

Subsec. (b)(2)(G). Pub. L. 103–66, Sec. 13226(b)(2), redesignated subpar. (F) as (G).

Subsec. (b)(3)(B). Pub. L. 103–66, Sec. 13226(b)(3)(A), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "The reductions described in subparagraphs (B) and (E) of paragraph (2) shall be 33 1/3 cents for each dollar excluded by subsection (a)."

Subsec. (b)(4)(B). Pub. L. 103–66, Sec. 13226(b)(3)(B), substituted "(D)" for "(C)" in heading and text.

Subsec. (b)(4)(C). Pub. L. 103–66, Sec. 13226(b)(3)(C), substituted "(G)" for "(E)" in heading and text.

Subsec. (c). Pub. L. 103–66, Sec. 13150(b), added subsec. (c).

Subsec. (d). Pub. L. 103–66, Sec. 13150(c)(3)(B), substituted "certain provisions" for "subsections (a), (b) and (g)" in heading.

Subsec. (d)(6), (7)(A). Pub. L. 103–66, Sec. 13150(c)(3)(A), (C), substituted "Certain provisions" for "Subsections (a), (b) and (g)" in heading and "subsections (a), (b), (c), and (g)" for "subsections (a), (b), and (g)" in text.

Subsec. (d)(7)(B). Pub. L. 103–66, Sec. 13150(c)(4), inserted at end "The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge."

Subsec. (d)(9)(A). Pub. L. 103–66, Sec. 13150(c)(5), inserted "or under paragraph (3)(B) of subsection (c)" after "subsection (b)".

Subsec. (e)(6). Pub. L. 103–66, Sec. 13226(a)(2)(B), substituted "Except as provided in regulations, for" for "For".

Subsec. (e)(8). Pub. L. 103–66, Sec. 13226(a)(1)(B), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "For purposes of determining income of the debtor from discharge of indebtedness, the stock for debt exception shall not apply –

"(A) to the issuance of nominal or token shares, or

"(B) with respect to an unsecured creditor, where the ratio of the value of the stock received by such unsecured creditor to the amount of his indebtedness cancelled or exchanged for stock in the workout is less than 50 percent of a similar ratio computed for all unsecured creditors participating in the workout.

Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph."

Subsec. (e)(10), (11). Pub. L. 103–66, Sec. 13226(a)(1)(A), redesignated par. (11) as (10) and struck out former par. (10) which related to satisfaction of indebtedness by transfer of corporation's stock.

Subsec. (g)(3)(B). Pub. L. 103–66, Sec. 13226(b)(3)(D), substituted "subparagraphs (A), (B), (C), (D), (F), and (G)" for "subparagraphs (A), (B), (C), and (E)" and "subparagraphs (B), (C), and (G)" for "subparagraphs (B) and (E)" and inserted before period at end "and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover".

1990 – Subsec. (e)(8). Pub. L. 101–508, Sec. 11325(b)(2),

inserted provision at end that any stock which is a disqualified stock, as so defined, not be treated as stock for purposes of this paragraph.

Subsec. (e)(10)(B). Pub. L. 101–508, Sec. 11325(b)(1), substituted heading for one which read: "Exception for title 11 cases and insolvent debtors" and amended text generally. Prior to amendment, text read as follows: "Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent."

Subsec. (e)(11). Pub. L. 101–508, Sec. 11325(a)(1), added par. (11).

Subsec. (g)(1)(B). Pub. L. 101–508, Sec. 11813(b)(6), substituted "section 49(a)(1)(D)(iv)" for "section 46(c)(8)(D)(iv)".

1988 – Subsec. (a)(1)(C). Pub. L. 100–647, Sec. 1004(a)(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 100–647, Sec. 1004(a)(2), amended par.

(2) generally. Prior to amendment, par. (2) read as follows:

"Subparagraph (B) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case."

Subsec. (b). Pub. L. 100–647, Sec. 1004(a)(3), struck out "in title 11 case or insolvency" after "Reduction of tax attributes" in heading and substituted "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)" in text of par. (1).

Subsec. (d). Pub. L. 100–647, Sec. 1004(a)(6)(B), which directed amendment of subsec. (d) heading by substituting "subsections (a), (b), and (g)" for "subsections (a), and (b)", was executed by

making the substitution for "subsections (a) and (b)" as the probable intent of Congress.

Subsec. (d)(6). Pub. L. 100–647, Sec. 1004(a)(6)(A), (C), substituted "Subsections (a), (b), and (g)" for "Subsections (a) and (b)" in heading and "subsections (a), (b), and (g)" for "subsections (a) and (b)" in text.

Subsec. (d)(7)(A). Pub. L. 100–647, Sec. 1004(a)(6)(A), (C), substituted "Subsections (a), (b), and (g)" for "Subsections (a) and (b)" in heading and "subsections (a), (b), and (g)" for "subsections (a) and (b)" in text.

Subsec. (g). Pub. L. 100–647, Sec. 1004(a)(4), substituted "indebtedness" for "indebtedness of solvent farmers" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) In general. – For purposes of this section and section 1017, the discharge by a qualified person of qualified farm indebtedness of a taxpayer who is not insolvent at the time of the discharge shall be treated in the same manner as if the discharge had occurred when the taxpayer was insolvent.

"(2) Qualified farm indebtedness. – For purposes of this subsection, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if –

"(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

"(B) 50 percent or more of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year

in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

"(3) Qualified person. – For purposes of this subsection, the term 'qualified person' means a person described in section 46(c)(8)(D)(iv)."

1986 – Subsec. (a)(1)(C). Pub. L. 99–514, Sec. 822(a), struck out subpar. (C) relating to exclusion from gross income if the indebtedness discharged is qualified business indebtedness.

Subsec. (a)(2). Pub. L. 99–514, Sec. 822(b)(1), substituted "Subparagraph (B) of paragraph (1)" for "Subparagraphs (B) and (C) of paragraph (1)" in subpar. (A), struck out subpar. (A) designation and heading, and struck out subpar. (B) providing that insolvency exclusion takes precedence over qualified business exclusion.

Subsec. (b)(2)(B). Pub. L. 99–514, Sec. 231(d)(3)(D), substituted "General business credit" for "Research credit and general business credit" in heading and amended text, as amended by this Act (Pub. L. 99–514, Sec. 1171(b)(4) (see below)), generally. Prior to amendment, text read as follows: "Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under –
"(i) section 30 (relating to credit for increasing research activities), or
"(ii) section 38 (relating to general business credit).

For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the

employee stock ownership credit determined under section 41."

Pub. L. 99-514, Sec. 1171(b)(4), struck out last sentence which had been eliminated by the general amendment of subpar. (B) by Pub. L. 99-514, Sec. 231(d)(3)(D). See above.

Subsec. (b)(2)(E). Pub. L. 99-514, Sec. 1847(b)(7), substituted "section 27" for "section 33".

Subsec. (b)(3). Pub. L. 99-514, Sec. 104(b)(2), substituted "33 1/3 cents" for "50 cents".

Subsec. (c). Pub. L. 99-514, Sec. 822(b)(2), struck out subsec. (c) relating to tax treatment of discharge of qualified business indebtedness.

Subsec. (d). Pub. L. 99-514, Sec. 822(b)(3)(B), struck out reference to subsec. (c) in heading.

Subsec. (d)(4). Pub. L. 99-514, Sec. 822(b)(3)(A), struck out par. (4) relating to treatment of indebtedness as qualified business indebtedness.

Subsec. (d)(6), (7)(A). Pub. L. 99-514, Sec. 822(b)(3)(B), struck out reference to subsec. (c) in heading and text.

Subsec. (d)(7)(B). Pub. L. 99-514, Sec. 822(b)(3)(C), struck out "The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(C) applies to such discharge."

Subsec. (d)(9)(A). Pub. L. 99-514, Sec. 822(b)(3)(D), struck out "under paragraph (4) of this subsection or" after "An election".

Subsec. (e)(7)(A)(ii)(I). Pub. L. 99-514, Sec. 805(c)(2), substituted "subsection (a) or (b) of section 166" for "subsection (a), (b), or (c) of section 166".

Subsec. (e)(7)(B) to (D). Pub. L. 99-514, Sec. 805(c)(3), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which related to taxpayers on reserve method.

Subsec. (e)(7)(E), (F). Pub. L. 99-514, Sec. 805(c)(3), (4), redesignated subpar. (F) as (E) and substituted "the foregoing subparagraphs" for "subparagraphs (A), (B), (C), (D), and (E)".

Former subpar. (E) redesignated (D).

Subsec. (e)(10)(C). Pub. L. 99-514, Sec. 621(e), repealed the amendment by Pub. L. 98-369, Sec. 59(b)(1), which had added subpar. (C) creating an exception for transfers in certain workouts of the satisfaction of indebtedness by corporation's stock. See 1984 Amendment note below.

Subsec. (g). Pub. L. 99-514, Sec. 405(a), added subsec. (g).

1984 – Subsec. (b)(2)(B). Pub. L. 98-369, Sec. 474(r)(5), substituted provisions relating to research credits and general business credits covering carryovers to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under section 30 (relating to credit for increasing research activities), or section 38 (relating to general business credit), and directing that there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41 for former provisions covering carryovers to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under section 38 (relating to

investment in certain depreciable property), section 40 (relating to expenses of work incentive programs), section 44B (relating to credit for employment of certain new employees), section 44E (relating to alcohol used as a fuel), or section 44F (relating to credit for increasing research activities), and directing that, for purposes of clause (i), there could not be taken into account any portion of a carryover which was attributable to the employee plan credit (within the meaning of section 48(o)(3)).

Subsec. (d)(6). Pub. L. 98-369, Sec. 721(b)(2), struck out "or S corporation shareholder level" in heading and second sentence which provided that "In the case of an S corporation, subsections (a), (b), and (c) shall apply at the shareholder level.". See par. (7)(A).

Subsec. (d)(7) to (10). Pub. L. 98-369, Sec. 721(b)(2), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (e)(10). Pub. L. 98-369, Sec. 59(a), added par. (10).

Subsec. (e)(10)(C). Pub. L. 98-369, Sec. 59(b)(1), which added subpar. (C), effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94-455, was repealed by Pub. L. 99-514, Sec. 621(e), (f)(2), eff. Jan. 1, 1986, with certain exceptions, see Effective Date of 1986 Amendment note below.

Subsec. (f). Pub. L. 98-369, Sec. 1076(a), added subsec. (f).

1983 – Subsec. (b)(2)(B)(v). Pub. L. 97-448, Sec. 102(h)(1), added cl. (v).

Subsec. (e)(7)(A)(iii). Pub. L. 97-448, Sec. 304(d), added cl.

(iii).

1982 – Subsec. (d)(6). Pub. L. 97–354 inserted "or S corporation shareholder level" in heading and inserted "In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the shareholder level."

1980 – Pub. L. 96–589 completely revised and expanded provisions by specifying the types of indebtedness and by setting out priorities among the exclusions, to reflect the revision of Title 11, Bankruptcy, in 1978.

1976 – Pub. L. 94–455, Sec. 1951(b)(2)(A), struck out "(a) Special rule of exclusion. – " after "Income from discharge of indebtedness" and struck out subsec. (b) which related to discharge, cancellation, or modification of indebtedness of certain railroad corporations.

Pub. L. 94–455, Sec. 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1960 – Subsec. (b). Pub. L. 86–496 provided that if the discharge, cancellation, or modification of any indebtedness is effected pursuant to a court order in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act, commenced before Jan. 1, 1960, then no amount is to be included in gross income with respect to it, and struck out provisions which made subsection inapplicable to discharges occurring in a taxable year beginning after Dec. 31, 1957.

1956 – Subsec. (b). Act June 29, 1956, substituted "December 31, 1957" for "December 31, 1955".

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, Sec. 402(b), Mar. 9, 2002, 116 Stat.

40, provided that:

"(1) In general. – Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to discharges of indebtedness after October 11, 2001, in taxable years ending after such date.

"(2) Exception. – The amendment made by this section shall not apply to any discharge of indebtedness before March 1, 2002, pursuant to a plan of reorganization filed with a bankruptcy court on or before October 11, 2001."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 225(b) of Pub. L. 105–34 provided that: "The amendments made by this section [amending this section] shall apply to discharges of indebtedness after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, Secs. 13001–13444, to which such amendment relates, see

section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13150(d) of Pub. L. 103–66 provided that: "The amendments made by this section [amending this section and sections 703 and 1017 of this title] shall apply to discharges after December 31, 1992, in taxable years ending after such date."

Section 13226(a)(3) of Pub. L. 103–66 provided that:

"(A) In general. – Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 382 of this title] shall apply to stock transferred after December 31, 1994, in satisfaction of any indebtedness.

"(B) Exception for title 11 cases. – The amendments made by this subsection shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before December 31, 1993."

Section 13226(b)(4) of Pub. L. 103–66 provided that: "The amendments made by this subsection [amending this section] shall apply to discharges of indebtedness in taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11325(c) of Pub. L. 101–508 provided that:

"(1) In general. – Except as provided in paragraph (2), the amendments made by this section [amending this section and section

1275 of this title] shall apply to debt instruments issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

"(2) Exceptions. – The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer (as the case may be) –

"(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

"(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

"(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

"(D) is pursuant to a transaction –

"(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

"(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

"(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991."

Amendment by section 11813(b)(6) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this

title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 29 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 231(d)(3)(D) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99-514, set out as a note under section 41 of this title.

Section 405(c) of Pub. L. 99-514 provided that: "The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges of indebtedness occurring after April 9, 1986, in taxable years ending after such date."

Repeal by section 621(e)(1) of Pub. L. 99-514 of amendment by section 59(b)(1) of Pub. L. 99-369, which was effective as if included in the amendments made by section 806(e) and (f) of Pub.

L. 94–455, effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Amendment by section 805(c)(2), (4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Section 822(c) of Pub. L. 99–514 provided that: "The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges after December 31, 1986."

Amendment by section 1171(b)(4) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Amendment by section 1847(b)(7) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 59(b)(2) of Pub. L. 98–369 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if it had been included in the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [Pub. L. 94–455]." See Effective Date of 1976 Amendment note set out under

section 382 of this title.

Section 59(b)(c) of Pub. L. 98-369 provided that:

"(1) In general. – Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) Transitional rule. – The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act if such transfer is –

"(A) pursuant to a written contract requiring such transfer which was binding on the corporation at all times on June 7, 1984, and at all times after such date but only if the transfer takes place before January 1, 1985, and only if the transferee held the debt at all times on June 7, 1984, or

"(B) pursuant to the exercise of an option to exchange debt for stock but only if such option was in effect at all times on June 7, 1984, and at all times after such date and only if at all times on June 7, 1984, the option and the debt were held by the same person.

"(3) Certain transfers to controlling shareholder. – The amendment made by subsection (a) shall not apply to any transfer before January 1, 1985, by a corporation of its stock in exchange for debt of such corporation if –

"(A) such transfer is to another corporation which at all times

on June 7, 1984, owned 75 percent or more of the total value of the stock of the corporation making such transfer, and

"(B) immediately after such transfer, the transferee corporation owns 80 percent or more of the total value of the stock of the transferor corporation.

"(4) Certain transfers pursuant to debt restructure agreement. – The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act and before January 1, 1985, if –

"(A) such transfer is covered by a debt restructure agreement entered into by the corporation during November 1983, and

"(B) such agreement was specified in a registration statement filed with the Securities and Exchange Commission by the corporation on March 7, 1984."

Amendment by section 474(r)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(b) of Pub. L. 98–369 applicable to contributions to capital after Dec. 31, 1980, in taxable years ending after such date, see section 721(y)(2) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Section 1076(b) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section] shall apply to discharges of indebtedness made on or after January 1, 1983."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96-589, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) For Section 2 (Relating to Tax Treatment of Discharge of Indebtedness). –

"(1) In general. – Except as provided in paragraph (2), the amendments made by section 2 [amending this section and sections 111, 118, 382, 703 and 1017 of this title] shall apply to any transaction which occurs after December 31, 1980, other than a transaction which occurs in a proceeding in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) [Title 11, Bankruptcy] commencing on or before December 31, 1980.

"(2) Transitional rule. – In the case of any discharge of indebtedness to which subparagraph (A) or (B) of section 108(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C.

1954] (relating to exclusion from gross income), as amended by section 2, applies and which occurs before January 1, 1982, or which occurs in a proceeding in a bankruptcy case or similar judicial proceedings commencing before January 1, 1982, then – "(A) section 108(b)(2) of the such Code (relating to reduction of tax attributes), as so amended, shall be applied without regard to subparagraphs (A), (B), (C), and (E) thereof, and

"(B) the basis of any property shall not be reduced under section 1017 of such Code (relating to reduction in basis in connection with discharges of indebtedness), as so amended, below the fair market value of such property on the date the debt is discharged.

"(b) For Section 3 (Relating to Rules Relating to Title 11 Cases for Individuals). – The amendments made by section 3 [enacting sections 1398 and 1399 of this title and amending sections 443, 6012 and 6103 of this title] shall apply to any bankruptcy case commencing more than 90 days after the date of the enactment of this Act [Dec. 24, 1980].

"(c) For Section 4 (Relating to Corporate Reorganization Provisions). –

"(1) In general. – The amendments made by section 4 [enacting section 370 of this title and amending sections 354, 355, 357, 368 and 381 of this title] shall apply to any bankruptcy case or similar judicial proceeding commencing after December 31, 1980.

"(2) Exchanges of property for accrued interest. – The

amendments made by subsection (e) of section 4 [amending sections 354 and 355 of this title] (relating to treatment of property attributable to accrued interest) shall also apply to any exchange –

"(A) which occurs after December 31, 1980, and

"(B) which does not occur in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) commenced on or before December 31, 1980.

"(d) For Section 5 (Relating to Miscellaneous Corporate Amendments). –

"(1) For subsection (a) (relating to exemption from personal holding company tax). – The amendments made by subsection (a) of section 5 [amending section 542 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

"(2) For subsection (b) (relating to repeal of special treatment for certain railroad redemptions). – The amendments made by subsection (b) of section 5 [amending section 302 of this title] shall apply to stock which is issued after December 31, 1980 (other than stock issued pursuant to a plan of reorganization approved on or before that date).

"(3) For subsection (c) (relating to application of 12-month liquidation rule). – The amendment made by subsection (c) of section 5 [amending section 337 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

"(4) For subsection (d) (relating to permitting bankruptcy estate to be subchapter s shareholder). – The amendment made by subsection (d) of section 5 [amending section 1371 of this title] shall apply to any bankruptcy case commenced on or after October 1, 1979.

"(5) For subsection (e) (relating to certain transfers to controlled corporations). – The amendments made by subsection (e) of section 5 [amending section 351 of this title] shall apply as provided in subsection (a) of this section.

"(6) For subsection (f) (relating to effect of debt discharge on earnings and profits). – The amendment made by subsection (f) of section 5 [amending section 312 of this title] shall apply as provided in subsection (a) of this section.

"(e) For Section 6 (Relating to Changes in Tax Procedures). – The amendments made by section 6 [enacting sections 6658 and 7464 of this title, amending sections 128, 354, 422, 1023, 3302, 6012, 6036, 6155, 6161, 6212, 6213, 6216, 6326 [now 6327], 6404, 6503, 6512, 6532, 6871, 6872, 6873, 7430, and 7508 of this title, repealing section 1018 of this title, and redesignating former section 7464 of this title as 7465] shall take effect on October 1, 1979, but shall not apply to any proceeding under the Bankruptcy Act [Title 11] commenced before October 1, 1979.

"(f) Election To Substitute September 30, 1979, for December 31, 1980. –

"(1) In general. – The debtor (or debtors) in a bankruptcy case or similar judicial proceeding may (with the approval of the

court) elect to apply subsections (a), (c), and (d) by substituting 'September 30, 1979' for 'December 31, 1980' each place it appears in such subsections.

"(2) Effect of election. – Any election made under paragraph (1) with respect to any proceeding shall apply to all parties to the proceeding.

"(3) Revocation only with consent. – Any election under this subsection may be revoked only with the consent of the Secretary of the Treasury or his delegate.

"(4) Time and manner of election. – Any election under this subsection shall be made at such time, and in such manner, as the Secretary of the Treasury or his delegate may by regulations prescribe.

"(g) Definitions. – For purposes of this section –

"(1) Bankruptcy case. – The term 'bankruptcy case' means any case under title 11 of the United States Code (as recodified by Public Law 95–598).

"(2) Similar judicial proceeding. – The term 'similar judicial proceeding' means a receivership, foreclosure, or similar proceeding in a Federal or State court (as modified by section 368(a)(3)(D) of the Internal Revenue Code of 1986)."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1951(b)(2)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 1(b) of Pub. L. 86-496 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1959, but only with respect to discharges occurring after such date."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813 of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

Section 1951(b)(2)(B) of Pub. L. 94-455 provided that: "If any discharge, cancellation, or modification of indebtedness of a railroad corporation occurs in a taxable year beginning after December 31, 1976, pursuant to an order of a court in a proceeding referred to in section 108(b)(A) or (B) which commenced before January 1, 1960, then, notwithstanding the amendments made by subparagraph (A) [amending this section] the provisions of subsection (b) of section 108 shall be considered as not repealed with respect to such discharge, cancellation, or modification of indebtedness."

EXCLUSION OF CERTAIN CANCELLATIONS OF INDEBTEDNESS

Pub. L. 107-134, title I, Sec. 105, Jan. 23, 2002, 115 Stat. 2432, provided that:

"(a) In General. – For purposes of the Internal Revenue Code of 1986 –

"(1) gross income shall not include any amount which (but for this section) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002; and

"(2) return requirements under section 6050P of such Code shall not apply to any discharge described in paragraph (1).

"(b) Effective Date. – This section shall apply to discharges made on or after September 11, 2001, and before January 1, 2002."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101–1147 and 1171–1177] or title XVIII [Secs. 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.

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 118, 147, 382, 703, 773,

774, 1017, 1503 of this title.

–End–

–CITE–

26 USC Sec. 109 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 109. Improvements by lessee on lessor's property

–STATUTE–

Gross income does not include income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 33.)

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1019 of this title.

–End–

–CITE–

26 USC Sec. 110 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 110. Qualified lessee construction allowances for short-term leases

–STATUTE–

(a) In general

Gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor –

(1) under a short-term lease of retail space, and

(2) for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space,

but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

(b) Consistent treatment by lessor

Qualified long-term real property constructed or improved in connection with any amount excluded from a lessee's income by reason of subsection (a) shall be treated as nonresidential real property of the lessor (including for purposes of section 168(i)(8)(B)).

(c) Definitions

For purposes of this section –

(1) Qualified long-term real property

The term "qualified long-term real property" means nonresidential real property which is part of, or otherwise present at, the retail space referred to in subsection (a) and which reverts to the lessor at the termination of the lease.

(2) Short-term lease

The term "short-term lease" means a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)).

(3) Retail space

The term "retail space" means real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

(d) Information required to be furnished to Secretary

Under regulations, the lessee and lessor described in subsection (a) shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary –

(1) information concerning the amounts received (or treated as a rent reduction) and expended as described in subsection (a), and

(2) any other information which the Secretary deems necessary to carry out the provisions of this section.

–SOURCE–

(Added Pub. L. 105-34, title XII, Sec. 1213(a), Aug. 5, 1997, 111 Stat. 1000.)

–MISC1–

PRIOR PROVISIONS

A prior section 110, act Aug. 16, 1954, ch. 736, 68A Stat. 33, related to income taxes paid by lessee corporations, prior to repeal by Pub. L. 101–508, title XI, Sec. 11801(a)(6), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE

Section 1213(e) of Pub. L. 105–34 provided that: "The amendments made by this section [enacting this section and amending sections 168 and 6724 of this title] shall apply to leases entered into after the date of the enactment of this Act [Aug. 5, 1997]."

–SECFEF–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 168, 6724 of this title.

–End–

–CITE–

26 USC Sec. 111 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 111. Recovery of tax benefit items

–STATUTE–

(a) Deductions

Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed by this chapter.

(b) Credits

(1) In general

If –

(A) a credit was allowable with respect to any amount for any prior taxable year, and

(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

(2) Exception where credit did not reduce tax

Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

(3) Exception for investment tax credit and foreign tax credit

This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

(c) Treatment of carryovers

For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery or adjustment takes place shall be treated as reducing tax imposed by this chapter.

(d) Special rules for accumulated earnings tax and for personal holding company tax

In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies) –

(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where any excluded amount under subsection (a) was not allowable as a deduction for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531 or the tax under section 541.

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 33; Pub. L. 94–455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, Sec. 2(c), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, Sec. 171(a), July 18, 1984, 98 Stat. 698; Pub. L. 99–514, title XVIII, Sec. 1812(a)(1), (2), Oct. 22, 1986, 100 Stat. 2833.)

–MISC1–

AMENDMENTS

1986 – Subsec. (a). Pub. L. 99–514, Sec. 1812(a)(1), substituted

"did not reduce the amount of tax imposed by this chapter" for "did not reduce income subject to tax".

Subsec. (c). Pub. L. 99-514, Sec. 1812(a)(2), substituted

"reducing tax imposed by this chapter" for "reducing income subject to tax or reducing tax imposed by this chapter, as the case may be".

1984 – Pub. L. 98-369 amended section generally, substituting provisions relating to recovery of tax benefit items for provisions relating to recovery of bad debts, prior taxes, and delinquency amounts.

1980 – Subsec. (d). Pub. L. 96-589 added subsec. (d).

1976 – Subsec. (b)(4). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 171(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to amounts recovered after December 31, 1983, in taxable years ending after such date."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to transactions which

occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101–1147 and 1171–1177] or title XVIII [Secs. 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.

–SECFEF–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 381, 1351, 1398 of this title.

–End–

–CITE–

26 USC Sec. 112 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 112. Certain combat zone compensation of members of the Armed Forces

–STATUTE–

(a) Enlisted personnel

Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member –

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(b) Commissioned officers

Gross income does not include so much of the compensation as does not exceed the maximum enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer –

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury

incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(c) Definitions

For purposes of this section –

(1) The term "commissioned officer" does not include a commissioned warrant officer.

(2) The term "combat zone" means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term "compensation" does not include pensions and retirement pay.

(5) The term "maximum enlisted amount" means, for any month,

the sum of –

(A) the highest rate of basic pay payable for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade applicable to enlisted members, and

(B) in the case of an officer entitled to special pay under section 310 of title 37, United States Code, for such month, the amount of such special pay payable to such officer for such month.

(d) Prisoners of war, etc.

(1) Members of the Armed Forces

Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status (as defined in section 551(2) of title 37, United States Code) during the Vietnam conflict as a result of such conflict, other than a period with respect to which it is officially determined under section 552(c) of such title 37 that he is officially absent from his post of duty without authority.

(2) Civilian employees

Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this paragraph, the terms "active service", "employee", and "missing status" have the respective meanings given to such terms by section 5561 of title 5 of the United States Code.

(3) Period of conflict

For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 34; Pub. L. 89–739, Sec. 1, Nov. 2, 1966, 80 Stat. 1165; Pub. L. 92–279, Sec. 1, Apr. 26, 1972, 86 Stat. 124; Pub. L. 93–597, Sec. 2(a), (b), Jan. 2, 1975, 88 Stat. 1950; Pub. L. 94–569, Sec. 3(b), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 104–117, Sec. 1(d), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104–188, title I, Sec. 1704(t)(4)(A), Aug. 20, 1996, 110 Stat. 1887.)

–MISC1–

AMENDMENTS

1996 – Pub. L. 104–188 substituted "combat zone compensation" for "combat pay" in section catchline.

Subsec. (b). Pub. L. 104–117, Sec. 1(d)(1), substituted "the maximum enlisted amount" for "\$500" in introductory provisions.

Subsec. (c)(5). Pub. L. 104–117, Sec. 1(d)(2), added par. (5).

1976 – Subsec. (a). Pub. L. 94–569 substituted "after January

1978" for "beginning more than 2 years after the date of the enactment of this sentence" after "With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month".

Subsec. (b). Pub. L. 94-569 substituted "after January 1978" for "beginning more than 2 years after the date of enactment of this sentence" after "With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month".

1975 – Subsec. (a). Pub. L. 93-597, Sec. 2(a)(3), inserted provision relating to the applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (a)(1). Pub. L. 93-597, Sec. 2(a)(1), struck out "during an induction period" after "served in a combat zone".

Subsec. (a)(2). Pub. L. 93-597, Sec. 2(a)(2), substituted "; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone" for "during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section".

Subsec. (b). Pub. L. 93-597, Sec. 2(a)(3), inserted provision relating to applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (b)(1). Pub. L. 93-597, Sec. 2(a)(1), struck out "during

an induction period" after "served in a combat zone".

Subsec. (b)(2). Pub. L. 93-597, Sec. 2(a)(2), substituted "; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone" for "during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section".

Subsec. (c)(5). Pub. L. 93-597, Sec. 2(b), struck out par. (5) which defined "induction period".

1972 – Subsec. (d). Pub. L. 92-279 added subsec. (d).

1966 – Subsec. (b). Pub. L. 89-739 substituted "\$500" for "\$200".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2(c) of Pub. L. 93-597 provided that: "The amendments made by this section [amending this section] shall take effect on July 1, 1973."

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(a)(1) of Pub. L. 92-279 provided that: "The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending on or after February 28, 1961."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89-739 provided that: "The amendment made by the first section of this Act [amending this section] shall apply with respect to compensation received in taxable years ending after December 31, 1965, for periods of active service after such date."

SENSE OF CONGRESS REGARDING TAX TREATMENT OF MEMBERS RECEIVING

SPECIAL PAY FOR DUTY SUBJECT TO HOSTILE FIRE OR IMMINENT DANGER

Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1089], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, provided that: "It is the sense of Congress that members of the Armed Forces who receive special pay under section 310 of title 37, United States Code, for duty subject to hostile fire or imminent danger should receive the same treatment under Federal income tax laws as members serving in combat zones."

SENSE OF CONGRESS REGARDING TREATMENT UNDER INTERNAL REVENUE CODE OF MEMBERS RECEIVING HOSTILE FIRE OR IMMINENT DANGER SPECIAL PAY DURING CONTINGENCY OPERATIONS

Pub. L. 106–65, div. A, title VI, Sec. 677, Oct. 5, 1999, 113 Stat. 676, provided that: "It is the sense of Congress that a member of the Armed Forces who is receiving special pay under section 310 of title 37, United States Code, while assigned to duty in support of a contingency operation should be treated under the Internal Revenue Code of 1986 in the same manner as a member of the Armed Forces serving in a combat zone (as defined in section 112 of the Internal Revenue Code of 1986)."

AVAILABILITY OF CERTAIN TAX BENEFITS FOR SERVICES AS PART OF OPERATION ALLIED FORCE

Pub. L. 106–21, Sec. 1, Apr. 19, 1999, 113 Stat. 34, provided that:

"(a) General Rule. – For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as

determined under section 112 of such Code):

"(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

"(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

"(3) Section 692 (relating to income taxes of members of Armed Forces on death).

"(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

"(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

"(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

"(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

"(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

"(b) Qualified Hazardous Duty Area. – For purposes of this section, the term 'qualified hazardous duty area' means any area of the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, and the northern Ionian Sea (above the 39th parallel) during the period (which includes the date of the enactment of this Act [Apr. 19, 1999]) that any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special

pay: duty subject to hostile fire or imminent danger) for services performed in such area.

"(c) Special Rule for Section 7508. – Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Allied Force outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which the entitlement referred to in subsection (b) is in effect, any area in which such services are performed.

"(d) Effective Dates. –

"(1) In general. – Except as provided in paragraph (2), this section shall take effect on March 24, 1999.

"(2) Withholding. – Subsection (a)(5) shall apply to remuneration paid after the date of the enactment of this Act [Apr. 19, 1999]."

TREATMENT OF CERTAIN INDIVIDUALS PERFORMING SERVICES IN CERTAIN HAZARDOUS DUTY AREAS; EFFECTIVE DATE

Section 1 of Pub. L. 104–117 provided that:

"(a) General Rule. – For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

"(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

"(2) Section 112 (relating to the exclusion of certain combat

pay of members of the Armed Forces).

"(3) Section 692 (relating to income taxes of members of Armed Forces on death).

"(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

"(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

"(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

"(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

"(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

"(b) Qualified Hazardous Duty Area. – For purposes of this section, the term 'qualified hazardous duty area' means Bosnia and Herzegovina, Croatia, or Macedonia, if as of the date of the enactment of this section [Mar. 20, 1996] any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger) for services performed in such country. Such term includes any such country only during the period such entitlement is in effect. Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Joint Endeavor outside the United States while

deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which such entitlement is in effect, any area in which such services are performed.

"(c) Exclusion of Combat Pay From Withholding Limited to Amount Excludable From Gross Income. – [Amended section 3401 of this title.]

"(d) Increase in Combat Pay Exclusion for Officers to Highest Amount Applicable to Enlisted Personnel. –

"(1) In general. – [Amended this section.]

"(2) Maximum enlisted amount. – [Amended this section.]

"(e) Effective Date. –

"(1) In general. – Except as provided in paragraph (2), the provisions of and amendments made by this section shall take effect on November 21, 1995.

"(2) Withholding. – Subsection (a)(5) and the amendment made by subsection (c) shall apply to remuneration paid after the date of the enactment of this Act [Mar. 20, 1996]."

REFUND OR CREDIT OF OVERPAYMENT; APPLICABLE PERIOD

Section 3(a)(2), (3) of Pub. L. 92–279, as amended by Pub. L. 99–514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(2) If refund or credit of any overpayment for any taxable year resulting from the application of the amendment made by the first section of this Act [amending this section] (including interest, additions to the tax, and additional amounts) is prevented at any time before the expiration of the applicable period specified in

paragraph (3) by the operation of any law or rule of law, such refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such applicable period.

"(3) For purposes of paragraph (2), the applicable period for any individual with respect to any compensation is the period ending on whichever of the following days is the later:

"(A) the day which is one year after the date of the enactment of this Act [Apr. 26, 1972], or

"(B) the day which is 2 years after the date on which it is determined that the individual's missing status (within the meaning of section 112(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) has terminated for purposes of such section 112."

–EXEC–

EX. ORD. NO. 10585. TERMINATION OF COMBATANT ACTIVITIES IN KOREA

Ex. Ord. No. 10585, Jan. 1, 1955, 20 F.R. 17, provided:

By virtue of the authority vested in me by section 112(c)(3) of the Internal Revenue Code of 1954 [now I.R.C. 1986], January 31, 1955, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 10195 of December 20, 1950 (15 F.R. 9177).

Dwight D. Eisenhower.

EX. ORD. NO. 11216. DESIGNATION OF VIETNAM AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 11216, Apr. 24, 1965, 30 F.R. 5817, provided:

Pursuant to the authority vested in me by section 112 of the Internal Revenue Code of 1954 [now I.R.C. 1986], I hereby designate, for the purposes of that section, as an area in which Armed Forces of the United States are and have been engaged in combat:

Vietnam, including the waters adjacent thereto within the following-described limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21° N Lat., 108° E Long.; thence southward to 18° N Lat., 108° E Long.; thence southeastward to 17° N Lat., 111° E Long.; thence southward to 11° N Lat., 111° E Long.; thence southwestward to 7° N Lat., 105° E Long.; thence westward to 7° N Lat., 103° E Long.; thence northward to 9° N Lat., 103° E Long.; thence northeastward to 10° N Lat., 104° E Long.; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

The date of the commencing of combatant activities in such area is hereby designated as January 1, 1964.

Lyndon B. Johnson.

EX. ORD. NO. 12744. DESIGNATION OF ARABIAN PENINSULA AREAS,
AIRSPACE, AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 12744, Jan. 21, 1991, 56 F.R. 2663, provided:

By the authority vested in me as President by the Constitution
and the laws of the United States of America, including section 112
of the Internal Revenue Code of 1986 (26 U.S.C. 112), I hereby
designate, for purposes of that section, the following locations,
including the airspace above such locations, as an area in which
Armed Forces of the United States are and have been engaged in
combat:

- the Persian Gulf
- the Red Sea
- the Gulf of Oman
- that portion of the Arabian Sea that lies north of 10 degrees
north latitude and west of 68 degrees east longitude
- the Gulf of Aden
- the total land areas of Iraq, Kuwait, Saudi Arabia, Oman,
Bahrain, Qatar, and the United Arab Emirates.

For the purposes of this order, the date of the commencing of
combatant activities in such zone is hereby designated as January
17, 1991.

George Bush.

EX. ORD. NO. 13002. TERMINATION OF COMBAT ZONE DESIGNATION IN
VIETNAM AND WATERS ADJACENT THERETO

Ex. Ord. No. 13002, May 13, 1996, 61 F.R. 24665, provided:

By the authority vested in me as President by the Constitution

and the laws of the United States of America, including section 112(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 112(c)(3)), June 30, 1996, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 11216 of April 24, 1965 [set out above].

William J. Clinton.

EX. ORD. NO. 13119. DESIGNATION OF FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA/MONTENEGRO), ALBANIA, THE AIRSPACE ABOVE, AND ADJACENT WATERS AS A COMBAT ZONE

Ex. Ord. No. 13119, April 13, 1999, 64 F.R. 18797, provided:

Pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for the purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

- The Federal Republic of Yugoslavia (Serbia/Montenegro);
- Albania;
- the Adriatic Sea;
- the Ionian Sea north of the 39th parallel.

For the purposes of this order, I designate March 24, 1999, as the date of the commencement of combatant activities in such zone.

William J. Clinton.

EX. ORD. NO. 13239. DESIGNATION OF AFGHANISTAN AND THE AIRSPACE

ABOVE AS A COMBAT ZONE

Ex. Ord. No. 13239, Dec. 12, 2001, 66 F.R. 64907, provided:

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for purposes of that section, Afghanistan, including the airspace above, as an area in which Armed Forces of the United States are and have been engaged in combat.

For purposes of this order, I designate September 19, 2001, as the date of the commencement of combatant activities in such zone.

George W. Bush.

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 692, 2201, 3401, 4253, 6013, 7508 of this title; title 5 sections 6304, 6326; title 10 section 1580.

–End–

–CITE–

26 USC [Sec. 113 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

[Sec. 113. Repealed. Pub. L. 101–508, title XI, Sec. 11801(a)(7),
Nov. 5, 1990, 104 Stat. 1388–520]

–MISC1–

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to
mustering–out payments for members of Armed Forces.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be
construed to affect treatment of certain transactions occurring,
property acquired, or items of income, loss, deduction, or credit
taken into account prior to Nov. 5, 1990, for purposes of
determining liability for tax for periods ending after Nov. 5,
1990, see section 11821(b) of Pub. L. 101–508, set out as a note
under section 29 of this title.

–End–

–CITE–

26 USC Sec. 114 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 114. Extraterritorial income

–STATUTE–

(a) Exclusion

Gross income does not include extraterritorial income.

(b) Exception

Subsection (a) shall not apply to extraterritorial income which is not qualifying foreign trade income as determined under subpart E of part III of subchapter N.

(c) Disallowance of deductions

(1) In general

Any deduction of a taxpayer allocated under paragraph (2) to extraterritorial income of the taxpayer excluded from gross income under subsection (a) shall not be allowed.

(2) Allocation

Any deduction of the taxpayer properly apportioned and allocated to the extraterritorial income derived by the taxpayer from any transaction shall be allocated on a proportionate basis between –

- (A) the extraterritorial income derived from such transaction which is excluded from gross income under subsection (a), and
- (B) the extraterritorial income derived from such transaction which is not so excluded.

(d) Denial of credits for certain foreign taxes

Notwithstanding any other provision of this chapter, no credit shall be allowed under this chapter for any income, war profits, and excess profits taxes paid or accrued to any foreign country or possession of the United States with respect to extraterritorial income which is excluded from gross income under subsection (a).

(e) Extraterritorial income

For purposes of this section, the term "extraterritorial income" means the gross income of the taxpayer attributable to foreign trading gross receipts (as defined in section 942) of the taxpayer.

–SOURCE–

(Added Pub. L. 106–519, Sec. 3(a), Nov. 15, 2000, 114 Stat. 2423.)

–MISC1–

PRIOR PROVISIONS

A prior section 114, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to sports programs conducted for American National Red Cross, prior to repeal by Pub. L. 101–508, title XI, Sec. 11801(a)(8), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE

Section applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 941 of this title.

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 56, 903, 941, 943 of this title.

–End–

–CITE–

26 USC Sec. 115 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 115. Income of States, municipalities, etc.

–STATUTE–

Gross income does not include –

(1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia;

or

(2) income accruing to the government of any possession of the United States, or any political subdivision thereof.

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 35; Pub. L. 94–455, title XIX, Sec. 1901(a)(19), Oct. 4, 1976, 90 Stat. 1766.)

–MISC1–

AMENDMENTS

1976 – Pub. L. 94–455 struck out "(a) General rule" before "Gross income does not include", struck out subsecs. (b) and (c) which related to contracts concerning public utilities made before Sept. 8, 1916, and contracts concerning bridge acquisition made before May 29, 1928, respectively, and in par. (1) of former subsec. (a), struck out "or territory" after "accruing to a State".

EFFECTIVE DATE OF 1976 AMENDMENT

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

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415, 501 of this title; title 45 section 1207.

–End–

–CITE–

26 USC [Sec. 116 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

[Sec. 116. Repealed. Pub. L. 99-514, title VI, Sec. 612(a), Oct. 22, 1986, 100 Stat. 2250]

–MISC1–

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 37; June 25, 1959, Pub. L. 86-69, Sec. 3(a)(2), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86-779, Sec. 10(f), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88-272, title II, Sec. 201(c), (d)(6)(C), 78 Stat. 32; Nov. 13, 1966, Pub. L. 89-809, title I, Sec. 103(g), 80 Stat. 1552; Oct. 4, 1976, Pub. L. 94-455, title X, Secs. 1051(h)(2), 1053(d)(1), title

XIX, Sec. 1901(a)(20), 90 Stat. 1647, 1649, 1766; Apr. 2, 1980,
Pub. L. 96-223, title IV, Sec. 404(a), 94 Stat. 305; Aug. 13, 1981,
Pub. L. 97-34, title III, Sec. 302(b)(2), 95 Stat. 272; July 18,
1984, Pub. L. 98-369, div. A, title V, Sec. 542(b), 98 Stat. 891,
authorized partial exclusion of dividends received by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986,
see section 612(c) of Pub. L. 99-514, set out as an Effective Date
of 1986 Amendment note under section 301 of this title.

-End-

-CITE-

26 USC Sec. 117 01/06/03

-EXPCITE-

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

-HEAD-

Sec. 117. Qualified scholarships

-STATUTE-

(a) General rule

Gross income does not include any amount received as a qualified
scholarship by an individual who is a candidate for a degree at an
educational organization described in section 170(b)(1)(A)(ii).

(b) Qualified scholarship

For purposes of this section –

(1) In general

The term "qualified scholarship" means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

(2) Qualified tuition and related expenses

For purposes of paragraph (1), the term "qualified tuition and related expenses" means –

(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

(c) Limitation

(1) In general

Except as provided in paragraph (2), subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

(2) Exceptions

Paragraph (1) shall not apply to any amount received by an individual under –

(A) the National Health Service Corps Scholarship Program

under section 338A(g)(1)(A) of the Public Health Service Act,

or

(B) the Armed Forces Health Professions Scholarship and Financial Assistance program under subchapter I of chapter 105 of title 10, United States Code.

(d) Qualified tuition reduction

(1) In general

Gross income shall not include any qualified tuition reduction.

(2) Qualified tuition reduction

For purposes of this subsection, the term "qualified tuition reduction" means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of –

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(h).

(3) Reduction must not discriminate in favor of highly compensated, etc.

Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated

employees (within the meaning of section 414(q)). For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

[(4) Repealed. Pub. L. 101-140, title II, Sec. 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830]

(5) Special rules for teaching and research assistants

In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase "(below the graduate level)".

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 38; Pub. L. 87-256, Sec. 110(a), Sept. 21, 1961, 75 Stat. 535; Pub. L. 94-455, title XIX, Sec. 1901(b)(8)(A), (c)(3), Oct. 4, 1976, 90 Stat. 1794, 1803; Pub. L. 96-541, Sec. 5(a)(1), Dec. 17, 1980, 94 Stat. 3205; Pub. L. 98-369, div. A, title V, Sec. 532(a), July 18, 1984, 98 Stat. 887; Pub. L. 99-514, title I, Sec. 123(a), title XI, Secs. 1114(b)(2), 1151(g)(2), Oct. 22, 1986, 100 Stat. 2112, 2450, 2506; Pub. L. 100-647, title I, Sec. 1011B(a)(31)(B), title IV, Sec. 4001(b)(2), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101-140, title II, Sec. 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 104-188, title I, Sec. 1703(n)(14), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 107-16, title IV, Sec. 413(a), June 7, 2001, 115 Stat. 64.)

–STATAMEND–

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.

–REFTEXT–

REFERENCES IN TEXT

Section 338A(g)(1)(A) of the Public Health Service Act, referred
to in subsec. (c)(2)(A), is classified to section 254l(g)(1)(A) of
Title 42, The Public Health and Welfare.

–MISC1–

AMENDMENTS

2001 – Subsec. (c). Pub. L. 107–16, Secs. 413(a), 901,
temporarily designated existing provisions as par. (1), inserted
par. heading, substituted "Except as provided in paragraph (2),
subsections (a)" for "Subsections (a)", and added par. (2). See
Effective and Termination Dates of 2001 Amendment note below.

1996 – Subsec. (d)(2)(B). Pub. L. 104–188 substituted "section
132(h)" for "section 132(f)".

1989 – Subsec. (d)(4). Pub. L. 101–140, Sec. 203(a)(2), amended
par. (4) to read as if amendments by Pub. L. 100–647, Sec.

1011B(a)(31)(B), had not been enacted, see 1988 Amendment note
below.

Pub. L. 101–140, Sec. 203(a)(1), amended subsec. (d) to read as
if amendments by Pub. L. 99–514, Sec. 1151(g)(2), which added par.
(4), had not been enacted, see 1986 Amendment note below.

1988 – Subsec. (d)(4). Pub. L. 100–647, Sec. 1011B(a)(31)(B),
substituted "there shall" for "there may" and "who are" for "who
may be".

Subsec. (d)(5). Pub. L. 100–647, Sec. 4001(b)(2), added par. (5).

1986 – Pub. L. 99–514, Sec. 123(a), in amending section

generally, substituted "Qualified scholarships" for "Scholarships and fellowship grants" in section catchline.

Subsec. (a). Pub. L. 99–514, Sec. 123(a), amended subsec. (a)

generally. Prior to amendment, subsec. (a) read as follows: "In the case of an individual, gross income does not include –

"(1) any amount received –

"(A) as a scholarship at an educational organization described in section 170(b)(1)(A)(ii), or

"(B) as a fellowship grant, including the value of contributed services and accommodations; and

"(2) any amount received to cover expenses for –

"(A) travel,

"(B) research,

"(C) clerical help, or

"(D) equipment,

which are incident to such a scholarship or to a fellowship grant, but only to the extent that the amount is so expended by the recipient."

Subsec. (b). Pub. L. 99–514, Sec. 123(a), in amending subsec. (b)

generally, substituted qualified scholarship provision for former limitations provision, which related in par. (1) to individuals who were candidates for degrees, and in par. (2) to individuals who were not candidates for degrees, describing in subpar. (A) conditions for exclusion and in subpar. (B) extent of exclusion,

such detailed provision now covered in subsec. (c).

Subsec. (c). Pub. L. 99-514, Sec. 123(a), in amending subsec. (c) generally, substituted limitation provision for former provision relating to Federal grants for tuition and related expenses not includable merely because there was requirement of future service as Federal employee.

Subsec. (d). Pub. L. 99-514, Sec. 123(a), in amending subsec. (d) generally, substituted "reduction" for "reductions" in heading and inserted "(within the meaning of section 414(q))" after "highly compensated employees" in par. (3).

Subsec. (d)(3). Pub. L. 99-514, Sec. 1114(b)(2), struck out "officer, owner, or" after "with respect to any" and "officers, owners, or" after "in favor of" and inserted at end "For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q)."

Subsec. (d)(4). Pub. L. 99-514, Sec. 1151(g)(2), added par. (4).

1984 – Subsec. (d). Pub. L. 98-369 added subsec. (d).

1980 – Subsec. (c). Pub. L. 96-541 added subsec. (c).

1976 – Subsecs. (a)(1)(A), (b)(1), (2). Pub. L. 94-455, Sec.

1901(b)(8)(A), substituted "educational organization described in section 170(b)(1)(A)(ii)" for "educational institution (as defined in section 151(e)(4))" after "scholarship at an".

Subsec. (b)(2)(A)(iv). Pub. L. 94-455, Sec. 1901(c)(3), struck out "a territory" after "or a State".

Subsec. (b)(2)(B). Pub. L. 94-455, Sec. 1901(b)(8)(A), substituted "educational organization described in section

170(b)(1)(A)(ii)" for "educational institution (as defined in section 151(e)(4))" after "degree at an".

1961 – Subsec. (b)(2)(A). Pub. L. 87–256 included cases where the grantor of the scholarship or fellowship grant is a foreign government, an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, Sec. 413(b), June 7, 2001, 115 Stat.

64, provided that: "The amendments made by subsection (a) [amending this section] shall apply to amounts received in taxable years beginning after December 31, 2001."

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, Secs. 13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section

1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

Section 4001(c) of Pub. L. 100-647 provided that: "The amendments made by this section [amending this section and section 127 of this title] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(a) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99-514, set out as a note under section 1 of this title.

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

Amendment by section 1151(g)(2) of Pub. L. 99-514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99-514, as amended, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 532(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to qualified tuition reductions (as defined in section 117(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for education furnished after June 30, 1985, in taxable years ending after such date."

Provisions of subsec. (d) treated as in effect on and after Jan. 1, 1984, in case of education described in section 127(c)(8) of this title, see section 1(g)(5) of Pub. L. 98-611, set out as a note under section 127 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a)(2) of Pub. L. 96-541 provided: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(1) of Pub. L. 87-256 provided that: "The amendments made by subsections (a), (b), and (c) of this section [amending this section and sections 871 and 872 of this title] shall apply to taxable years beginning after December 31, 1961."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1,

1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101-136 to be used to implement or enforce section 1151 of Pub. L. 99-514 or the amendments made by such section, see section 528 of Pub. L. 101-136, set out as a note under section 89 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(a) of Pub. L. 99-514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101-1147 and 1171-1177] or title XVIII [Secs. 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a

note under section 401 of this title.

TRANSITIONAL RULES FOR TREATMENT OF CERTAIN REDUCTIONS IN TUITION

Section 1853(f) of Pub. L. 99-514 provided that:

"(1) A tuition reduction plan shall be treated as meeting the requirements of section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] if –

"(A) such plan would have met the requirements of such section (as amended by this section but without regard to the lack of evidence that benefits under such plan were the subject of good faith bargaining) on the day on which eligibility to participate in the plan was closed,

"(B) at all times thereafter, the tuition reductions available under such plan are available on substantially the same terms to all employees eligible to participate in such plan, and

"(C) the eligibility to participate in such plan closed on June 30, 1972, June 30, 1974, or December 31, 1975.

"(2) For purposes of applying section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] to all tuition reduction plans of an employer with at least 1 such plan described in paragraph (1) of this subsection, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement that the Secretary of the Treasury or his delegate finds to be a collective bargaining agreement between employee representatives and 1 or more employers, if, with respect to plans other than plans described in paragraph (1), there is evidence that such benefits were the subject of good

faith bargaining.

"(3) Any reduction in tuition provided with respect to a full-time course of education furnished at the graduate level before July 1, 1988, shall not be included in gross income if –

"(A) such reduction would not be included in gross income under the Internal Revenue Service regulations in effect on the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], and

"(B) such reduction is provided with respect to a student who was accepted for admission to such course of education before July 1, 1984, and began such course of education before June 30, 1985."

NATIONAL RESEARCH SERVICE AWARDS

Pub. L. 95–600, title I, Sec. 161(b), Nov. 6, 1978, 92 Stat. 2810, as amended by Pub. L. 96–167, Sec. 9(b), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96–541, Sec. 5(b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–248, title II, Sec. 285, Sept. 3, 1982, 96 Stat. 569; Pub. L. 99–514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that any amount paid to, or on behalf of, an individual as a national research service award under former section 2891–1 of title 42 during calendar years 1974 through 1983 was to be treated as a scholarship or fellowship grant under this section.

SCHOLARSHIP PROGRAMS FOR MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93–483, Sec. 4, Oct. 26, 1974, 88 Stat. 1458, as amended Pub. L. 94–455, title XXI, Sec. 2130, Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95–171, Sec. 5, Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title I, Sec. 161(a), Nov. 6, 1978, 92 Stat. 2810; Pub. L.

95–615, title I, Sec. 6, Nov. 8, 1978, 92 Stat. 3098; Pub. L.

96–167, Sec. 9(a), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 99–514,

Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) In General. – Any amount received from appropriated funds as a scholarship, including the value of contributed services and accommodations, by a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program determined by the Secretary of the Treasury or his delegate to have substantially similar objectives) from an educational institution (as defined in section 151(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [see section 170(b)(1)(A)(ii) of this title] shall be treated as a scholarship under section 117 of such Code [this section], whether that member is receiving training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required of the member as a condition of receiving those payments.

"(b) Definition of Uniformed Services. – For purposes of this section, the term 'uniformed service' has the meaning given it by section 101(3) of title 37, United States Code.

"(c) Effective Date. – The provisions of this section shall apply with respect to amounts received during calendar years 1973, 1974, and 1975, and, in the case of a member of a uniformed service receiving training after 1975 and before 1981 in programs described in subsection (a), with respect to amounts received after 1975 and before 1985."

[Section 6 of Pub. L. 95–615, which reenacted Sec. 4(c) of Pub. L. 93–483 without change, to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a note under section 61 of this title.]

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25A, 74, 125, 127, 135, 414, 1441, 3121, 3231, 3306, 3401, 4941, 4945 of this title; title 42 section 409.

–End–

–CITE–

26 USC Sec. 118 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 118. Contributions to the capital of a corporation

–STATUTE–

(a) General rule

In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

(b) Contributions in aid of construction, etc.

For purposes of subsection (a), except as provided in subsection

(c), the term "contribution to the capital of the taxpayer" does not include any contribution in aid of construction or any other contribution as a customer or potential customer.

(c) Special rules for water and sewerage disposal utilities

(1) General rule

For purposes of this section, the term "contribution to the capital of the taxpayer" includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal services if –

(A) such amount is a contribution in aid of construction,

(B) in the case of contribution of property other than water or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for ratemaking purposes.

(2) Expenditure rule

An amount meets the requirements of this paragraph if –

(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b) –

(i) which is the property for which the contribution was made or is of the same type as such property, and

(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

(C) accurate records are kept of the amounts contributed and expenditures made, the expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

(3) Definitions

For purposes of this subsection –

(A) Contribution in aid of construction

The term "contribution in aid of construction" shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

(B) Predominantly

The term "predominantly" means 80 percent or more.

(C) Regulated public utility

The term "regulated public utility" has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(4) Disallowance of deductions and credits; adjusted basis

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of

construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.

(d) Statute of limitations

If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection

(c), then –

(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe)

of –

(A) the amount of the expenditure referred to in subparagraph

(A) of subsection (c)(2),

(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2), and

(2) such deficiency may be assessed before the expiration of such 3–year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Cross references

(1) For basis of property acquired by a corporation through a contribution to its capital, see section 362.

(2) For special rules in the case of contributions of indebtedness, see section 108(e)(6).

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 94–455, title XXI, Sec. 2120(a), Oct. 4, 1976, 90 Stat. 1912; Pub. L. 95–600, title III, Sec. 364(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96–589, Sec. 2(e)(2), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, Sec. 163(a), July 18, 1984, 98 Stat. 697; Pub. L. 99–514, title VIII, Sec. 824(a), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 104–188, title I, Sec. 1613(a)(1), (2), Aug. 20, 1996, 110 Stat. 1848–1850.)

–MISC1–

AMENDMENTS

1996 – Subsec. (b). Pub. L. 104–188, Sec. 1613(a)(2), inserted "except as provided in subsection (c)," before "the term".

Subsecs. (c) to (e). Pub. L. 104–188, Sec. 1613(a)(1), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1986 – Subsec. (b). Pub. L. 99–514, Sec. 824(a), added subsec. (b) and struck out former subsec. (b) relating to contributions in aid of construction, containing par. (1) general rule, par. (2) expenditure rule, par. (3) definitions, and par. (4) disallowance of deductions and investment credit; adjusted basis.

Subsecs. (c), (d). Pub. L. 99–514, Sec. 824(a), redesignated former subsec. (d) as (c) and struck out former subsec. (c), statute of limitations, which read as follows: "If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (b), then –

"(1) the statutory period for the assessment of any deficiency

attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of –

"(A) the amount of the expenditure referred to in subparagraph (A) of subsection (b)(2),

"(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

"(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (b)(2); and

"(2) such deficiency may be assessed before the expiration of such 3–year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment."

1984 – Subsecs. (c), (d). Pub. L. 98–369 added subsec. (c) and redesignated former subsec. (c) as (d).

1980 – Subsec. (c). Pub. L. 96–589 designated existing provisions as par. (1) and added par. (2).

1978 – Subsec. (b)(1). Pub. L. 95–600, Sec. 364(a)(1), (2), substituted in provisions preceding subpar. (A) "electric energy, gas (through a local distribution system or transportation by pipeline), water," for "water" and in subpar. (B) "electric energy, gas, steam, water," for "water".

Subsec. (b)(2)(A)(ii). Pub. L. 95–600, Sec. 364(a)(3), substituted "electric energy, gas, steam, water," for "water".

Subsec. (b)(3)(A). Pub. L. 95–600, Sec. 364(a)(4), substituted

"line to an electric line, a gas main, a steam line, or a main water or sewer line" for "property to a main water or sewer line". Subsec. (b)(3)(C). Pub. L. 95–600, Sec. 364(a)(5), substituted "electric energy, gas, water," for "water" and inserted "(including in the case of a gas transmission utility, the provision of gas services by sale for resale to the general public)" after "members of the general public".

1976 – Subsecs. (b), (c). Pub. L. 94–455, Sec. 2120(a), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1613(a)(3) of Pub. L. 104–188 provided that: "The amendments made by this subsection [amending this section] shall apply to amounts received after June 12, 1996."

EFFECTIVE DATE OF 1986 AMENDMENT

Section 824(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, Sec. 1008(j)(2), Nov. 10, 1988, 102 Stat. 3445, provided that:

"(1) In general. – Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 362 of this title] shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

"(2) Treatment of certain water supply projects. – The amendments made by this section shall not apply to amounts which are paid by the New Jersey Department of Environmental Protection for construction of alternative water supply projects in zones of

drinking water contamination and which are designated by such department as being taken into account under this paragraph. Not more than \$4,631,000 of such amounts may be designated under the preceding sentence.

"(3) Treatment of certain contributions by transportation authority. – The amendments made by this section shall not apply to contributions in aid of construction by a qualified transportation authority which were clearly identified in a master plan in existence on September 13, 1984, and which are designated by such authority as being taken into account under this paragraph. Not more than \$68,000,000 of such contributions may be designated under the preceding sentence. For purposes of this paragraph, a qualified transportation authority is an entity which was created on February 20, 1967, and which was established by an interstate compact and consented to by Congress in Public Law 89–774, 80 Stat. 1324 (1966).

"(4) Treatment of certain partnerships. – In the case of a partnership with a taxable year beginning May 1, 1986, if such partnership realized net capital gain during the period beginning on the 1st day of such taxable year and ending on May 29, 1986, pursuant to an underwriting agreement dated May 6, 1986, then such partnership may elect to treat each asset to which such net capital gain relates as having been distributed to the partners of such partnership in proportion to their distributive share of the capital gain or loss realized by the partnership with respect to such asset and to treat each such asset as having been sold by each

partner on the date of the sale of the asset by the partnership. If such an election is made, the consideration received by the partnership in connection with the sale of such assets shall be treated as having been received by the partners in connection with the deemed sale of such assets. In the case of a tiered partnership, for purposes of this paragraph each partnership shall be treated as having realized net capital gain equal to its proportionate share of the net capital gain of each partnership in which it is a partner, and the election provided by this paragraph shall apply to each tier."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 163(c) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 6501 and 6511 of this title] shall apply to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends after December 31, 1984."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96-589, set

out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 364(b) of Pub. L. 95–600 provided that: "The amendments made by this section [amending this section] shall apply to contributions made after January 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2120(c) of Pub. L. 94–455 provided that: "The amendments made by this section [amending this section and section 362 of this title] apply to contributions made after January 31, 1976."

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 108 of this title.

–End–

–CITE–

26 USC Sec. 119 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 119. Meals or lodging furnished for the convenience of the employer

–STATUTE–

(a) Meals and lodging furnished to employee, his spouse, and his

dependents, pursuant to employment

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if –

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) Special rules

For purposes of subsection (a) –

(1) Provisions of employment contract or State statute not to be determinative

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) Certain factors not taken into account with respect to meals

In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) Certain fixed charges for meals

(A) In general

If –

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) Application of subparagraph (A)

Subparagraph (A) shall apply –

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(4) Meals furnished to employees on business premises where meals of most employees are otherwise excludable

All meals furnished on the business premises of an employer to such employer's employees shall be treated as furnished for the convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.

(c) Employees living in certain camps

(1) In general

In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises

of the employer.

(2) Camp

For purposes of this section, a camp constitutes lodging which is –

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) Lodging furnished by certain educational institutions to employees

(1) In general

In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) Exception in cases of inadequate rent

Paragraph (1) shall not apply to the extent of the excess of –

(A) the lesser of –

(i) 5 percent of the appraised value of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution)

during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over (B) the rent paid by the employee for the qualified campus lodging during such calendar year.

The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.

(3) Qualified campus lodging

For purposes of this subsection, the term "qualified campus lodging" means lodging to which subsection (a) does not apply and which is –

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

(4) Educational institution, etc.

For purposes of this subsection –

(A) In general

The term "educational institution" means –

(i) an institution described in section 170(b)(1)(A)(ii)

(or an entity organized under State law and composed of public institutions so described), or

(ii) an academic health center.

(B) Academic health center

For purposes of subparagraph (A), the term "academic health center" means an entity –

- (i) which is described in section 170(b)(1)(A)(iii),
- (ii) which receives (during the calendar year in which the taxable year of the taxpayer begins) payments under subsection (d)(5)(B) or (h) of section 1886 of the Social Security Act (relating to graduate medical education), and
- (iii) which has as one of its principal purposes or functions the providing and teaching of basic and clinical medical science and research with the entity's own faculty.

–SOURCE–

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 95–427, Sec. 4(a), Oct. 7, 1978, 92 Stat. 997; Pub. L. 95–615, title II, Sec. 205, Nov. 8, 1978, 92 Stat. 3107; Pub. L. 96–222, title I, Sec. 108(a)(1)(G), Apr. 1, 1980, 94 Stat. 225; Pub. L. 97–34, title I, Sec. 113, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, title XI, Sec. 1164(a), Oct. 22, 1986, 100 Stat. 2511; Pub. L. 100–647, title I, Sec. 1011B(d), Nov. 10, 1988, 102 Stat. 3489; Pub. L. 104–188, title I, Sec. 1123(a), Aug. 20, 1996, 110 Stat. 1768; Pub. L. 105–206, title V, Sec. 5002(a), July 22, 1998, 112 Stat. 788.)

–REFTEXT–

REFERENCES IN TEXT

Section 1886(d)(5)(B) or (h) of the Social Security Act, referred to in subsec. (d)(4)(B)(ii), is classified to section

1395ww(d)(5)(B) or (h) of Title 42, The Public Health and Welfare.

–MISC1–

AMENDMENTS

1998 – Subsec. (b)(4). Pub. L. 105–206 added par. (4).

1996 – Subsec. (d)(4). Pub. L. 104–188 amended par. (4)

generally. Prior to amendment, par. (4) read as follows:

"Educational institution. – For purposes of this paragraph, the term 'educational institution' means an institution described in section 170(b)(1)(A)(ii)."

1988 – Subsec. (d). Pub. L. 100–647 struck out "(as of the close of the calendar year in which the taxable year begins)" after "appraised value" in par. (2)(A)(i) and inserted at end "The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins." as concluding provision.

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

1981 – Subsec. (c). Pub. L. 97–34 added subsec. (c).

1980 – Subsec. (a). Pub. L. 96–222 struck out "General rule" in subsec. (a) as in effect on the day before the date of enactment of the Foreign Earned Income Act of 1978 to correct a legislative oversight in the amendment of subsec. (a) of this section by section 205 of Pub. L. 95–615. The amendment by Pub. L. 95–615, however, was executed without reference to "General rule" as the probable intent of Congress, thereby requiring no change in text.

1978 – Subsec. (a). Pub. L. 95–615 designated existing provisions as subsec. (a), added subsec. (a) heading, and substituted "furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer" for "furnished to him by his employer for the convenience of the employer".

Pub. L. 95–427 inserted provisions relating to factors not taken into account with respect to meals and certain fixed charges for meals.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title v, Sec. 5002(b), July 22, 1998, 112 Stat. 789, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1123(b) of Pub. L. 104–188 provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1164(b) of Pub. L. 99–514 provided that: "The amendment

made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95-615, see section 108(a)(2)(A) of Pub. L. 96-222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95-427 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as a note under section 911 of this title.

STATUTE OF LIMITATIONS

Pub. L. 96-605, title I, Sec. 107(b), Dec. 28, 1980, 94 Stat. 3524, provided that: "In the case of any allowance received during calendar year 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 [section 3 of Pub. L. 95-427, set out below]

shall be applied by substituting the date one year after the date of the enactment of this Act [Dec. 28, 1980] for 'April 15, 1979' each place it appears."

TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR
SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW
RECEIVED BY STATE POLICE OFFICERS BEFORE JANUARY 1, 1978

Section 3 of Pub. L. 95-427, as amended by Pub. L. 96-605, title I, Sec. 107(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) General Rule. – If –

"(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

"(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

"(3) this section applies to such allowance, then, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such allowance shall not be included in such individual's gross income.

"(b) Allowances to Which Section Applies. – For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received –

"(1) after December 31, 1969, and before January 1, 1974, to

the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

"(2) during the calendar year 1974, 1975, 1976, or 1977.

"(c) Other Definitions. – For purposes of this section –

"(1) State police officer. – The term 'State police officer' means any police officer (including a highway patrolman) employed by a State (or the District of Columbia) on a full-time basis with the power to arrest.

"(2) Income tax return. – The term 'income tax return' means the return of the taxes imposed by subtitle A of the Internal Revenue Code of 1986. If an individual filed before November 29, 1977, an amended return for any taxable year, such amended return shall be treated as the return for such taxable year.

"(d) Limitation on Deduction. – If any individual receives a subsistence allowance which is excluded from gross income under subsection (a), no deduction shall be allowed under any provision of chapter 1 of the Internal Revenue Code of 1986 for expenses in respect of which he has received such allowance, except to the extent that such expenses exceed the amount excludable from gross income under subsection (a) and the excess is otherwise allowed as a deduction under such chapter 1.

"(e) Statute of Limitations. – If refund or credit of any overpayment of tax resulting from the application of this section is prevented at any time on or before April 15, 1979, by the operation of any law or rule of law (including res judicata),

refund or credit of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1979."

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 132, 280A, 1402, 3121, 3231, 3306 of this title; title 42 sections 409, 411.

–End–

–CITE–

26 USC Sec. 120 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 120. Amounts received under qualified group legal services plans

–STATUTE–

(a) Exclusion by employee for contributions and legal services provided by employer

Gross income of an employee, his spouse, or his dependents, does not include –

(1) amounts contributed by an employer on behalf of an employee, his spouse, or his dependents under a qualified group

legal services plan (as defined in subsection (b)); or

(2) the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan (as defined in subsection (b)) to, or with respect to, an employee, his spouse, or his dependents.

No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds \$70.

(b) Qualified group legal services plan

For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).

(c) Requirements

(1) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) Eligibility

The plan shall benefit employees who qualify under a

classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are described in paragraph (1). For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Contribution limitation

Not more than 25 percent of the amounts contributed under the plan during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Notification

The plan shall give notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of the status of a qualified group legal services plan.

(5) Contributions

Amounts contributed under the plan shall be paid only (A) to insurance companies, or to organizations or persons that provide personal legal services, or indemnification against the cost of personal legal services, in exchange for a prepayment or payment

of a premium, (B) to organizations or trusts described in section 501(c)(20), (C) to organizations described in section 501(c) which are permitted by that section to receive payments from an employer for support of one or more qualified group legal services plan or plans, except that such organizations shall pay or credit the contribution to an organization or trust described in section 501(c)(20), (D) as prepayments to providers of legal services under the plan, or (E) a combination of the above.

(d) Other definitions and special rules

For purposes of this section –

(1) Employee

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

(2) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(3) Allocations

Allocations of amounts contributed under the plan shall be made in accordance with regulations prescribed by the Secretary and shall take into account the expected relative utilization of benefits to be provided from such contributions or plan assets and the manner in which any premium or other charge was developed.

(4) Dependent

The term "dependent" has the meaning given to it by section 152.

(5) Exclusive benefit

In the case of a plan to which contributions are made by more than one employer, in determining whether the plan is for the exclusive benefit of an employer's employees or their spouses or dependents, the employees of any employer who maintains the plan shall be considered to be the employees of each employer who maintains the plan.

(6) Attribution rules

For purposes of this section –

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

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

(7) Time of notice to Secretary

A plan shall not be a qualified group legal services plan for any period prior to the time notification was provided to the Secretary in accordance with subsection (c)(4), if such notice is given after the time prescribed by the Secretary by regulations

for giving such notice.

(e) Termination

This section and section 501(c)(20) shall not apply to taxable years beginning after June 30, 1992.

(f) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

–SOURCE–

(Added Pub. L. 94–455, title XXI, Sec. 2134(a), Oct. 4, 1976, 90 Stat. 1926; amended Pub. L. 97–34, title VIII, Sec. 802(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97–448, title I, Sec. 108(a), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–612, Sec. 1(a), (b)(3)(A), Oct. 31, 1984, 98 Stat. 3180, 3181; Pub. L. 99–514, title XI, Secs. 1114(b)(3), 1151(c)(3), (g)(1), 1162(b), Oct. 22, 1986, 100 Stat. 2450, 2503, 2506, 2510; Pub. L. 100–647, title I, Sec. 1011B(a)(31)(B), title IV, Sec. 4002(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, Sec. 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, Sec. 7102(a)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, Sec. 11404(a), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, Sec. 104(a)(1), Dec. 11, 1991, 105 Stat. 1687.)

–MISC1–

PRIOR PROVISIONS

A prior section 120, act Aug. 16, 1954, ch. 736, 68A Stat. 39, related to statutory subsistence allowance received by police, prior to repeal by Pub. L. 85–866, title I, Sec. 3(a), (c), Sept.

2, 1958, 72 Stat. 1607, effective with respect to taxable years ending after Sept. 30, 1958, but only with respect to amounts received as a statutory subsistence allowance for any day after Sept. 30, 1958.

AMENDMENTS

1991 – Subsec. (e). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990 – Subsec. (e). Pub. L. 101–508 substituted "December 31, 1991" for "September 30, 1990".

1989 – Subsec. (b). Pub. L. 101–140, Sec. 203(a)(1), amended subsec. (b) to read as if amendments by Pub. L. 99–514, Sec. 1151(c)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(2). Pub. L. 101–140, Sec. 203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, Sec. 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

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

Subsec. (e). Pub. L. 101–239 substituted "taxable years beginning after September 30, 1990" for "taxable years ending after December 31, 1988".

1988 – Subsec. (a). Pub. L. 100–647, Sec. 4002(b)(1), inserted at end "No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self–insurance) against legal costs incurred by the individual (or his spouse or

dependents) provided under a qualified group legal services plan exceeds \$70."

Subsec. (c)(2). Pub. L. 100-647, Sec. 1011B(a)(31)(B), substituted "there shall" for "there may" and "who are" for "who may be".

Subsec. (e). Pub. L. 100-647, Sec. 4002(a), substituted "1988" for "1987".

1986 – Subsec. (b). Pub. L. 99-514, Sec. 1151(c)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c)."

Subsec. (c)(1). Pub. L. 99-514, Sec. 1114(b)(3)(A), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, shareholders, self-employed individuals, or highly compensated".

Subsec. (c)(2). Pub. L. 99-514, Sec. 1151(g)(1), substituted "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for "For purposes of this paragraph, there shall be excluded from consideration employees not included in the

plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers."

Subsec. (d)(1). Pub. L. 99-514, Sec. 1114(b)(3)(B), struck out reference to self-employed individuals in heading, and substituted "The" for "The term 'self-employed individual' means, and the" in text.

Subsec. (e). Pub. L. 99-514, Sec. 1162(b), substituted "December 31, 1987" for "December 31, 1985".

1984 – Subsec. (e). Pub. L. 98-612, Sec. 1(a), substituted "December 31, 1985" for "December 31, 1984".

Subsec. (f). Pub. L. 98-612, Sec. 1(b)(3)(A), added subsec. (f).

1983 – Subsec. (e). Pub. L. 97-448 substituted "This section and section 501(c)(20) shall not apply" for "This section shall not apply".

1981 – Subsec. (e). Pub. L. 97-34 added subsec. (e).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 104(b) of Pub. L. 102-227 provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11404(c) of Pub. L. 101-508 provided that: "The amendments made by this section [amending this section and

repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989."

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7102(b) of Pub. L. 101-239 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1988."

Amendment by Pub. L. 101-140 effective as if included in section 1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

Section 4002(c) of Pub. L. 100-647 provided that: "The amendments made by this section [amending this section and section 125 of this title] shall apply to taxable years ending after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(3) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99-514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(3), (g)(1) of Pub. L. 99-514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L.

99–514, as amended, set out as a note under section 79 of this title.

Section 1162(c) of Pub. L. 99–514 provided that:

"(1) Subsection (a). – The amendments made by subsection (a) [amending section 127 of this title] shall apply to taxable years beginning after December 31, 1985.

"(2) Subsection (b). – The amendment made by subsection (b) [amending this section] shall apply to years ending after December 31, 1985.

"(3) Cafeteria plan with group legal benefits. – If, within 60 days after the date of the enactment of this Act [Oct. 22, 1986], an employee elects under a cafeteria plan under section 125 of the Internal Revenue Code of 1986 coverage for group legal benefits to which section 120 of such Code applies, such election may, at the election of the taxpayer, apply to all legal services provided during 1986. The preceding sentence shall not apply to any plan which on August 16, 1986, offered such group legal benefits under such plan."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(d)(1) of Pub. L. 98–612 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1984."

Amendment by section 1(b)(3)(A) of Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise

provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 2134(e) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, Sec. 703(b)(1), Nov. 6, 1978, 92 Stat. 2939; Pub. L. 97-34, title VIII, Sec. 802(b), Aug. 13, 1981, 95 Stat. 349; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) In general. – Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1976.

"(2) Notice requirement. – For purposes of section 120(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the time prescribed by the Secretary of the Treasury by regulations for giving the notice required by section 120(c)(4) of such Code shall not expire before the 90th day after the day on which regulations prescribed under such section 120(c)(4) first become final.

"(3) Existing plans. –

"(A) For purposes of section 120 of the Internal Revenue Code of 1986, a written group legal services plan which was in existence on June 4, 1976, shall be considered as satisfying the requirements of subsections (b) and (c) of such section 120 for the period ending with the compliance date (determined

under subparagraph (B)).

"(B) Compliance date. – For purposes of this paragraph, the term 'compliance date' means –

"(i) the date occurring 180 days after the date of the enactment of this Act [Oct. 4, 1976], or

"(ii) if later, in the case of a plan which is maintained pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements, the earlier of December 31, 1981, or the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Oct. 4, 1976])."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

EXTENSION OF EMPLOYER–PROVIDED GROUP LEGAL SERVICES

Section 104(a)(2) of Pub. L. 102–227 provided that: "In the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by the employer for coverage for the employee, his spouse, or his dependents, under a qualified group legal services plan for periods before July 1, 1992, shall be taken into account in determining the amount excluded under section 120 of the Internal Revenue Code of 1986 with respect to such employee for

such taxable year."

SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 1990

Section 7102(a)(2) of Pub. L. 101-239 provided that in the case of any taxable year beginning in 1990, only amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan for periods before October 1, 1990, would be taken into account in determining the amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101-508, title XI, Sec. 11404(b), Nov. 5, 1990, 104 Stat. 1388-473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101-136 to be used to implement or enforce section 1151 of Pub. L. 99-514 or the amendments made by such section, see section 528 of Pub. L. 101-136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101-1147 and 1171-1177] or title XVIII [Secs. 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

STUDY AND REPORT

Section 2134(d) of Pub. L. 94-455 provided that a complete study and investigation with respect to the desirability and feasibility of continuing the exclusion from income of certain prepaid group legal services benefits under section 120 of the Internal Revenue Code of 1954 be made by the Secretary of Labor and the Secretary of the Treasury, with a report to the President and the Congress not later than Dec. 31, 1980.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 414, 501, 3121, 3306, 3231, 6039D of this title; title 42 section 409.

-End-

-CITE-

26 USC Sec. 121 01/06/03

-EXPCITE-

TITLE 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

CHAPTER 1 - NORMAL TAXES AND SURTAXES

Subchapter B - Computation of Taxable Income

PART III - ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

-HEAD-

Sec. 121. Exclusion of gain from sale of principal residence

-STATUTE-

(a) Exclusion

Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the

sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) Limitations

(1) In general

The amount of gain excluded from gross income under subsection

(a) with respect to any sale or exchange shall not exceed \$250,000.

(2) Special rules for joint returns

In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property –

(A) \$500,000 Limitation for certain joint returns

Paragraph (1) shall be applied by substituting "\$500,000" for "\$250,000" if –

(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

(ii) both spouses meet the use requirements of subsection

(a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

(B) Other joint returns

If such spouses do not meet the requirements of subparagraph

(A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of

the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

(3) Application to only 1 sale or exchange every 2 years

(A) In general

Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

(B) Pre-May 7, 1997, sales not taken into account

Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(c) Exclusion for taxpayers failing to meet certain requirements

(1) In general

In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to –

(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

(B)(i) the shorter of –

(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence; or

(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

(ii) 2 years.

(2) Sales and exchanges to which subsection applies

This subsection shall apply to any sale or exchange if –

(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of –

(i) a failure to meet the ownership and use requirements of subsection (a), or

(ii) subsection (b)(3), and

(B) such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(d) Special rules

(1) Joint returns

If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

(2) Property of deceased spouse

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned and used such property shall include the period such deceased

spouse owned and used such property before death.

(3) Property owned by spouse or former spouse

For purposes of this section –

(A) Property transferred to individual from spouse or former spouse

In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

(B) Property used by former spouse pursuant to divorce decree, etc.

Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)).

(4) Tenant–stockholder in cooperative housing corporation

For purposes of this section, if the taxpayer holds stock as a tenant–stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then –

(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(5) Involuntary conversions

(A) In general

For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

(B) Application of section 1033

In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) Property acquired after involuntary conversion

If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(6) Recognition of gain attributable to depreciation

Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

(7) Determination of use during periods of out-of-residence care

In the case of a taxpayer who –

(A) becomes physically or mentally incapable of self-care,

and

(B) owns property and uses such property as the taxpayer's

principal residence during the 5-year period described in

subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the

taxpayer's principal residence during any time during such 5-year

period in which the taxpayer owns the property and resides in any

facility (including a nursing home) licensed by a State or

political subdivision to care for an individual in the taxpayer's

condition.

(8) Sales of remainder interests

For purposes of this section –

(A) In general

At the election of the taxpayer, this section shall not fail

to apply to the sale or exchange of an interest in a principal

residence by reason of such interest being a remainder interest

in such residence, but this section shall not apply to any

other interest in such residence which is sold or exchanged

separately.

(B) Exception for sales to related parties

Subparagraph (A) shall not apply to any sale to, or exchange

with, any person who bears a relationship to the taxpayer which

is described in section 267(b) or 707(b).

(e) Denial of exclusion for expatriates

This section shall not apply to any sale or exchange by an

individual if the treatment provided by section 877(a)(1) applies to such individual.

(f) Election to have section not apply

This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

(g) Residences acquired in rollovers under section 1034

For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034 (!1) (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(7) in determining the holding period of such property) had been so owned and used.

–SOURCE–

(Added Pub. L. 88–272, title II, Sec. 206(a), Feb. 26, 1964, 78 Stat. 38; amended Pub. L. 94–455, title XIV, Sec. 1404(a), title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1733, 1834; Pub. L. 95–600, title IV, Sec. 404(a)–(c)(2), Nov. 6, 1978, 92 Stat. 2869, 2870; Pub. L. 97–34, title I, Sec. 123(a), Aug. 13, 1981, 95 Stat. 197; Pub. L. 100–647, title VI, Sec. 6011(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 105–34, title III, Sec. 312(a), Aug. 5, 1997, 111 Stat. 836; Pub. L. 105–206, title VI, Sec. 6005(e)(1),

(2), July 22, 1998, 112 Stat. 805; Pub. L. 107–16, title V, Sec.

542(c), June 7, 2001, 115 Stat. 84.)

–STATAMEND–

AMENDMENT OF SUBSECTION (D)

Pub. L. 107–16, title V, Sec. 542(c), (f)(1), title IX, Sec. 901,

June 7, 2001, 115 Stat. 84, 86, 150, provided that, applicable to

estates of decedents dying after Dec. 31, 2009, subsection (d) of

this section is temporarily amended by adding paragraph (9) at end

to read as follows:

(9) Property acquired from a decedent

The exclusion under this section shall apply to property sold

by –

(A) the estate of a decedent,

(B) any individual who acquired such property from the
decedent (within the meaning of section 1022), and

(C) a trust which, immediately before the death of the
decedent, was a qualified revocable trust (as defined in
section 645(b)(1)) established by the decedent,

determined by taking into account the ownership and use by the
decedent.

See Effective and Termination Dates of 2001 Amendment note below.

–REFTEXT–

REFERENCES IN TEXT

Section 1034 (as in effect on the day before the date of the

enactment of this section), referred to in subsec. (g), probably

means section 1034 of this title as in effect on the day before the

date of enactment of Pub. L. 105–34 which amended this section generally and was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, Sec. 312(b), Aug. 5, 1997, 111 Stat. 839.

–MISC1–

PRIOR PROVISIONS

A prior section 121 was renumbered section 140 of this title.

AMENDMENTS

1998 – Subsec. (b)(2). Pub. L. 105–206, Sec. 6005(e)(1), substituted "Special rules for joint returns" for "\$500,000 limitation for certain joint returns" in heading and amended text generally. Prior to amendment, text read as follows: "Paragraph (1) shall be applied by substituting '\$500,000' for '\$250,000' if – "(A) a husband and wife make a joint return for the taxable year of the sale or exchange of the property, "(B) either spouse meets the ownership requirements of subsection (a) with respect to such property, "(C) both spouses meet the use requirements of subsection (a) with respect to such property, and "(D) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3)."

Subsec. (c)(1). Pub. L. 105–206, Sec. 6005(e)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of a sale or exchange to which this subsection applies, the ownership and use

requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed –

"(A) the amount which bears the same ratio to the amount which would be so excluded under this section if such requirements had been met, as

"(B) the shorter of –

"(i) the aggregate periods, during the 5–year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

"(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to 2 years."

1997 – Pub. L. 105–34 amended section catchline and text generally. Prior to amendment, section related to one–time exclusion of gain from sale of principal residence by individual who had attained age 55.

1988 – Subsec. (d)(9). Pub. L. 100–647 added par. (9).

1981 – Subsec. (b)(1). Pub. L. 97–34 substituted "\$125,000 (\$62,500" for "\$100,000 (\$50,000".

1978 – Pub. L. 95–600, Sec. 404(a), substituted "One–time exclusion of gain from sale of principal residence by individual who has attained age 55" for "Gain from sale or exchange of

residence of individual who has attained age 65" in section catchline.

Subsec. (a). Pub. L. 95-600, Sec. 404(a), substituted "55" for "65", "5-year" for "8-year", and "3 years" for "5 years".

Subsec. (b). Pub. L. 95-600, Sec. 404(a), in par. (1) substituted provisions respecting dollar limitations for amount of gain for provisions setting forth applicable limitations where the adjusted sales price exceeds \$35,000 and added par. (3).

Subsec. (d)(2). Pub. L. 95-600, Sec. 404(c)(1), substituted "5-year period" for "8-year period".

Subsec. (d)(5). Pub. L. 95-600, Sec. 404(c)(2), substituted "5-year period" for "8-year period" and "3 years" for "5 years".

Subsec. (d)(8). Pub. L. 95-600, Sec. 404(b), added par. (8).

1976 – Subsec. (b)(1). Pub. L. 94-455, Sec. 1404(a), substituted "\$35,000" for "\$20,000" in three places.

Subsecs. (c), (d)(5). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, Sec. 542(f), June 7, 2001, 115 Stat. 86, provided that:

"(1) In general. – Except as provided in paragraph (2), the amendments made by this section [enacting sections 1022 and 6716 of this title and amending this section and sections 170, 684, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title] shall apply to estates of decedents dying after December 31, 2009.

"(2) Transfers to nonresidents. – The amendments made by subsection (e)(1) [amending section 684 of this title] shall apply to transfers after December 31, 2009.

"(3) Section 4947. – The amendment made by subsection (e)(4) [amending section 4947 of this title] shall apply to deductions for taxable years beginning after December 31, 2009."

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 312(d) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, Sec. 6005(e)(3), July 22, 1998, 112 Stat. 806, provided that:

"(1) In general. – The amendments made by this section [amending this section and sections 25, 32, 56, 143, 163, 215, 280A, 464, 512, 1016, 1033, 1038, 1223, 1250, 1274, 6012, 6045, 6212, 6334, 6504, and 7872 of this title and repealing section 1034 of this

title] shall apply to sales and exchanges after May 6, 1997.

"(2) Sales on or before date of enactment. – At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange on or before the date of the enactment of this Act [Aug. 5, 1997].

"(3) Certain sales within 2 years after date of enactment. – Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2–year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

"(4) Binding contracts. – At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if –

"(A) such sale or exchange is pursuant to a contract which was binding on such date, or

"(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual."

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6011(b) of Pub. L. 100-647 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date."

EFFECTIVE DATE OF 1981 AMENDMENT

Section 123(b) of Pub. L. 97-34 provided that: "The amendment made by this section [amending this section] shall apply to residences sold or exchanged after July 20, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 404(d)(1) of Pub. L. 95-600 provided that: "The amendments made by this section [amending this section and sections 1033, 1034, 1038, 1250, and 6012 of this title] shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1404(b) of Pub. L. 94-455 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE

Section 206(c) of Pub. L. 88-272 provided that: "The amendments made by this section [enacting this section, redesignating former section 121 as 122, and amending sections 1033, 1034, and 6012 of

this title] shall apply to dispositions after Dec. 31, 1963, in taxable years ending after such date."

SENSE OF CONGRESS CONCERNING TAX TREATMENT OF PRINCIPAL RESIDENCE OF MEMBERS OF ARMED FORCES WHILE AWAY FROM HOME ON ACTIVE DUTY

Pub. L. 105-261, div. A, title X, Sec. 1074, Oct. 17, 1998, 112

Stat. 2138, provided that: "It is the sense of Congress that a member of the Armed Forces should be treated for purposes of section 121 of the Internal Revenue Code of 1986 as using property as a principal residence during any continuous period that the member is serving on active duty for 180 days or more with the Armed Forces, but only if the member used the property as a principal residence for any period during or immediately before that period of active duty."

TRANSITIONAL RULE IN CASE OF SALE OR EXCHANGE OF RESIDENCE BEFORE JULY 26, 1981

Section 404(d)(2) of Pub. L. 95-600, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied by substituting '8-year period' for '5-year period' and '5 years' for '3 years' in subsections (a), (d)(2), and (d)(5) of such section."

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25, 45F, 56, 72, 143,

163, 216, 280A, 464, 1033, 1038, 1274, 1400C, 6012, 6045, 6334,

7872 of this title.

–FOOTNOTE–

(!1) See References in Text note below.

–End–

–CITE–

26 USC Sec. 122 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 122. Certain reduced uniformed services retirement pay

–STATUTE–

(a) General rule

In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.

(b) Special rule

(1) Amount excluded from gross income

In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has

been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

(2) Consideration for the contract

For purposes of paragraph (1) and section 72(n), the term "consideration for the contract" means, in respect of any individual, the sum of –

- (A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and
- (B) any amounts deposited at any time by him pursuant to section 1438 or 1452(d) of such title 10.

–SOURCE–

(Added Pub. L. 89–365, Sec. 1(a)(1), Mar. 8, 1966, 80 Stat. 32; amended Pub. L. 93–406, title II, Secs. 2005(c)(10), 2007(a), (b)(1), Sept. 2, 1974, 88 Stat. 992, 994.)

–MISC1–

PRIOR PROVISIONS

A prior section 122 was renumbered section 140 of this title.

AMENDMENTS

1974 – Subsec. (a). Pub. L. 93–406, Sec. 2007(a), substituted "United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code" for "United States who has made an election under chapter 73 of title 10 of the United

States Code to receive a reduced amount of retired or retainer pay, gross income does not include the amount of any reduction after December 31, 1965, in his retired or retainer pay by reason of such election".

Subsec. (b)(2). Pub. L. 93-406, Sec. 2005(c)(10), substituted "72(n)" for "72(o)".

Subsec. (b)(2)(B). Pub. L. 93-406, Sec. 2007(b)(1), inserted reference to section 1452(d) of title 10.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(10) of Pub. L. 93-406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

Section 2007(c) of Pub. L. 93-406 provided that: "The amendments made by this section [amending this section and sections 72, 101, and 2039 of this title] apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) [amending sections 101 and 2039 of this title] apply with respect to individuals dying on or after such date".

EFFECTIVE DATE

Section 1(d) of Pub. L. 89-365 provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending section 72 of this title] shall apply with respect to taxable years ending after December 31, 1965. The amendment made by subsection (c) [amending section 101 of this title] shall apply with respect

to individuals making an election under chapter 73 of title 10 of the United States Code who die after December 31, 1965."

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 72 of this title.

–End–

–CITE–

26 USC Sec. 123 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 123. Amounts received under insurance contracts for certain living expenses

–STATUTE–

(a) General rule

In the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for

himself and members of his household resulting from the loss of use or occupancy of such residence.

(b) Limitation

Subsection (a) shall apply to amounts received by the taxpayer for living expenses incurred during any period only to the extent the amounts received do not exceed the amount by which –

- (1) the actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceed
- (2) the normal living expenses which would have been incurred for himself and members of his household during such period.

–SOURCE–

(Added Pub. L. 91–172, title IX, Sec. 901(a), Dec. 30, 1969, 83 Stat. 709.)

–MISC1–

PRIOR PROVISIONS

A prior section 123 was renumbered section 140 of this title.

EFFECTIVE DATE

Section 901(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section] shall apply with respect to amounts received on or after January 1, 1969."

–End–

–CITE–

26 USC [Sec. 124 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

[Sec. 124. Repealed. Pub. L. 101–508, title XI, Sec. 11801(a)(9),
Nov. 5, 1990, 104 Stat. 1388–520]

–MISC1–

Section, added Pub. L. 95–618, title II, Sec. 242(a), Nov. 9,
1978, 92 Stat. 3193, related to qualified transportation provided
by employers.

A prior section 124 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be
construed to affect treatment of certain transactions occurring,
property acquired, or items of income, loss, deduction, or credit
taken into account prior to Nov. 5, 1990, for purposes of
determining liability for tax for periods ending after Nov. 5,
1990, see section 11821(b) of Pub. L. 101–508, set out as a note
under section 29 of this title.

–End–

–CITE–

26 USC Sec. 125 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 125. Cafeteria plans

–STATUTE–

(a) General rule

Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.

(b) Exception for highly compensated participants and key employees

(1) Highly compensated participants

In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of –

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Key employees

In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any benefit attributable to a plan for which the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of such benefits provided for all employees under the

plan. For purposes of the preceding sentence, statutory nontaxable benefits shall be determined without regard to the last sentence of subsection (f).

(3) Year of inclusion

For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) or (2) shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends.

(c) Discrimination as to benefits or contributions

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where qualified benefits and total benefits (or employer contributions allocable to qualified benefits and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) Cafeteria plan defined

For purposes of this section –

(1) In general

The term "cafeteria plan" means a written plan under which –

- (A) all participants are employees, and
- (B) the participants may choose among 2 or more benefits consisting of cash and qualified benefits.

(2) Deferred compensation plans excluded

(A) In general

The term "cafeteria plan" does not include any plan which provides for deferred compensation.

(B) Exception for cash and deferred arrangements

Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan or rural cooperative plan (within the meaning of section 401(k)(7)) which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

(C) Exception for certain plans maintained by educational institutions

Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if –

(i) all contributions for such insurance must be made before retirement, and

(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance.

(e) Highly compensated participant and individual defined

For purposes of this section –

(1) Highly compensated participant

The term "highly compensated participant" means a participant who is –

- (A) an officer,
- (B) a shareholder owning more than 5 percent of the voting power or value of all classes of stock of the employer,
- (C) highly compensated, or
- (D) a spouse or dependent (within the meaning of section 152) of an individual described in subparagraph (A), (B), or (C).

(2) Highly compensated individual

The term "highly compensated individual" means an individual who is described in subparagraphs (1) (A), (B), (C), or (D) of paragraph (1).

(f) Qualified benefits defined

For purposes of this section, the term "qualified benefit" means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 106(b), 117, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 and such term includes any other benefit permitted under regulations. Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance.

(g) Special rules

(1) Collectively bargained plan not considered discriminatory

For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement

between employee representatives and one or more employers.

(2) Health benefits

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan which provides health benefits shall not be treated as discriminatory if –

(A) contributions under the plan on behalf of each participant include an amount which –

(i) equals 100 percent of the cost of the health benefit coverage under the plan of the majority of the highly compensated participants similarly situated, or

(ii) equals or exceeds 75 percent of the cost of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(B) contributions or benefits under the plan in excess of those described in subparagraph (A) bear a uniform relationship to compensation.

(3) Certain participation eligibility rules not treated as discriminatory

For purposes of subparagraph (A) of subsection (b)(1), a classification shall not be treated as discriminatory if the plan

–

(A) benefits a group of employees described in section 410(b)(2)(A)(i), and

(B) meets the requirements of clauses (i) and (ii):

(i) No employee is required to complete more than 3 years

of employment with the employer or employers maintaining the plan as a condition of participation in the plan, and the employment requirement for each employee is the same.

(ii) Any employee who has satisfied the employment requirement of clause (i) and who is otherwise entitled to participate in the plan commences participation no later than the first day of the first plan year beginning after the date the employment requirement was satisfied unless the employee was separated from service before the first day of that plan year.

(4) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(h) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(i) Regulations

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

–SOURCE–

(Added Pub. L. 95–600, title I, Sec. 134(a), Nov. 6, 1978, 92 Stat. 2783; amended Pub. L. 96–222, title I, Sec. 101(a)(6)(A), Apr. 1, 1980, 94 Stat. 196; Pub. L. 96–605, title II, Secs. 201(b)(2), 226(a), Dec. 28, 1980, 94 Stat. 3527, 3529; Pub. L. 96–613, Sec. 5(b)(2), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 98–369, div. A,

title V, Sec. 531(b)(1)–(4)(A), July 18, 1984, 98 Stat. 881, 882;
Pub. L. 98–611, Sec. 1(d)(3)(A), Oct. 31, 1984, 98 Stat. 3177; Pub.
L. 98–612, Sec. 1(b)(3)(B), Oct. 31, 1984, 98 Stat. 3181; Pub. L.
99–514, title XI, Sec. 1151(d)(1), title XVIII, Sec. 1853(b)(1),
Oct. 22, 1986, 100 Stat. 2504, 2870; Pub. L. 100–647, title I,
Secs. 1011B(a)(11)–(13), 1018(t)(6), title IV, Sec. 4002(b)(2),
title VI, Sec. 6051(b), Nov. 10, 1988, 102 Stat. 3484, 3485, 3589,
3643, 3696; Pub. L. 101–140, title II, Sec. 203(a)(1), (3), (b)(2),
Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101–239, title VII, Sec.
7814(b), Dec. 19, 1989, 103 Stat. 2413; Pub. L. 101–508, title XI,
Sec. 11801(c)(3), Nov. 5, 1990, 104 Stat. 1388–523; Pub. L.
104–191, title III, Secs. 301(d), 321(c)(1), Aug. 21, 1996, 110
Stat. 2051, 2058.)

–COD–

CODIFICATION

Pub. L. 101–140, Sec. 203(a)(1), amended this section to read as
if the amendments made by section 1151(d)(1) of Pub. L. 99–514
(amending this section generally) had not been enacted. Subsequent
to amendment by Pub. L. 99–514, this section was amended by Pub. L.
100–647 and Pub. L. 101–239. See 1989 and 1988 Amendment notes
below.

–MISC1–

PRIOR PROVISIONS

A prior section 125 was renumbered section 140 of this title.

AMENDMENTS

1996 – Subsec. (f). Pub. L. 104–191, Sec. 321(c)(1), inserted at

end "Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance."

Pub. L. 104-191, Sec. 301(d), inserted "106(b)," before "117".

1990 – Subsec. (f). Pub. L. 101-508 substituted "section 117," for "section 117, 124,".

1989 – Pub. L. 101-140, Sec. 203(a)(1), amended section to read as if amendments by Pub. L. 99-514, Sec. 1151(d)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(2). Pub. L. 101-140, Sec. 203(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'cafeteria plan' does not include any plan which provides for deferred compensation. The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee."

Subsec. (e)(2)(A). Pub. L. 101-239 substituted "includible only because" for "includable only because", see Codification note above.

Subsec. (g)(3)(A). Pub. L. 101-140, Sec. 203(a)(3), substituted "section 410(b)(2)(A)(i)" for "subparagraph (B) of section 410(b)(1)".

1988 – Subsec. (a). Pub. L. 100-647, Sec. 1011B(a)(11)(A), amended subsec. (a) generally, see Codification note above. Prior to amendment, subsec. (a) read as follows: "In the case of a

cafeteria plan –

"(1) amounts shall not be included in gross income of a participant in such plan solely because, under the plan, the participant may choose among the benefits of the plan, and

"(2) if the plan fails to meet the requirements of subsection (b) for any plan year –

"(A) paragraph (1) shall not apply, and

"(B) notwithstanding any other provision of part III of this subchapter, any qualified benefits received under such cafeteria plan by a highly compensated employee for such plan year shall be included in the gross income of such employee for the taxable year with or within which such plan year ends."

Subsec. (b)(1). Pub. L. 100–647, Sec. 1011B(a)(11)(B),

substituted "In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year" for "A plan shall be treated as failing to meet the requirements of this subsection", see Codification note above.

Subsec. (b)(2). Pub. L. 100–647, Sec. 1011B(a)(11)(C),

substituted "subsection (a) shall not apply to any plan year" for "a plan shall be treated as failing to meet the requirements of this subsection" in first sentence, see Codification note above.

Pub. L. 100–647, Sec. 1011B(a)(13)(B), substituted "shall not include benefits which (without regard to this paragraph) are includible in gross income" for "shall be determined without regard to the last sentence of subsection (e)", see Codification note above.

Subsec. (c)(1)(B). Pub. L. 100–647, Sec. 1011B(a)(12), amended subpar. (B) generally, see Codification note above. Prior to amendment, subpar. (B) read as follows: "the participants may choose –

"(i) among 2 or more benefits consisting of cash and qualified benefits, or

"(ii) among 2 or more qualified benefits."

Subsec. (c)(2)(B). Pub. L. 100–647, Sec. 1018(t)(6), inserted "or rural electric cooperative plan (within the meaning of section 401(k)(7))" after "stock bonus plan", see Codification note above.

Subsec. (c)(2)(C). Pub. L. 100–647, Sec. 6051(b), inserted at end "In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made.", see Codification note above.

Subsec. (e)(1). Pub. L. 100–647, Sec. 1011B(a)(13)(A), inserted "and without regard to section 89(a)" after "subsection (a)", see Codification note above.

Subsec. (e)(2)(A). Pub. L. 100–647, Sec. 4002(b)(2), inserted "or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)" after "section 79", see Codification note above.

1986 – Pub. L. 99–514, Sec. 1151(d)(1), amended section generally, revising and restating as subsecs. (a) to (g) provisions of former subsecs. (a) to (i) so as to coincide with the coming into effect of section 89 of this title.

Subsecs. (c), (d)(1)(B). Pub. L. 99–514, Sec. 1853(b)(1)(A),

substituted "qualified benefits" for "statutory nontaxable benefits" wherever appearing.

Subsec. (f). Pub. L. 99-514, Sec. 1853(b)(1)(B), substituted "Qualified benefits defined" for "Statutory nontaxable benefits defined" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'statutory nontaxable benefit' means any benefit which, with the application of subsection (a) is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79."

1984 – Subsec. (b). Pub. L. 98-369, Sec. 531(b)(3), amended subsec. (b) generally, substituting "and key employees" for "where plan is discriminatory" in heading and "Highly compensated participants" for "In general" in par. (1) heading, adding par. (2), redesignating former par. (2) as (3), and inserting therein references to par. (2) and to taxable year of key employee.

Subsec. (c). Pub. L. 98-369, Sec. 531(b)(2)(B), inserted "statutory" before "nontaxable benefits" in two places.

Subsec. (d)(1). Pub. L. 98-369, Sec. 531(b)(1), substituted "among 2 or more benefits consisting of cash and statutory nontaxable benefits" for "among two or more benefits" in cl. (B) and struck out "The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits."

Subsec. (f). Pub. L. 98-369, Sec. 531(b)(2)(A), amended subsec.

(f) generally, inserting "Statutory" in heading and "statutory" before "nontaxable benefit" in text, providing that the benefit be excluded by reason of an express provision of this chapter (other than section 117, 124, 127, or 132), and extending the benefit to include group term life insurance.

Subsec. (h). Pub. L. 98–611 and Pub. L. 98–612, made identical amendments, substituting cross reference provision for reporting requirements provisions.

Pub. L. 98–369, Sec. 531(b)(4)(A), added subsec. (h) relating to reporting requirements provisions. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 98–369, Sec. 531(b)(4)(A), redesignated subsec. (h) as (i).

1980 – Subsec. (d)(2). Pub. L. 96–605, Sec. 226(a), inserted provision that the sentence excluding deferred compensation plans not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement, as defined in section 401(k)(2) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

Subsec. (g)(3)(B). Pub. L. 96–222 substituted "employment requirement" for "service requirement" in cls. (i) and (ii).

Subsec. (g)(4). Pub. L. 96–613, Sec. 5(b)(2), and Pub. L. 96–605, Sec. 201(b)(2), made identical amendments by substituting "controlled groups, etc." for "controlled groups" in heading, and by substituting "subsection (b), (c), or (m) of section 414" for

"subsection (b) or (c) of section 414" in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(d) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(1) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

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

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(a)(11)–(13) and 1018(t)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4002(b)(2) of Pub. L. 100–647 applicable to taxable years ending after Dec. 31, 1987, see section 4002(c) of

Pub. L. 100–647, set out as a note under section 120 of this title.

Section 6051(c) of Pub. L. 100–647 provided that: "The amendments made by this section [amending this section and section 89 of this title] shall take effect as if included in the amendments made by section 1151 of the Reform Act [Pub. L. 99–514, see Effective Date of 1986 Amendment note set out under section 79 of this title]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(d)(1) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1853(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

Amendment by Pub. L. 98–611 effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98–611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendments by section 201(b)(2) of Pub. L. 96-605 and section 5(b)(2) of Pub. L. 96-613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980 where amendments by section 201(b)(2) of Pub. L. 96-605 and section 5(b)(2) of Pub. L. 96-613 applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96-605 and section 5(c) of Pub. L. 96-613, set out as a note under section 414 of this title.

Section 226(b) of Pub. L. 96-605 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1980."

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 134(c) of Pub. L. 95-600, as amended by Pub. L. 96-222, title I, Sec. 101(a)(6)(B), Apr. 1, 1980, 94 Stat. 197, provided that: "The amendments made by this section [enacting this section] shall apply to plan years beginning after December 31, 1978."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of

determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 29 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

TREATMENT OF PRE–1989 ELECTIONS FOR DEPENDENT CARE ASSISTANCE UNDER CAFETERIA PLANS

Section 6063 of Pub. L. 100–647 provided that: "For purposes of section 125 of the 1986 Code, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1989, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1988, and such assistance is includible in gross income under the provisions of the Family Support Act of 1988 [Pub. L. 100–485, see Tables for classification]."

For provision that for purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight, see section 10101(b)(2)

of Pub. L. 100–203, as added by Pub. L. 100–647, set out as an Effective Date of 1987 Amendment note under section 21 of this title.

EXCEPTION FOR CERTAIN CAFETERIA PLANS AND BENEFITS

Section 531(b)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, Sec. 1853(b)(2), (3), Oct. 22, 1986, 100 Stat. 2870, 2871, provided that:

"(A) General transitional rule. – Any cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules relating to section 125 under proposed Treasury regulations, and any benefit offered under such a cafeteria plan which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations, will not fail to be a cafeteria plan under section 125 or a nontaxable benefit under section 105, 106, 120, or 129 solely because of such failures. The preceding sentence shall apply only with respect to cafeteria plans and benefits provided under cafeteria plans before the earlier of –

"(i) January 1, 1985, or

"(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

"(B) Special transition rule for advance election benefit banks.

– Any benefit offered under a cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations because an employee was

assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses, will not fail to be a nontaxable benefit under such applicable section solely because of such failure. The preceding sentence shall apply only with respect to benefits provided under cafeteria plans before the earlier of –

"(i) July 1, 1985, or

"(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

Except as provided in Treasury regulations, the special transition rule is available only for benefits with respect to which, after December 31, 1984, contributions are fixed before the period of coverage and taxable cash is not available until the end of such period of coverage.

"(C) Plans for which substantial implementation costs were incurred. – For purposes of this paragraph, any plan with respect to which substantial implementation costs had been incurred before February 10, 1984, shall be treated as in existence on February 10, 1984.

"(D) Collective bargaining agreements. – In the case of any cafeteria plan in existence on February 10, 1984, and maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to after

July 18, 1984) shall be substituted for 'January 1, 1985' in subparagraph (A) and for 'July 1, 1985' in subparagraph (B). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section (or any requirement in the regulations under section 125 of the Internal Revenue Code of 1954 [now 1986] proposed on May 6, 1984) shall not be treated as a termination of such collective bargaining agreement.

"(E) Special rule where contributions or reimbursements suspended. – For purposes of subparagraphs (A) and (B), a plan shall not be treated as not continuing to fail to satisfy the rules referred to in such subparagraphs with respect to any benefit provided in the form of a flexible spending arrangement merely because contributions or reimbursements (or both) with respect to such plan were suspended before January 1, 1985."

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35, 79, 403, 414, 415, 3121, 3306, 6039D, 7701 of this title; title 29 section 2918; title 42 section 409.

–FOOTNOTE–

(1) So in original. Probably should be "subparagraph".

–End–

–CITE–

26 USC Sec. 126 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 126. Certain cost-sharing payments

–STATUTE–

(a) General rule

Gross income does not include the excludable portion of payments received under –

- (1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)).
- (2) The rural abandoned mine program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).
- (3) The water bank program authorized by the Water Bank Act (16 U.S.C. 1301 et seq.).
- (4) The emergency conservation measures program authorized by title IV of the Agricultural Credit Act of 1978.
- (5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a).
- (6) The great plains conservation program authorized by section 16 (!1) of the Soil Conservation and Domestic Policy Act (16 U.S.C. 590p(b)).

(7) The resource conservation and development program authorized by the Bankhead–Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a et seq.).

(8) The forestry incentives program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(9) Any small watershed program administered by the Secretary of Agriculture which is determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in paragraphs (1) through (8).

(10) Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(b) Excludable portion

For purposes of this section –

(1) In general

The term "excludable portion" means that portion (or all) of a payment made to any person under any program described in subsection (a) which –

(A) is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife, and

(B) is determined by the Secretary of the Treasury or his delegate as not increasing substantially the annual income derived from the property.

(2) Payments not chargeable to capital account

The term "excludable portion" does not include that portion of any payment which is properly associated with an amount which is allowable as a deduction for the taxable year in which such amount is paid or incurred.

(c) Election for section not to apply

(1) In general

The taxpayer may elect not to have this section (and section 1255) apply to any excludable portion (or portion thereof).

(2) Manner and time for making election

Any election under paragraph (1) shall be made in the manner prescribed by the Secretary by regulations and shall be made not later than the due date prescribed by law (including extensions) for filing the return of tax under this chapter for the taxable year in which the payment was received or accrued.

(d) Denial of double benefits

No deduction or credit shall be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsection (a).

(e) Basis of property not increased by reason of excludable payments

Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made with respect to property acquired

or improved through the use of any payment, to the extent that such adjustment would reflect any amount which is excluded from gross income under subsection (a).

–SOURCE–

(Added Pub. L. 95–600, title V, Sec. 543(a), Nov. 6, 1978, 92 Stat. 2888; amended Pub. L. 96–222, title I, Sec. 105(a)(7)(A), (C), (E), Apr. 1, 1980, 94 Stat. 220, 221.)

–REFTEXT–

REFERENCES IN TEXT

The Water Bank Act, referred to in subsec. (a)(3), is Pub. L. 91–559, Dec. 19, 1970, 84 Stat. 1468, as amended, which is classified generally to chapter 29 (Sec. 1301 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 16 and Tables.

The Agricultural Credit Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95–334, Aug. 4, 1978, 92 Stat. 420, as amended. Title IV of the Agricultural Credit Act of 1978 is classified generally to chapter 42 (Sec. 2201 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

The Soil Conservation and Domestic Allotment Act, referred to in subsec. (a)(5), (7), is act Apr. 27, 1935, ch. 85, 49 Stat. 163, as amended, which is classified generally to chapter 3B (Sec. 590a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 590q of Title 16 and Tables.

Section 16 of the Soil Conservation and Domestic Policy Act, referred to in subsec. (a)(6), probably means section 16 of the Soil Conservation and Domestic Allotment Act, which was classified to section 590p of Title 16, Conservation, prior to repeal by Pub. L. 104–127, title III, Sec. 336(b)(1), Apr. 4, 1996, 110 Stat. 1006.

The Bankhead–Jones Farm Tenant Act, referred to in subsec. (a)(7), is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (Sec. 1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

–MISC1–

PRIOR PROVISIONS

A prior section 126 was renumbered section 140 of this title.

AMENDMENTS

1980 – Subsec. (a). Pub. L. 96–222, Sec. 105(a)(7)(C), (E), inserted in par. (9) "or his delegate" after "Secretary of the Treasury" and substituted in par. (10) "Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia" for "Any State program".

Subsec. (b). Pub. L. 96–222, Sec. 105(a)(7)(A), inserted provisions relating to payments not chargeable to capital account.

Subsec. (c). Pub. L. 96–222, Sec. 105(a)(7)(A), substituted provisions allowing the taxpayer to elect not to have this section apply to any excludable portion for provisions relating to the

application of subsec. (a) of this section with other sections.

Subsecs. (d), (e). Pub. L. 96-222, Sec. 105(a)(7)(A), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 543(d) of Pub. L. 95-600 provided that: "The amendments made by this section [enacting this section and section 1255 of this title] shall apply with respect to grants made under the programs after September 30, 1979."

-SECREP-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1255 of this title.

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

26 USC Sec. 127 01/06/03

-EXPCITE-

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

Sec. 127. Educational assistance programs

–STATUTE–

(a) Exclusion from gross income

(1) In general

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

(2) \$5,250 maximum exclusion

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

(b) Educational assistance program

(1) In general

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

(2) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary

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

(3) Principal shareholders or owners

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

(4) Other benefits as an alternative

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

(5) No funding required

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

(6) Notification of employees

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

(c) Definitions; special rules

For purposes of this section –

(1) Educational assistance

The term "educational assistance" means –

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee

(including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment), but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation.

The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee

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

(3) Employer

An individual who owns the entire interest in an unincorporated

trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) Attribution rules

(A) Ownership of stock

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

(B) Interest in unincorporated trade or business

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

(5) Certain tests not applicable

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

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

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

(6) Relationship to current law

This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under

this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) Disallowance of excluded amounts as credit or deduction

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

(d) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

–SOURCE–

(Added Pub. L. 95–600, title I, Sec. 164(a), Nov. 6, 1978, 92 Stat. 2811; amended Pub. L. 98–611, Sec. 1(a)–(c), (d)(3)(B), (e), Oct. 31, 1984, 98 Stat. 3176–3178; Pub. L. 99–514, title XI, Secs. 1114(b)(4), 1151(c)(4), (g)(3), 1162(a), Oct. 22, 1986, 100 Stat. 2450, 2503, 2507, 2510; Pub. L. 100–647, title I, Sec. 1011B(a)(31)(B), title IV, Sec. 4001(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, Sec. 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, Secs. 7101(a)(1), 7814(a), Dec. 19, 1989, 103 Stat. 2304, 2413; Pub. L. 101–508, title XI, Sec. 11403(a), (b), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, Sec. 103(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, Sec. 13101(a)(1), Aug. 10, 1993, 107 Stat. 420; Pub. L. 104–188, title I, Sec. 1202(a), (b), Aug. 20, 1996, 110 Stat. 1772, 1773; Pub. L. 105–34, title II, Sec. 221(a), Aug. 5, 1997, 111 Stat. 818; Pub. L. 106–170, title V,

Sec. 506(a), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 107–16, title IV, Sec. 411(a), (b), June 7, 2001, 115 Stat. 63.)

–STATAMEND–

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.

–MISC1–

PRIOR PROVISIONS

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

AMENDMENTS

2001 – Subsec. (c)(1). Pub. L. 107–16, Secs. 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, Secs. 411(a), 901, temporarily redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "This section shall not apply to expenses paid with respect to courses beginning after December 31, 2001." See Effective and Termination Dates of 2001 Amendment note below.

1999 – Subsec. (d). Pub. L. 106–170 substituted "December 31, 2001" for "May 31, 2000".

1997 – Subsec. (d). Pub. L. 105–34 amended heading and text of

subsec. (d) generally. Prior to amendment, text read as follows:

"This section shall not apply to taxable years beginning after May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section."

1996 – Subsec. (c)(1). Pub. L. 104–188, Sec. 1202(b), in closing provisions, inserted before period at end ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree".

Subsec. (d). Pub. L. 104–188, Sec. 1202(a), substituted "May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section." for "December 31, 1994."

1993 – Subsec. (d). Pub. L. 103–66 substituted "December 31, 1994" for "June 30, 1992".

1991 – Subsec. (d). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990 – Subsec. (c)(1). Pub. L. 101–508, Sec. 11403(b), struck out at end "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other

advanced academic or professional degree."

Subsec. (d). Pub. L. 101–508, Sec. 11403(a), substituted

"December 31, 1991" for "September 30, 1990".

1989 – Subsec. (b)(1). Pub. L. 101–140, Sec. 203(a)(1), amended

par. (1) to read as if amendments by Pub. L. 99–514, Sec.

1151(c)(4)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(2). Pub. L. 101–140, Sec. 203(a)(2), amended par. (2)

to read as if amendments by Pub. L. 100–647, Sec. 1011B(a)(31)(B),

had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, Sec. 203(a)(1), amended par. (2) to read as if

amendments by Pub. L. 99–514, Sec. 1151(g)(3), had not been

enacted, see 1986 Amendment note below.

Subsec. (b)(6). Pub. L. 101–140, Sec. 203(a)(1), amended par. (6)

to read as if amendments by Pub. L. 99–514, Sec. 1151(c)(4)(B), had

not been enacted, see 1986 Amendment note below.

Subsec. (c)(8). Pub. L. 101–239, Sec. 7814(a), struck out par.

(8) which read as follows: "Coordination with section 117(d). – In

the case of the education of an individual who is a graduate

student at an educational organization described in section

170(b)(1)(A)(ii) and who is engaged in teaching or research

activities for such organization, section 117(d)(2) shall be

applied as if it did not contain the phrase '(below the graduate

level)'."

Subsec. (d). Pub. L. 101–239, Sec. 7101(a)(1), substituted

"September 30, 1990" for "December 31, 1988".

1988 – Subsec. (b)(2). Pub. L. 100–647, Sec. 1011B(a)(31)(B),

substituted "there shall" for "there may" and "who are" for "who may be" in last sentence.

Subsec. (c)(1). Pub. L. 100-647, Sec. 4001(b)(1), inserted at end "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

Subsec. (d). Pub. L. 100-647, Sec. 4001(a), substituted "1988" for "1987".

1986 – Subsec. (a)(2). Pub. L. 99-514, Sec. 1162(a)(2), substituted "\$5,250" for "\$5,000" in heading and twice in text.

Subsec. (b)(1). Pub. L. 99-514, Sec. 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, Sec. 1151(g)(3), substituted "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for "For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective

bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers."

Pub. L. 99-514, Sec. 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, Sec. 1151(c)(4)(B), struck out par. (6) which read as follows: "Notification of employees. – Reasonable notification of the availability and terms of the program must be provided to eligible employees."

Subsec. (d). Pub. L. 99-514, Sec. 1162(a)(1), substituted "December 31, 1987" for "December 31, 1985".

1984 – Subsec. (a). Pub. L. 98-611, Sec. 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, Sec. 1(e), substituted "allowed to the employee" for "allowed".

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

Subsec. (d). Pub. L. 98-611, Sec. 1(a), substituted "December 31, 1985" for "December 31, 1983".

Subsec. (e). Pub. L. 98-611, Sec. 1(d)(3)(B), added subsec. (e).

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable with respect to expenses relating to courses beginning after Dec. 31, 2001, see section

411(d) of Pub. L. 107–16, set out as a note under section 51A 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 1999 AMENDMENT

Pub. L. 106–170, title V, Sec. 506(b), Dec. 17, 1999, 113 Stat. 1922, provided that: "The amendment made by subsection (a) [amending this section] shall apply to courses beginning after May 31, 2000."

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1202(c)(1), (2) of Pub. L. 104–188 provided that:

"(1) Extension. – The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.

"(2) Graduate education. – The amendment made by subsection (b) [amending this section] shall apply with respect to expenses relating to courses beginning after June 30, 1996."

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13101(c)(1) of Pub. L. 103–66 provided that: "The

amendments made by subsection (a) [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11403(d) of Pub. L. 101–508 provided that:

"(1) In general. – Except as provided in paragraph (2), the amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.

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

EFFECTIVE DATE OF 1989 AMENDMENTS

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

Amendment by section 7814(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(4) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

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

Amendment by section 1162(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 1162(c) of Pub. L. 99–514, set out as a note under section 120 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(g) of Pub. L. 98–611, as amended by Pub. L. 99–514,

Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) In general. – Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6039D of this title and amending this section and sections 125, 3231, and 6652 of this title] shall apply to taxable years beginning after December 31, 1983.

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

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

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

"(5) Coordination with section 117(d). – In the case of education described in section 127(c)(8) of the Internal Revenue Code of 1986, as added by this section, section 117(d) of such Code shall be treated as in effect on and after January 1, 1984."

EFFECTIVE DATE

Section 164(d) of Pub. L. 95–600 provided that: "The amendments

made by this section [enacting this section and amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1978."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

EXPEDITED PROCEDURES FOR REFUNDS OF OVERPAYMENTS

Section 1202(c)(3) of Pub. L. 104-188 provided that: "The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1995 or 1996 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee's signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee."

SPECIAL RULE FOR CERTAIN TAXABLE YEARS

Section 103(a)(2) of Pub. L. 102-227 provided that, in the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 103-66, title XIII, Sec. 13101(a)(2), Aug. 10,

1993, 107 Stat. 420.

Section 7101(a)(2) of Pub. L. 101–239 provided that, in the case of any taxable year beginning in 1990, only amounts paid before Oct. 1, 1990, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, Sec. 11403(c), Nov. 5, 1990, 104 Stat. 1388–473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101–1147 and 1171–1177] or title XVIII [Secs. 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.

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51A, 125, 132, 137, 221, 414, 1397, 3121, 3231, 3306, 3401, 6039D of this title; title 42

section 409.

–End–

–CITE–

26 USC [Sec. 128 01/06/03

–EXPCITE–

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

–HEAD–

[Sec. 128. Repealed. Pub. L. 101–508, title XI, Sec. 11801(a)(10),
Nov. 5, 1990, 104 Stat. 1388–520]

–MISC1–

Section, added and amended Pub. L. 97–34, title III, Secs.

301(a), 302(a), (d)(1), Aug. 13, 1981, 95 Stat. 267, 270, 274; Pub.

L. 97–448, title I, Secs. 103(a)(1), (5), (b), 109, Jan. 12, 1983,

96 Stat. 2374, 2375, 2391; Pub. L. 98–21, title I, Secs. 121(f)(2),

(g), 122(c)(3), (d), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L.

98–369, div. A, title I, Sec. 16(a), July 18, 1984, 98 Stat. 505,

related to interest on certain savings certificates.

A prior section 128 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be

construed to affect treatment of certain transactions occurring,

property acquired, or items of income, loss, deduction, or credit

taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

-End-

-CITE-

26 USC Sec. 129 01/06/03

-EXPCITE-

TITLE 26 – INTERNAL REVENUE CODE

Subtitle A – Income Taxes

CHAPTER 1 – NORMAL TAXES AND SURTAXES

Subchapter B – Computation of Taxable Income

PART III – ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

-HEAD-

Sec. 129. Dependent care assistance programs

-STATUTE-

(a) Exclusion

(1) In general

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

(2) Limitation of exclusion

(A) In general

The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care

services provided during a taxable year shall not exceed \$5,000 (\$2,500 in the case of a separate return by a married individual).

(B) Year of inclusion

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

(C) Marital status

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

(b) Earned income limitation

(1) In general

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

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

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

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

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

(2) Special rule for certain spouses

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

(c) Payments to related individuals

No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee shall be excluded under subsection (a) if such amount was paid or incurred to an individual –

(1) with respect to whom, for such taxable year, a deduction is allowable under section 151(c) (relating to personal exemptions for dependents) to such employee or the spouse of such employee, or

(2) who is a child of such employee (within the meaning of section 151(c)(3)) under the age of 19 at the close of such taxable year.

(d) Dependent care assistance program

(1) In general

For purposes of this section a dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (8) of this subsection. If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a

dependent care assistance program in the case of employees who are not highly compensated employees.

(2) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents.

(3) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees described in paragraph (2), or their dependents.

(4) Principal shareholders or owners

Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(5) No funding required

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

(6) Notification of eligible employees

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

(7) Statement of expenses

The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(8) Benefits

(A) In general

A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees under all plans of the employer is at least 55 percent of the average benefits provided to highly compensated employees under all plans of the employer.

(B) Salary reduction agreements

For purposes of subparagraph (A), in the case of any benefits provided through a salary reduction agreement, a plan may disregard any employees whose compensation is less than \$25,000. For purposes of this subparagraph, the term "compensation" has the meaning given such term by section 414(q)(4), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.

(9) Excluded employees

For purposes of paragraphs (3) and (8), there shall be excluded from consideration –

(A) subject to rules similar to the rules of section 410(b)(4), employees who have not attained the age of 21 and

completed 1 year of service (as defined in section 410(a)(3)),

and

(B) employees not included in a dependent care assistance program who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employees, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(e) Definitions and special rules

For purposes of this section –

(1) Dependent care assistance

The term "dependent care assistance" means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income

The term "earned income" shall have the meaning given such term in section 32(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) Employee

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

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) Attribution rules

(A) Ownership of stock

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

(B) Interest in unincorporated trade or business

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

(6) Utilization test not applicable

A dependent care assistance program shall not be held or considered to fail to meet any requirements of subsection (d) (other than paragraphs (4) and (8) thereof) merely because of utilization rates for the different types of assistance made available under the program.

(7) Disallowance of excluded amounts as credit or deduction

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

(8) Treatment of onsite facilities

In the case of an onsite facility maintained by an employer, except to the extent provided in regulations, the amount of dependent care assistance provided to an employee excluded with respect to any dependent shall be based on –

(A) utilization of the facility by a dependent of the employee, and

(B) the value of the services provided with respect to such dependent.

(9) Identifying information required with respect to service provider

No amount paid or incurred by an employer for dependent care assistance provided to an employee shall be excluded from the gross income of such employee unless –

(A) the name, address, and taxpayer identification number of the person performing the services are included on the return to which the exclusion relates, or

(B) if such person is an organization described in section

501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return to which

the exclusion relates.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

–SOURCE–

(Added Pub. L. 97–34, title I, Sec. 124(e)(1), Aug. 13, 1981, 95

Stat. 198; amended Pub. L. 97–448, title I, Sec. 101(e), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title IV, Sec. 474(r)(6), July 18, 1984, 98 Stat. 839; Pub. L. 99–514, title I, Sec. 104(b)(1), title XI, Secs. 1114(b)(4), 1151(c)(5), (f), (g)(4), 1163(a), (b), Oct. 22, 1986, 100 Stat. 2104, 2450, 2503, 2506, 2507, 2510; Pub. L. 100–485, title VII, Sec. 703(c)(2), Oct. 13, 1988, 102 Stat. 2427; Pub. L. 100–647, title I, Sec. 1011B(a)(14), (15), (18), (30), (31)(A), (c)(1), (2)(A), title III, Sec. 3021(a)(14), Nov. 10, 1988, 102 Stat. 3485, 3487–3489, 3631; Pub. L. 101–140, title II, Secs. 203(a)(1), (2), 204(a)(1)–(3)(C), Nov. 8, 1989, 103 Stat. 830, 832; Pub. L. 101–239, title VII, Sec. 7811(h)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 104–188, title I, Sec. 1431(c)(1)(B), Aug. 20, 1996, 110 Stat. 1803.)

–COD–

CODIFICATION

Pub. L. 101–140, Sec. 203(a)(1), amended this section to read as if the amendments made by section 1151(c)(5)(A) of Pub. L. 99–514 (amending subsec. (d)(1)) had not been enacted. Subsequent to amendment by Pub. L. 99–514, subsec. (d)(1) was amended by Pub. L. 100–647. See 1988 Amendment note below.

–MISC1–

PRIOR PROVISIONS

A prior section 129 was renumbered section 140 of this title.

AMENDMENTS

1996 – Subsec. (d)(8)(B). Pub. L. 104–188 substituted "section 414(q)(4)" for "section 414(q)(7)".

1989 – Subsec. (a). Pub. L. 101–239 struck out at end "For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e)."

Subsec. (d)(1). Pub. L. 101–140, Sec. 204(a)(3)(B), substituted "paragraphs (2) through (8)" for "paragraphs (2) through (7)".

Pub. L. 101–140, Sec. 204(a)(1), inserted at end "If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees."

Pub. L. 101–140, Sec. 203(a)(1), amended par. (1) to read as if the amendments by Pub. L. 99–514, Sec. 1151(c)(5)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(3). Pub. L. 101–140, Sec. 204(a)(2)(B), struck out at end "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for "For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employ