§ 104. Compensation for injuries or sickness

(a) In general

Except in the case of amounts attributable to—

(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 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;

(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)); and

(6) amounts received pursuant to—

(A) section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796); or

(B) a program established under the laws of any State which provides monetary compensation for surviving dependents of a public safety officer who has died as the direct and proximate result of a personal injury sustained in the line of duty.

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 (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).

(Eighty-sixth Congress) Pub. L. 90–310, title IV, § 407, May 22, 1968, 82 Stat. 140, provided that: "In case of a civil action commenced before the effective date, the provisions of the Act of July 30, 1918, entitled "An Act to provide for just compensation for personal injuries or death to United States employees resulting from the performance of their duties," as amended (22 U.S.C. 1710), shall apply to such applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).

Amendments


2002—Subsec. (a)(5). Pub. L. 107–134 substituted "a terrorist 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, § 1805(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 253(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, § 1606(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;"

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

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

1992—Subsec. (a)(2). Pub. L. 102–240 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."


Subsecs. (b), (c). Pub. L. 94–455, § 505(b), added subsec. (b), redesignated former subsec. (b) as (c) and, as so redesignated, § 1901(a)(18)(B), substituted "1403 of title 10, United States Code (relating to career compensation laws)" for "401(h) of the Career Compensation Act of 1949 (37 U.S.C. 272(b))"

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.


CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–277, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.


Effect of Prior Law on Civil Action


Effective Date of 2002 Amendment


Effective Date of 1996 Amendment

§ 105. Amounts received under accident and health plans

(a) Amounts attributable to employer contributions

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

(b) Amounts expended for medical care

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, his dependents (as defined in section 152), determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof, and any child (as defined in section 152(c)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27. Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

(c) Payments unrelated to absence from work

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

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

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


(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) 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