

1986 [formerly I.R.C. 1954] as such section was amended by section 505(a) of the Tax Reform Act of 1976.

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

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title V, § 505(f), as added by Pub. L. 95-30, title III, § 301(a), May 23, 1977, 91 Stat. 151, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.”

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

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, § 205(b), Feb. 26, 1964, 78 Stat. 38, provided that: “The amendment made by subsection (a) [amending this section] shall apply to amounts attributable to periods of absence commencing after December 31, 1963.”

EFFECTIVE DATE OF 1962 AMENDMENT

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

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

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

REVOCATION OF ELECTION

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

PERIOD FOR ASSESSING DEFICIENCY

Pub. L. 95-30, title III, § 301(d), May 23, 1977, 91 Stat. 152, provided that: “In the case of any revocation made under subsection (c) [set out above], the period for assessing a deficiency with respect to any taxable year affected by the revocation shall not expire before the date which is 1 year after the date of the making of the revocation, and, notwithstanding any law or rule of law, such deficiency, to the extent attributable to such revocation, may be assessed at any time during such 1-year period.”

EFFECTIVE DATE OF CHANGES IN EXCLUSION FOR SICK PAY

Pub. L. 95-30, title III, § 301(e), May 23, 1977, 91 Stat. 152, as amended by Pub. L. 95-600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [enacting and amending provisions set out as notes under this section] shall take effect on October 4, 1976, but shall not apply—

“(1) with respect to any taxpayer who makes or has made an election under section 105(d)(6) of the Inter-

nal 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

Pub. L. 94-455, title V, § 505(c), Oct. 4, 1976, 90 Stat. 1567, as amended by Pub. L. 95-30, title III, § 301(b)(1), (2), May 23, 1977, 91 Stat. 151; Pub. L. 95-600, title VII, § 701(c)(2)(A), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In the case of any individual who—

“(1) retired before January 1, 1977,

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

“(3) on January 1, 1976, or January 1, 1977, was permanently and totally disabled (within the meaning of section 105(d)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

such individual shall be deemed to have met the requirements of section 105(d)(1)(B) of such Code (as amended by subsection (a) of this section).”

SPECIAL RULE FOR COORDINATION WITH SECTION 72 OF THIS TITLE

Pub. L. 94-455, title V, § 505(d), Oct. 4, 1976, 90 Stat. 1568, as amended by Pub. L. 95-30, title III, § 301(b)(3)–(5), May 23, 1977, 91 Stat. 151; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In the case of an individual who—

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

“(2) on December 31, 1975, or December 31, 1976, was entitled to exclude any amount with respect to such retirement disability from gross income under section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954],

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

§ 106. Contributions by employer to accident and health plans

(a) General rule

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

(b) Contributions to Archer MSAs

(1) In general

In the case of an employee who is an eligible individual, amounts contributed by such employee's employer to any Archer MSA of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such

amounts do not exceed the limitation under section 220(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) No constructive receipt

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

(3) Special rule for deduction of employer contributions

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

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

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

(5) MSA contributions not part of COBRA coverage

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

(6) Definitions

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

(7) Cross reference

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

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

(1) In general

Gross income of an employee shall include employer-provided coverage for qualified long-term care services (as defined in section 7702B(c)) to the extent that such coverage is provided through a flexible spending or similar arrangement.

(2) Flexible spending arrangement

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

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

(B) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

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

(d) Contributions to health savings accounts

(1) In general

In the case of an employee who is an eligible individual (as defined in section 223(c)(1)),

amounts contributed by such employee's employer to any health savings account (as defined in section 223(d)) of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 223(b) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) Special rules

Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

(3) Cross reference

For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.

(e) FSA and HRA terminations to fund HSAs

(1) In general

A plan shall not fail to be treated as a health flexible spending arrangement or health reimbursement arrangement under this section or section 105 merely because such plan provides for a qualified HSA distribution.

(2) Qualified HSA distribution

The term “qualified HSA distribution” means a distribution from a health flexible spending arrangement or health reimbursement arrangement to the extent that such distribution—

(A) does not exceed the lesser of the balance in such arrangement on September 21, 2006, or as of the date of such distribution, and

(B) is contributed by the employer directly to the health savings account of the employee before January 1, 2012.

Such term shall not include more than 1 distribution with respect to any arrangement.

(3) Additional tax for failure to maintain high deductible health plan coverage

(A) In general

If, at any time during the testing period, the employee is not an eligible individual, then the amount of the qualified HSA distribution—

(i) shall be includible in the gross income of the employee for the taxable year in which occurs the first month in the testing period for which such employee is not an eligible individual, and

(ii) the tax imposed by this chapter for such taxable year on the employee shall be increased by 10 percent of the amount which is so includible.

(B) Exception for disability or death

Clauses (i) and (ii) of subparagraph (A) shall not apply if the employee ceases to be an eligible individual by reason of the death of the employee or the employee becoming disabled (within the meaning of section 72(m)(7)).

(4) Definitions and special rules

For purposes of this subsection—

(A) Testing period

The term “testing period” means the period beginning with the month in which the qualified HSA distribution is contributed to the health savings account and ending on the last day of the 12th month following such month.

(B) Eligible individual

The term “eligible individual” has the meaning given such term by section 223(c)(1).

(C) Treatment as rollover contribution

A qualified HSA distribution shall be treated as a rollover contribution described in section 223(f)(5).

(5) Tax treatment relating to distributions

For purposes of this title—

(A) In general

A qualified HSA distribution shall be treated as a payment described in subsection (d).

(B) Comparability excise tax**(i) In general**

Except as provided in clause (ii), section 4980G shall not apply to qualified HSA distributions.

(ii) Failure to offer to all employees

In the case of a qualified HSA distribution to any employee, the failure to offer such distribution to any eligible individual covered under a high deductible health plan of the employer shall (notwithstanding section 4980G(d)) be treated for purposes of section 4980G as a failure to meet the requirements of section 4980G(b).

(f) Reimbursements for menstrual care products

For purposes of this section and section 105, expenses incurred for menstrual care products (as defined in section 223(d)(2)(D)) shall be treated as incurred for medical care.

(g) Qualified small employer health reimbursement arrangement

For purposes of this section and section 105, payments or reimbursements from a qualified small employer health reimbursement arrangement (as defined in section 9831(d)) of an individual for medical care (as defined in section 213(d)) shall not be treated as paid or reimbursed under employer-provided coverage for medical expenses under an accident or health plan if for the month in which such medical care is provided the individual does not have minimum essential coverage (within the meaning of section 5000A(f)).

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

108-173, title XII, §1201(d)(1), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 109-432, div. A, title III, §302(a), Dec. 20, 2006, 120 Stat. 2948; Pub. L. 111-148, title IX, §9003(c), Mar. 23, 2010, 124 Stat. 854; Pub. L. 113-295, div. A, title II, §221(a)(17), Dec. 19, 2014, 128 Stat. 4039; Pub. L. 114-255, div. C, title XVIII, §18001(a)(2), Dec. 13, 2016, 130 Stat. 1341; Pub. L. 116-136, div. A, title III, §3702(c), Mar. 27, 2020, 134 Stat. 416.)

Editorial Notes

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. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2020—Subsec. (f). Pub. L. 116-136 added subsec. (f) and struck out former subsec. (f). Prior to amendment, text read as follows: “For purposes of this section and section 105, reimbursement for expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.”

2016—Subsec. (g). Pub. L. 114-255 added subsec. (g).

2014—Subsec. (c)(1). Pub. L. 113-295 substituted “Gross income” for “Effective on and after January 1, 1997, gross income”.

2010—Subsec. (f). Pub. L. 111-148 added subsec. (f).

2006—Subsec. (e). Pub. L. 109-432 added subsec. (e).

2003—Subsec. (d). Pub. L. 108-173 added subsec. (d).

2000—Subsec. (b). Pub. L. 106-554 §1(a)(7) [title II, §202(b)(6)], substituted “Archer MSAs” for “medical savings accounts” in heading.

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

Subsec. (b)(3). Pub. L. 106-554 §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA”.

Pub. L. 106-554 §1(a)(7) [title II, §202(a)(2)], substituted “Archer MSA” for “medical savings account”.

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

Subsec. (b)(6). Pub. L. 106-554 §1(a)(7) [title II, §202(a)(2)], substituted “Archer MSA” for “medical savings account”.

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

1996—Pub. L. 104-191, §301(c)(1), amended text generally. Prior to amendment, text read as follows: “Gross income of an employee does not include employer-provided coverage under an accident or health plan.”

Subsec. (c). Pub. L. 104-191, §321(c)(2), added subsec. (c).

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

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

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

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-136, div. A, title III, §3702(d)(2), Mar. 27, 2020, 134 Stat. 416, provided that: “The amendment made by subsection (c) [amending this section] shall apply to expenses incurred after December 31, 2019.”

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-255 applicable to years beginning after Dec. 31, 2016, see section 18001(a)(7) of Pub. L. 114-255, set out as a note under section 36B of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-148, title IX, §9003(d)(2), Mar. 23, 2010, 124 Stat. 854, provided that: “The amendment made by subsection (c) [amending this section] shall apply to expenses incurred with respect to taxable years beginning after December 31, 2010.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title III, §302(c)(1), Dec. 20, 2006, 120 Stat. 2949, provided that: “The amendment made by subsection (a) [amending this section] shall apply to distributions on or after the date of the enactment of this Act [Dec. 20, 2006].”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7862(c)(1)(C), Dec. 19, 1989, 103 Stat. 2432, 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.”

Pub. L. 101-239, title VII, §7863, Dec. 19, 1989, 103 Stat. 2434, provided that: “Except as otherwise provided in this subpart any amendment made by this subpart [subpart A (§§7861-7863) of part V of title VII of Pub. L. 101-239, amending this section and sections 162, 411, 417,

and 4980B of this title and sections 1052 to 1055, 1161, 1162, 1167, 1398, and 1461 of Title 29, Labor, enacting provisions set out as notes under this section and sections 162, 417, 1167, 4980, and 4980B of this title, and amending provisions set out as notes under sections 401 and 411 of this title and sections 1001 and 1054 of Title 29], shall take effect as if included in the provision of the Reform Act [Pub. L. 99-514] to which such amendment relates.”

EFFECTIVE DATE OF 1988 AMENDMENT

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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.

Pub. L. 99-272, title X, §10001(e), Apr. 7, 1986, 100 Stat. 227, provided that:

“(1) GENERAL RULE.—The amendments made by this section [amending this section and section 162 of this title] shall apply to plan years beginning on or after July 1, 1986.

“(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

“(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

“(B) January 1, 1987.

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

REGULATIONS

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

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

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147

and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 107. Rental value of parsonages

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

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

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

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

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

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

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.

“(2) RETURNS POSITIONS.—The amendment made by this section also shall apply to any taxable year beginning before January 1, 2002, for which the taxpayer—

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

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

“(3) OTHER YEARS BEFORE 2002.—Except as provided in paragraph (2), notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section 107 of such Code by this Act for any taxable year beginning before January 1, 2002.”

§ 108. Income from discharge of indebtedness

(a) Exclusion from gross income

(1) In general

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

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

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

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged—

(i) before January 1, 2026, or

(ii) subject to an arrangement that is entered into and evidenced in writing before January 1, 2026.

(2) Coordination of exclusions

(A) Title 11 exclusion takes precedence

Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion

Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) Principal residence exclusion takes precedence over insolvency exclusion unless elected otherwise

Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) Insolvency exclusion limited to amount of insolvency

In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) Reduction of tax attributes

(1) In general

The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL

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

(B) General business credit

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

(C) Minimum tax credit

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

(D) Capital loss carryovers

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

(E) Basis reduction

(i) In general

The basis of the property of the taxpayer.