

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.”

§ 120. Amounts received under qualified group legal services plans

(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 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(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.

(Added Pub. L. 94-455, title XXI, §2134(a), Oct. 4, 1976, 90 Stat. 1926; amended Pub. L. 97-34, title VIII, §802(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97-448, title I, §108(a), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98-612, §1(a), (b)(3)(A), Oct. 31, 1984, 98 Stat. 3180, 3181; Pub. L. 99-514, title XI, §§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, §1011B(a)(31)(B), title IV, §4002(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101-140, title II, §203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title VII, §7102(a)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101-508, title XI, §11404(a), Nov. 5, 1990, 104 Stat. 1388-473; Pub. L. 102-227, title I, §104(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 108-311, title II, §207(10), Oct. 4, 2004, 118 Stat. 1177.)

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, §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

2004—Subsec. (d)(4). Pub. L. 108-311 inserted “(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)” after “section 152”.

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, §203(a)(1), amended subsec. (b) to read as if amendments by Pub. L. 99-514, §1151(c)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(2). Pub. L. 101-140, §203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100-647, §1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101-140, §203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99-514, §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, §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, §1011B(a)(31)(B), substituted “there shall” for “there may” and “who are” for “who may be”.

Subsec. (e). Pub. L. 100-647, §4002(a), substituted “1988” for “1987”.

1986—Subsec. (b). Pub. L. 99-514, §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, §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, §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, §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, §1162(b), substituted “December 31, 1987” for “December 31, 1985”.

1984—Subsec. (e). Pub. L. 98-612, §1(a), substituted “December 31, 1985” for “December 31, 1984”.

Subsec. (f). Pub. L. 98-612, §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 2004 AMENDMENT

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-227, title I, §104(b), Dec. 11, 1991, 105 Stat. 1687, 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

Pub. L. 101-508, title XI, §11404(c), Nov. 5, 1990, 104 Stat. 1388-473, 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 AMENDMENT

Pub. L. 101-239, title VII, §7102(b), Dec. 19, 1989, 103 Stat. 2305, 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.

Pub. L. 100-647, title IV, §4002(c), Nov. 10, 1988, 102 Stat. 3643, 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.

Pub. L. 99-514, title XI, §1162(c), Oct. 22, 1986, 100 Stat. 2510, 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

Pub. L. 98-612, §1(d)(1), Oct. 31, 1984, 98 Stat. 3181, 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

Pub. L. 94-455, title XXI, §2134(e), Oct. 4, 1976, 90 Stat. 1928, as amended by Pub. L. 95-600, title VII, §703(b)(1), Nov. 6, 1978, 92 Stat. 2939; Pub. L. 97-34, title VIII, §802(b), Aug. 13, 1981, 95 Stat. 349; Pub. L. 99-514, §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

Pub. L. 102-227, title I, §104(a)(2), Dec. 11, 1991, 105 Stat. 1687, 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

Pub. L. 101-239, title VII, §7102(a)(2), Dec. 19, 1989, 103 Stat. 2305, 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 ex-

cluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101-508, title XI, §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 [§§ 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.

STUDY AND REPORT

Pub. L. 94-455, title XXI, §2134(d), Oct. 4, 1976, 90 Stat. 1928, 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.

§ 121. Exclusion of gain from sale of principal residence

(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.

(4)¹ Special rule for certain sales by surviving spouses

In the case of a sale or exchange of property by an unmarried individual whose spouse is deceased on the date of such sale, paragraph (1) shall be applied by substituting "\$500,000" for "\$250,000" if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

(4)¹ Exclusion of gain allocated to nonqualified use

(A) In general

Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

(B) Gain allocated to periods of nonqualified use

For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

- (i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to
- (ii) the period such property was owned by the taxpayer.

(C) Period of nonqualified use

For purposes of this paragraph—

(i) In general

The term "period of nonqualified use" means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer's spouse or former spouse.

(ii) Exceptions

The term "period of nonqualified use" does not include—

- (I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used

¹ So in original. Two pars. (4) have been enacted.