

**§ 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(f)(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.

**[(d) Repealed. Pub. L. 98-21, title I, § 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) 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 subpara-

graph (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)<sup>1</sup> 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.

<sup>1</sup>So in original. Probably should be followed by a closing parenthesis.

**(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.

**(j) Special rule for certain governmental plans**

**(1) In general**

For purposes of subsection (b), amounts paid (directly or indirectly) to the taxpayer from an accident or health plan described in paragraph (2) shall not fail to be excluded from gross income solely because such plan, on or before January 1, 2008, provides for reimbursements of health care expenses of a deceased plan participant’s beneficiary.

**(2) Plan described**

An accident or health plan is described in this paragraph if such plan is funded by a medical trust that is established in connection with a public retirement system and that—

- (A) has been authorized by a State legislature, or
- (B) has received a favorable ruling from the Internal Revenue Service that the trust’s income is not includible in gross income under section 115.

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 87-792, §7(e), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88-272, title II, §205(a), Feb. 26, 1964, 78 Stat. 38; Pub. L. 94-455, title V, §505(a), title XIX, §1901(c)(2), Oct. 4, 1976, 90 Stat. 1566, 1803; Pub. L. 95-600, title III, §366(a), title VII, §701(c)(1), Nov. 6, 1978, 92 Stat. 2855, 2899; Pub. L. 96-222, title I, §103(a)(13)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96-605, title II, §201(b)(1), Dec. 28, 1980, 94 Stat. 3527; Pub. L. 96-613, §5(b)(1), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 97-34, title I, §§103(c)(2), 111(b)(4), Aug. 13, 1981, 95 Stat. 188, 194; Pub. L. 97-248, title II, §202(b)(3)(C), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98-21, title I, §122(b), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-76, title II, §241(a), Aug. 12, 1983, 97 Stat. 430; Pub. L. 98-369, div. A, title IV, §423(b)(2), July 18, 1984, 98 Stat. 800; Pub. L. 99-514, title XI, §1151(c)(2), title XIII, §1301(j)(9), Oct. 22, 1986, 100 Stat. 2503, 2658; Pub. L. 101-140, title II, §203(a)(1), Nov. 8, 1989, 103 Stat. 830; Pub. L. 108-311, title II, §207(9), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110-458, title I, §124(a), Dec. 23, 2008, 122 Stat. 5114; Pub. L. 111-152, title I, §1004(d)(1), Mar. 30, 2010, 124 Stat. 1035; Pub. L. 113-295, div. A, title II, §221(a)(16), Dec. 19, 2014, 128 Stat. 4039.)

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.

## AMENDMENTS

2014—Subsec. (f). Pub. L. 113-295 struck out “or (d)” after “subsection (c)”.

2010—Subsec. (b). Pub. L. 111-152 substituted “his dependents” for “and his dependents” and inserted “, and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27” after “thereof”.

2008—Subsec. (j). Pub. L. 110-458 added subsec. (j).

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

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

1986—Subsec. (d)(5)(C). Pub. L. 99-514, § 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, § 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, § 103(c)(2), substituted “this subsection and section 221” for “this subsection” in parenthetical provision.

Subsec. (h)(3)(B)(v). Pub. L. 97-34, § 111(b)(4), substituted “section 911(d)(2)” for “section 911(b)”.

1980—Subsec. (h)(3)(A). Pub. L. 96-222, § 103(a)(13)(B), substituted “highly compensated individuals” for “highly compensated participants”.

Subsec. (h)(7)(A). Pub. L. 96-222, § 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, § 701 (c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (5)(A) and (C).

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

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

1976—Subsec. (d). Pub. L. 94-455, § 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, § 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 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 2008 AMENDMENT

Pub. L. 110-458, title I, § 124(b), Dec. 23, 2008, 122 Stat. 5115, provided that: “The amendment made by subsection (a) [amending this section] shall apply to payments before, on, or after the date of the enactment of this Act [Dec. 23, 2008].”

## 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 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, 1986, 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 AMENDMENT

Pub. L. 98-76, title II, § 241(b), Aug. 12, 1983, 97 Stat. 430, 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 AMENDMENT

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

Pub. L. 95-600, title III, §366(b), Nov. 6, 1978, 92 Stat. 2857, as amended by Pub. L. 96-222, title I, §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."

Pub. L. 95-600, title VII, §701(c)(3), Nov. 6, 1978, 92 Stat. 2900, as amended by Pub. L. 99-514, §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, §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 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

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.