

barred on the date of the enactment of this Act [July 18, 1984] or at any time during the 1-year period beginning on the date of the enactment of this Act 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 amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.”

§ 86. Social security and tier 1 railroad retirement benefits

(a) In general

(1) In general

Except as provided in paragraph (2), gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

- (A) one-half of the social security benefits received during the taxable year, or
- (B) one-half of the excess described in subsection (b)(1).

(2) Additional amount

In the case of a taxpayer with respect to whom the amount determined under subsection (b)(1)(A) exceeds the adjusted base amount, the amount included in gross income under this section shall be equal to the lesser of—

- (A) the sum of—
 - (i) 85 percent of such excess, plus
 - (ii) the lesser of the amount determined under paragraph (1) or an amount equal to one-half of the difference between the adjusted base amount and the base amount of the taxpayer, or
- (B) 85 percent of the social security benefits received during the taxable year.

(b) Taxpayers to whom subsection (a) applies

(1) In general

A taxpayer is described in this subsection if—

- (A) the sum of—
 - (i) the modified adjusted gross income of the taxpayer for the taxable year, plus
 - (ii) one-half of the social security benefits received during the taxable year, exceeds
- (B) the base amount.

(2) Modified adjusted gross income

For purposes of this subsection, the term “modified adjusted gross income” means adjusted gross income—

- (A) determined without regard to this section and sections 135, 137, 199, 221, 222, 911, 931, and 933, and
- (B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(c) Base amount and adjusted base amount

For purposes of this section—

(1) Base amount

The term “base amount” means—

- (A) except as otherwise provided in this paragraph, \$25,000,

(B) \$32,000 in the case of a joint return, and
(C) zero in the case of a taxpayer who—

- (i) is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and
- (ii) does not live apart from his spouse at all times during the taxable year.

(2) Adjusted base amount

The term “adjusted base amount” means—

- (A) except as otherwise provided in this paragraph, \$34,000,
- (B) \$44,000 in the case of a joint return, and
- (C) zero in the case of a taxpayer described in paragraph (1)(C).

(d) Social security benefit

(1) In general

For purposes of this section, the term “social security benefit” means any amount received by the taxpayer by reason of entitlement to—

- (A) a monthly benefit under title II of the Social Security Act, or
- (B) a tier 1 railroad retirement benefit.

(2) Adjustment for repayments during year

(A) In general

For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

(B) Denial of deduction

If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

(3) Workmen’s compensation benefits substituted for social security benefits

For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen’s compensation act, the term “social security benefit” includes that portion of such benefit received under the workmen’s compensation act which equals such reduction.

(4) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term “tier 1 railroad retirement benefit” means—

- (A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being

paid) had been included in the term “employment” as defined in the Social Security Act, and

(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.

(5) Effect of early delivery of benefit checks

For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.

(e) Limitation on amount included where taxpayer receives lump-sum payment

(1) Limitation

If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result solely from taking into account such portion in the taxable years to which it is attributable.

(2) Special rules

(A) Year to which benefit attributable

For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

(B) Election

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

(f) Treatment as pension or annuity for certain purposes

For purposes of—

(1) section 22(c)(3)(A) (relating to reduction for amounts received as pension or annuity),

(2) section 32(c)(2) (defining earned income),

(3) section 219(f)(1) (defining compensation), and

(4) section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

(Added and amended Pub. L. 98-21, title I, §121(a), title III, §335(b)(2)(A), Apr. 20, 1983, 97 Stat. 80, 130; Pub. L. 98-76, title II, §224(d), Aug. 12, 1983, 97 Stat. 424; Pub. L. 98-369, div. A, title IV, §474(r)(2), div. B, title VI, §2661(o)(1), July 18, 1984, 98 Stat. 839, 1158; Pub. L. 99-272, title XII, §12111(b), title XIII, §13204(a), Apr. 7, 1986, 100 Stat. 287, 313; Pub. L. 99-514, title I, §131(b)(2), title XIII, §1301(j)(8), title XVIII, §1847(b)(2), Oct. 22, 1986, 100 Stat. 2113, 2658, 2856; Pub. L. 100-647,

title I, §1001(e), title VI, §6009(c)(1), Nov. 10, 1988, 102 Stat. 3351, 3690; Pub. L. 103-66, title XIII, §13215(a), (b), Aug. 10, 1993, 107 Stat. 475, 476; Pub. L. 103-296, title III, §309(d), Aug. 15, 1994, 108 Stat. 1523; Pub. L. 104-188, title I, §§1704(t)(3), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1887, 1902; Pub. L. 105-277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681-908; Pub. L. 107-16, title IV, §431(c)(1), June 7, 2001, 115 Stat. 68; Pub. L. 108-357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1) and (d)(1)(A), (3), (4)(A), (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 207, 224, and 708 of the Act are classified to sections 407, 424a, and 909 of Title 42, respectively. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3), (4), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Section 3(a)(1), (f)(3) of the Act is classified to section 231b(a)(1), (f)(3) of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

PRIOR PROVISIONS

A prior section 86 was renumbered section 87 of this title.

AMENDMENTS

2004—Subsec. (b)(2)(A). Pub. L. 108-357 inserted “199,” before “221”.

2001—Subsec. (b)(2)(A). Pub. L. 107-16 inserted “222,” after “221.”

1998—Subsec. (b)(2)(A). Pub. L. 105-277 inserted “221,” after “137.”

1996—Subsec. (b)(2). Pub. L. 104-188, §1704(t)(3), substituted “means adjusted” for “means adusted” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 104-188, §1807(c)(2), inserted “137,” before “911”.

1994—Subsec. (d)(1). Pub. L. 103-296 struck out at end “For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.”

1993—Subsec. (a). Pub. L. 103-66, §13215(a), designated existing provisions as par. (1), inserted par. (1) heading, substituted “Except as provided in paragraph (2), gross” for “Gross”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (c). Pub. L. 103-66, §13215(b), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “For purposes of this section, the term ‘base amount’ means—

“(1) except as otherwise provided in this subsection, \$25,000,

“(2) \$32,000, in the case of a joint return, and

“(3) zero, in the case of a taxpayer who—

“(A) is married at the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

“(B) does not live apart from his spouse at all times during the taxable year.”

1988—Subsec. (b)(2)(A). Pub. L. 100-647, §6009(c)(1), inserted “135,” before “911”.

Subsec. (f)(4), (5). Pub. L. 100-647, §1001(e), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “section 221(b)(2) (defining earned income), and”.

1986—Subsec. (b)(2)(A). Pub. L. 99-514, §131(b)(2), substituted “sections” for “sections 221.”

Subsec. (c)(3)(A). Pub. L. 99-514, §1301(j)(8), substituted “section 7703” for “section 143”.

Subsec. (d)(4). Pub. L. 99-272, §13204(a), in amending par. (4) generally, designated existing provisions as introductory clause of par. (4), struck out “a monthly benefit under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974”, and added cls. (A) and (B).

Subsec. (d)(5). Pub. L. 99-272, §12111(b), added par. (5).

Subsec. (f)(1). Pub. L. 99-514, §1847(b)(2), substituted “section 22(c)(3)(A)” for “section 37(c)(3)(A)”.

1984—Subsec. (f)(1). Pub. L. 98-369, §2661(o)(1), added par. (1). Former par. (1) redesignated par. (2).

Pub. L. 98-369, §474(r)(2), substituted “section 32(c)(2)” for “section 43(c)(2)”.

Subsec. (f)(2)–(5). Pub. L. 98-369, §2661(o)(1), redesignated pars. (1) to (4) as (2) to (5), respectively.

1983—Subsec. (a). Pub. L. 98-21, §335(b)(2)(A), inserted “(notwithstanding section 207 of the Social Security Act)”.

Subsec. (d)(4). Pub. L. 98-76 inserted “3(f)(3),” after “3(a),”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108-357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107-16, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. J, title IV, §4003(l), Oct. 21, 1998, 112 Stat. 2681-910, provided that: “The amendments made by this section [amending this section and sections 135, 137, 163, 172, 219, 221, 264, 351, 368, 469, 954, 2001, 6311, 6404, and 9510 of this title and amending provisions set out as a note under section 7508A of this title] shall take effect as if included in the provisions of the 1997 Act [Pub. L. 105-34] to which they relate.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(2) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104-188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-296, title III, §309(e)(2), Aug. 15, 1994, 108 Stat. 1524, provided that: “The amendment made by subsection (d) [amending this section] shall apply with respect to benefits received after December 31, 1995, in taxable years ending after such date.”

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13215(d), Aug. 10, 1993, 107 Stat. 477, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1993.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(e) 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 VI, §6009(d), Nov. 10, 1988, 102 Stat. 3690, provided that: “The amendments made by this section [enacting section 135 of this title, amending this section and sections 219 and 469 of this title,

and renumbering former section 135 as section 136 of this title] shall apply to taxable years beginning after December 31, 1989.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 131(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311-1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1847(b)(2) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Amendment by section 12111(b) of Pub. L. 99-272 applicable with respect to benefit checks issued for months ending after Apr. 7, 1986, see section 12111(c) of Pub. L. 99-272, set out as a note under section 909 of Title 42, The Public Health and Welfare.

Pub. L. 99-272, title XIII, §13204(b), Apr. 7, 1986, 100 Stat. 313, provided that: “The amendment made by subsection (a) [amending this section] shall apply to any monthly benefit for which the generally applicable payment date is after December 31, 1985.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for portions of lump-sum payments received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 227(b) of Pub. L. 98-76 set out as a note under section 72 of this title.

EFFECTIVE DATE

Pub. L. 98-21, title I, §121(g), Apr. 20, 1983, 97 Stat. 84, as amended by 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 6050F of this title, amending sections 85, 128, 861, 871, 1441, and 6103 of this title and section 3413 of Title 12, Banks and Banking, and enacting provisions set out as a note under section 401 of Title 42, The Public Health and Welfare] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

“(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983.—The amendments made by this section shall not apply to any portion of a lump-sum payment of social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984.”

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.

§ 87. Alcohol and biodiesel fuels credits

Gross income includes—

(1) the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a), and

(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).

(Added Pub. L. 96-223, title II, § 232(c)(1), Apr. 2, 1980, 94 Stat. 276, § 86; renumbered § 87, Pub. L. 98-21, title I, § 121(a), Apr. 20, 1983, 97 Stat. 80; amended Pub. L. 98-369, div. A, title IV, § 474(r)(3), July 18, 1984, 98 Stat. 839; Pub. L. 108-357, title III, § 302(c)(1)(A), Oct. 22, 2004, 118 Stat. 1465.)

AMENDMENTS

2004—Pub. L. 108-357 amended section catchline and text generally. Prior to amendment, text read as follows: “Gross income includes the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a).”

1984—Pub. L. 98-369 amended section generally, substituting “the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a)” for “an amount equal to the amount of the credit allowable to the taxpayer under section 44E for the taxable year (determined without regard to subsection (e) thereof)”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108-357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE

Section applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96-223, set out as a note under section 40 of this title.

§ 88. Certain amounts with respect to nuclear decommissioning costs

In the case of any taxpayer who is required to include the amount of any nuclear decommissioning costs in the taxpayer's cost of service for ratemaking purposes, there shall be includible in the gross income of such taxpayer the amount so included for any taxable year.

(Added Pub. L. 98-369, div. A, title I, § 91(f)(1), July 18, 1984, 98 Stat. 607; amended Pub. L. 99-514, title XVIII, § 1807(a)(4)(E)(vii), Oct. 22, 1986, 100 Stat. 2813.)

AMENDMENTS

1986—Pub. L. 99-514 substituted “for ratemaking purposes” for “of ratemaking purposes”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of

the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, see section 91(g)(5) of Pub. L. 98-369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 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.

§ 89. Repealed. Pub. L. 101-140, title II, § 202(a), Nov. 8, 1989, 103 Stat. 830

Section, added Pub. L. 99-514, title XI, § 1151(a), Oct. 22, 1986, 100 Stat. 2494; amended Pub. L. 100-647, title I, § 1011B(a)(1)-(9), (21), (28), (29), (34), title III, § 3021(a)(1)(A), (B), (2)(A), (3)-(9), (11)-(13)(A), (b)(2)(B), (3), title VI, § 6051(a), Nov. 10, 1988, 102 Stat. 3483-3485, 3487, 3488, 3625-3632, 3695, related to nondiscrimination rules regarding benefits provided under employee benefit plans.

EFFECTIVE DATE OF REPEAL

Pub. L. 101-140, title II, § 202(c), Nov. 8, 1989, 103 Stat. 830, provided that: “The amendments made by this section [repealing this section] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99-514, see section 1151(k) set out as a note under section 79 of this title].”

NONENFORCEMENT OF SECTION FOR FISCAL YEAR 1990

Pub. L. 101-136, title V, § 528, Nov. 3, 1989, 103 Stat. 816, provided that: “No monies appropriated by this Act [see Tables for classification] may be used to implement or enforce section 1151 of the Tax Reform Act of 1986 or the amendments made by such section [section 1151 of Pub. L. 99-514, which enacted section 89 of this title, amended sections 79, 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 3121, 3306, 6039D, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 89 of this title].”

TRANSITIONAL PROVISIONS

Pub. L. 100-647, title III, § 3021(c), Nov. 10, 1988, 102 Stat. 3633, provided for the first issue of valuation rules, the interim impact on former employees, the meeting of the written requirement for covered plans in connection with implementation of section 89 of the Code, and the issuance by Nov. 15, 1988, of rules necessary to carry out section 89, prior to repeal by Pub. L. 101-140, title II, § 203(a)(7), Nov. 8, 1989, 103 Stat. 831.

PART-TIME EMPLOYEE DEFINED FOR PURPOSES OF SUBSECTION (f)

Pub. L. 100-647, title VI, § 6070, Nov. 10, 1988, 102 Stat. 3704, increased the number of employees who would be excluded from consideration under this section during plan years 1989 and 1990, in the case of a plan maintained by an employer which employs fewer than 10 employees on a normal working day during a plan year, prior to repeal by Pub. L. 101-140, title II, § 203(a)(7), Nov. 8, 1989, 103 Stat. 831.

§ 90. Illegal Federal irrigation subsidies

(a) General rule

Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.