

case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.” as concluding provision.

1986—Subsec. (d). Pub. L. 99-514 added subsec. (d).

1981—Subsec. (c). Pub. L. 97-34 added subsec. (c).

1980—Subsec. (a). Pub. L. 96-222 struck out “General rule” in subsec. (a) as in effect on the day before the date of enactment of the Foreign Earned Income Act of 1978 to correct a legislative oversight in the amendment of subsec. (a) of this section by section 205 of Pub. L. 95-615. The amendment by Pub. L. 95-615, however, was executed without reference to “General rule” as the probable intent of Congress, thereby requiring no change in text.

1978—Subsec. (a). Pub. L. 95-615 designated existing provisions as subsec. (a), added subsec. (a) heading, and substituted “furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer” for “furnished to him by his employer for the convenience of the employer”.

Pub. L. 95-427 inserted provisions relating to factors not taken into account with respect to meals and certain fixed charges for meals.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title v, § 5002(b), July 22, 1998, 112 Stat. 789, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [July 22, 1998].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, § 1123(b), Aug. 20, 1996, 110 Stat. 1768, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XI, § 1164(b), Oct. 22, 1986, 100 Stat. 2511, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95-615, see section 108(a)(2)(A) of Pub. L. 96-222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-427, § 4(b), Oct. 7, 1978, 92 Stat. 998, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.”

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as a note under section 911 of this title.

STATUTE OF LIMITATIONS

Pub. L. 96-605, title I, § 107(b), Dec. 28, 1980, 94 Stat. 3524, provided that: “In the case of any allowance re-

ceived during calendar year 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 [section 3 of Pub. L. 95-427, set out below] shall be applied by substituting the date one year after the date of the enactment of this Act [Dec. 28, 1980] for ‘April 15, 1979’ each place it appears.”

TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW RECEIVED BY STATE POLICE OFFICERS BEFORE JANUARY 1, 1978

Pub. L. 95-427, § 3, Oct. 7, 1978, 92 Stat. 996, as amended by Pub. L. 96-605, title I, § 107(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) GENERAL RULE.—If—

“(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

“(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

“(3) this section applies to such allowance, then, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such allowance shall not be included in such individual’s gross income.

“(b) ALLOWANCES TO WHICH SECTION APPLIES.—For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received—

“(1) after December 31, 1969, and before January 1, 1974, to the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

“(2) during the calendar year 1974, 1975, 1976, or 1977.

“(c) OTHER DEFINITIONS.—For purposes of this section—

“(1) STATE POLICE OFFICER.—The term ‘State police officer’ means any police officer (including a highway 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. Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(19)(A), Dec. 19, 2014, 128 Stat. 4039]

Section, 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, related to amounts received under qualified group legal services plans.

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.

EFFECTIVE DATE OF REPEAL

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

§ 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

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.

(4) 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.

(5) 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 as the principal residence of the taxpayer or the taxpayer's spouse,
- (II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and
- (III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

(D) Coordination with recognition of gain attributable to depreciation

For purposes of this paragraph—

- (i) subparagraph (A) shall be applied after the application of subsection (d)(6), and