

117(d) of such Code shall be treated as in effect on and after January 1, 1984.”

#### EFFECTIVE DATE

Pub. L. 95-600, title I, §164(d), Nov. 6, 1978, 92 Stat. 2814, provided that: “The amendments made by this section [enacting this section and amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1978.”

#### 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.

#### EXPEDITED PROCEDURES FOR REFUNDS OF OVERPAYMENTS

Pub. L. 104-188, title I, §1202(c)(3), Aug. 20, 1996, 110 Stat. 1773, provided that: “The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1995 or 1996 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee’s signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee.”

#### SPECIAL RULE FOR CERTAIN TAXABLE YEARS

Pub. L. 102-227, title I, §103(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 employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 103-66, title XIII, §13101(a)(2), Aug. 10, 1993, 107 Stat. 420.

Pub. L. 101-239, title VII, §7101(a)(2), Dec. 19, 1989, 103 Stat. 2304, provided that, in the case of any taxable year beginning in 1990, only amounts paid before Oct. 1, 1990, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101-508, title XI, §11403(c), 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.

### **[§ 128. Repealed. Pub. L. 101-508, title XI, §11801(a)(10), Nov. 5, 1990, 104 Stat. 1388-520]**

Section, added and amended Pub. L. 97-34, title III, §§301(a), 302(a), (d)(1), Aug. 13, 1981, 95 Stat. 267, 270, 274;

Pub. L. 97-448, title I, §§103(a)(1), (5), (b), 109, Jan. 12, 1983, 96 Stat. 2374, 2375, 2391; Pub. L. 98-21, title I, §§121(f)(2), (g), 122(c)(3), (d), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 98-369, div. A, title I, §16(a), July 18, 1984, 98 Stat. 505, related to interest on certain savings certificates.

A prior section 128 was renumbered section 140 of this title.

#### SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

### **§ 129. Dependent care assistance programs**

#### **(a) Exclusion**

##### **(1) In general**

Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

##### **(2) Limitation of exclusion**

###### **(A) In general**

The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed \$5,000 (\$2,500 in the case of a separate return by a married individual).

###### **(B) Year of inclusion**

The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

###### **(C) Marital status**

For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).

#### **(b) Earned income limitation**

##### **(1) In general**

The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

##### **(2) Special rule for certain spouses**

For purposes of paragraph (1), the provisions of section 21(d)(2) shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.