

The purchase and installation of specially defined energy property shall be treated as an energy conservation measure described in subparagraph (B)."

Subsec. (c)(2). Pub. L. 104-188, §1617(b)(2), struck out "and special rules" after "definitions" in heading, redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which related to "specially defined energy property".

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1617(c), Aug. 20, 1996, 110 Stat. 1858, provided that: "The amendments made by this section [amending this section] shall apply to amounts received after December 31, 1996, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter."

#### EFFECTIVE DATE

Pub. L. 102-486, title XIX, §1912(c), Oct. 24, 1992, 106 Stat. 3016, provided that: "The amendments made by this section [enacting this section and renumbering former section 136 as 137] shall apply to amounts received after December 31, 1992."

### § 137. Adoption assistance programs

#### (a) Exclusion

##### (1) In general

Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

##### (2) \$10,000 exclusion for adoption of child with special needs regardless of expenses

In the case of an adoption of a child with special needs which becomes final during a taxable year, the qualified adoption expenses with respect to such adoption for such year shall be increased by an amount equal to the excess (if any) of \$10,000 over the actual aggregate qualified adoption expenses with respect to such adoption during such taxable year and all prior taxable years.

#### (b) Limitations

##### (1) Dollar limitation

The aggregate of the amounts paid or expenses incurred which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed \$10,000.

##### (2) Income limitation

The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as—

- (A) the amount (if any) by which the taxpayer's adjusted gross income exceeds \$150,000, bears to
- (B) \$40,000.

##### (3) Determination of adjusted gross income

For purposes of paragraph (2), adjusted gross income shall be determined—

- (A) without regard to this section and sections 221, 222, 911, 931, and 933, and
- (B) after the application of sections 86, 135, 219, and 469.

#### (c) Adoption assistance program

For purposes of this section, an adoption assistance program is a separate written plan of an employer for the exclusive benefit of such employer's employees—

- (1) under which the employer provides such employees with adoption assistance, and
- (2) which meets requirements similar to the requirements of paragraphs (2), (3), (5), and (6) of section 127(b).

An adoption reimbursement program operated under section 1052 of title 10, United States Code (relating to armed forces) or section 514<sup>1</sup> of title 14, United States Code (relating to members of the Coast Guard) shall be treated as an adoption assistance program for purposes of this section.

#### (d) Qualified adoption expenses

For purposes of this section, the term "qualified adoption expenses" has the meaning given such term by section 23(d) (determined without regard to reimbursements under this section).

#### (e) Certain rules to apply

Rules similar to the rules of subsections (e), (f), and (g) of section 23 shall apply for purposes of this section.

#### (f) Adjustments for inflation

In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(2) and paragraphs (1) and (2)(A) of subsection (b) shall be increased by an amount equal to—

- (1) such dollar amount, multiplied by
- (2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2001" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

(Added Pub. L. 104-188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; amended Pub. L. 105-34, title XVI, §1601(h)(2)(C), Aug. 5, 1997, 111 Stat. 1092; Pub. L. 105-277, div. J, title IV, §4003(a)(2)(C), Oct. 21, 1998, 112 Stat. 2681-908; Pub. L. 107-16, title II, §202(a)(2), (b)(1)(B), (2)(B), (d)(2), (e)(2), title IV, §431(c)(1), June 7, 2001, 115 Stat. 47, 48, 68; Pub. L. 107-147, title IV, §§411(c)(2), 418(a)(2), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 108-311, title IV, §403(e), Oct. 4, 2004, 118 Stat. 1188; Pub. L. 108-357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 111-148, title X, §10909(a)(2), (b)(2)(J), (c), Mar. 23, 2010, 124 Stat. 1022, 1023; Pub. L. 111-312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 115-97, title I, §§11002(d)(1)(N), 13305(b)(1), Dec. 22, 2017, 131 Stat. 2060, 2126.)

#### INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

#### REFERENCES IN TEXT

Section 514 of title 14, referred to in subsec. (c), was renumbered section 541 of title 14 by Pub. L. 113-281, title II, §214(b)(1)(A), Dec. 18, 2014, 128 Stat. 3033.

<sup>1</sup> See References in Text note below.

## PRIOR PROVISIONS

A prior section 137 was renumbered section 140 of this title.

## AMENDMENTS

2017—Subsec. (b)(3)(A). Pub. L. 115-97, §13305(b)(1), struck out “199,” before “221”.

Subsec. (f)(2). Pub. L. 115-97, §11002(d)(1)(N), substituted “for ‘calendar year 2016’ in subparagraph (A)(ii)” for “for ‘calendar year 1992’ in subparagraph (B)”.

2010—Subsec. (a)(2). Pub. L. 111-148, §10909(a)(2)(B), (c), as amended by Pub. L. 111-312, temporarily substituted “\$13,170” for “\$10,000” in heading and text. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(1). Pub. L. 111-148, §10909(a)(2)(A), (c), as amended by Pub. L. 111-312, temporarily substituted “\$13,170” for “\$10,000”. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (d). Pub. L. 111-148, §10909(b)(2)(J)(i), (c), as amended by Pub. L. 111-312, temporarily substituted “section 36C(d)” for “section 23(d)”. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (e). Pub. L. 111-148, §10909(b)(2)(J)(ii), (c), as amended by Pub. L. 111-312, temporarily substituted “section 36C” for “section 23”. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (f). Pub. L. 111-148, §10909(a)(2)(C), (c), as amended by Pub. L. 111-312, temporarily amended subsec. (f) generally. See Effective and Termination Dates of 2010 Amendment note below. Prior to amendment subsec. (f) read as follows: “ADJUSTMENTS FOR INFLATION.—In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(2) and paragraphs (1) and (2)(A) of subsection (b) shall be increased by an amount equal to—

“(1) such dollar amount, multiplied by

“(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2001’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.”

2004—Subsec. (b)(1). Pub. L. 108-311 amended directory language of Pub. L. 107-147, §411(c)(2)(B). See 2002 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 108-357 inserted “199,” before “221”.

2002—Subsec. (a). Pub. L. 107-147, §411(c)(2)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Gross income of an employee does not include amounts paid or expenses incurred by the employer for adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program. The amount of the exclusion shall be—

“(1) in the case of an adoption of a child other than a child with special needs, the amount of the qualified adoption expenses paid or incurred by the taxpayer, and

“(2) in the case of an adoption of a child with special needs, \$10,000.”

Subsec. (b)(1). Pub. L. 107-147, §411(c)(2)(B), as amended by Pub. L. 108-311, substituted “subsection (a)” for “subsection (a)(1)”.

Subsec. (f). Pub. L. 107-147, §418(a)(2), inserted at end “If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.”

2001—Subsec. (a). Pub. L. 107-16, §202(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a

child by an employee if such amounts are furnished pursuant to an adoption assistance program.”

Subsec. (b)(1). Pub. L. 107-16, §202(b)(1)(B), substituted “subsection (a)(1)” for “subsection (a)” and “\$10,000” for “\$5,000 (\$6,000, in the case of a child with special needs)”.

Subsec. (b)(2)(A). Pub. L. 107-16, §202(b)(2)(B), substituted “\$150,000” for “\$75,000”.

Subsec. (b)(3)(A). Pub. L. 107-16, §431(c)(1), inserted “222,” after “221.”

Subsec. (f). Pub. L. 107-16, §202(d)(2), (e)(2), added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: “This section shall not apply to amounts paid or expenses incurred after December 31, 2001.”

1998—Subsec. (b)(3)(A). Pub. L. 105-277 inserted “221,” after “and sections”.

1997—Subsec. (b)(1). Pub. L. 105-34 substituted “of the amounts paid or expenses incurred which may be taken into account” for “amount excludable from gross income”.

## EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(1)(N) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115-97, set out as a note under section 1 of this title.

Amendment by section 13305(b)(1) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13305(c) of Pub. L. 115-97, set out as a note under section 74 of this title.

## EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111-148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111-148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111-148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111-148, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 2004 AMENDMENTS

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.

Amendment by Pub. L. 108-311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107-147, to which such amendment relates, see section 403(f) of Pub. L. 108-311, set out as a note under section 56 of this title.

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(c)(2) of Pub. L. 107-147 applicable to taxable years beginning after Dec. 31, 2002, except that amendment by section 411(c)(2)(B) applicable to taxable years beginning after Dec. 31, 2001, see section 411(c)(3) of Pub. L. 107-147, set out as a note under section 23 of this title.

Amendment by section 418(a)(2) of Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 418(c) of Pub. L. 107-147, set out as a note under section 21 of this title.

## EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 202(b)(1)(B), (2)(B), (d)(2), (e)(2) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107-16, set out as a note under section 23 of this title.

Amendment by section 202(a)(2) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2002, see section 202(g)(2) of Pub. L. 107-16, set out as a note under section 23 of this title.

Amendment by section 431(c)(1) of 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

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104-188, set out as a note under section 23 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 138. Medicare Advantage MSA

#### (a) Exclusion

Gross income shall not include any payment to the Medicare Advantage MSA of an individual by the Secretary of Health and Human Services under part C of title XVIII of the Social Security Act.

#### (b) Medicare Advantage MSA

For purposes of this section, the term “Medicare Advantage MSA” means an Archer MSA (as defined in section 220(d))—

- (1) which is designated as a Medicare Advantage MSA,
- (2) with respect to which no contribution may be made other than—
  - (A) a contribution made by the Secretary of Health and Human Services pursuant to part C of title XVIII of the Social Security Act, or
  - (B) a trustee-to-trustee transfer described in subsection (c)(4),
- (3) the governing instrument of which provides that trustee-to-trustee transfers described in subsection (c)(4) may be made to and from such account, and
- (4) which is established in connection with an MSA plan described in section 1859(b)(3) of the Social Security Act.

#### (c) Special rules for distributions

##### (1) Distributions for qualified medical expenses

In applying section 220 to a Medicare Advantage MSA—

- (A) qualified medical expenses shall not include amounts paid for medical care for any individual other than the account holder, and
- (B) section 220(d)(2)(C) shall not apply.

### (2) Penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained

#### (A) In general

The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a Medicare Advantage MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be increased by 50 percent of the excess (if any) of—

- (i) the amount of such payment or distribution, over
- (ii) the excess (if any) of—

(I) the fair market value of the assets in such MSA as of the close of the calendar year preceding the calendar year in which the taxable year begins, over

(II) an amount equal to 60 percent of the deductible under the Medicare Advantage MSA plan covering the account holder as of January 1 of the calendar year in which the taxable year begins.

Section 220(f)(4) shall not apply to any payment or distribution from a Medicare Advantage MSA.

#### (B) Exceptions

Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

- (i) becomes disabled within the meaning of section 72(m)(7), or
- (ii) dies.

#### (C) Special rules

For purposes of subparagraph (A)—

- (i) all Medicare Advantage MSAs of the account holder shall be treated as 1 account,
- (ii) all payments and distributions not used exclusively to pay the qualified medical expenses of the account holder during any taxable year shall be treated as 1 distribution, and
- (iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

#### (3) Withdrawal of erroneous contributions

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any payment or distribution from a Medicare Advantage MSA to the Secretary of Health and Human Services of an erroneous contribution to such MSA and of the net income attributable to such contribution.

#### (4) Trustee-to-trustee transfers

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any trustee-to-trustee transfer from a Medicare Advantage MSA of an account holder to another Medicare Advantage MSA of such account holder.

#### (d) Special rules for treatment of account after death of account holder

In applying section 220(f)(8)(A) to an account which was a Medicare Advantage MSA of a decedent, the rules of section 220(f) shall apply in lieu of the rules of subsection (c) of this section