

ance 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 Repealed.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.