

Pub. L. 95-600, title I, §157(b)(4)(A), Nov. 6, 1978, 92 Stat. 2805, provided that: “The amendments made by this subsection [amending this section and sections 220 and 4973 of this title] shall apply to the determination of deductions for taxable years beginning after December 31, 1975.”

Pub. L. 95-600, title VII, §703(c)(5), Nov. 6, 1978, 92 Stat. 2939, provided that: “The amendments made by this subsection [amending this section and sections 220 and 408 of this title] shall apply to taxable years beginning after December 31, 1976.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(4) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94-455, set out as an Effective Date note under section 62 of this title.

Pub. L. 94-455, title XV, §1503(b), Oct. 4, 1976, 90 Stat. 1738, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.”

Amendment by section 1901(a)(32) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 93-406, title II, §2002(i)(1), Sept. 2, 1974, 88 Stat. 971, provided that: “The amendments made by subsections (a), (b), and (c) [of section 2002 of Pub. L. 93-406, enacting this section and sections 408 and 409 of this title and amending section 62 of this title] apply to taxable years beginning after December 31, 1974.”

CONTRIBUTIONS FOR TAXABLE YEARS ENDING BEFORE MAY 29, 2006

Pub. L. 109-227, §2(c), May 29, 2006, 120 Stat. 385, provided that:

“(1) IN GENERAL.—In the case of any taxpayer with respect to whom compensation was excluded from gross income under section 112 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 2003, and ending before the date of the enactment of this Act [May 29, 2006], any contribution to an individual retirement plan made on account of such taxable year and not later than the last day of the 3-year period beginning on the date of the enactment of this Act shall be treated, for purposes of such Code, as having been made on the last day of such taxable year.

“(2) WAIVER OF LIMITATIONS.—

“(A) CREDIT OR REFUND.—If the credit or refund of any overpayment of tax resulting from a contribution to which paragraph (1) applies is prevented at any time by the operation of any law or rule of law (including *res judicata*), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date that such contribution is made (determined without regard to paragraph (1)).

“(B) ASSESSMENT OF DEFICIENCY.—The period for assessing a deficiency attributable to a contribution to which paragraph (1) applies shall not expire before the close of the 3-year period beginning on the date that such contribution is made. Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(3) INDIVIDUAL RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ‘individual retirement plan’ has the meaning given such term by section 7701(a)(37) of such Code.”

CLARIFICATION OF TREATMENT OF FEDERAL JUDGES

Pub. L. 100-203, title X, §10103, Dec. 22, 1987, 101 Stat. 1330-386, as amended by Pub. L. 100-647, title II, §2004(c), Nov. 10, 1988, 102 Stat. 3599, provided that:

“(a) GENERAL RULE.—A Federal judge—

“(1) shall be treated as an active participant in a plan established for its employees by the United States for purposes of section 219(g) of the Internal Revenue Code of 1986, and

“(2) shall be treated as an employee for purposes of chapter 1 of such Code.

“(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 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, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 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.

TRANSITIONAL RULES FOR ALLOWABLE DEDUCTIONS FOR FIRST TAXABLE YEAR BEGINNING IN 1978

Pub. L. 95-600, title I, §157(b)(4)(B), Nov. 6, 1978, 92 Stat. 2805, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 219(c)(5) or 220(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer’s first taxable year beginning in 1978.”

§ 220. Archer MSAs

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to an Archer MSA of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is the amount equal to $\frac{1}{12}$ of—

(A) in the case of an individual who has self-only coverage under the high deductible

health plan as of the first day of such month, 65 percent of the annual deductible under such coverage, and

(B) in the case of an individual who has family coverage under the high deductible health plan as of the first day of such month, 75 percent of the annual deductible under such coverage.

(3) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) of this paragraph) shall be divided equally between them unless they agree on a different division.

(4) Deduction not to exceed compensation

(A) Employees

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (I) of subsection (c)(1)(A)(iii) shall not exceed such individual's wages, salaries, tips, and other employee compensation which are attributable to such individual's employment by the employer referred to in such subclause.

(B) Self-employed individuals

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (II) of subsection (c)(1)(A)(iii) shall not exceed such individual's earned income (as defined in section 401(c)(1)) derived by the taxpayer from the trade or business with respect to which the high deductible health plan is established.

(C) Community property laws not to apply

The limitations under this paragraph shall be determined without regard to community property laws.

(5) Coordination with exclusion for employer contributions

No deduction shall be allowed under this section for any amount paid for any taxable year to an Archer MSA of an individual if—

(A) any amount is contributed to any Archer MSA of such individual for such year which is excludable from gross income under section 106(b), or

(B) if such individual's spouse is covered under the high deductible health plan covering such individual, any amount is contributed for such year to any Archer MSA of such spouse which is so excludable.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be

zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(c) Definitions

For purposes of this section—

(1) Eligible individual

(A) In general

The term “eligible individual” means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month,

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan, and

(iii)(I) the high deductible health plan covering such individual is established and maintained by the employer of such individual or of the spouse of such individual and such employer is a small employer, or

(II) such individual is an employee (within the meaning of section 401(c)(1)) or the spouse of such an employee and the high deductible health plan covering such individual is not established or maintained by any employer of such individual or spouse.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance, and

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

(C) Continued eligibility of employee and spouse establishing Archer MSAs

If, while an employer is a small employer—

(i) any amount is contributed to an Archer MSA of an individual who is an employee of such employer or the spouse of such an employee, and

(ii) such amount is excludable from gross income under section 106(b) or allowable as a deduction under this section,

such individual shall not cease to meet the requirement of subparagraph (A)(iii)(I) by reason of such employer ceasing to be a small employer so long as such employee continues to be an employee of such employer.

(D) Limitations on eligibility

For limitations on number of taxpayers who are eligible to have Archer MSAs, see subsection (i).

(2) High deductible health plan

(A) In general

The term “high deductible health plan” means a health plan—

(i) in the case of self-only coverage, which has an annual deductible which is

not less than \$1,500 and not more than \$2,250.

(ii) in the case of family coverage, which has an annual deductible which is not less than \$3,000 and not more than \$4,500, and

(iii) the annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) \$3,000 for self-only coverage, and

(II) \$5,500 for family coverage.

(B) Special rules

(i) Exclusion of certain plans

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(ii) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care if the absence of a deductible for such care is required by State law.

(3) Permitted insurance

The term “permitted insurance” means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

(i) liabilities incurred under workers’ compensation laws,

(ii) tort liabilities,

(iii) liabilities relating to ownership or use of property, or

(iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Small employer

(A) In general

The term “small employer” means, with respect to any calendar year, any employer if such employer employed an average of 50 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Certain growing employers retain treatment as small employer

The term “small employer” includes, with respect to any calendar year, any employer if—

(i) such employer met the requirement of subparagraph (A) (determined without re-

gard to subparagraph (B)) for any preceding calendar year after 1996.

(ii) any amount was contributed to the Archer MSA of any employee of such employer with respect to coverage of such employee under a high deductible health plan of such employer during such preceding calendar year and such amount was excludable from gross income under section 106(b) or allowable as a deduction under this section, and

(iii) such employer employed an average of 200 or fewer employees on business days during each preceding calendar year after 1996.

(D) Special rules

(i) Controlled groups

For purposes of this paragraph, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

(ii) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(5) Family coverage

The term “family coverage” means any coverage other than self-only coverage.

(d) Archer MSA

For purposes of this section—

(1) Archer MSA

The term “Archer MSA” means a trust created or organized in the United States as a medical savings account exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5), no contribution will be accepted—

(i) unless it is in cash, or

(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds 75 percent of the highest annual limit deductible permitted under subsection (c)(2)(A)(ii) for such calendar year.

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses

(A) In general

The term “qualified medical expenses” means, with respect to an account holder,

amounts paid by such holder for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. For purposes of this subparagraph, amounts paid for menstrual care products (as defined in section 223(d)(2)(D)) shall be treated as paid for medical care.

(B) Health insurance may not be purchased from account

(i) In general

Subparagraph (A) shall not apply to any payment for insurance.

(ii) Exceptions

Clause (i) shall not apply to any expense for coverage under—

(I) a health plan during any period of continuation coverage required under any Federal law,

(II) a qualified long-term care insurance contract (as defined in section 7702B(b)), or

(III) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law.

(C) Medical expenses of individuals who are not eligible individuals

Subparagraph (A) shall apply to an amount paid by an account holder for medical care of an individual who is not described in clauses (i) and (ii) of subsection (c)(1)(A) for the month in which the expense for such care is incurred only if no amount is contributed (other than a rollover contribution) to any Archer MSA of such account holder for the taxable year which includes such month. This subparagraph shall not apply to any expense for coverage described in subclause (I) or (III) of subparagraph (B)(ii).

(3) Account holder

The term “account holder” means the individual on whose behalf the Archer MSA was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts

(1) In general

An Archer MSA is exempt from taxation under this subtitle unless such account has

ceased to be an Archer MSA. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to Archer MSAs, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is used exclusively to pay qualified medical expenses of any account holder shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be included in the gross income of such holder.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any Archer MSA of an individual, paragraph (2) shall not apply to distributions from the Archer MSAs of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term “excess contribution” means any contribution (other than a rollover contribution) which is neither excludable from gross income under section 106(b) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account holder for any taxable year in which there is a payment or distribution from an Archer MSA of such holder which is includible in gross income under paragraph (2) shall be increased by 20 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the

account holder becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after medical care eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on which the account holder attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from an Archer MSA to the account holder to the extent the amount received is paid into an Archer MSA or a health savings account (as defined in section 223(d)) for the benefit of such holder not later than the 60th day after the day on which the holder receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from an Archer MSA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from an Archer MSA which was not includible in the individual's gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment or distribution out of an Archer MSA for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in an Archer MSA to an individual's spouse or former spouse under a divorce or separation instrument described in clause (i) of section 121(d)(3)(C) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as an Archer MSA with respect to which such spouse is the account holder.

(8) Treatment after death of account holder

(A) Treatment if designated beneficiary is spouse

If the account holder's surviving spouse acquires such holder's interest in an Archer MSA by reason of being the designated beneficiary of such account at the death of the account holder, such Archer MSA shall be treated as if the spouse were the account holder.

(B) Other cases

(i) In general

If, by reason of the death of the account holder, any person acquires the account

holder's interest in an Archer MSA in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be an Archer MSA as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such holder, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's gross income for the last taxable year of such holder.

(ii) Special rules

(I) Reduction of inclusion for pre-death expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

In the case of any taxable year beginning in a calendar year after 1998, each dollar amount in subsection (c)(2) 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 such taxable year begins by substituting "calendar year 1997" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any increase under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.

(h) Reports

The Secretary may require the trustee of an Archer MSA to make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(i) Limitation on number of taxpayers having Archer MSAs

(1) In general

Except as provided in paragraph (5), no individual shall be treated as an eligible individual for any taxable year beginning after the cut-off year unless—

(A) such individual was an active MSA participant for any taxable year ending on or before the close of the cut-off year, or

(B) such individual first became an active MSA participant for a taxable year ending after the cut-off year by reason of coverage under a high deductible health plan of an MSA-participating employer.

(2) Cut-off year

For purposes of paragraph (1), the term “cut-off year” means the earlier of—

(A) calendar year 2007, or

(B) the first calendar year before 2007 for which the Secretary determines under subsection (j) that the numerical limitation for such year has been exceeded.

(3) Active MSA participant

For purposes of this subsection—

(A) In general

The term “active MSA participant” means, with respect to any taxable year, any individual who is the account holder of any Archer MSA into which any contribution was made which was excludable from gross income under section 106(b), or allowable as a deduction under this section, for such taxable year.

(B) Special rule for cut-off years before 2007

In the case of a cut-off year before 2007—

(i) an individual shall not be treated as an eligible individual for any month of such year or an active MSA participant under paragraph (1)(A) unless such individual is, on or before the cut-off date, covered under a high deductible health plan, and

(ii) an employer shall not be treated as an MSA-participating employer unless the employer, on or before the cut-off date, offered coverage under a high deductible health plan to any employee.

(C) Cut-off date

For purposes of subparagraph (B)—

(i) In general

Except as otherwise provided in this subparagraph, the cut-off date is October 1 of the cut-off year.

(ii) Employees with enrollment periods after October 1

In the case of an individual described in subclause (I) of subsection (c)(1)(A)(iii), if the regularly scheduled enrollment period for health plans of the individual's employer occurs during the last 3 months of the cut-off year, the cut-off date is December 31 of the cut-off year.

(iii) Self-employed individuals

In the case of an individual described in subclause (II) of subsection (c)(1)(A)(iii), the cut-off date is November 1 of the cut-off year.

(iv) Special rules for 1997

If 1997 is a cut-off year by reason of subsection (j)(1)(A)—

(I) each of the cut-off dates under clauses (i) and (iii) shall be 1 month earlier than the date determined without regard to this clause, and

(II) clause (ii) shall be applied by substituting “4 months” for “3 months”.

(4) MSA-participating employer

For purposes of this subsection, the term “MSA-participating employer” means any small employer if—

(A) such employer made any contribution to the Archer MSA of any employee during the cut-off year or any preceding calendar year which was excludable from gross income under section 106(b), or

(B) at least 20 percent of the employees of such employer who are eligible individuals for any month of the cut-off year by reason of coverage under a high deductible health plan of such employer each made a contribution of at least \$100 to their Archer MSAs for any taxable year ending with or within the cut-off year which was allowable as a deduction under this section.

(5) Additional eligibility after cut-off year

If the Secretary determines under subsection (j)(2)(A) that the numerical limit for the calendar year following a cut-off year described in paragraph (2)(B) has not been exceeded—

(A) this subsection shall not apply to any otherwise eligible individual who is covered under a high deductible health plan during the first 6 months of the second calendar year following the cut-off year (and such individual shall be treated as an active MSA participant for purposes of this subsection if a contribution is made to any Archer MSA with respect to such coverage), and

(B) any employer who offers coverage under a high deductible health plan to any employee during such 6-month period shall be treated as an MSA-participating employer for purposes of this subsection if the requirements of paragraph (4) are met with respect to such coverage.

For purposes of this paragraph, subsection (j)(2)(A) shall be applied for 1998 by substituting “750,000” for “600,000”.

(j) Determination of whether numerical limits are exceeded

(1) Determination of whether limit exceeded for 1997

The numerical limitation for 1997 is exceeded if, based on the reports required under paragraph (4), the number of Archer MSAs established as of—

(A) April 30, 1997, exceeds 375,000, or

(B) June 30, 1997, exceeds 525,000.

(2) Determination of whether limit exceeded for 1998, 1999, 2001, 2002, 2004, 2005, or 2006

(A) In general

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is exceeded if the sum of—

(i) the number of MSA returns filed on or before April 15 of such calendar year for taxable years ending with or within the preceding calendar year, plus

(ii) the Secretary's estimate (determined on the basis of the returns described in

clause (i)) of the number of MSA returns for such taxable years which will be filed after such date,

exceeds 750,000 (600,000 in the case of 1998). For purposes of the preceding sentence, the term “MSA return” means any return on which any exclusion is claimed under section 106(b) or any deduction is claimed under this section.

(B) Alternative computation of limitation

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is also exceeded if the sum of—

(i) 90 percent of the sum determined under subparagraph (A) for such calendar year, plus

(ii) the product of 2.5 and the number of Archer MSAs established during the portion of such year preceding July 1 (based on the reports required under paragraph (4)) for taxable years beginning in such year,

exceeds 750,000.

(C) No limitation for 2000 or 2003

The numerical limitation shall not apply for 2000 or 2003.

(3) Previously uninsured individuals not included in determination

(A) In general

The determination of whether any calendar year is a cut-off year shall be made by not counting the Archer MSA of any previously uninsured individual.

(B) Previously uninsured individual

For purposes of this subsection, the term “previously uninsured individual” means, with respect to any Archer MSA, any individual who had no health plan coverage (other than coverage referred to in subsection (c)(1)(B)) at any time during the 6-month period before the date such individual’s coverage under the high deductible health plan commences.

(4) Reporting by MSA trustees

(A) In general

Not later than August 1 of 1997, 1998, 1999, 2001, 2002, 2004, 2005, and 2006, each person who is the trustee of an Archer MSA established before July 1 of such calendar year shall make a report to the Secretary (in such form and manner as the Secretary shall specify) which specifies—

(i) the number of Archer MSAs established before such July 1 (for taxable years beginning in such calendar year) of which such person is the trustee,

(ii) the name and TIN of the account holder of each such account, and

(iii) the number of such accounts which are accounts of previously uninsured individuals.

(B) Additional report for 1997

Not later than June 1, 1997, each person who is the trustee of an Archer MSA established before May 1, 1997, shall make an ad-

ditional report described in subparagraph (A) but only with respect to accounts established before May 1, 1997.

(C) Penalty for failure to file report

The penalty provided in section 6693(a) shall apply to any report required by this paragraph, except that—

(i) such section shall be applied by substituting “\$25” for “\$50”, and

(ii) the maximum penalty imposed on any trustee shall not exceed \$5,000.

(D) Aggregation of accounts

To the extent practicable, in determining the number of Archer MSAs on the basis of the reports under this paragraph, all Archer MSAs of an individual shall be treated as 1 account and all accounts of individuals who are married to each other shall be treated as 1 account.

(5) Date of making determinations

Any determination under this subsection that a calendar year is a cut-off year shall be made by the Secretary and shall be published not later than October 1 of such year.

(Added Pub. L. 104-191, title III, §301(a), Aug. 21, 1996, 110 Stat. 2037; amended Pub. L. 105-33, title IV, §4006(b)(2), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105-34, title XVI, §1602(a)(2), (3), Aug. 5, 1997, 111 Stat. 1093, 1094; Pub. L. 106-554, §1(a)(7) [title II, §§201(a), (b), 202(a)(4), (b)(2)(B), (3)-(8), (10), (11)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, 2763A-629; Pub. L. 107-147, title VI, §612(a), (b), Mar. 9, 2002, 116 Stat. 61; Pub. L. 108-173, title XII, §1201(c), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 108-311, title II, §207(19), title III, §322(a), (b), Oct. 4, 2004, 118 Stat. 1178, 1183; Pub. L. 109-432, div. A, title I, §117(a), (b), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 111-148, title IX, §§9003(b), 9004(b), Mar. 23, 2010, 124 Stat. 854; Pub. L. 115-97, title I, §§11002(d)(1)(T), 11051(b)(3)(D), Dec. 22, 2017, 131 Stat. 2060, 2090; Pub. L. 116-136, div. A, title III, §3702(b), Mar. 27, 2020, 134 Stat. 416.)

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.

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(7) and (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1811 of the Act is classified to section 1395c of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 220 was renumbered 224 of this title. Another prior section 220, added Pub. L. 100-647, title VI, §6007(a), Nov. 10, 1988, 102 Stat. 3687, related to jury duty pay remitted to employer, prior to repeal by Pub. L. 101-508, title XI, §11802(e)(2), Nov. 5, 1990, 104 Stat. 1388-530.

Another prior section 220, added Pub. L. 94-455, title XV, §1501(a), Oct. 4, 1976, 90 Stat. 1734; amended Pub. L. 95-600, title I, §§156(c)(3), 157(a)(2), (b)(2), title VII, §703(c)(2), (3), Nov. 6, 1978, 92 Stat. 2803, 2804, 2939; Pub.

L. 96-222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204, related to retirement savings for certain married individuals, prior to repeal by Pub. L. 97-34, title III, §311(e), Aug. 13, 1981, 95 Stat. 280, applicable to taxable years beginning after Dec. 31, 1981, and deductions allowed under section 220 of this title, as in effect prior to its repeal, treated as deductions under section 219 of this title.

AMENDMENTS

2020—Subsec. (d)(2)(A). Pub. L. 116-136 substituted “For purposes of this subparagraph, amounts paid for menstrual care products (as defined in section 223(d)(2)(D)) shall be treated as paid for medical care.” for “Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.”

2017—Subsec. (f)(7). Pub. L. 115-97, §11051(b)(3)(D), substituted “clause (i) of section 121(d)(3)(C)” for “subparagraph (A) of section 71(b)(2)”.

Subsec. (g)(2). Pub. L. 115-97, §11002(d)(1)(T), substituted “for ‘calendar year 2016’ in subparagraph (A)(ii)” for “for ‘calendar year 1992’ in subparagraph (B)”.

2010—Subsec. (d)(2)(A). Pub. L. 111-148, §9003(b), inserted at end “Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.”

Subsec. (f)(4)(A). Pub. L. 111-148, §9004(b), substituted “20 percent” for “15 percent”.

2006—Subsec. (i)(2), (3)(B). Pub. L. 109-432, §117(a), substituted “2007” for “2005” wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 109-432, §117(b)(1), substituted “2004, 2005, or 2006” for “or 2004” in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(4)(A). Pub. L. 109-432, §117(b)(2), substituted “2004, 2005, and 2006” for “and 2004” in introductory provisions.

2004—Subsec. (d)(2)(A). Pub. L. 108-311, §207(19), inserted “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

Subsec. (i)(2), (3)(B). Pub. L. 108-311, §322(a), substituted “2005” for “2003” wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 108-311, §322(b)(1)(B), substituted “2002, or 2004” for “or 2002” in heading.

Subsec. (j)(2)(A), (B). Pub. L. 108-311, §322(b)(1)(A), substituted “2002, or 2004” for “or 2002” in introductory provisions.

Subsec. (j)(2)(C). Pub. L. 108-311, §322(b)(3), amended heading and text of subpar. (C) generally. Prior to amendment text read as follows: “The numerical limitation shall not apply for 2000.”

Subsec. (j)(4)(A). Pub. L. 108-311, §322(b)(2), substituted “2002, and 2004” for “and 2002” in introductory provisions.

2003—Subsec. (f)(5)(A). Pub. L. 108-173 inserted “or a health savings account (as defined in section 223(d))” after “paid into an Archer MSA”.

2002—Subsec. (i)(2). Pub. L. 107-147, §612(a), substituted “2003” for “2002” in subpars. (A) and (B).

Subsec. (i)(3)(B). Pub. L. 107-147, §612(a), substituted “2003” for “2002” in heading and introductory provisions.

Subsec. (j)(2). Pub. L. 107-147, §612(b)(1), substituted “1998, 1999, 2001, or 2002” for “1998, 1999, or 2001” wherever appearing in heading and text.

Subsec. (j)(4)(A). Pub. L. 107-147, §612(b)(2), substituted “2001, and 2002” for “and 2001”.

2000—Pub. L. 106-554, §1(a)(7) [title II, §202(b)(8)], substituted “Archer MSAs” for “Medical savings accounts” in section catchline.

Subsecs. (a), (b)(5). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account” wherever appearing.

Subsec. (c)(1)(C). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(7)], substituted “Archer MSAs” for “medical savings accounts” in heading.

Subsec. (c)(1)(C)(i). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (c)(1)(D). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (c)(4)(C)(ii). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (d). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(4)], substituted “Archer MSA” for “Medical savings account” in heading.

Subsec. (d)(1). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(5)], substituted “Archer MSA” for “Medical savings account” in heading.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4), (b)(3)], in introductory provisions, substituted “Archer MSA” for “medical savings account” and inserted “as a medical savings account” after “United States”.

Subsec. (d)(2)(C), (3). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (e)(1). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10), (11)], substituted “An Archer MSA is exempt” for “A Archer MSA is exempt” and “ceased to be an Archer MSA” for “ceased to be a Archer MSA”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account” in two places.

Subsec. (e)(2). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (f). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA” wherever appearing.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4), (b)(2)(B)], substituted “Archer MSA” for “medical savings account” wherever appearing and “Archer MSAs” for “medical savings accounts” in introductory provisions of par. (3)(A).

Subsec. (h). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (i). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(6)], substituted “Archer MSAs” for “medical savings accounts” in heading.

Subsec. (i)(2)(A), (B). Pub. L. 106-554, §1(a)(7) [title II, §201(a)], substituted “2002” for “2000”.

Subsec. (i)(3)(A). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (i)(3)(B). Pub. L. 106-554, §1(a)(7) [title II, §201(a)], substituted “2002” for “2000” in heading and introductory provisions.

Subsec. (i)(4)(A). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (i)(4)(B). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (i)(5)(A). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (j)(1). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts” in introductory provisions.

Subsec. (j)(2). Pub. L. 106-554, §1(a)(7) [title II, §201(b)(1)(A)], substituted “1998, 1999, or 2001” for “1998 or 1999” in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(2)(A). Pub. L. 106-554, §1(a)(7) [title II, §201(b)(1)(B)], substituted “750,000 (600,000 in the case of 1998)” for “600,000 (750,000 in the case of 1999)” in concluding provisions.

Subsec. (j)(2)(B)(i). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (j)(2)(C). Pub. L. 106-554, §1(a)(7) [title II, §201(b)(1)(C)], added subpar. (C).

Subsec. (j)(3)(A), (B). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (j)(4)(A). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA” in introductory provisions.

Pub. L. 106-554, §1(a)(7) [title II, §§201(b)(2), 202(a)(4)], in introductory provisions, substituted “1999, and 2001” for “and 1999” and “Archer MSA” for “medical savings account”.

Subsec. (j)(4)(A)(i). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (j)(4)(B). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer MSA” for “a Archer MSA”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(4)], substituted “Archer MSA” for “medical savings account”.

Subsec. (j)(4)(D). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(B)], substituted “Archer MSAs” for “medical savings accounts” in two places.

1997—Subsec. (b)(7). Pub. L. 105-33 added par. (7).

Subsec. (c)(3). Pub. L. 105-34, §1602(a)(2), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: “Medicare supplemental insurance.”

Subsec. (d)(2)(C). Pub. L. 105-34, §1602(a)(3), substituted “described in clauses (i) and (ii) of subsection (c)(1)(A)” for “an eligible individual”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-136, div. A, title III, §3702(d)(1), Mar. 27, 2020, 134 Stat. 416, provided that: “The amendment made by subsections (a) and (b) [amending this section and section 223 of this title] shall apply to amounts paid after December 31, 2019.”

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(1)(T) 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 11051(b)(3)(D) of Pub. L. 115-97 applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115-97 applies to such modification, see section 11051(c) of Pub. L. 115-97, set out as a note under section 61 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-148, title IX, §9003(d)(1), Mar. 23, 2010, 124 Stat. 854, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 223 of this title] shall apply to amounts paid with respect to taxable years beginning after December 31, 2010.”

Pub. L. 111-148, title IX, §9004(c), Mar. 23, 2010, 124 Stat. 854, provided that: “The amendments made by this section [amending this section and section 223 of this title] shall apply to distributions made after December 31, 2010.”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(19) of Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see

section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

Pub. L. 108-311, title III, §322(c), Oct. 4, 2004, 118 Stat. 1183, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 2004.”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title VI, §612(c), Mar. 9, 2002, 116 Stat. 61, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 2002.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(7) [title II, §201(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].”

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

Amendment by Pub. L. 105-33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of Pub. L. 105-33, set out as an Effective Date note under section 138 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

TIME FOR FILING REPORTS, ETC.

Pub. L. 109-432, div. A, title I, §117(c), Dec. 20, 2006, 120 Stat. 2942, provided that:

“(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2005, or August 1, 2006, as the case may be, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Dec. 20, 2006].

“(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2005 or calendar year 2006, as the case may be, shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2005 or 2006 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.”

Pub. L. 108-311, title III, §322(d), Oct. 4, 2004, 118 Stat. 1183, provided that:

“(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2004, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Oct. 4, 2004].

“(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2004 shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2004 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.”

MONITORING OF PARTICIPATION IN MEDICAL SAVINGS
ACCOUNTS

Pub. L. 104-191, title III, §301(k), Aug. 21, 1996, 110 Stat. 2052, provided that: “The Secretary of the Treasury or his delegate shall—

“(1) during 1997, 1998, 1999, and 2000, regularly evaluate the number of individuals who are maintaining medical savings accounts and the reduction in revenues to the United States by reason of such accounts, and

“(2) provide such reports of such evaluations to Congress as such Secretary determines appropriate.”

STUDY OF EFFECTS OF MEDICAL SAVINGS ACCOUNTS ON
SMALL GROUP MARKET

Pub. L. 104-191, title III, §301(l), Aug. 21, 1996, 110 Stat. 2052, mandated a comprehensive study regarding the effects of medical savings accounts in the small group market on selection, health costs, preventive care, consumer choice, high deductible plans, and other relevant issues, and mandated a report to Congress on the results of the study by Jan. 1, 1999.

§ 221. Interest on education loans

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

(b) Maximum deduction

(1) In general

Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable year shall not exceed \$2,500.

(2) Limitation based on modified adjusted gross income

(A) In general

The amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount determined under subparagraph (B).

(B) Amount of reduction

The amount determined under this subparagraph is the amount which bears the same ratio to the amount which would be so taken into account as—

(i) the excess of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over
(II) \$50,000 (\$100,000 in the case of a joint return), bears to

(ii) \$15,000 (\$30,000 in the case of a joint return).

(C) Modified adjusted gross income

The term “modified adjusted gross income” means adjusted gross income determined—

(i) without regard to this section and sections 85(c)¹ 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, and 469.

(c) Dependents not eligible for deduction

No deduction shall be allowed by this section to an individual for the taxable year if a deduc-

tion under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) Definitions

For purposes of this section—

(1) Qualified education loan

The term “qualified education loan” means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses—

(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

(C) which are attributable to education furnished during a period during which the recipient was an eligible student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term “qualified education loan” shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5).

(2) Qualified higher education expenses

The term “qualified higher education expenses” means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution, reduced by the sum of—

(A) the amount excluded from gross income under section 127, 135, 529, or 530 by reason of such expenses, and

(B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).

For purposes of the preceding sentence, the term “eligible educational institution” has the same meaning given such term by section 25A(f)(2), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

(3) Eligible student

The term “eligible student” has the meaning given such term by section 25A(b)(3).

(4) Dependent

The term “dependent” has the meaning given such term by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(e) Special rules

(1) Denial of double benefit

No deduction shall be allowed under this section for any amount for which a deduction is

¹ So in original. Probably should be followed by a comma.