

Checkpoint Contents

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Code, Regulations, Committee Reports & Tax Treaties

Internal Revenue Code

Code History

Subtitle A Income Taxes §§1-1563

Chapter 1 NORMAL TAXES AND SURTAXES §§1-1400U-3

Subchapter B Computation of Taxable Income §§61-291

Part III ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME §§101-140

§125 Cafeteria plans.

Internal Revenue Code

History for Code Section 125

In 2014, **P.L. 113-295, Sec. 213(b)DivA**, added "(and shall not fail to be treated as an accident or health plan)" before "merely", effective for distributions made after 6/17/2008 [as if included in Sec. 110 of the Heroes Earnings Assistance and Relief Tax Act of 2008, P.L. 110-245, 6/17/2008]

- **P.L. 113-295, Sec. 220(f)DivA**, substituted "qualified benefits" for "statutory nontaxable benefits" each place it appears in para. (b)(2) **P.L. 113-295, Sec. 220(g)DivA**, substituted "means any" for "means, any" in para. (h)(2), enacted 12/19/2014.

In 2010, **P.L. 111-152, Sec. 1403(a)**, of this Act, reads as follows:

"(a) In general. Section 10902(b) of the Patient Protection and Affordable Care Act [relating to Sec. 10902(a) of such Act, which amended Code Sec. 125(i), see below] is amended by striking 'December 31, 2010' and inserting 'December 31, 2012'." **P.L. 111-152, Sec. 1403(b)(1)**,

substituted "December 31, 2013" for "December 31, 2011" in the matter preceding subpara. (i)(2)(A) [as added by Sec. 9005(a)(2) of P.L. 111-148, and amended by Sec. 10902(a) of P.L. 111-148] **P.L. 111-152, Sec. 1403(b)(2)**, substituted "2012" for "2010" in subpara. (i)(2)(B) [as added by Sec. 9005(a)(2) of P.L. 111-148, and amended by Sec. 10902(a) of P.L. 111-148], enacted 3/30/2010.

- **P.L. 111-148, Sec. 1515(a)**, added para. (f)(3) **P.L. 111-148, Sec. 1515(b)(1)**, substituted "For purposes of this section- (1) In general. The term" for "For purposes of this section, the term" in subsec. (f) **P.L. 111-148, Sec. 1515(b)(2)**, substituted "(2) Long-term care insurance not qualified. The term 'qualified benefit' shall not include" for "Such term shall not include" in subsec. (f), effective for tax. yrs. begin. after 12/31/2013.

- **P.L. 111-148, Sec. 9005(a)(1)**, redesignated subsecs. (i)-(j) as subsecs. (j)-(k) **P.L. 111-148, Sec. 9005(a)(2)**, added subsec. (i), effective for tax. yrs. begin. after 12/31/2010. [Ed. Note: We believe the intent of Congress was to change the effective date for subsec. (i) amde by P.L. 111-152, 1403(a) to P.L. 111-148, 10902(b) to 12/31/2012.]

- **P.L. 111-148, Sec. 9022(a)**, redesignated subsecs. (j)-(k), as amended by Sec. 9005(a)(1) of this Act, above, as subsecs. (k)-(l), and added subsec. (j), effective for yrs. begin. after 12/31/2010.

- **P.L. 111-148, Sec. 10902(a)**, amended subsec. (i), as added by Sec. 9005(a)(2) of this Act, [Ed. Note: We believe the intent of Congress was for the amendment made by P.L. 111-148, Sec. 10902 to completely replace the amendment made by P.L. 111-148, Sec. 9005 and that subsequent changes to effective dates apply to provisions made by 9005] see above, effective [as amended by P.L. 111-152, Sec. 1403(a), see above] for tax. yrs. begin. after 12/31/2013.

Prior to amendment, subsec. (i) read as follows:

"(i) Limitation on health flexible spending arrangements.

"For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of \$2,500 made to such arrangement."

In 2008, P.L. 110-245, Sec. 114(a), redesignated subsecs. (h) and (i) as subsecs. (i) and (j) and added new subsec. (h), effective for distributions made after 6/17/2008.

In 2007, P.L. 110-172, Sec. 11(a)(12), substituted "second sentence" for "last sentence" in para. (b)(2), enacted 12/29/2007.

In 2004, P.L. 108-311, Sec. 207(11), added ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152" in subpara. (e)(1)(D), effective for tax. yrs. begin. after 12/31/2004.

In 2003, P.L. 108-173, Sec. 1201(i), added subpara. (d)(2)(D), effective for tax. yrs. begin. after 12/31/2003.

In 1996, P.L. 104-191, Sec. 301(d), added "106(b)," before "117" in subsec. (f), effective for tax. yrs. begin. after 12/31/96.

- **P.L. 104-191, Sec. 321(c)(1)**, added a sentence at the end of subsec. (f), effective for contracts issued after 12/31/96. Sec. 321(f)(2)-(5), of this Act, reads as follows:

"(2) Continuation of existing policies. In the case of any contract issued before January 1, 1997, which met the long-term care insurance requirements of the State in which the contract was situated at the time the contract was issued-

"(A) such contract shall be treated for purposes of the Internal Revenue Code of 1986 as a qualified long-term care insurance contract (as defined in section 7702B(b) of such Code), and

"(B) services provided under, or reimbursed by, such contract shall be treated for such purposes as qualified long-term care services (as defined in section 7702B(c) of such Code).

In the case of an individual who is covered on December 31, 1996, under a State long-term care plan (as defined in section 7702B(f)(2) of such Code), the terms of such plan on such date shall be treated for purposes of the preceding sentence as a contract issued on such date which met the long-term care insurance requirements of such State.

"(3) Exchanges of existing policies. If, after the date of enactment of this Act and before January 1, 1998, a contract providing for long-term care insurance coverage is exchanged solely for a qualified long-term care insurance contract (as defined in section 7702B(b) of such Code), no gain or loss shall be recognized on the exchange. If, in addition to a qualified long-term care insurance contract, money or other property is received in the exchange, then any gain shall be recognized to the extent of the sum of the money and the fair market value of the other property received. For purposes of this paragraph, the cancellation of a contract providing for long-term care insurance coverage and reinvestment of the cancellation proceeds in a qualified long-term care insurance contract within 60 days thereafter shall be treated as an exchange.

"(4) Issuance of certain riders permitted. For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract

"(A) the issuance of a rider which is treated as a qualified long-term care insurance contract under section 7702B, and

"(B) the addition of any provision required to conform any other long-term care rider to be so treated, shall not be treated as a modification or material change of such contract.

"(5) Application of per diem limitation to existing contracts. The amount of per diem payments made under a contract issued on or before July 31, 1996, with respect to an insured which are excludable from gross income by reason of section 7702B of the Internal Revenue Code of 1986 (as added by this section) shall not be reduced under subsection (d)(2)(B) thereof by reason of reimbursements received under a contract issued on or before such date. The preceding sentence shall cease to apply as of the date (after July 31, 1996) such contract is exchanged or there is any contract modification which results in an increase in the amount of such per diem payments or the amount of such reimbursements."

In 1990, P.L. 101-508, Sec. 11801(c)(3), substituted "section 117," for "section 117, 124," in subsec. (f), effective 11/5/90 except as provided in Sec. 11821(b) of this Act, reproduced in note following Code Sec. 110.

In 1989, **P.L. 101-239, Sec. 7814(b)**, substituted "includible" for "includable" in subpara. (e)(2)(C) [inoperative, see Sec. 203(a)(1) of P.L. 101-140, below].

- **P.L. 101-140, Sec. 203(a)(1)**, repealed as if not enacted Sec. 1151(d)(1) of P.L. 99-514, which amended Code Sec 125.

- **P.L. 101-140, Sec. 203(a)(3)**, substituted "section 410(b)(2)(A)(i)" for "subparagraph (B) of section 410(b)(1)" in subpara. (g)(3)(A) **P.L. 101-140, Sec. 203(b)(2)**, amended para. (d)(2), effective as provided in Sec. 1151(k)(1) of P.L. 99-514, reproduced in note following Code Sec. 414.

Prior to amendment, para. (d)(2) read as follows:

"(2) Deferred compensation plans excluded. The term 'cafeteria plan' does not include any plan which provides for deferred compensation. The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee."

In 1988, P.L. 100-647, Sec. 1011B(a)(11)(A)-(C), Sec. 1011B(a)(12), Sec. 1011B(a)(13)(A)-(B), Sec. 1018(t)(6), Sec. 4002(b)(2), and Sec. 6051(b) amended Code Sec. 125 as amended by Sec. 1151(d)(1) of P.L. 99-514 which is repealed as if not enacted by Sec. 203(a)(1) of P.L. 101-140, see above.

- **P.L. 100-647, Sec. 6063**, provides:

"SEC. 6063. TREATMENT OF PRE-1989 ELECTIONS FOR DEPENDENT CARE ASSISTANCE UNDER CAFETERIA PLANS.

"For purposes of section 125 of the 1986 Code, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1989, to receive reimbursement under the plan for dependant care assistance for periods after December 31, 1988, and such assistance is includible in gross income under the provisions of the Family Support Act of 1988."

In 1986, **P.L. 99-514, Sec. 1853(b)(1)(A)**, substituted "qualified benefits" for "statutory nontaxable benefits" each place it appears in subsec. (c) and in subpara. (d)(1)(B) **P.L. 99-514, Sec. 1853(b)(1)(B)**, amended subsec. (f) effective 1/1/85 except as provided by Sec. 531(b)(5) of P.L. 98-369 [see below].

Prior to amendment, subsec. (f) read as follows:

"(f) Statutory nontaxable benefits defined.

"For purposes of this section, the term 'statutory nontaxable benefit' means any benefit which, with the application of subsection (a) is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any

group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79."

- **P.L. 99-514, Sec. 1853(b)(2)**, and (3), added Sec. 531(b)(5)(D) and (E) to P.L. 98-369 [reproduced below], exceptions to the effective date for changes made by Sec. 531(b) of P.L. 98-369, see below.

In 1984, P.L. 98-612, Sec. 1(b)(3)(B), amended subsec. (h), effective 1/1/85. [Inoperative, same amendment made by P.L. 98-611, Sec. (d)(3)(A), below.]

- P.L. 98-611, Sec. 1(d)(3)(A), amended subsec. (h), effective 1/1/85.

Prior to amendment, subsec. (h) read as follows:

"(h) Reporting requirements.

"(1) In general. Each employer maintaining a cafeteria plan during any year which begins after December 31, 1984, and to which this section applies shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such plan showing for such year-

"(A) the number of employees of the employer,

"(B) the number of employees participating under the plan,

"(C) the total cost of the plan during the year, and

"(D) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.

"(2) Recordkeeping requirement. Each employer maintaining a cafeteria plan during any year shall keep such records as may be necessary for purposes of determining whether the requirements of this section are met.

"(3) Additional information when required by the Secretary. Any employer-

"(A) who maintains a cafeteria plan during any year for which a return is required under paragraph (1), and

"(B) who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe."

- **P.L. 98-369, Sec. 531(b)(1)**, amended para. (d)(1) **P.L. 98-369, Sec. 531(b)(2)(A)**, amended subsec. (f) **P.L. 98-369, Sec. 531(b)(2)(B)**, substituted "statutory nontaxable benefits" for "nontaxable benefits" each place it appeared in subsec. (c) **P.L. 98-369, Sec. 531(b)(3)**, amended subsec. (b)

P.L. 98-369, Sec. 531(b)(4)(A), redesignated subsec. (h) as subsec. (i) and added new subsec. (h), effective on 1/1/85 except as provided by Sec. 531(b)(5) [as amended by Sec. 1853(b)(2) and (3) of P.L. 99-514, see above] of this Act which reads as follows:

"(5) Exception for certain cafeteria plans and benefits.-

"(A) General transitional rule.-Any cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules relating to section 125 under proposed Treasury regulations, and any benefit offered under such a cafeteria plan which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations, will not fail to be a cafeteria plan under section 125 or a nontaxable benefit under section 105, 106, 120, or 129 solely because of such failures. The preceding sentence shall apply only with respect to cafeteria plans and benefits provided under cafeteria plans before the earlier of-

"(i) January 1, 1985, or

"(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

"(B) Special transition rule for advance election benefit banks.-Any benefit offered under a cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations because an employee was assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses, will not fail to be a nontaxable benefit under such applicable section solely because of such failure. The preceding sentence shall apply only with respect to benefits provided under cafeteria plans before the earlier of-

"(i) July 1, 1985, or

"(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

Except as provided in Treasury regulations, the special transition rule is available only for benefits with respect to which, after December 31, 1984, contributions are fixed before the period of coverage and taxable cash is not available until the end of such period of coverage.

"(C) Plans for which substantial implementation costs were incurred.-For purposes of this paragraph, any plan with respect to which substantial implementation costs had been incurred before February 10, 1984, shall be treated as in existence on February 10, 1984.

"(D) Collective bargaining agreements.-In the case of any cafeteria plan in existence on February 10, 1984, and maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to after July 18, 1984) shall be substituted for 'January 1, 1985' in subparagraph (A) and for 'July 1, 1985' in

subparagraph (B). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section (or any requirement in the regulations under section 125 of the Internal Revenue Code of 1954 proposed on May 6, 1984) shall not be treated as a termination of such collective bargaining agreement.

"(E) Special rule where contributions or reimbursements suspended.-For purposes of subparagraphs (A) and (B), a plan shall not be treated as not continuing to fail to satisfy the rules referred to in such subparagraphs with respect to any benefit provided in the form of a flexible spending arrangement merely because contributions or reimbursements (or both) with respect to such plan were suspended before January 1, 1985."

Sec. 531(b)(6)(A) of this Act provides:

"(6) Study of effects of cafeteria plans on health care costs.-

"(A) Study.-The Secretary of Health and Human Services, in cooperation with the Secretary of the Treasury, shall conduct a study of the effects of cafeteria plans (within the meaning of section 125 of the Internal Revenue Code of 1954) on the containment of health care costs."

Prior to amendment, para. (d)(1) read as follows:

"(1) In general. The term 'cafeteria plan' means a written plan under which-

"(A) all participants are employees, and

"(B) the participants may choose among two or more benefits.

The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits."

Prior to amendment, subsec. (f) read as follows:

"(f) Nontaxable benefit defined.

"For purposes of this section, the term 'nontaxable benefit' means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee."

Prior to amendment, subsec. (b) read as follows:

"(b) Exception for highly compensated participants where plan is discriminatory.

"(1) In general. In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of-

"(A) highly compensated individuals as to eligibility to participate, or

"(B) highly compensated participants as to contributions and benefits.

"(2) Year of inclusion. For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) shall be treated as received or accrued in the participant's taxable year in which the plan year ends."

In 1980, P.L. 96-613, Sec. 5(b)(2), made the same amendment to para. (g)(4) as Sec. 201(b)(2) of P.L. 96-605, see below.

- P.L. 96-605, Sec. 226(a), added the last sentence to para. (d)(2), effective for tax. yrs. begin. after 12/31/80.

- P.L. 96-605, Sec. 201(b)(2), substituted "subsection (b), (c), or (m) of section 414" for "subsection (b) or (c) or section 414" in para. (g)(4) and substituted "controlled groups, etc." for "controlled groups" in the heading of para. (g)(4), for plan yrs. ending after 11/30/80 except as provided in Sec. 201(c)(2) of this Act, which reads as follows:

"(2) Plans in existence on November 30, 1980. In the case of a plan in existence on November 30, 1980, the amendments made by this section shall apply to plan years beginning after November 30, 1980."

- P.L. 96-222, Sec. 101(a)(6)(A), substituted "employment requirement" for "service requirement" each place it appeared in subpara. (g)(3)(B), for plan yrs. begin, after '78 [see below].

- P.L. 96-222, Sec. 101(a)(6)(B), changed the effective date for changes made by Sec. 134(a) of P.L. 95-600 from tax. yrs. begin. after 12/31/78 to plan yrs. begin. after 12/31/78 [see below].

In 1978, P.L. 95-600, Sec. 134(a), added Code Sec. 125, effective [as amended by Sec. 101(a)(6)(B) of P.L. 96-222, see above] for plan yrs. begin. after 12/31/78.