

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter B - Computation of Taxable Income****PART III - ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME****§ 106. Contributions by employer to accident and health plans****(a) General rule**

Except as otherwise provided in this section, gross income of an employee does not include employer-provided coverage under an accident or health plan.

(b) Contributions to Archer MSAs**(1) In general**

In the case of an employee who is an eligible individual, amounts contributed by such employee's employer to any Archer MSA of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 220 (b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) No constructive receipt

No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

(3) Special rule for deduction of employer contributions

Any employer contribution to an Archer MSA, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

(4) Employer MSA contributions required to be shown on return

Every individual required to file a return under section 6012 for the taxable year shall include on such return the aggregate amount contributed by employers to the Archer MSAs of such individual or such individual's spouse for such taxable year.

(5) MSA contributions not part of COBRA coverage

Paragraph (1) shall not apply for purposes of section 4980B.

(6) Definitions

For purposes of this subsection, the terms "eligible individual" and "Archer MSA" have the respective meanings given to such terms by section 220.

(7) Cross reference

For penalty on failure by employer to make comparable contributions to the Archer MSAs of comparable employees, see section 4980E.

(c) Inclusion of long-term care benefits provided through flexible spending arrangements**(1) In general**

Effective on and after January 1, 1997, gross income of an employee shall include employer-provided coverage for qualified long-term care services (as defined in section 7702B (c)) to the extent that such coverage is provided through a flexible spending or similar arrangement.

(2) Flexible spending arrangement

For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which—

(A) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

(B) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.

(d) Contributions to health savings accounts

(1) In general

In the case of an employee who is an eligible individual (as defined in section 223 (c)(1)), amounts contributed by such employee's employer to any health savings account (as defined in section 223(d)) of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 223 (b) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) Special rules

Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

(3) Cross reference

For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.

(e) FSA and HRA terminations to fund HSAs

(1) In general

A plan shall not fail to be treated as a health flexible spending arrangement or health reimbursement arrangement under this section or section 105 merely because such plan provides for a qualified HSA distribution.

(2) Qualified HSA distribution

The term "qualified HSA distribution" means a distribution from a health flexible spending arrangement or health reimbursement arrangement to the extent that such distribution—

(A) does not exceed the lesser of the balance in such arrangement on September 21, 2006, or as of the date of such distribution, and

(B) is contributed by the employer directly to the health savings account of the employee before January 1, 2012.

Such term shall not include more than 1 distribution with respect to any arrangement.

(3) Additional tax for failure to maintain high deductible health plan coverage

(A) In general

If, at any time during the testing period, the employee is not an eligible individual, then the amount of the qualified HSA distribution—

(i) shall be includible in the gross income of the employee for the taxable year in which occurs the first month in the testing period for which such employee is not an eligible individual, and

(ii) the tax imposed by this chapter for such taxable year on the employee shall be increased by 10 percent of the amount which is so includible.

(B) Exception for disability or death

Clauses (i) and (ii) of subparagraph (A) shall not apply if the employee ceases to be an eligible individual by reason of the death of the employee or the employee becoming disabled (within the meaning of section 72 (m)(7)).

(4) Definitions and special rules

For purposes of this subsection—

(A) Testing period

The term “testing period” means the period beginning with the month in which the qualified HSA distribution is contributed to the health savings account and ending on the last day of the 12th month following such month.

(B) Eligible individual

The term “eligible individual” has the meaning given such term by section 223 (c)(1).

(C) Treatment as rollover contribution

A qualified HSA distribution shall be treated as a rollover contribution described in section 223 (f)(5).

(5) Tax treatment relating to distributions

For purposes of this title—

(A) In general

A qualified HSA distribution shall be treated as a payment described in subsection (d).

(B) Comparability excise tax**(i) In general**

Except as provided in clause (ii), section 4980G shall not apply to qualified HSA distributions.

(ii) Failure to offer to all employees

In the case of a qualified HSA distribution to any employee, the failure to offer such distribution to any eligible individual covered under a high deductible health plan of the employer shall (notwithstanding section 4980G (d)) be treated for purposes of section 4980G as a failure to meet the requirements of section 4980G (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 99–272, title X, § 10001(b), Apr. 7, 1986, 100 Stat. 223; Pub. L. 99–514, title XI, §§ 1114(b)(1), 1151 (j)(2), Oct. 22, 1986, 100 Stat. 2450, 2508; Pub. L. 100–647, title I, § 1018(t)(7)(A), title III, § 3011(b)(1), Nov. 10, 1988, 102 Stat. 3589, 3624; Pub. L. 101–239, title VII, § 7862(c)(1)(A), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 104–191, title III, §§ 301(c)(1), 321 (c)(2), Aug. 21, 1996, 110 Stat. 2048, 2058; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(2), (b)(2)(A), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–173, title XII, § 1201(d)(1), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 109–432, div. A, title III, § 302(a), Dec. 20, 2006, 120 Stat. 2948.)

References in Text

COBRA, referred to in the heading for subsec. (b)(5), probably means the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82, as amended. For complete classification of this Act to the Code, see Tables.

Amendments

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2003—Subsec. (d). Pub. L. 108–173 added subsec. (d).

2000—Subsec. (b). Pub. L. 106–554 § 1(a)(7) [title II, § 202(b)(6)], substituted “Archer MSAs” for “medical savings accounts” in heading.

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

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (b)(3). 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)(2)], substituted “Archer MSA” for “medical savings account”.

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

Subsec. (b)(6). Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted “Archer MSA” for “medical savings account”.

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

1996—Pub. L. 104–191, § 301(c)(1), amended text generally. Prior to amendment, text read as follows: “Gross income of an employee does not include employer-provided coverage under an accident or health plan.”

Subsec. (c). Pub. L. 104–191, § 321(c)(2), added subsec. (c).

1989—Subsec. (b)(2). Pub. L. 101–239 amended subsec. (b)(2) as it existed prior to general amendment by Pub. L. 100–647 by striking out the last sentence which read as follows: “Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 (relating to employers under common control) shall apply for purposes of subparagraph (A).” See Effective Date of 1989 Amendment note below.

1988—Pub. L. 100–647, § 3011(b)(1), amended section generally, substituting a single undesignated par. for former subsec. (a) providing that gross income does not include employer-provided coverage under an accident or health plan and subsec. (b) providing for an exception for highly compensated individuals where a plan fails to provide certain continuation coverage.

Subsec. (b)(1). Pub. L. 100–647, § 1018(t)(7)(A), substituted “any employer-provided coverage” for “any amount contributed by an employer” and “under a group” for “to a group”.

1986—Pub. L. 99–272 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

Subsec. (a). Pub. L. 99–514, § 1151(j)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness.”

Subsec. (b)(1). Pub. L. 99–514, § 1114(b)(1), substituted “highly compensated employee (within the meaning of section 414 (q))” for “highly compensated individual (within the meaning of section 105 (h)(5))”.

Effective Date of 2006 Amendment

Pub. L. 109–432, div. A, title III, § 302(c)(1), Dec. 20, 2006, 120 Stat. 2949, provided that: “The amendment made by subsection (a) [amending this section] shall apply to distributions on or after the date of the enactment of this Act [Dec. 20, 2006].”

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 1996 Amendment

Amendment by section 301(c)(1) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(2) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

Effective Date of 1989 Amendment

Section 7862(c)(1)(C) of Pub. L. 101–239 provided that: “The amendments made by this paragraph [amending this section and section 1161 of Title 29, Labor] shall apply to years beginning after December 31, 1986.”

Section 7863 of Pub. L. 101–239 provided that: “Except as otherwise provided in this subpart any amendment made by this subpart [subpart A (§§ 7861–7863) of part V of title VII of Pub. L. 101–239, amending this section and sections 162, 411, 417, and 4980B of this title and sections 1052 to 1055, 1161, 1162, 1167, 1398, and 1461 of Title 29, Labor, enacting provisions set out as notes under this section and sections 162, 417, 1167, 4980, and 4980B of this title, and amending provisions set out as notes under sections 401 and 411 of this title and sections 1001 and 1054 of Title 29], shall take effect as if included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates.”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Effective Date of 1988 Amendment

Amendment by section 1018(t)(7)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3011(b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162 (k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

Effective Date of 1986 Amendments

Amendment by section 1114(b)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(j)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Section 10001(e) of Pub. L. 99–272 provided that:

“(1) General rule.—The amendments made by this section [amending this section and section 162 of this title] shall apply to plan years beginning on or after July 1, 1986.

“(2) Special rule for collective bargaining agreements.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

“(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

“(B) January 1, 1987.

For purposes of subparagraph (A), 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 shall not be treated as a termination of such collective bargaining agreement.”

Regulations

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Nonenforcement of Amendment Made by Section 1151 of Pub. L. 99–514 for Fiscal Year 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.