



December 4, 2018

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Kristin Olson, Deputy Chief of Staff
Amanda Mandrup-Poulsen, Deputy Cabinet Affairs Director

The Honorable Jimmy Patronis, Chief Financial Officer
Attention: Robert Tornillo, Director of Cabinet Affairs
Stephanie Leeds Sutton, Deputy Director of Cabinet Affairs

The Honorable Pam Bondi, Attorney General
Attention: Erin Sumpter, Deputy Director of Cabinet Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Brooke McKnight, Director of Cabinet Affairs
Jessica Field, Deputy Cabinet Affairs Director

THRU: Leon M. Biegalski, Executive Director

FROM: Debbie Longman, Director, Legislative and Cabinet Services

SUBJECT: Requesting Adoption and Approval to File and Certify Proposed Rules

Statement of Sections 120.54(3)(b) and 120.541, F.S. Impact: No impact.

The Department has reviewed the proposed rules for compliance with Sections 120.54(3)(b) and 120.541, F.S. The proposed rules will not likely have an adverse impact on small business, small counties, or small cities, and they are not likely to have an increased regulatory cost in excess of \$200,000 within 1 year. Additionally, the proposed rules are not likely to have an adverse impact or increased regulatory costs in excess of \$1,000,000 within 5 years.

What is the Department requesting? The Department requests final adoption of the following proposed rules, and approval to file and certify them with the Secretary of State under Chapter 120, F.S.

Legislative Changes

Why are the proposed rules necessary? These rule changes are necessary to incorporate statutory revisions made by the 2018 Legislature.

What do the proposed rules do?

Florida Tax Credit Scholarship Program; Applications, Rules 12-29.001, 12-29.002, and 12-29.003, F.A.C.: the proposed rule incorporates statutory changes made by Sections 6, 7, 15, and 48, Chapter 2018-6, L.O.F. These changes include the due date for an application for a credit allocation; how and when a credit must be added back to corporate income; and the extension of the carryforward provision for unused credits from 5 to 10 years. A change is also made to the name of two forms used in the program.

Leases and Licenses of Real Property, Rule 12A-1.070, F.A.C.: the state sales tax rate is set by the Legislature and is subject to change from year to year. The 2018 Legislature reduced the rate on leases and licenses of real property from 5.8% to 5.7%. The proposed rule adjusts the state sales tax rate to match the statutory change.

Exemptions for Power Farm Equipment; Suggested Exemption Certificate for Items Used for Agricultural Purposes, Rule 12A-1.087, F.A.C.: the proposed change provides guidance on how to document and receive the exemptions provided to aquacultural businesses by Section 36, Chapter 2018-118, L.O.F.

Transition Rule, Rule 12A-15.014, F.A.C.: the state sales tax rate is set by the Legislature and is subject to change from year to year. The 2018 Legislature reduced the rate on leases and licenses of real property from 5.8% to 5.7%. The proposed rule adjusts the state sales tax rate to match the statutory change.

Corporate Income Tax, Rules 12C-1.013, 12C-1.034, and 12C-1.051, F.A.C.: the proposed amendments incorporate statutory changes by the 2018 Legislature and federal law changes made by the 115th U.S. Congress. These changes include the adoption of the 2018 Internal Revenue Code; provisions relating to alternative minimum tax; and provisions related to estimated tax payments.

Were comments received from external parties? No.

No request for workshop was received, and no workshop was held.

On August 14, 2018, the Governor and Cabinet approved the Department's request to publish Notices of Proposed Rule and to conduct a rule hearing. A rule hearing was scheduled for October 10, 2018, if requested. No request was received to hold the scheduled rule hearing and no hearing was held.

Comments were received from the staff of the Joint Administrative Procedures Committee for Rules 12A-1.087, 12C-1.013, and 12C-1.051, F.A.C. All questions have been answered, and all necessary changes have been made in response to those comments.

Form Updates

Why are the proposed rules necessary? These rule changes are necessary to incorporate statutory revisions made by the 2018 Legislature, to update annual tax rates and jurisdictions, to update contact information for the Department, and to incorporate formatting changes that will make the forms easier to use.

What do the proposed rules do?

This rulemaking will adopt legislative and administrative changes to forms used by the Department in the administration of the following taxes, fees, and surcharges (alphabetical by topic):

- Administrative – 6 forms (Rules 12-19.002, 12-26.008, and 12-29.003, F.A.C.)
- Communication Services Tax – 1 form (Rule 12A-19.100, F.A.C.)
- Corporate Income Tax – 6 forms (Rule 12C-1.051, F.A.C.)
- Insurance Premium Taxes, Fees and Surcharges – 5 forms (Rule 12B-8.003, F.A.C.)
- Motor Fuel, Diesel Fuels, Aviation Fuels, Pollutants, and Natural Gas Fuel Tax – 1 form (Rule 12B-5.150, F.A.C.)
- Sales and Use Tax – 8 forms (Rule 12A-1.097, F.A.C.) (and one repeal)
- Severance Taxes, Fees, and Surcharges - 5 Forms (Rules 12B-7.008 and 12B-7.031, F.A.C.)

Were comments received from external parties? Yes.

No request for workshop was received, and no workshop was held.

On August 14, 2018, the Governor and Cabinet approved the Department's request to publish Notices of Proposed Rule and to conduct a rule hearing. A rule hearing was scheduled for October 10, 2018, if requested. No request was received to hold the scheduled rule hearing and no rule hearing was held on October 10, 2018.

In response to notifications received by the Department regarding local elections, a hearing was held on November 7, 2018, to provide an opportunity for the Department to present changes to three forms. These included a change to jurisdictions on two Insurance Premium Tax forms, and multiple changes to local rates on a Communications Services Tax form. These form amendments were then published in a Notice of Change.

Comments were received from the staff of the Joint Administrative Procedures Committee for Rules 12C-1.051 and 12B-8.003, F.A.C. All questions have been answered, and all necessary changes have been made in response to those comments.

Administrative Changes

Why are the proposed rules necessary? These rule changes are necessary to incorporate administrative changes. These changes will clarify the computation of a corporate income tax carryover; update an outdated reference; remove obsolete or redundant information; and update names and cross-references.

What do the proposed rules do?

Adoption of Materials that Contain Departmental Procedures, Rule 12-3.0017, F.A.C.: the proposed changes remove obsolete information regarding fax numbers no longer used by the Department.

Large Currency Transaction Reports Required, Rule 12-19.002, F.A.C.: the proposed amendment updates the name of the Florida Money Laundering Act, corrects cross-references to other provisions, removes a redundant definition, and incorporates by reference an Internal Revenue Code provision used in the rule.

Penalties for Failure to Comply, Rule 12-19.004, F.A.C.: the proposed amendment updates the name of the Florida Money Laundering Act.

Manufacturing & Spaceport Investment Program Tax Refunds, Rule 12A-1.0143, F.A.C. (repeal): the proposed repeal removes an obsolete rule for an incentive program that expired pursuant to its own terms (Chapter Law 2010-147, Section 21).

Sales Factor for Apportionment, Rule 12C-1.0155, F.A.C.: the proposed amendment updates an outdated statutory reference related to telecommunications for the purposes of determining the sales factor for apportionment of Florida corporate income tax.

Capital Investment Tax Credit Program, Rule 12C-1.0191, F.A.C.: the proposed amendment clarifies how a carryover arising from the Florida corporate income tax capital investment tax credit should be computed.

Were comments received from external parties? No.

No request for workshop was received, and no workshop was held.

On August 14, 2018, the Governor and Cabinet approved the Department's request to publish Notices of Proposed Rule and to conduct a rule hearing. A rule hearing was scheduled for

October 10, 2018, if requested. No request was received to hold the scheduled rule hearing and no hearing was held.

Comments were received from the staff of the Joint Administrative Procedures Committee for Rule 12-19.002, F.A.C. All questions have been answered, and all necessary changes have been made in response to those comments.

Motor vehicles

Why is the proposed rule necessary?

The proposed amendments are needed to clarify the tax treatment of a motor vehicle repurchased by the dealer under Chapter 681, F.S. (the “Lemon Law”). In addition, a change is needed to the title of a form referenced in the rule so that it is consistent with the promulgated form.

What does the proposed rule do?

Aircraft, Boats, Mobile Homes, and Motor Vehicles, Rule 12A-1.007, F.A.C.: the proposed changes clarify that all taxes paid by and refunded to a customer who has a vehicle repurchased under Chapter 681, F.S., are refundable to the manufacturer making the refund. An amendment is also made to the title of a form.

Were comments received from external parties? Yes.

No request for workshop was received, and no workshop was held. Written public comments were received, and the rule language was revised as requested.

On June 13, 2018, the Governor and Cabinet approved the Department’s request to publish Notices of Proposed Rule and to conduct a rule hearing. A rule hearing was scheduled for July 11, 2018, if requested. No request was received to hold the scheduled rule hearing and no hearing was held.

Comments of a technical nature were received from the staff of the Joint Administrative Procedures Committee. All questions have been answered, and all necessary changes have been made in response to those comments.

This rule was presented at the August 14, 2018, Cabinet meeting for final approval; however, the rule text presented was not the final version. Today’s version includes all necessary changes.

For each rule, attached are copies of:

- Summary of the proposed rules, which includes:
 - Statements of facts and circumstances justifying the rules;
 - Federal comparison statements; and
 - Summary of the workshops and hearings
- Rule text
- Incorporated materials

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-3, FLORIDA ADMINISTRATIVE CODE
GENERAL; PROCEDURE
AMENDING RULE 12-3.0017

SUMMARY OF PROPOSED RULE

The proposed amendment to Rule 12-3.0017, F.A.C., removes obsolete information regarding fax numbers no longer used by the Department.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed change is necessary to provide citizens with accurate information for contacting the agency.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

JULY 18, 2018

A Notice of Proposed Rule Development was published in the Florida Administrative Register on July 2, 2018 (Vol. 44, No. 128, p. 3091), to advise the public of the proposed changes to Rule 12-3.0017, F.A.C., and to provide that, if requested in writing, a rule

development workshop would be held on July 18, 2018. No request was received, and no workshop was held. No written comments were received by the Department.

SUMMARY OF PUBLIC MEETING

AUGUST 14, 2018

The Governor and Cabinet, sitting as head of the Department of Revenue, met on August 14, 2018, and approved the publication of the Notice of Proposed Rule for changes to Rule 12-3.0017, F.A.C. A notice for the public hearing was published in the Florida Administrative Register on August 6, 2018 (Vol. 44, No. 152, pp. 3648-3649).

SUMMARY OF RULE HEARING

OCTOBER 10, 2018

A Notice of Proposed Rule was published in the Florida Administrative Register on September 14, 2018 (Vol. 44, No. 180, pp. 4199-4200), to advise the public of the proposed changes to Rule 12-3.0017, F.A.C., and to provide that, if requested in writing, a rule hearing would be held on October 10, 2018. No request was received, and no hearing was held. No public comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-3, FLORIDA ADMINISTRATIVE CODE
GENERAL; PROCEDURE
AMENDING RULE 12-3.0017

12-3.0017 Adoption of Materials That Contain Departmental Procedures.

(1) The following subsections of this rule describe materials and publications which contain procedures used by the Department in performing its statutory responsibilities, and these materials and publications are hereby incorporated by reference in this rule. A copy of these materials and publications may be obtained by one or more of the following methods:

(a) No change.

~~(b) Faxing the Distribution Center at (850)922-2208; or~~

~~(c) Using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or~~

(d) through (f) redesignated (b) through (d) No change.

(2) through (4) No change.

Rulemaking Authority 213.06(1) FS. Law Implemented 212.12, 212.13, 213.35 FS. History—New 10-1-03, Amended_____.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-19, FLORIDA ADMINISTRATIVE CODE
REPORTS OF LARGE CURRENCY TRANSACTIONS
AMENDING RULES 12-19.002 AND 12-19.004

SUMMARY OF PROPOSED RULES

The proposed amendments to Rules 12-19.002 and 12-19.004, F.A.C., update the name of the Florida Money Laundering Act, correct cross references to other provisions; remove a redundant definition; and incorporate, by reference, an Internal Revenue Code provision used in the rule.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The proposed changes are necessary for consistency with other Florida and federal laws on this topic.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

JULY 18, 2018

A Notice of Proposed Rule Development was published in the Florida Administrative

Register on July 2, 2018 (Vol. 44, No. 128, pp. 3091-3092), to advise the public of the proposed changes to Rules 12-19.002 and 12-19.004, F.A.C., and to provide that, if requested in writing, a rule development workshop would be held on July 18, 2018. No request was received, and no workshop was held. No written comments were received by the Department.

SUMMARY OF PUBLIC MEETING

AUGUST 14, 2018

The Governor and Cabinet, sitting as head of the Department of Revenue, met on August 14, 2018, and approved the publication of the Notice of Proposed Rule for changes to Rules 12-19.002 and 12-19.004, F.A.C. A notice for the public hearing was published in the Florida Administrative Register on August 6, 2018 (Vol. 44, No. 152, pp. 3648-3649).

SUMMARY OF RULE HEARING

OCTOBER 10, 2018

A Notice of Proposed Rule was published in the Florida Administrative Register on September 14, 2018 (Vol. 44, No. 180, pp. 4200-4201), to advise the public of the proposed changes to Rules 12-19.002 and 12-19.004, F.A.C., and to provide that, if requested in writing, a rule hearing would be held on October 10, 2018. No request was received, and no hearing was held.

Written comments were received from the staff of the Joint Administrative Procedures Committee. A notice of change was published in the Florida Administrative Register on November 7, 2018 (Vol. 44, No. 218, p. 5130), providing requested changes. The change to Rule 12-19.002, F.A.C, includes the full citation for the Internal Revenue Code, along with the

effective date of the U.S.C. provision. The final rule language presented for adoption today reflects these changes.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-19, FLORIDA ADMINISTRATIVE CODE
REPORTS OF LARGE CURRENCY TRANSACTIONS
AMENDING RULES 12-19.002 AND 12-19.004

12-19.002 Large Currency Transaction Reports Required.

The Florida Money Laundering Act ~~Money Laundering Control Act~~ imposes a state reporting requirement with respect to large currency transactions. The Florida reporting requirement is similar to the federal reporting requirement imposed under 26 U.S.C. s.6050I with respect to these transactions.

(1) Any person engaged in a trade or business in this state, other than a financial institution, must file a report with the Department of Revenue when such person receives more than \$10,000 in currency in a single transaction, or in two or more related transactions, in the course of such trade or business. For the purposes of these rules, the following definitions shall apply:

(a) No change.

(b) The term “engaged in a trade or business” has the same meaning as under ~~section 26~~ U.S.C. § 162, Internal Revenue Code, hereby incorporated by reference, as amended and in effect 01/18, (http://www.flrules.org/Gateway/reference.asp?No=Ref-_____) ~~of 1954~~.

(c) No change.

(d) “Financial institution” has the meaning ascribed to the term in Section 655.50(3)(c) ~~655.50(3)(b)~~, F.S. The term includes any national bank or banking association, state bank or banking association, industrial savings bank, trust company, federal savings and loan association,

state savings and loan association, federal savings bank, state savings bank, federal or state credit union, Edge Act or agreement corporation, or international bank agency located in this state, whether organized under the laws of Florida, another state, or the United States.

(e) No change.

~~(f) "Transaction" means the purchase of goods, services, or real or personal property by a customer; a debt obligation purchased with currency; the receipt and conversion of currency to a negotiable instrument; the receipt of currency to be held in escrow or trust or on account of a customer; and, similar events which precipitate a transfer of currency by a payer or its agent to a recipient. The term includes: rental of real or personal property; an exchange of currency for currency; the establishment, or maintenance of, or contribution to, a custodial, trust or escrow arrangement; a payment of an existing debt; repayment of a loan; and, reimbursement for expenses paid.~~

(g) renumbered (f) No change.

(2) through (5) No change.

(6) A transaction may not be subdivided into multiple parts to avoid the reporting requirements imposed under the Florida Money Laundering Act ~~Money Laundering Control Act~~. Rulemaking Authority 896.102(3) FS. Law Implemented 896.102 FS. History—New 2-18-88, Amended _____.

12-19.004 Penalties for Failure to Comply.

The Florida Money Laundering Act ~~Money Laundering Control Act~~ imposes a criminal penalty for willful failure to file a report of a large currency transaction. Each separate currency transaction exceeding \$10,000 which the recipient willfully fails to report properly constitutes a

separate, punishable offense.

Rulemaking Authority 896.102(3) FS. Law Implemented 896.102 FS. History—New 2-18-88,

Amended_____.

ble to amounts paid or incurred in taxable years beginning after Dec. 31, 2021, this analysis is amended by striking item 174 and inserting a new item 174 "Amortization of research and experimental expenditures." See 2017 Amendment note below.

AMENDMENTS

2017—Pub. L. 115-97, title I, §§11011(d)(6), 13305(a), Dec. 22, 2017, 131 Stat. 2071, 2126, struck out item 199 "Income attributable to domestic production activities" and added item 199A.

Pub. L. 115-97, title I, §13206(c), Dec. 22, 2017, 131 Stat. 2112, substituted "Amortization of research and experimental expenditures" for "Research and experimental expenditures" in item 174.

2015—Pub. L. 114-113, div. Q, title I, §169(b)(3), Dec. 18, 2015, 129 Stat. 3068, substituted "Treatment of certain qualified film and television and live theatrical productions" for "Treatment of certain qualified film and television productions" in item 181.

2014—Pub. L. 113-295, div. A, title II, §221(a)(34)(A), (35), Dec. 19, 2014, 128 Stat. 4042, which directed amendment of table of sections for part VI of subchapter A of this chapter by striking items 179A and 198A, was executed by striking items 179A "Deduction for clean-fuel vehicles and certain refueling property" and 198A "Expensing of Qualified Disaster Expenses" in table of sections for part VI of this subchapter to reflect the probable intent of Congress.

2008—Pub. L. 110-343, div. C, title VII, §707(b), Oct. 3, 2008, 122 Stat. 3924, added item 198A.

Pub. L. 110-234, title XV, §15303(a)(2)(C), May 22, 2008, 122 Stat. 1501, and Pub. L. 110-246, title XV, §15303(a)(2)(C), June 18, 2008, 122 Stat. 2263, made identical amendments, inserting "endangered species recovery expenditures" after "conservation expenditures" in item 175. The amendment by Pub. L. 110-234 was repealed by Pub. L. 110-246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109-432, div. A, title IV, §404(b)(4), Dec. 20, 2006, 120 Stat. 2956, added item 179E.

2005—Pub. L. 109-58, title XIII, §§1323(b)(4), 1331(c), Aug. 8, 2005, 119 Stat. 1015, 1024, added items 179C and 179D.

2004—Pub. L. 108-357, title I, §102(d)(8), title II, §244(b), title III, §§322(c)(5), 338(b)(6), Oct. 22, 2004, 118 Stat. 1429, 1446, 1475, 1481, added items 179B, 181, and 199, and substituted "Treatment" for "Amortization" in item 194.

1997—Pub. L. 105-34, title IX, §941(b), Aug. 5, 1997, 111 Stat. 885, added item 198.

1993—Pub. L. 103-66, title XIII, §13261(f)(6), Aug. 10, 1993, 107 Stat. 539, added item 197.

1992—Pub. L. 102-486, title XIX, §1913(a)(3)(B), Oct. 24, 1992, 106 Stat. 3019, added item 179A.

1990—Pub. L. 101-508, title XI, §11801(b)(3), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 184 "Amortization of certain railroad rolling stock" and item 188 "Amortization of certain expenditures for child care facilities".

1986—Pub. L. 99-514, title II, §§201(d)(2)(B), 241(b)(3), 242(b)(3), title IV, §402(b)(3), title VIII, §803(c)(2), Oct. 22, 1986, 100 Stat. 2139, 2181, 2221, 2356, substituted "Amortization of cost of acquiring a lease" for "Depreciation or amortization of improvements made by lessee on lessor's property" in item 178, and struck out items 177 "Trademark and trade name expenditures", 182 "Expenditures by farmers for clearing land", 185 "Amortization of railroad grading and tunnel bores", and 189 "Amortization of real property construction period interest and taxes".

1984—Pub. L. 98-369, div. A, title I, §94(b), title IV, §474(r)(8)(B), July 18, 1984, 98 Stat. 615, 841, reenacted item 195 without change, and substituted "business credits" for "investment credits" in item 196.

1983—Pub. L. 97-448, title III, §305(b)(2), Jan. 12, 1983, 96 Stat. 2399, redesignated item 194 (relating to contributions to employer liability trusts) as 194A.

1982—Pub. L. 97-248, title II, §205(a)(5)(C), Sept. 3, 1982, 96 Stat. 430, added item 196.

1981—Pub. L. 97-34, title II, §§201(d), 202(d)(3), Aug. 13, 1981, 95 Stat. 219, 221, added item 168 and substituted "Election to expense certain depreciable business assets" for "Additional first-year depreciation allowance for small business" in item 179.

1980—Pub. L. 96-605, title I, §102(b), Dec. 28, 1980, 94 Stat. 3522, added item 195.

Pub. L. 96-451, title III, §301(c)(2), Oct. 14, 1980, 94 Stat. 1991, added item 194 relating to amortization of reforestation expenditures.

Pub. L. 96-364, title II, §209(c)(2), Sept. 26, 1980, 94 Stat. 1291, added item 194 relating to contributions to employer liability trusts.

Pub. L. 96-223, title II, §251(a)(2)(A), Apr. 2, 1980, 94 Stat. 287, added item 193.

1978—Pub. L. 95-227, §4(b)(2), Feb. 10, 1978, 95 Stat. 17, added item 192.

1977—Pub. L. 95-30, title IV, §402(a)(4), May 23, 1977, 91 Stat. 155, struck out "on-the-job training and" after "certain expenditures for" in item 188.

1976—Pub. L. 94-455, title II, §201(b), title XIX, §§1901(b)(1)(B), 1951(c)(2)(D), title XXI, §§2122(b)(1), 2124(a)(3)(A), Oct. 4, 1976, 90 Stat. 1527, 1795, 1841, 1915, 1917, struck out item 168 "Amortization of emergency facilities" and item 187 "Amortization of certain coal mine safety equipment" and added items 189, 190, and 191.

1971—Pub. L. 92-178, title III, §303(c)(6), Dec. 10, 1971, 85 Stat. 522, added item 188.

1969—Pub. L. 91-172, title II, §213(c)(1), title VII, §§704(b)(1), 705(b), 707(b), title IX, §904(b), Dec. 30, 1969, 83 Stat. 572, 669, 674, 675, 712, substituted reference to pollution control facilities for reference to grain storage facilities in item 169, and added items 183 to 187.

1964—Pub. L. 88-272, title II, §203(a)(3)(D), Feb. 26, 1964, 78 Stat. 34, struck out item 181 "Deduction for certain unused investment credit".

1962—Pub. L. 87-834, §§2(g)(3), 21(c), Oct. 16, 1962, 76 Stat. 973, 1064, added items 181, 182.

1960—Pub. L. 86-779, §6(b), Sept. 14, 1960, 74 Stat. 1001, added item 180.

1958—Pub. L. 85-866, title I, §15(b), title II, §204(b), Sept. 2, 1958, 72 Stat. 1613, 1680, added items 178 and 179.

1956—Act June 29, 1956, ch. 464, §4(b), 70 Stat. 406, added item 177.

1954—Act Sept. 1, 1954, ch. 1206, title II, §210(b), 68 Stat. 1097, added item 176.

§ 161. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 95-30, title I, §102(b)(1), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95-30 substituted "section 63" for "section 63(a)".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

§ 162. Trade or business expenses

(a) In general

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

- (1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes. For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.

(b) Charitable contributions and gifts excepted

No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) Illegal bribes, kickbacks, and other payments

(1) Illegal payments to government officials or employees

No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) Other illegal payments

No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally

enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) Kickbacks, rebates, and bribes under medicare and medicaid

No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

(d) Capital contributions to Federal National Mortgage Association

For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) Denial of deduction for certain lobbying and political expenditures

(1) In general

No deduction shall be allowed under subsection (a) for any amount paid or incurred in connection with—

(A) influencing legislation,

(B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,

(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or

(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

(2) Application to dues of tax-exempt organizations

No deduction shall be allowed under subsection (a) for the portion of dues or other similar amounts paid by the taxpayer to an organization which is exempt from tax under this subtitle which the organization notifies

the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which paragraph (1) applies.

(3) Influencing legislation

For purposes of this subsection—

(A) In general

The term “influencing legislation” means any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

(B) Legislation

The term “legislation” has the meaning given such term by section 4911(e)(2).

(4) Other special rules

(A) Exception for certain taxpayers

In the case of any taxpayer engaged in the trade or business of conducting activities described in paragraph (1), paragraph (1) shall not apply to expenditures of the taxpayer in conducting such activities directly on behalf of another person (but shall apply to payments by such other person to the taxpayer for conducting such activities).

(B) De minimis exception

(i) In general

Paragraph (1) shall not apply to any in-house expenditures for any taxable year if such expenditures do not exceed \$2,000. In determining whether a taxpayer exceeds the \$2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in paragraphs (1)(A) and (D).

(ii) In-house expenditures

For purposes of clause (i), the term “in-house expenditures” means expenditures described in paragraphs (1)(A) and (D) other than—

(I) payments by the taxpayer to a person engaged in the trade or business of conducting activities described in paragraph (1) for the conduct of such activities on behalf of the taxpayer, or

(II) dues or other similar amounts paid or incurred by the taxpayer which are allocable to activities described in paragraph (1).

(C) Expenses incurred in connection with lobbying and political activities

Any amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) shall be treated as paid or incurred in connection with such activity.

(5) Covered executive branch official

For purposes of this subsection, the term “covered executive branch official” means—

(A) the President,

(B) the Vice President,

(C) any officer or employee of the White House Office of the Executive Office of the President, and the 2 most senior level offi-

cers of each of the other agencies in such Executive Office, and

(D)(i) any individual serving in a position in level I of the Executive Schedule under section 5312 of title 5, United States Code, (ii) any other individual designated by the President as having Cabinet level status, and (iii) any immediate deputy of an individual described in clause (i) or (ii).

(6) Cross reference

For reporting requirements and alternative taxes related to this subsection, see section 6033(e).

(f) Fines, penalties, and other amounts

(1) In general

Except as provided in the following paragraphs of this subsection, no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

(2) Exception for amounts constituting restitution or paid to come into compliance with law

(A) In general

Paragraph (1) shall not apply to any amount that—

(i) the taxpayer establishes—

(I) constitutes restitution (including remediation of property) for damage or harm which was or may be caused by the violation of any law or the potential violation of any law, or

(II) is paid to come into compliance with any law which was violated or otherwise involved in the investigation or inquiry described in paragraph (1),

(ii) is identified as restitution or as an amount paid to come into compliance with such law, as the case may be, in the court order or settlement agreement, and

(iii) in the case of any amount of restitution for failure to pay any tax imposed under this title in the same manner as if such amount were such tax, would have been allowed as a deduction under this chapter if it had been timely paid.

The identification under clause (ii) alone shall not be sufficient to make the establishment required under clause (i).

(B) Limitation

Subparagraph (A) shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

(3) Exception for amounts paid or incurred as the result of certain court orders

Paragraph (1) shall not apply to any amount paid or incurred by reason of any order of a court in a suit in which no government or governmental entity is a party.

(4) Exception for taxes due

Paragraph (1) shall not apply to any amount paid or incurred as taxes due.

(5) Treatment of certain nongovernmental regulatory entities

For purposes of this subsection, the following nongovernmental entities shall be treated as governmental entities:

(A) Any nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)).

(B) To the extent provided in regulations, any nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

(g) Treble damage payments under the antitrust laws

If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

(h) State legislators’ travel expenses away from home**(1) In general**

For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States, and

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) Legislative days

For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) Election

An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) Section not to apply to legislators who reside near capitol

This subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

(i) Repealed. Pub. L. 101-239, title VI, § 6202(b)(3)(A), Dec. 19, 1989, 103 Stat. 2233]

(j) Certain foreign advertising expenses**(1) In general**

No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) Broadcast undertaking

For purposes of paragraph (1), the term “broadcast undertaking” includes (but is not limited to) radio and television stations.

(k) Stock reacquisition expenses**(1) In general**

Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C)).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Certain specific deductions

Any—

(i) deduction allowable under section 163 (relating to interest),

(ii) deduction for amounts which are properly allocable to indebtedness and amortized over the term of such indebtedness, or

(iii) deduction for dividends paid (within the meaning of section 561).

(B) Stock of certain regulated investment companies

Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.

(I) Special rules for health insurance costs of self-employed individuals**(1) Allowance of deduction**

In the case of a taxpayer who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

- (A) the taxpayer,
- (B) the taxpayer's spouse,
- (C) the taxpayer's dependents, and
- (D) any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.

(2) Limitations**(A) Dollar amount**

No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B) Other coverage

Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of, or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to, the taxpayer. The preceding sentence shall be applied separately with respect to—

- (i) plans which include coverage for qualified long-term care services (as defined in section 7702B(c)) or are qualified long-term care insurance contracts (as defined in section 7702B(b)), and
- (ii) plans which do not include such coverage and are not such contracts.

(C) Long-term care premiums

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in section 213(d)(10)) shall be taken into account under paragraph (1).

(3) Coordination with medical deduction

Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

(4) Deduction not allowed for self-employment tax purposes

The deduction allowable by reason of this subsection shall not be taken into account in

determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2 for taxable years beginning before January 1, 2010, or after December 31, 2010.

(5) Treatment of certain S corporation shareholders

This subsection shall apply in the case of any individual treated as a partner under section 1372(a), except that—

(A) for purposes of this subsection, such individual's wages (as defined in section 3121) from the S corporation shall be treated as such individual's earned income (within the meaning of section 401(c)(1)), and

(B) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.

(m) Certain excessive employee remuneration**(1) In general**

In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds \$1,000,000.

(2) Publicly held corporation

For purposes of this subsection, the term "publicly held corporation" means any corporation which is an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c))—

(A) the securities of which are required to be registered under section 12 of such Act (15 U.S.C. 78l), or

(B) that is required to file reports under section 15(d) of such Act (15 U.S.C. 78o(d)).

(3) Covered employee

For purposes of this subsection, the term "covered employee" means any employee of the taxpayer if—

(A) such employee is the principal executive officer or principal financial officer of the taxpayer at any time during the taxable year, or was an individual acting in such a capacity,

(B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 3 highest compensated officers for the taxable year (other than any individual described in subparagraph (A)), or

(C) was a covered employee of the taxpayer (or any predecessor) for any preceding taxable year beginning after December 31, 2016.

Such term shall include any employee who would be described in subparagraph (B) if the reporting described in such subparagraph were required as so described.

(4) Applicable employee remuneration

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term "applicable employee remuneration" means

eration” means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

(B) Exception for existing binding contracts

The term “applicable employee remuneration” shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

(C) Remuneration

For purposes of this paragraph, the term “remuneration” includes any remuneration (including benefits) in any medium other than cash, but shall not include—

(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and

(ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section 3121(v)(1).

(D) Coordination with disallowed golden parachute payments

The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G.

(E) Coordination with excise tax on specified stock compensation

The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.

(F) Special rule for remuneration paid to beneficiaries, etc.

Remuneration shall not fail to be applicable employee remuneration merely because it is includible in the income of, or paid to, a person other than the covered employee, including after the death of the covered employee.

(5) Special rule for application to employers participating in the Troubled Assets Relief Program

(A) In general

In the case of an applicable employer, no deduction shall be allowed under this chapter—

(i) in the case of executive remuneration for any applicable taxable year which is attributable to services performed by a covered executive during such applicable taxable year, to the extent that the amount of such remuneration exceeds \$500,000, or

(ii) in the case of deferred deduction executive remuneration for any taxable year for services performed during any applicable taxable year by a covered executive, to the extent that the amount of such remuneration exceeds \$500,000 reduced (but not below zero) by the sum of—

(I) the executive remuneration for such applicable taxable year, plus

(II) the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a preceding taxable year.

(B) Applicable employer

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term “applicable employer” means any employer from whom 1 or more troubled assets are acquired under a program established by the Secretary under section 101(a) of the Emergency Economic Stabilization Act of 2008 if the aggregate amount of the assets so acquired for all taxable years exceeds \$300,000,000.

(ii) Disregard of certain assets sold through direct purchase

If the only sales of troubled assets by an employer under the program described in clause (i) are through 1 or more direct purchases (within the meaning of section 113(c) of the Emergency Economic Stabilization Act of 2008), such assets shall not be taken into account under clause (i) in determining whether the employer is an applicable employer for purposes of this paragraph.

(iii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of either such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(C) Applicable taxable year

For purposes of this paragraph, the term “applicable taxable year” means, with respect to any employer—

(i) the first taxable year of the employer—

(I) which includes any portion of the period during which the authorities

under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), and

(II) in which the aggregate amount of troubled assets acquired from the employer during the taxable year pursuant to such authorities (other than assets to which subparagraph (B)(ii) applies), when added to the aggregate amount so acquired for all preceding taxable years, exceeds \$300,000,000, and

(i) any subsequent taxable year which includes any portion of such period.

(D) Covered executive

For purposes of this paragraph—

(i) In general

The term “covered executive” means, with respect to any applicable taxable year, any employee—

(I) who, at any time during the portion of the taxable year during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), is the chief executive officer of the applicable employer or the chief financial officer of the applicable employer, or an individual acting in either such capacity, or

(II) who is described in clause (ii).

(ii) Highest compensated employees

An employee is described in this clause if the employee is 1 of the 3 highest compensated officers of the applicable employer for the taxable year (other than an individual described in clause (i)(I)), determined—

(I) on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (without regard to whether those rules apply to the employer), and

(II) by only taking into account employees employed during the portion of the taxable year described in clause (i)(I).

(iii) Employee remains covered executive

If an employee is a covered executive with respect to an applicable employer for any applicable taxable year, such employee shall be treated as a covered executive with respect to such employer for all subsequent applicable taxable years and for all subsequent taxable years in which deferred deduction executive remuneration with respect to services performed in all such applicable taxable years would (but for this paragraph) be deductible.

(E) Executive remuneration

For purposes of this paragraph, the term “executive remuneration” means the applicable employee remuneration of the covered executive, as determined under paragraph (4) without regard to subparagraph (B) thereof. Such term shall not include any deferred deduction executive remuneration with respect

to services performed in a prior applicable taxable year.

(F) Deferred deduction executive remuneration

For purposes of this paragraph, the term “deferred deduction executive remuneration” means remuneration which would be executive remuneration for services performed in an applicable taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (D) and (E) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph and the Emergency Economic Stabilization Act of 2008, including the extent to which this paragraph applies in the case of any acquisition, merger, or reorganization of an applicable employer.

(6) Special rule for application to certain health insurance providers

(A) In general

No deduction shall be allowed under this chapter—

(i) in the case of applicable individual remuneration which is for any disqualified taxable year beginning after December 31, 2012, and which is attributable to services performed by an applicable individual during such taxable year, to the extent that the amount of such remuneration exceeds \$500,000, or

(ii) in the case of deferred deduction remuneration for any taxable year beginning after December 31, 2012, which is attributable to services performed by an applicable individual during any disqualified taxable year beginning after December 31, 2009, to the extent that the amount of such remuneration exceeds \$500,000 reduced (but not below zero) by the sum of—

(I) the applicable individual remuneration for such disqualified taxable year, plus

(II) the portion of the deferred deduction remuneration for such services which was taken into account under this clause in a preceding taxable year (or which would have been taken into account under this clause in a preceding taxable year if this clause were applied by substituting “December 31, 2009” for “December 31, 2012” in the matter preceding subclause (I)).

(B) Disqualified taxable year

For purposes of this paragraph, the term “disqualified taxable year” means, with respect to any employer, any taxable year for which such employer is a covered health insurance provider.

(C) Covered health insurance provider

For purposes of this paragraph—

(i) In general

The term “covered health insurance provider” means—

(I) with respect to taxable years beginning after December 31, 2009, and before January 1, 2013, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and which receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)), and

(II) with respect to taxable years beginning after December 31, 2012, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and with respect to which not less than 25 percent of the gross premiums received from providing health insurance coverage (as defined in section 9832(b)(1)) is from minimum essential coverage (as defined in section 5000A(f)).

(ii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of any such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(D) Applicable individual remuneration

For purposes of this paragraph, the term “applicable individual remuneration” means, with respect to any applicable individual for any disqualified taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration (as defined in paragraph (4) without regard to subparagraph (B) thereof) for services performed by such individual (whether or not during the taxable year). Such term shall not include any deferred deduction remuneration with respect to services performed during the disqualified taxable year.

(E) Deferred deduction remuneration

For purposes of this paragraph, the term “deferred deduction remuneration” means remuneration which would be applicable individual remuneration for services performed in a disqualified taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(F) Applicable individual

For purposes of this paragraph, the term “applicable individual” means, with respect to any covered health insurance provider for any disqualified taxable year, any individual—

(i) who is an officer, director, or employee in such taxable year, or

(ii) who provides services for or on behalf of such covered health insurance provider during such taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (D) and (E) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph.

(n) Special rule for certain group health plans**(1) In general**

No deduction shall be allowed under this chapter to an employer for any amount paid or incurred in connection with a group health plan if the plan does not reimburse for inpatient hospital care services provided in the State of New York—

(A) except as provided in subparagraphs (B) and (C), at the same rate as licensed commercial insurers are required to reimburse hospitals for such services when such reimbursement is not through such a plan,

(B) in the case of any reimbursement through a health maintenance organization, at the same rate as health maintenance organizations are required to reimburse hospitals for such services for individuals not covered by such a plan (determined without regard to any government-supported individuals exempt from such rate), or

(C) in the case of any reimbursement through any corporation organized under Article 43 of the New York State Insurance Law, at the same rate as any such corporation is required to reimburse hospitals for such services for individuals not covered by such a plan.

(2) State law exception

Paragraph (1) shall not apply to any group health plan which is not required under the laws of the State of New York (determined without regard to this subsection or other provisions of Federal law) to reimburse at the rates provided in paragraph (1).

(3) Group health plan

For purposes of this subsection, the term “group health plan” means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to any employee, any former employee, the employer, or any other individual associated or formerly associated with the employer in a business relationship, or any member of their family.

(o) Treatment of certain expenses of rural mail carriers**(1) General rule**

In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

(2) Special rule where expenses exceed reimbursements

Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.

(3) Definition of qualified reimbursements

For purposes of this subsection, the term “qualified reimbursements” means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers’ Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted by increasing any such amount under the 1991 agreement by an amount equal to—

(A) such amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting “calendar year 1990” for “calendar year 2016” in subparagraph (A)(ii) thereof.

(p) Treatment of expenses of members of reserve component of Armed Forces of the United States

For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.

(q) Payments related to sexual harassment and sexual abuse

No deduction shall be allowed under this chapter for—

(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or

(2) attorney’s fees related to such a settlement or payment.

(r) Disallowance of FDIC premiums paid by certain large financial institutions

(1) In general

No deduction shall be allowed for the applicable percentage of any FDIC premium paid or incurred by the taxpayer.

(2) Exception for small institutions

Paragraph (1) shall not apply to any taxpayer for any taxable year if the total consolidated assets of such taxpayer (determined as of the close of such taxable year) do not exceed \$10,000,000,000.

(3) Applicable percentage

For purposes of this subsection, the term “applicable percentage” means, with respect to any taxpayer for any taxable year, the ratio (expressed as a percentage but not greater than 100 percent) which—

(A) the excess of—

(i) the total consolidated assets of such taxpayer (determined as of the close of such taxable year), over

(ii) \$10,000,000,000, bears to

(B) \$40,000,000,000.

(4) FDIC premiums

For purposes of this subsection, the term “FDIC premium” means any assessment imposed under section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)).

(5) Total consolidated assets

For purposes of this subsection, the term “total consolidated assets” has the meaning given such term under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365).

(6) Aggregation rule

(A) In general

Members of an expanded affiliated group shall be treated as a single taxpayer for purposes of applying this subsection.

(B) Expanded affiliated group

(i) In general

For purposes of this paragraph, the term “expanded affiliated group” means an affiliated group as defined in section 1504(a), determined—

(I) by substituting “more than 50 percent” for “at least 80 percent” each place it appears, and

(II) without regard to paragraphs (2) and (3) of section 1504(b).

(ii) Control of non-corporate entities

A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this clause).

(s) Cross reference

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 85-866, title I, §5(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L. 86-779, §§7(b), 8(a), Sept. 14, 1960, 74 Stat. 1002, 1003; Pub. L. 87-834, §§3(a), 4(b), Oct. 16, 1962, 76 Stat. 973, 976; Pub. L. 91-172, title V, §516(c)(2)(A), title IX, §902(a), (b), Dec. 30, 1969, 83 Stat. 648, 710; Pub. L. 92-178, title III, §310(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94-455, title XIX, §§1901(c)(4), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1803, 1834; Pub. L. 97-34, title I, §127(a), Aug. 13, 1981, 95 Stat. 202; Pub. L. 97-35, title XXI, §2146(b), Aug. 13, 1981, 95 Stat. 801; Pub. L. 97-51, §139(b)(1), Oct. 1, 1981, 95 Stat. 967; Pub. L. 97-216, title II, §215(a), July 18, 1982, 96 Stat. 194; Pub. L. 97-248, title I, §128(b), title II, §288(a), Sept. 3, 1982, 96 Stat. 366, 571; Pub. L. 98-369, div. A, title V, §512(b), div. B, title III, §2354(d), July 18, 1984, 98 Stat. 863, 1102; Pub. L. 98-573, title II, §232(a), Oct. 30, 1984, 98 Stat. 2991; Pub. L. 99-272, title X, §10001(a), (c), (d), Apr. 7, 1986, 100 Stat. 222, 223, 227; Pub. L. 99-509, title IX, §§9307(c)(2)(B), 9501(a)(1), (b)(1)(A), (2)(A), (c)(1), (d)(1), Oct. 21, 1986, 100 Stat. 1995, 2075-2077; Pub. L. 99-514, title VI, §613(a), title XI, §1161(a), title XVIII, §1895(d)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (7), Oct. 22, 1986, 100 Stat. 2251, 2509, 2936-2940; Pub. L. 100-647, title I, §§1011B(b)(1)-(3), 1018(t)(7)(B), title III, §3011(b)(2), (3), Nov. 10, 1988, 102 Stat. 3488, 3589, 3624, 3625; Pub. L. 101-140, title II, §203(a)(4), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title VI, §6202(b)(3)(A), title VII, §§7107(a)(1), (b), 7862(c)(3)(A), Dec. 19, 1989, 103 Stat. 2233, 2306, 2432; Pub. L. 101-508, title XI, §§11111(d)(2), 11410(a), Nov. 5, 1990, 104 Stat. 1388-413, 1388-479; Pub. L. 102-227, title I, §110(a)(1), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 102-486, title XIX, §1938(a), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103-66, title XIII, §§13131(d)(2), 13174(a)(1), (b)(1), 13211(a), 13222(a), 13442(a), Aug. 10, 1993, 107 Stat. 435, 457, 469, 477, 568; Pub. L. 104-7, §1(a), (b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104-188, title I, §1704(p)(1)-(3), Aug. 20, 1996, 110 Stat. 1886; Pub. L. 104-191, title III, §§311(a), 322(b)(2)(B), Aug. 21, 1996, 110 Stat. 2053, 2060; Pub. L. 105-34, title IX, §934(a), title XII, §§1203(a), 1204(a), title XVI, §1602(c), Aug. 5, 1997, 111 Stat. 882, 994, 995, 1094; Pub. L. 105-206, title VI, §6012(a), July 22, 1998, 112 Stat. 818; Pub. L. 105-277, div. J, title II, §2002(a), Oct. 21, 1998, 112 Stat. 2681-901; Pub. L. 108-121, title I, §109(a), Nov. 11, 2003, 117 Stat. 1341; Pub. L. 108-357, title III, §318(a), (b), title VIII, §802(b)(2), Oct. 22, 2004, 118 Stat. 1470, 1568; Pub. L. 110-343, div. A, title III, §302(a), Oct. 3, 2008, 122 Stat. 3803; Pub. L. 111-148, title IX, §9014(a), title X, §10108(g)(1), Mar. 23, 2010, 124 Stat. 868, 913; Pub. L. 111-152, title I, §1004(d)(2), (3), Mar. 30, 2010, 124 Stat. 1035; Pub. L. 111-240, title II, §2042(a), Sept. 27, 2010, 124 Stat. 2560; Pub. L. 112-10, div. B, title VIII, §1858(b)(3), Apr. 15, 2011, 125 Stat. 169; Pub. L. 113-295, div. A, title II, §221(a)(23), (24), Dec. 19, 2014, 128 Stat. 4040; Pub. L. 115-97, title I, §§11002(d)(6), 13306(a)(1), 13307(a), 13308(a), 13311(a), 13531(a), 13601(a)-(d), Dec. 22, 2017, 131 Stat. 2061, 2126, 2129, 2132, 2153, 2155, 2156.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (c)(1), is title I of Pub. L. 95-213, Dec. 19, 1977, 91 Stat. 1494, which enacted sections 78dd-1 to 78dd-3 of

Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

The Social Security Act, referred to in subsec. (c)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 4 of the Clayton Act, referred to in subsec. (g)(1), is classified to section 15 of Title 15, Commerce and Trade.

The Securities Exchange Act of 1934, referred to in subsec. (m)(3)(B), (5)(D)(ii)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (m)(5), is div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of Title 12, Banks and Banking. Section 101(a) of the Act enacted section 5211(a) of Title 12 and amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance. Section 113(c) of the Act is classified to section 5223(c) of Title 12. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115-97, §13311(a), struck out “in excess of \$3,000” after “income tax purposes” in concluding provisions.

Subsec. (e)(2) to (8). Pub. L. 115-97, §13308(a), redesignated pars. (3) to (6) and (8) as (2) to (6), respectively, and struck out former par. (2) relating to exception for local legislation and par. (7) relating to special rule for Indian tribal governments.

Subsec. (f). Pub. L. 115-97, §13306(a)(1), amended subsec. (f) generally. Prior to amendment, text read as follows: “No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.”

Subsec. (m)(2). Pub. L. 115-97, §13601(c)(1), amended par. (2) generally. Prior to amendment, text read as follows: “For purposes of this subsection, the term ‘publicly held corporation’ means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.”

Subsec. (m)(3). Pub. L. 115-97, §13601(c)(2), inserted concluding provisions.

Subsec. (m)(3)(A). Pub. L. 115-97, §13601(b)(1), substituted “such employee is the principal executive officer or principal financial officer of the taxpayer at any time during the taxable year, or was” for “as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is”.

Subsec. (m)(3)(B). Pub. L. 115-97, §13601(b)(2), substituted “3” for “4” and “(other than any individual described in subparagraph (A))” for “(other than the chief executive officer)”.

Subsec. (m)(3)(C). Pub. L. 115-97, §13601(b)(3), added subpar. (C).

Subsec. (m)(4)(B) to (E). Pub. L. 115-97, §13601(a)(1), redesignated subpars. (D) to (G) as (B) to (E), respectively, and struck out former subpar. (B) relating to an exemption to the term “applicable employee remuneration” and former subpar. (C) relating to the term “applicable employee remuneration”.

Subsec. (m)(4)(F). Pub. L. 115-97, §13601(a)(1), (d), added subpar. (F) and redesignated former subpar. (F) as (D).

Subsec. (m)(4)(G). Pub. L. 115-97, §13601(a)(1), redesignated subpar. (G) as (E).

Subsec. (m)(5)(E). Pub. L. 115-97, §13601(a)(2)(A), substituted "subparagraph (B)" for "subparagraphs (B), (C), and (D)".

Subsec. (m)(5)(G). Pub. L. 115-97, §13601(a)(2)(B), substituted "(D) and (E)" for "(F) and (G)".

Subsec. (m)(6)(D). Pub. L. 115-97, §13601(a)(2)(A), substituted "subparagraph (B)" for "subparagraphs (B), (C), and (D)".

Subsec. (m)(6)(G). Pub. L. 115-97, §13601(a)(2)(B), substituted "(D) and (E)" for "(F) and (G)".

Subsec. (o)(3). Pub. L. 115-97, §11002(d)(6), substituted "adjusted by increasing any such amount under the 1991 agreement by an amount equal to—" and subpars. (A) and (B) for "adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5) since 1991."

Subsec. (q). Pub. L. 115-97, §13307(a), added subsec. (q). Former subsec. (q) redesignated (r), then (s).

Subsec. (r). Pub. L. 115-97, §13531(a), added subsec. (r).

Subsec. (s). Pub. L. 115-97, §§13307(a), 13531(a), redesignated subsec. (q) as (r), then (s).

2014—Subsec. (g). Pub. L. 113-295, §221(a)(23), struck out concluding provisions which read as follows: "The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date."

Subsec. (h)(4). Pub. L. 113-295, §221(a)(24), substituted "This subsection" for "For taxable years beginning after December 31, 1980, this subsection".

2011—Subsec. (a). Pub. L. 112-10 struck out last sentence in concluding provisions which read as follows: "For purposes of paragraph (1), the amount of a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered."

2010—Subsec. (a). Pub. L. 111-148, §10108(g)(1), inserted at end of concluding provisions "For purposes of paragraph (1), the amount of a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered."

Subsec. (l)(1). Pub. L. 111-152, §1004(d)(2), amended par. (1) generally. Prior to amendment, par. (1) authorized a deduction in an amount equal to the applicable percentage of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

Subsec. (l)(2)(B). Pub. L. 111-152, §1004(d)(3), inserted ", or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to," after "spouse of" in introductory provisions.

Subsec. (l)(4). Pub. L. 111-240 inserted "for taxable years beginning before January 1, 2010, or after December 31, 2010" before period at end.

Subsec. (m)(6). Pub. L. 111-148, §9014(a), added par. (6).

2008—Subsec. (m)(5). Pub. L. 110-343 added par. (5).

2004—Subsec. (m)(4)(G). Pub. L. 108-357, §802(b)(2), added subpar. (G).

Subsec. (o). Pub. L. 108-357, §318(b), struck out "reimbursed" before "expenses" in heading.

Subsec. (o)(2), (3). Pub. L. 108-357, §318(a), added par. (2) and redesignated former par. (2) as (3).

2003—Subsecs. (p), (q). Pub. L. 108-121 added subsec. (p) and redesignated former subsec. (p) as (q).

1998—Subsec. (a). Pub. L. 105-206, in last sentence, substituted "investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime." for "investigate, or provide support services for the investigation of, a Federal crime."

Subsec. (l)(1)(B). Pub. L. 105-277 amended table in subpar. (B) generally. Prior to amendment, table read as follows:

"For taxable years beginning in calendar year—	The applicable percentage is—
1997	40
1998 and 1999	45
2000 and 2001	50
2002	60

"For taxable years beginning in calendar year—	The applicable percentage is—
2003 through 2005	80
2006	90
2007 and thereafter	100."

1997—Subsec. (a). Pub. L. 105-34, §1204(a), inserted at end of concluding provisions "The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime."

Subsec. (l)(1)(B). Pub. L. 105-34, §934(a), amended table generally. Prior to amendment, table read as follows:

"For taxable years beginning in calendar year—	The applicable percentage is—
1997	40 percent
1998 through 2002	45 percent
2003	50 percent
2004	60 percent
2005	70 percent
2006 or thereafter	80 percent."

Subsec. (l)(2)(B). Pub. L. 105-34, §1602(c), inserted "The preceding sentence shall be applied separately with respect to—" at end and added cls. (i) and (ii).

Subsecs. (o), (p). Pub. L. 105-34, §1203(a), added subsec. (o) and redesignated former subsec. (o) as (p).

1996—Subsec. (k). Pub. L. 104-188, §1704(p)(3), substituted "reaquisition" for "redemption" in heading.

Subsec. (k)(1). Pub. L. 104-188, §1704(p)(1), substituted "the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C))" for "the redemption of its stock".

Subsec. (k)(2)(A). Pub. L. 104-188, §1704(p)(2), struck out "or" at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

Subsec. (l)(1). Pub. L. 104-191, §311(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"(1) IN GENERAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 30 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents."

Subsec. (l)(2)(C). Pub. L. 104-191, §322(b)(2)(B), added subpar. (C).

1995—Subsec. (l)(1). Pub. L. 104-7, §1(b), substituted "30 percent" for "25 percent".

Subsec. (l)(6). Pub. L. 104-7, §1(a), struck out par. (6) "Termination" which read as follows: "This subsection shall not apply to any taxable year beginning after December 31, 1993."

1993—Subsec. (e). Pub. L. 103-66, §13222(a), amended heading and text generally. Prior to amendment, text consisted of pars. (1) and (2) relating to deduction of ordinary and necessary expenses paid or incurred in connection with certain activities relating to congressional, State, and local legislation.

Subsec. (l)(2)(B). Pub. L. 103-66, §13174(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer."

Subsec. (l)(3). Pub. L. 103-66, §13131(d)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows:

"(A) MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

"(B) HEALTH INSURANCE CREDIT.—The amount otherwise taken into account under paragraph (1) as paid for

insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32.”

Subsec. (l)(6). Pub. L. 103-66, §13174(a)(1), substituted “December 31, 1993” for “June 30, 1992”.

Subsec. (m). Pub. L. 103-66, §13211(a), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 103-66, §13442(a), added subsec. (n). Former subsec. (n) redesignated (o).

Pub. L. 103-66, §13211(a), redesignated subsec. (m) as (n).

Subsec. (o). Pub. L. 103-66, §13442(a), redesignated subsec. (n) as (o).

1992—Subsec. (a). Pub. L. 102-486 inserted at end “For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year.”

1991—Subsec. (l)(6). Pub. L. 102-227 substituted “June 30, 1992” for “December 31, 1991”.

1990—Subsec. (l)(3). Pub. L. 101-508, §11111(d)(2), substituted heading for one which read: “Coordination with medical deduction” and amended text generally. Prior to amendment, text read as follows: “Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).”

Subsec. (l)(6). Pub. L. 101-508, §11410(a), substituted “December 31, 1991” for “September 30, 1990”.

1989—Subsec. (i). Pub. L. 101-239, §6202(b)(3)(A), struck out subsec. (i) which read as follows:

“(1) COVERAGE RELATING TO END STAGE RENAL DISEASE.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner.

“(2) GROUP HEALTH PLAN.—For purposes of this subsection the term ‘group health plan’ means any plan of, or contributed to by, an employer to provide medical care (as defined in section 213(d) to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise.”

Subsec. (k)(2)(B)(iv). Pub. L. 101-239, §7862(c)(3)(A), amended cl. (iv) as it existed prior to repeal of subsec. (k) by Pub. L. 100-647, by substituting “entitlement” for “eligibility” in heading and inserting “which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary” after “or otherwise)” in subclause (I).

Subsec. (l)(2). Pub. L. 101-140 redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “REQUIRED COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any taxable year unless coverage is provided under 1 or more plans meeting the requirements of section 89, treating such coverage as an employer-provided benefit.”

Subsec. (l)(5). Pub. L. 101-239, §7107(b), added par. (5). Former par. (5) redesignated (6).

Pub. L. 101-239, §7107(a)(1), substituted “September 30, 1990” for “December 31, 1989”.

Subsec. (l)(6). Pub. L. 101-239, §7107(b), redesignated former par. (5) as (6).

1988—Subsec. (i)(2), (3). Pub. L. 100-647, §3011(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which required plans to provide continuation coverage to certain individuals.

Subsec. (k). Pub. L. 100-647, §3011(b)(3), redesignated subsec. (l), relating to stock redemption expenses, as (k) and struck out former subsec. (k) which related to continuation coverage requirements of group health plans.

Subsec. (k)(5)(B). Pub. L. 100-647, §1018(t)(7)(B), made amendment identical to Pub. L. 99-509, §9307(c)(2)(B),

which amended directory language of Pub. L. 99-514, §1895(d)(5)(A), by substituting “section 162(k)(5)” for “section 162(k)(2)”. See 1986 Amendment note below.

Subsec. (l). Pub. L. 100-647, §3011(b)(3)(A), (B), redesignated subsec. (m), relating to special rules for health insurance costs of self-employed individuals, as (l). Former subsec. (l), relating to stock redemption expenses, redesignated (k).

Subsec. (m). Pub. L. 100-647, §3011(b)(3)(B), (C), redesignated subsec. (n), relating to cross references, as (m). Former subsec. (m), relating to special rules for health insurance costs of self-employed individuals, redesignated (l).

Pub. L. 100-647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

Subsec. (m)(2)(A). Pub. L. 100-647, §1011B(b)(3), inserted “derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established” after “401(c)”.

Subsec. (m)(4), (5). Pub. L. 100-647, §1011B(b)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (n). Pub. L. 100-647, §3011(b)(3)(C), redesignated subsec. (n) as (m).

Pub. L. 100-647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

1986—Subsec. (i)(1). Pub. L. 99-272, §10001(d), substituted “Coverage relating to end stage renal disease” for “General rule” in heading.

Subsec. (i)(2), (3). Pub. L. 99-272, §10001(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (k). Pub. L. 99-272, §10001(c), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (k)(2)(A). Pub. L. 99-514, §1895(d)(1)(A), inserted “If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.”

Subsec. (k)(2)(B)(i). Pub. L. 99-514, §1895(d)(2)(A), substituted “Maximum required period” for “Maximum period” in heading and amended text generally. Prior to amendment, text read as follows: “In the case of—

“(I) a qualifying event described in paragraph (3)(B) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

“(II) any qualifying event not described in subclause (I), the date which is 36 months after the date of the qualifying event.”

Subsec. (k)(2)(B)(i)(II). Pub. L. 99-509, §9501(b)(1)(A)(i), inserted “(other than a qualifying event described in paragraph (3)(F))”.

Subsec. (k)(2)(B)(i)(III), (IV). Pub. L. 99-509, §9501(b)(1)(A)(ii)-(iv), added subcl. (III), redesignated former subcl. (III) as (IV), and inserted “or (3)(F)”.

Subsec. (k)(2)(B)(iii). Pub. L. 99-514, §1895(d)(3)(A), inserted “The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.”

Subsec. (k)(2)(B)(iv). Pub. L. 99-514, §1895(d)(4)(A)(iii), substituted “Group health plan coverage” for “Reemployment” in heading.

Subsec. (k)(2)(B)(iv)(I). Pub. L. 99-514, §1895(d)(4)(A)(ii), substituted “covered under any other group health plan (as an employee or otherwise)” for “a covered employee under any other group health plan”.

Subsec. (k)(2)(B)(iv)(II). Pub. L. 99-509, §9501(b)(2)(A), inserted “in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv),”.

Subsec. (k)(2)(B)(v). Pub. L. 99-514, §1895(d)(4)(A)(i), struck out cl. (v), remarriage of spouse, which read as follows: “In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.”

Subsec. (k)(3). Pub. L. 99-509, §9501(a)(1), added subpar. (F) and concluding provisions.

Subsec. (k)(5)(B). Pub. L. 99-514, §1895(d)(5)(A), as amended by Pub. L. 99-509, §9307(c)(2)(B), and Pub. L. 100-647, §1018(t)(7)(B), inserted “of continuation coverage” and “If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.” See 1988 Amendment note above.

Subsec. (k)(6)(B). Pub. L. 99-509, §9501(d)(1), substituted “(D), or (F)” for “or (D)”.

Subsec. (k)(6)(C). Pub. L. 99-514, §1895(d)(6)(A), inserted “within 60 days after the date of the qualifying event”.

Subsec. (k)(6)(D)(i). Pub. L. 99-509, §9501(d)(1), substituted “(D), or (F)” for “or (D)”.

Subsec. (k)(7)(B)(iii). Pub. L. 99-514, §1895(d)(7), added cl. (iii).

Subsec. (k)(7)(B)(iv). Pub. L. 99-509, §9501(c)(1), added cl. (iv).

Subsec. (l). Pub. L. 99-514, §613(a), added subsec. (l). Former subsec. (l) redesignated (m).

Pub. L. 99-272, §10001(c), redesignated former subsec. (k), relating to cross references, as (l).

Subsec. (m). Pub. L. 99-514, §1161(a), added subsec. (m) relating to special rules for health insurance costs of self-employed individuals, and further directed that this section be amended “by redesignating subsection (n) as subsection (m)”, which directory language could not be executed because this section does not contain a subsec. (n).

Pub. L. 99-514, §613(a), redesignated subsec. (l), relating to cross references, as (m).

1984—Subsec. (i)(2). Pub. L. 98-369, §2354(d), substituted “section 213(d)” for “section 213(e)”.

Subsec. (j). Pub. L. 98-573 added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 98-369, §512(b), added par. (3).

Subsec. (k). Pub. L. 98-573 redesignated former subsec. (j) as (k).

1982—Subsec. (a). Pub. L. 97-216 inserted provisions under which amounts expended by Members of Congress within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000.

Subsec. (c)(1). Pub. L. 97-248, §288(a), substituted “is unlawful under the Foreign Corrupt Practices Act of 1977” for “would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee” after “government, the payment”, and “(or is unlawful under the Foreign Corrupt Practices Act of 1977)” for “(or would be unlawful under the laws of the United States)” before “shall be upon the Secretary”.

Subsec. (h). Pub. L. 97-248, §128(b)(2), redesignated subsec. (i), relating to State legislators’ travel expenses away from home, as (h). Former subsec. (h), relating to group health plans, redesignated (i).

Subsec. (i). Pub. L. 97-248, §128(b)(2), redesignated former subsec. (h), relating to group health plans, as (i). Former subsec. (i), relating to State legislators’ travel expenses away from home, redesignated (h). Former subsec. (i), relating to cross references, redesignated (j).

Subsec. (j). Pub. L. 97-248, §128(b)(1), redesignated former subsec. (i), relating to cross references, as (j).

1981—Subsec. (a). Pub. L. 97-51 struck out provisions under which amounts expended by Members of Congress within each taxable year for living expenses could not be deductible for income tax purposes in excess of \$3,000.

Subsec. (h). Pub. L. 97-35 added subsec. (h) relating to group health plans. Former subsec. (h), as added by Pub. L. 97-34 and relating to State legislators’ travel expenses away from home, redesignated (i). See 1982 Amendment note above.

Pub. L. 97-34 added subsec. (h) relating to State legislators’ travel expenses away from home. Former subsec. (h), relating to cross references, redesignated (i). See 1982 Amendment note above.

Subsec. (i). Pub. L. 97-35 redesignated former subsec. (h), as added by Pub. L. 97-34 and relating to State leg-

islators’ travel expenses away from home, as (i). See 1982 Amendment note above.

Pub. L. 97-34 redesignated former subsec. (h), relating to cross references, as (i). See 1982 Amendment note above.

1976—Subsec. (a). Pub. L. 94-455, §1901(c)(4), struck out reference to Territory in provisions following par. (3).

Subsec. (c). Pub. L. 94-455, §1906(b)(13)(A), struck out in pars. (1) and (2) “or his delegate” after “Secretary”.

1971—Subsec. (c). Pub. L. 92-178, §310(a)(2), substituted “Illegal bribes, kickbacks, and other payments” for “Bribes and illegal kickbacks” in heading.

Subsec. (c)(2). Pub. L. 92-178, §310(a)(1), substituted provisions respecting “Other illegal payments” for former provisions on “Other bribes or kickbacks” reading “If in a criminal proceeding a taxpayer is convicted of making a payment (other than a payment described in paragraph (1) which is an illegal bribe or kickback, or his plea of guilty or nolo contendere to an indictment or information charging the making of such a payment is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) on account of such payment or any related payment made prior to the date of the final judgment in such proceeding.”

Subsec. (c)(3). Pub. L. 92-178, §310(a)(1), substituted provisions respecting kickbacks, rebates, and bribes under medicare and medicaid for former statute of limitations provisions.

1969—Subsec. (c). Pub. L. 91-172, §902(b), designated existing provisions as par. (1), extended the applicability of nondeductible expenses for payments to any official or employee of any government, or of any agency or instrumentality of any government, and added pars. (2) and (3).

Subsecs. (f), (g). Pub. L. 91-172, §902(a), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 91-172, §§516(c)(2)(A), 902(a), redesignated former subsec. (f) as (h), substituted “(1) For” for “For”, and inserted reference to section 1253 for special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name.

1962—Subsec. (a)(2). Pub. L. 87-834, §4(b), substituted “(including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances)” for “including the entire amount expended for meals and lodging”.

Subsecs. (e), (f). Pub. L. 87-834, §3(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1960—Subsec. (b). Pub. L. 86-779, §7(b), inserted “the dollar limitations,” after “the percentage limitations,”.

Subsecs. (d), (e). Pub. L. 86-779, §8(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Subsecs. (c), (d). Pub. L. 85-866, §5(a), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(6) 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.

Pub. L. 115-97, title I, §13306(a)(2), Dec. 22, 2017, 131 Stat. 2127, provided that: “The amendment made by this subsection [amending this section] shall apply to amounts paid or incurred on or after the date of the enactment of this Act [Dec. 22, 2017], except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.”

Pub. L. 115-97, title I, §13307(b), Dec. 22, 2017, 131 Stat. 2129, provided that: “The amendments made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Dec. 22, 2017].”

Pub. L. 115-97, title I, §13308(c), Dec. 22, 2017, 131 Stat. 2129, provided that: “The amendments made by this

section [amending this section and section 6033 of this title] shall apply to amounts paid or incurred on or after the date of the enactment of this Act [Dec. 22, 2017].”

Pub. L. 115-97, title I, §1331(b), Dec. 22, 2017, 131 Stat. 2132, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2017].”

Pub. L. 115-97, title I, §1353(b), Dec. 22, 2017, 131 Stat. 2154, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

Pub. L. 115-97, title I, §13601(e), Dec. 22, 2017, 131 Stat. 2156, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.

“(2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to remuneration which is provided pursuant to a written binding contract which was in effect on November 2, 2017, and which was not modified in any material respect on or after such date.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-10 effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111-148 to which it relates, see section 1858(d) of Pub. L. 112-10, set out as a note under section 36B of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-240, title II, §2042(b), Sept. 27, 2010, 124 Stat. 2560, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.”

Pub. L. 111-148, title IX, §9014(b), Mar. 23, 2010, 124 Stat. 870, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009, with respect to services performed after such date.”

Pub. L. 111-148, title X, §10108(g)(2), Mar. 23, 2010, 124 Stat. 914, provided that: “The amendments made by this subsection [amending this section] shall apply to vouchers provided after December 31, 2013.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. A, title III, §302(c)(1), Oct. 3, 2008, 122 Stat. 3806, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Oct. 3, 2008].”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title III, §318(c), Oct. 22, 2004, 118 Stat. 1470, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.”

Amendment by section 802(b)(2) of Pub. L. 108-357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108-357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-121 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2002, see section 109(c) of Pub. L. 108-121, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105-277, div. J, title II, §2002(b), Oct. 21, 1998, 112 Stat. 2681-901, provided that: “The amendment

made by this section [amending this section] shall apply to taxable years beginning after December 31, 1998.”

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title IX, §934(b), Aug. 5, 1997, 111 Stat. 882, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.”

Pub. L. 105-34, title XII, §1203(c), Aug. 5, 1997, 111 Stat. 995, provided that: “The amendments made by this section [amending this section and repealing provisions set out as a note below] shall apply to taxable years beginning after December 31, 1997.”

Pub. L. 105-34, title XII, §1204(b), Aug. 5, 1997, 111 Stat. 995, provided that: “The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred with respect to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

Amendment by section 1602(c) of 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.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 311(a) of Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 311(c) of Pub. L. 104-191, set out as a note under section 104 of this title.

Pub. L. 104-191, title III, §322(c), Aug. 21, 1996, 110 Stat. 2062, provided that: “The amendments made by this section [amending this section and section 213 of this title] shall apply to taxable years beginning after December 31, 1996.”

Pub. L. 104-188, title I, §1704(p)(4), Aug. 20, 1996, 110 Stat. 1886, provided that:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply to amounts paid or incurred after September 13, 1995, in taxable years ending after such date.

“(B) PARAGRAPH (2).—The amendment made by paragraph (2) [amending this section] shall take effect as if included in the amendment made by section 613 of the Tax Reform Act of 1986 [Pub. L. 99-514].”

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-7, §1(c), Apr. 11, 1995, 109 Stat. 93, provided that:

“(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1993.

“(2) INCREASE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1994.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13131(d)(2) of Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103-66, set out as a note under section 32 of this title.

Pub. L. 103-66, title XIII, §13174(a)(3), Aug. 10, 1993, 107 Stat. 457, provided that: “The amendments made by this subsection [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992.”

Pub. L. 103-66, title XIII, §13174(b)(2), Aug. 10, 1993, 107 Stat. 457, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1992.”

Pub. L. 103-66, title XIII, §13211(b), Aug. 10, 1993, 107 Stat. 471, provided that: “The amendment made by sub-

section (a) [amending this section] shall apply to amounts which would otherwise be deductible for taxable years beginning on or after January 1, 1994.”

Pub. L. 103-66, title XIII, §13222(e), Aug. 10, 1993, 107 Stat. 481, provided that: “The amendments made by this section [amending this section and sections 170, 6033, and 7871 of this title] shall apply to amounts paid or incurred after December 31, 1993.”

Pub. L. 103-66, title XIII, §13442(b), Aug. 10, 1993, 107 Stat. 568, as amended by Pub. L. 104-7, §5, Apr. 11, 1995, 109 Stat. 96, provided that: “The provisions of this section [amending this section] shall apply to services provided after February 2, 1993, and on or before December 31, 1995.”

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-486, title XIX, §1938(b), Oct. 24, 1992, 106 Stat. 3033, provided that: “The amendment made by subsection (a) [amending this section] shall apply to costs paid or incurred after December 31, 1992.”

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-227, title I, §110(b), Dec. 11, 1991, 105 Stat. 1688, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1111(d)(2) of Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 1111(f) of Pub. L. 101-508, set out as a note under section 32 of this title.

Pub. L. 101-508, title XI, §11410(c), Nov. 5, 1990, 104 Stat. 1388-479, provided that: “The amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.”

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VI, §6202(b)(5), Dec. 19, 1989, 103 Stat. 2233, provided that: “The amendments made by this subsection [amending this section, sections 4980B and 5000 of this title, sections 623 and 631 of Title 29, Labor, and sections 1395p, 1395r, and 1395y of Title 42, The Public Health and Welfare] shall apply to items and services furnished after the date of the enactment of this Act [Dec. 19, 1989].”

Pub. L. 101-239, title VII, §7107(c), Dec. 19, 1989, 103 Stat. 2306, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1989.”

Pub. L. 101-239, title VII, §7862(c)(3)(D), Dec. 19, 1989, 103 Stat. 2432, provided that: “The amendments made by this paragraph [amending this section, section 4980B of this title, and section 1162 of Title 29, Labor] shall apply to—

“(i) qualifying events occurring after December 31, 1989, and

“(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).”

Amendment by Pub. L. 101-140 effective as if included in section 1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(b)(1)-(3) and 1018(t)(7)(B) 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.

Pub. L. 100-647, title III, §3011(d), Nov. 10, 1988, 102 Stat. 3625, provided that: “The amendments made by this section [enacting section 4980B of this title, and amending this section, sections 106 and 414 of this title, section 1167 of Title 29, Labor, and section 300bb-8 of

Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1988, but shall not apply to any plan for any plan year to which section 162(k) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) did not apply by reason of section 10001(e)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [section 10001(e)(2) of Pub. L. 99-272, set out as an Effective Date of 1986 Amendment note under section 106 of this title].”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title VI, §613(b), Oct. 22, 1986, 100 Stat. 2251, provided that: “The amendments made by subsection (a) [amending this section] shall apply to any amount paid or incurred after February 28, 1986, in taxable years ending after such date.”

Pub. L. 99-514, title XI, §1161(b), Oct. 22, 1986, 100 Stat. 2509, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

“(2) TRANSITIONAL RULE.—In the case of any year to which section 89 of the Internal Revenue Code of 1986 does not apply, [former] section 162(m)(2)(B) of such Code shall be applied by substituting any non-discrimination requirements otherwise applicable for the requirements of section 89 of such Code.

“(3) ASSISTANCE.—The Secretary of the Treasury or his delegate shall provide guidance to self-employed individuals to assist them in meeting the requirements of section 89 of the Internal Revenue Code of 1986 with respect to coverage required by the amendments made by this section [amending this section].”

Pub. L. 99-514, title XVIII, §1895(d)(6)(D), Oct. 22, 1986, 100 Stat. 2939, provided that: “The amendments made by this paragraph [amending this section, section 1166 of Title 29, Labor, and section 300bb-6 of Title 42, The Public Health and Welfare] shall only apply with respect to qualifying events occurring after the date of the enactment of this Act [Oct. 22, 1986].”

Pub. L. 99-514, title XVIII, §1895(e), Oct. 22, 1986, 100 Stat. 2940, provided that: “Except as otherwise provided in this section, the amendments made by this section [amending this section, section 3121 of this title, sections 1162 and 1165 to 1167 of Title 29, sections 300bb-2, 300bb-5, 300bb-6, 410, 1301, 1320c-13, 1395p, 1395u, 1395cc, 1395dd, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, and 1396s of Title 42, enacting provisions set out as notes under this section, section 3121 of this title, section 1167 of Title 29, and sections 1395u, 1395y, 1395ww, and 1395yy of Title 42, and amending provisions set out as notes under sections 403, 1395u, 1395cc, 1395mm, 1395ww, 1395yy, and 1396b of Title 42] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-272].”

Amendment by section 9307(c)(2)(B) of Pub. L. 99-509 effective as if included in the enactment of Tax Reform Act of 1986, Pub. L. 99-514, see section 9307(c)(2) of Pub. L. 99-509, set out as a note under section 1395u of Title 42.

Pub. L. 99-509, title IX, §9501(e), Oct. 21, 1986, 100 Stat. 2078, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29, Labor] shall take effect as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 [sections 10001 to 10003 of Pub. L. 99-272].

“(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1), section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [set out as a note under section 106 of this title], and section 10002(d) of such Act [set out as a note under section 1161 of Title 29], the amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29] and by sections 10001 and 10002 of such Act [enacting sections 1161 to 1168 of Title 29, amending this section, section 106 of this title, and section 1132 of Title 29, and enacting provisions set

out as notes under section 106 of this title and sections 1161 and 1166 of Title 29] shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

“(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)], and

“(B) a qualifying event described in section 162(k)(3)(A) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(1)] relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

“(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1986 and section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] apply to covered employees who retired before, on, or after the date of the enactment of this Act [Oct. 21, 1986].

“(4) NOTICE.—In the case of a qualifying event described in section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] that occurred before the date of the enactment of this Act [Oct. 21, 1986], the notice required under section 606(2) of such Act [29 U.S.C. 1166(2)] (and under section 162(k)(6)(B) of the Internal Revenue Code of 1986) with respect to such event shall be provided no later than 30 days after the date of the enactment of this Act [Oct. 21, 1986].”

Amendment by Pub. L. 99-272 applicable to plan years beginning on or after July 1, 1986, with special rule for collective bargaining agreements, see section 10001(e) of Pub. L. 99-272, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-573, title II, §232(b), Oct. 30, 1984, 98 Stat. 2991, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 30, 1984].”

Amendment by section 512(b) of Pub. L. 98-369 applicable to amounts paid or incurred after July 18, 1984, in taxable years ending after such date, subject to an exception for certain extended vacation pay plans, see section 512(c) of Pub. L. 98-369, set out as a note under section 404 of this title.

Amendment by section 2354(d) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e) of Pub. L. 98-369, set out as a note under section 1320a-1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §288(c), Sept. 3, 1982, 96 Stat. 571, provided that: “The amendments made by this section [amending this section and sections 952 and 964 of this title] shall apply to payments made after the date of the enactment of this Act [Sept. 3, 1982].”

Amendment by section 128(b) of Pub. L. 97-248 effective as if such amendment had been originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, see section 128(e)(2) of Pub. L. 97-248, set out as a note under section 1395x of Title 42, The Public Health and Welfare.

Pub. L. 97-216, title II, §215(d), July 18, 1982, 96 Stat. 194, provided that: “The amendments made by this section [amending this section and section 280A of this title and repealing provisions set out as a note under this section] shall apply to taxable years beginning after December 31, 1981.”

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-51, §139(b)(3), Oct. 1, 1981, 95 Stat. 967, as amended by Pub. L. 97-92, §133a, Dec. 15, 1981, 95 Stat.

1199, provided that: “The amendments made by this subsection [amending this section and repealing section 31c of Title 2, The Congress] shall apply to taxable years beginning after December 31, 1980.”

Pub. L. 97-35, title XXI, §2146(c)(2), Aug. 13, 1981, 95 Stat. 801, provided that: “The amendments made by subsection (b) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1982.”

Pub. L. 97-34, title I, §127(b), Aug. 13, 1981, 95 Stat. 203, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after January 1, 1976.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(4) 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 a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92-178, title III, §310(b), Dec. 10, 1971, 85 Stat. 525, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to payments after December 30, 1969, except that section 162(c)(3) of the Internal Revenue Act of 1954 (as added by subsection (a)) shall apply only with respect to kickbacks, rebates, and bribes payment of which is made on or after the date of the enactment of this Act [Dec. 10, 1971].”

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IX, §902(c), Dec. 30, 1969, 83 Stat. 711, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Section 162(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to all taxable years to which such Code applies. Section 162(g) of such Code (as added by subsection (a)) shall apply with respect to amounts paid or incurred after December 31, 1969. Section 162(c)(1) of such Code (as amended by subsection (b)) shall apply to all taxable years to which such Code applies. Sections 162(c)(2) and (3) of such Code (as amended by subsection (b)) shall apply with respect to payments made after the date of the enactment of this Act [Dec. 30, 1969].”

Amendment by section 516(c)(2)(A) of Pub. L. 91-172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91-172, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-834, §4(c), Oct. 16, 1962, 76 Stat. 977, provided that: “The amendments made by this section [amending this section and enacting section 274 of this title] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.”

Pub. L. 87-834, §3(b), Oct. 16, 1962, 76 Stat. 973, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1962.”

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-779, §7(c), Sept. 14, 1960, 74 Stat. 1002, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 170 of this title] shall apply with respect to taxable years beginning after December 31, 1959.”

Pub. L. 86-779, §8(d), Sept. 14, 1960, 74 Stat. 1003, provided that: “The amendments made by subsections (a), (b), and (c) [amending this section and section 1054 of this title and amending table of sections for Part IV by adding item 1054 and numbering former item 1054 as 1055] shall apply with respect to taxable years beginning after December 31, 1959.”

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-866, title I, §5(b), Sept. 2, 1958, 72 Stat. 1608, provided that: “The amendment made by subsection (a)

[amending this section] shall apply only with respect to expenses paid or incurred after the date of the enactment of this Act [Sept. 2, 1958]. The determination as to whether any expense paid or incurred on or before the date of the enactment of this Act shall be allowed as a deduction shall be made as if this section had not been enacted and without inference drawn from the fact that this section is not made applicable with respect to expenses paid or incurred on or before the date of the enactment of this Act.”

DEDUCTION FOR SPECIAL ASSESSMENTS

Pub. L. 104-208, div. A, title II, §2711, Sept. 30, 1996, 110 Stat. 3009-498, provided that, for purposes of subtitle A of this title, the amount allowed as a deduction under this section for a taxable year would include any amount paid during that year by reason of an assessment under section 2702 of Pub. L. 104-208, formerly set out as a note under section 1817 of Title 12, Banks and Banking, and that former section 172(f) of this title would not apply to that deduction.

SPECIAL RULE FOR DEDUCTIONS UNDER SUBSECTION (I) FOR CERTAIN TAXABLE YEARS

Pub. L. 102-227, title I, §110(a)(2), Dec. 11, 1991, 105 Stat. 1688, provided that, in the case of any taxable year beginning in 1992 only amounts paid before July 1, 1992, by the individual for insurance coverage for periods before July 1, 1992, would be taken into account in determining the amount deductible under subsec. (I) of this section with respect to such individual for such taxable year, and that for purposes of subparagraph (A) of subsec. (I)(2) of this section, the amount of the earned income described in such subparagraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before July 1, 1992, bears to the number of months in such taxable year, prior to repeal by Pub. L. 103-66, title XIII, §13174(a)(2), Aug. 10, 1993, 107 Stat. 457.

Pub. L. 101-239, title VII, §7107(a)(2), Dec. 19, 1989, 103 Stat. 2306, provided that, in the case of any taxable year beginning in 1990 only amounts paid before Oct. 1, 1990, by the individual for insurance coverage for periods before Oct. 1, 1990, would be taken into account in determining the amount deductible under subsec. (I) of this section with respect to such individual for such taxable year, and that for purposes of subsec. (I)(2)(A) of this section, the amount of the earned income described in such paragraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before Oct. 1, 1990, bears to the number of months in such taxable year, prior to repeal by Pub. L. 101-508, title XI, §11410(b), Nov. 5, 1990, 104 Stat. 1388-479.

BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS

Pub. L. 100-647, title VI, §6008, Nov. 10, 1988, 102 Stat. 3687, provided that in the case of any employee of the United States Postal Service who performed services involving the collection and delivery of mail on a rural route, such employee was permitted to compute the amount allowable as a deduction under this chapter for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate, prior to repeal by Pub. L. 105-34, title XII, §1203(b), Aug. 5, 1997, 111 Stat. 995. See subsec. (o) of this section.

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.

LIVING EXPENSES OF MEMBERS OF CONGRESS WHILE AWAY FROM HOME; SENSE OF CONGRESS

Pub. L. 97-51, §139(a), Oct. 1, 1981, 95 Stat. 967, which expressed the sense of Congress that the dollar limits on tax deductions for living expenses of Members of Congress while away from home be the same as such limits for businessmen and other private citizens, was repealed by Pub. L. 97-216, title II, §215(c), July 18, 1982, 96 Stat. 194.

STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME

Pub. L. 94-455, title VI, §604, Oct. 4, 1976, 90 Stat. 1575, as amended by Pub. L. 95-30, title III, §307, May 23, 1977, 91 Stat. 153; Pub. L. 95-258, §2, Apr. 7, 1978, 92 Stat. 195; Pub. L. 96-167, §3, Dec. 29, 1979, 93 Stat. 1275; Pub. L. 96-178, §1, Jan. 2, 1980, 93 Stat. 1295; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) In GENERAL.—For purposes of section 162(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any individual who was a State legislator at any time during any taxable year beginning before January 1, 1981, and who, for the taxable year, elects the application of this section, for any period during such a taxable year in which he was a State legislator—

“(1) the place of residence of such individual within the legislative district which he represented shall be considered his home, and

“(2) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

“(b) LEGISLATIVE DAYS.—For purposes of subsection (a), a legislative day during any taxable year for any individual shall be any day during such year on which (1) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or (2) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

“(c) LIMITATION.—The amount taken into account as living expenses attributable to a trade or business as a State legislator for any taxable year beginning before January 1, 1976, under an election made under this section shall not exceed the amount claimed for such purpose under a return (or amended return) filed before May 21, 1976.

“(d) MAKING AND EFFECT OF ELECTION.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.”

[Amendment of section 604 of Pub. L. 94-455 by section 1 of Pub. L. 96-178, which purported to substitute “January 1, 1979” for “January 1, 1978”, was not executed because of the prior amendment by section 3(a)(2), (b) of Pub. L. 96-167 which substituted “January 1, 1981” for “January 1, 1978” in subsec. (a) and which struck out the last sentence of subsec. (d).]

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94-12, see section 208(c) of Pub. L. 94-12, title II, Mar. 29, 1975, 89 Stat. 35, set out as a note under section 44 of this title.

DEDUCTIBILITY OF ACCRUED VACATION PAY

Pub. L. 85-866, title I, §97, Sept. 2, 1958, 72 Stat. 1672, as amended by Pub. L. 86-496, §2, June 8, 1960, 74 Stat. 164; Pub. L. 88-153, Oct. 17, 1963, 77 Stat. 272; Pub. L. 88-554, §1, Aug. 31, 1964, 78 Stat. 761; Pub. L. 89-692, Oct. 15, 1966, 80 Stat. 1025; Pub. L. 91-172, title IX, §903, Dec. 30, 1969, 83 Stat. 711; Pub. L. 92-580, §3, Oct. 27, 1972, 86 Stat. 1276, provided that deductions for accrued vacation pay under this section would not be denied for any taxable year ending before Jan. 1, 1973, so long as the employee at the time of accrual of pay has performed the necessary qualifying service under an appropriate plan.

INVESTIGATION OF, AND REPORTS ON, TREATMENT OF ENTERTAINMENT AND CERTAIN OTHER EXPENSES

Pub. L. 86-564, title III, §301, June 30, 1960, 74 Stat. 291, authorized the Joint Committee on Internal Revenue Taxation to investigate and report on the use of entertainment and certain other expense deductions to the 87th Congress and authorized the Secretary of the Treasury to report to the 87th Congress on the enforcement program of the Internal Revenue Service relating to such deductions.

FILING OF CLAIMS FOR REFUNDS OF OVERPAYMENTS

Extension of time for filing of claims for refunds or credit of overpayments of income tax resulting from application of this section, see section 96 of Pub. L. 85-866, set out as a note under section 6511 of this title.

§ 163. Interest**(a) General rule**

There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) Installment purchases where interest charge is not separately stated**(1) General rule**

If personal property or educational services are purchased under a contract—

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term “educational services” means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization.

(2) Limitation

In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) Redeemable ground rents

For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent

(excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) Limitation on investment interest**(1) In general**

In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

(2) Carryforward of disallowed interest

The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

(3) Investment interest

For purposes of this subsection—

(A) In general

The term “investment interest” means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1)) which is paid or accrued on indebtedness properly allocable to property held for investment.

(B) Exceptions

The term “investment interest” shall not include—

(i) any qualified residence interest (as defined in subsection (h)(3)), or

(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

(C) Personal property used in short sale

For purposes of this paragraph, the term “interest” includes any amount allowable as a deduction in connection with personal property used in a short sale.

(4) Net investment income

For purposes of this subsection—

(A) In general

The term “net investment income” means the excess of—

(i) investment income, over

(ii) investment expenses.

(B) Investment income

The term “investment income” means the sum of—

(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),

(ii) the excess (if any) of—

(I) the net gain attributable to the disposition of property held for investment, over

(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the