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Internal Revenue Code Section 127(c)(4)

Educational assistance programs

(a) Exclusion from gross income.

(1) In general.

Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b) .

(2) \$5,250 maximum exclusion.

If, but for this paragraph, this section would exclude from gross income more than \$5,250 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first \$5,250 of such assistance so furnished.

(b) Educational assistance program.

(1) In general.

For purposes of this section, an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection .

(2) Eligibility.

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents. For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Principal shareholders or owners.

Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Other benefits as an alternative.

A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section

, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required.

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of employees.

Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) Definitions; special rules.

For purposes of this section -

(1) Educational assistance.

The term "educational assistance" means-

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee.

The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) Employer.

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2) .

(4) Attribution rules.

(A) Ownership of stock. Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business. The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A) .

(5) Certain tests not applicable.

An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because-



(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) Relationship to current law.

This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117 , 162 or 212 .

(7) Disallowance of excluded amounts as credit or deduction.

No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from income by reason of this section .

(d) Cross reference.

For reporting and recordkeeping requirements, see section 6039D .