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**26 USC Sec. 104**

01/19/04

-EXPCITE-

TITLE 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

CHAPTER 1 - NORMAL TAXES AND SURTAXES

Subchapter B - Computation of Taxable Income

PART III - ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

-HEAD-

Sec. 104. Compensation for injuries or sickness

-STATUTE-

(a) In general

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include -

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;

(3) amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not

includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2)).

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee. For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.

(b) Termination of application of subsection (a)(4) in certain cases

(1) In general

Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2).

(2) Individuals to whom subsection (a)(4) continues to apply

An individual is described in this paragraph if -

(A) on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4),

(B) on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

(C) he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

(D) on application therefor, he would be entitled to receive disability compensation from the Veterans' Administration.

(3) Special rules for combat-related injuries

For purposes of this subsection, the term "combat-related injury" means personal injury or sickness -

(A) which is incurred -

(i) as a direct result of armed conflict,

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

(4) Amount excluded to be not less than veterans' disability compensation

In the case of any individual described in paragraph (2), the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

(c) Application of prior law in certain cases

The phrase "(other than punitive damages)" shall not apply to punitive damages awarded in a civil action -

(1) which is a wrongful death action, and

(2) with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).

(d) Cross references

(1) For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106.

(2) For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section, see section 1403 of title 10, United States Code (relating to career compensation laws).

-SOURCE-

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 86-723, Sec. 51, Sept. 8, 1960, 74 Stat. 847; Pub. L. 87-792, Sec. 7(d), Oct. 10, 1962, 76 Stat. 829; Pub. L. 94-455, title V, Sec. 505(b), (e)(1), title XIX, Sec. 1901(a)(18), Oct. 4, 1976, 90 Stat. 1567, 1568, 1766; Pub. L. 96-465, title II, Sec. 2206(e)(1), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 97-473, title I, Sec. 101(a), Jan. 14, 1983, 96 Stat. 2605; Pub. L. 101-239, title VII, Sec. 7641(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 104-188, title I, Sec. 1605(a)-(c), Aug. 20, 1996, 110 Stat. 1838; Pub. L. 104-191, title III, Sec.

311(b), Aug. 21, 1996, 110 Stat. 2053; Pub. L. 107-134, title I, Sec. 113(a), Jan. 23, 2002, 115 Stat. 2435.)

-REFTEXT-

#### REFERENCES IN TEXT

Section 808 of the Foreign Service Act of 1980, referred to in subsec. (a)(4), is Pub. L. 96-465, title I, Sec. 808, Oct. 17, 1980, 94 Stat. 2110, which is classified to section 4048 of Title 22, Foreign Relations and Intercourse.

-MISC1-

#### AMENDMENTS

2002 - Subsec. (a)(5). Pub. L. 107-134 substituted "a terroristic or military action (as defined in section 692(c)(2))." for "a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States."

1996 - Subsec. (a). Pub. L. 104-188, Sec. 1605(b), in closing provisions, substituted "For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress." for "Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness."

Subsec. (a)(2). Pub. L. 104-188, Sec. 1605(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;"

Subsec. (a)(3). Pub. L. 104-191 inserted "(or through an

arrangement having the effect of accident or health insurance)" after "accident or health insurance".

Subsecs. (c), (d). Pub. L. 104-188, Sec. 1605(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1989 - Subsec. (a). Pub. L. 101-239 inserted at end "Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness."

1983 - Subsec. (a)(2). Pub. L. 97-473 substituted "whether by suit or agreement and whether as lump sums or as periodic payments" for "whether by suit or agreement".

1980 - Subsec. (a)(4). Pub. L. 96-465 substituted reference to section 808 of the Foreign Service Act of 1980 for reference to section 831 of the Foreign Service Act of 1946.

1976 - Subsec. (a)(4). Pub. L. 94-455, Sec. 1901(a)(18)(A), struck out "; 60 Stat. 1021" after "(22 U.S.C. 1081".

Subsec. (a)(5). Pub. L. 94-455, Sec. 505(e)(1), added par. (5).

Subsecs. (b), (c). Pub. L. 94-455, Sec. 505(b), added subsec. (b), redesignated former subsec. (b) as (c) and, as so redesignated, Sec. 1901(a)(18)(B), substituted "1403 of title 10, United States Code (relating to career compensation laws)" for "402(h) of the Career Compensation Act of 1949 (37 U.S.C. 272(h))".

1962 - Subsec. (a). Pub. L. 87-792 inserted sentence requiring contributions made on behalf of an individual who is, or has been, an employee within the meaning of section 401(c)(1), while he was such an employee to a trust which is exempt from tax, or under a plan described in section 403(a), to be treated as contributions by the employer which were not includible in the gross income of the employee.

1960 - Subsec. (a)(4). Pub. L. 86-723 provided for exclusion from gross income of amounts received as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of

1946, as amended.

-CHANGE-

#### CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 FR 8819, 79 Stat. 1318. Environmental Science Services Administration abolished in 1970 and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 FR 15627, 84 Stat. 2090. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 FR 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. See notes under section 311 of Title 15, Commerce and Trade.

-MISC2-

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-134, title I, Sec. 113(c), Jan. 23, 2002, 115 Stat. 2435, provided that: "The amendments made by this section [amending this section and section 692 of this title] shall apply to taxable years ending on or after September 11, 2001."

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Section 311(c) of Pub. L. 104-191 provided that: "The amendments made by this section [amending this section and section 162 of this title] shall apply to taxable years beginning after December 31, 1996."

Section 1605(d) of Pub. L. 104-188 provided that:

"(1) In general. - Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts received after the date of the enactment of this Act [Aug. 20, 1996], in taxable years ending after such date.

"(2) Exception. - The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995."

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 7641(b) of Pub. L. 101-239 provided that:

"(1) In general. - Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts received after July 10, 1989, in taxable years ending after such date.

"(2) Exception. - The amendment made by subsection (a) shall not apply to any amount received -

"(A) under any written binding agreement, court decree, or mediation award in effect on (or issued on or before) July 10, 1989, or

"(B) pursuant to any suit filed on or before July 10, 1989."

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 505(b) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

Section 505(e)(2) of Pub. L. 94-455 provided that: "The amendments made by this subsection [amending this section] shall

apply to taxable years beginning after December 31, 1976."

Amendment by section 1901(a)(18)(A) 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 1962 AMENDMENT

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Section 56(e) of Pub. L. 86-723 provided that: "The amendment made by section 51 of this Act [amending this section] shall be effective with respect to taxable years ending after the date of enactment of this Act [Sept. 8, 1960]."

-TRANS-

#### TRANSFER OF FUNCTIONS

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

-SECREP-

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 105, 130, 5891, 6051, 7701 of this title; title 10 section 1403.



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