

Public Law 97-473
97th Congress

An Act

To amend the Internal Revenue Code of 1954 with respect to the tax treatment of periodic payments for damages received on account of personal injury or sickness, and for other purposes.

Jan. 14, 1983
[H.R. 5470]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Damages for personal injury or sickness, tax treatment of periodic payments.

SECTION 1. AMENDMENT OF 1954 CODE.

Whenever in title I or II an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

26 USC 1 *et seq.*

TITLE I—INCOME TAX PROVISIONS

SEC. 101. TREATMENT OF RECIPIENT OF SETTLEMENT PERIODIC PAYMENTS.

(a) TREATMENT OF RECIPIENT.—Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended by striking out “whether by suit or agreement” and inserting in lieu thereof “whether by suit or agreement and whether as lump sums or as periodic payments”.

26 USC 104.

(b) TREATMENT OF ASSIGNEE-PAYOR.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 130 as section 131 and by inserting after section 129 the following new section:

26 USC 131.

“SEC. 130. CERTAIN PERSONAL INJURY LIABILITY ASSIGNMENTS.

26 USC 130.

“(a) IN GENERAL.—Any amount received for agreeing to a qualified assignment shall not be included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

“(b) TREATMENT OF QUALIFIED FUNDING ASSET.—In the case of any qualified funding asset—

“(1) the basis of such asset shall be reduced by the amount excluded from gross income under subsection (a) by reason of the purchase of such asset, and

“(2) any gain recognized on a disposition of such asset shall be treated as ordinary income.

“(c) QUALIFIED ASSIGNMENT.—For purposes of this section, the term ‘qualified assignment’ means any assignment of a liability to make periodic payments as damages (whether by suit or agreement) on account of personal injury or sickness—

“(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, and

“(2) if—

“(A) such periodic payments are fixed and determinable as to amount and time of payment,

“(B) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments,

“(C) the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor,

“(D) the assignee’s obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

“(E) such periodic payments are excludable from the gross income of the recipient under section 104(a)(2).

“(d) **QUALIFIED FUNDING ASSET.**—For purposes of this section, the term ‘qualified funding asset’ means any annuity contract issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

“(1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,

“(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,

“(3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and

“(4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment.”

(2) **CONFORMING AMENDMENT.**—The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 130 and inserting in lieu thereof the following new items:

“Sec. 130. Certain personal injury liability assignments.

“Sec. 131. Cross references to other Acts.”

26 USC 130 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years ending after December 31, 1982.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR CERTAIN FOSTER CARE PAYMENTS.

(a) **IN GENERAL.**—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income), as amended by section 101(b), is amended by redesignating section 131 as section 132 and by inserting after section 130 the following new section:

Ante, p. 2605.

26 USC 132.

26 USC 131.

“**SEC. 131. CERTAIN FOSTER CARE PAYMENTS.**

“(a) **GENERAL RULE.**—Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.

“(b) **QUALIFIED FOSTER CARE PAYMENT DEFINED.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘qualified foster care payment’ means any amount—

“(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

“(B) which is—

“(i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent’s home, or

“(ii) a difficulty of care payment.

“(2) **QUALIFIED FOSTER CHILD.**—The term ‘qualified foster child’ means any individual who—

“(A) has not attained age 19, and

“(B) is living in a foster family home in which such individual was placed by—

“(i) an agency of a State or political subdivision thereof, or

“(ii) an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).

“(c) **DIFFICULTY OF CARE PAYMENTS.**—For purposes of this section—

“(1) **DIFFICULTY OF CARE PAYMENTS.**—The term ‘difficulty of care payments’ means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

“(A) are compensation for providing the additional care of a qualified foster child which is—

“(i) required by reason of a physical, mental, or emotional handicap of such child with respect to which the State has determined that there is a need for additional compensation, and

“(ii) provided in the home of the foster parent, and

“(B) are designated by the payor as compensation described in subparagraph (A).

“(2) **LIMITATION BASED ON NUMBER OF CHILDREN.**—In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 10 qualified foster children.”

(b) **CLERICAL AMENDMENT.**—The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 131 and by inserting in lieu thereof the following items:

“Sec. 131. Certain foster care payments.

“Sec. 132. Cross references to other Acts.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1978.

26 USC 131 note.

TITLE II—TAX STATUS OF INDIAN TRIBAL GOVERNMENTS

Indian Tribal Governmental Tax Status Act of 1982.

SEC. 201. SHORT TITLE.

This title may be cited as the “Indian Tribal Governmental Tax Status Act of 1982”.

26 USC 1 note.

SEC. 202. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

(a) **GENERAL RULE.**—Chapter 80 (relating to general rules) is amended by adding at the end thereof the following new subchapter:

“Subchapter C—Provisions Affecting More than One Subtitle

“Sec. 7871. Indian tribal governments treated as States for certain purposes.

26 USC 7871.

“SEC. 7871. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

“(a) **GENERAL RULE.**—An Indian tribal government shall be treated as a State—

“(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

“(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

“(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or

“(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

“(2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

“(A) chapter 31 (relating to tax on special fuels),

“(B) chapter 32 (relating to manufacturers excise taxes),

“(C) subchapter B of chapter 33 (relating to communications excise tax), or

“(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

“(3) for purposes of section 164 (relating to deduction for taxes);

“(4) subject to subsection (c), for purposes of section 103 (relating to interest on certain governmental obligations);

“(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

“(6) for purposes of—

“(A) section 37(e)(9)(A) (relating to certain public retirement systems),

“(B) section 41(c)(4) (defining State for purposes of credit for contribution to candidates for public offices),

“(C) section 117(b)(2)(A) (relating to scholarships and fellowship grants), and

“(D) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities); and

“(7) for purposes of—

“(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

“(B) subchapter A of chapter 42 (relating to private foundations).

“(b) **ADDITIONAL REQUIREMENTS FOR EXCISE TAX EXEMPTIONS.**—Paragraph (2) of subsection (a) shall apply with respect to any transaction only if, in addition to any other requirement of this title

26 USC 4041 et seq.

26 USC 4061 et seq.

26 USC 4251.

26 USC 4481.

26 USC 4911 et seq.

26 USC 4940.

applicable to similar transactions involving a State or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

“(c) ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT BONDS.—

“(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

“(2) NO EXEMPTION FOR CERTAIN PRIVATE-ACTIVITY BONDS.—Subsection (a) of section 103 shall not apply to any of the following issued by an Indian tribal government (or subdivision thereof):

“(A) An industrial development bond (as defined in section 103(b)(2)).

“(B) An obligation described in section 103(l)(1)(A) (relating to scholarship bonds).

“(C) A mortgage subsidy bond (as defined in paragraph (1) of section 103A(b) without regard to paragraph (2) thereof).

“(d) TREATMENT OF SUBDIVISIONS OF INDIAN TRIBAL GOVERNMENTS AS POLITICAL SUBDIVISIONS.—For the purposes specified in subsection (a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a State if (and only if) the Secretary determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.”

(b) CONFORMING AMENDMENTS RELATING TO CROSS REFERENCES.—

(1) Subsection (d) of section 41 is amended to read as follows: 26 USC 41.

“(d) CROSS REFERENCES.—

“(1) For disallowance of credits to estates and trusts, see section 642(a)(2).

“(2) For treatment of Indian tribal governments as States (and the political subdivisions of Indian tribal governments as political subdivisions of States), see section 7871.”

(2) Subsection (m) of section 103 is amended to read as follows: 26 USC 103.

“(m) CROSS REFERENCES.—

“For provisions relating to the taxable status of—

“(1) Certain obligations issued by Indian tribal governments (or their subdivisions), see section 7871.

“(2) Exempt interest dividends of regulated investment companies, see section 852(b)(5)(B).

“(3) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (48 U.S.C. 745).

“(4) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1919 (48 U.S.C. 1403).

“(5) Certain obligations issued under title I of the Housing Act of 1949, see section 102(g) of title I of such Act (42 U.S.C. 1452(g)).”

(3) Section 164(f) is amended by adding at the end thereof the following new paragraph: 26 USC 164.

“(3) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871.”

(4) Section 170(k) is amended by adding at the end thereof the following new paragraph: 26 USC 170.

- 26 USC 2055. “(8) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.”
- 26 USC 2106. (5) Section 2055(f) is amended by adding at the end thereof the following new paragraph:
 “(11) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.”
- 26 USC 2522. (6) Subparagraph (F) of section 2106(a)(2) is amended to read as follows:
 “(F) CROSS REFERENCES.—
 “(i) For option as to time for valuation for purposes of deduction under this section, see section 2032.
 “(ii) For exemption of certain bequests for the benefit of the United States and for rules of construction for certain bequests, see section 2055(f).
 “(iii) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.”
- 26 USC 4227. (7) Subsection (d) of section 2522 is amended to read as follows:
 “(d) CROSS REFERENCES.—
 “(1) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).
 “(2) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.”
- 26 USC 4484. (8) Section 4227 is amended to read as follows:
 “SEC. 4227. CROSS REFERENCES.
 “(1) For exemption for a sale to an Indian tribal government (or its subdivision) for the exclusive use of an Indian tribal government (or its subdivision), see section 7871.
 “(2) For credit for taxes on tires and tubes, see section 6416(c).”
- 26 USC 6420, 6421. (9) The table of sections for subchapter G of chapter 32 is amended by striking out the item relating to section 4227 and inserting in lieu thereof the following new item:
 “Sec. 4227. Cross references.”
- 26 USC 6424, 6427. (10) Section 4484 is amended to read as follows:
 “SEC. 4484. CROSS REFERENCES.
 “(1) For penalties and administrative provisions applicable to this subchapter, see subtitle F.
 “(2) For exemption for uses by Indian tribal governments (or their subdivisions), see section 7871.”
- 26 USC 6420, 6421. (11) The table of sections for subchapter D of chapter 36 is amended by striking out the item relating to section 4484 and inserting in lieu thereof the following new item:
 “Sec. 4484. Cross references.”
- 26 USC 6424, 6427. (12) Sections 6420(h) and 6421(j) are each amended by adding at the end thereof the following new paragraph:
 “(4) For treatment of an Indian tribal government as a State and a subdivision of an Indian tribal government as a political subdivision of a State, see section 7871.”
- 26 USC 6424, 6427. (13) Sections 6424(g) and 6427(k) are each amended by adding at the end thereof the following new paragraph:
 “(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.”
- 26 USC 80. (c) CLERICAL AMENDMENT.—The table of subchapters for chapter 80 is amended by adding at the end thereof the following new item:
 “Subchapter C. Provisions affecting more than one subtitle.”

SEC. 203. DEFINITION OF INDIAN TRIBAL GOVERNMENT.

Subsection (a) of Section 7701 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

Ante, p. 2406.
26 USC 7701.

“(40) INDIAN TRIBAL GOVERNMENT.—

“(A) IN GENERAL.—The term ‘Indian tribal government’ means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

“(B) SPECIAL RULE FOR ALASKA NATIVES.—No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.”

Ante, p. 2608.
Ante, p. 2607.

SEC. 204. EFFECTIVE DATES.

The amendments made by this title—

26 USC 7871
note.

(1) insofar as they relate to chapter 1 of the Internal Revenue Code of 1954 (other than section 103 thereof), shall apply to taxable years beginning after December 31, 1982, and before January 1, 1985,

26 USC 1 *et seq.*

(2) insofar as they relate to section 103 of such Code, shall apply to obligations issued after December 31, 1982, and before January 1, 1985,

(3) insofar as they relate to chapter 11 of such Code, shall apply to estates of decedents dying after December 31, 1982, and before January 1, 1985,

26 USC 2001 *et seq.*

(4) insofar as they relate to chapter 12 of such Code, shall apply to gifts made after December 31, 1982, and before January 1, 1985, and

26 USC 2501 *et seq.*

(5) insofar as they relate to taxes imposed by subtitle D of such Code, shall take effect on January 1, 1983, and shall cease to apply at the close of December 31, 1984.

26 USC 4041.

TITLE III—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 301. TREATMENT OF HAWAII PREPAID HEALTH CARE ACT UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) EXEMPTION FROM PREEMPTION.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end thereof the following new paragraph:

“(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).

“(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

“(i) any State tax law relating to employee benefit plans, or

“(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

“(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph), but the Secretary may enter into cooperative arrangements under this paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts.”

29 USC 1136.

29 USC 1144 note.

29 USC 1144 note.

(b) TREATMENT OF OTHER STATE LAWS.—The amendment made by this section shall not be considered a precedent with respect to extending such amendment to any other State law.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 302. TREATMENT OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) DEFINITION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENT.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), relating to definitions, is amended by adding at the end thereof the following new paragraph:

“(40)(A) The term ‘multiple employer welfare arrangement’ means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—

“(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, or

“(ii) by a rural electric cooperative.

“(B) For purposes of this paragraph—

“(i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,

“(ii) the term ‘control group’ means a group of trades or businesses under common control,

“(iii) the determination of whether a trade or business is under ‘common control’ with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent, and

“(iv) the term ‘rural electric cooperative’ means—

“(I) any organization which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954 and which is engaged primarily in providing electric service on a mutual or cooperative basis, and

“Control group.”

29 USC 1301.

“Rural electric cooperative.”

26 USC 501.

“(II) any organization described in paragraph (4) or (6) of section 501(c) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code and at least 80 percent of the members of which are organizations described in subclause (I).”

26 USC 501.

(b) **LIMITATION ON PREEMPTION OF STATE LAW WITH REGARD TO WELFARE PLANS WHICH ARE MULTIPLE EMPLOYER WELFARE ARRANGEMENTS.**—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)), as amended by section 301 of this Act, is further amended by adding at the end thereof the following new paragraph:

“(6)(A) Notwithstanding any other provision of this section—

“(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

“(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

“(II) provisions to enforce such standards, and

“(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

“(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(l) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

29 USC 1002,
1003.

“(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

“(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the

Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.”

29 USC 1002 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Approved January 14, 1983.

LEGISLATIVE HISTORY—H.R. 5470:

HOUSE REPORTS: No. 97-832 (Comm. on Ways and Means) and No. 97-984 (Comm. of Conference).

SENATE REPORT No. 97-646 (Comm. on Finance).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Sept. 20, considered and passed House.

Oct. 1, considered and passed Senate, amended.

Dec. 13, House concurred in Senate amendment and in another with an amendment.

Dec. 21, House and Senate agreed to conference report.