

Definitions Relating to Application of Exclusion Under Section 127 of the Internal Revenue Code

Notice 96-68

This notice provides guidance regarding certain definitions affecting the proper tax treatment of educational assistance received by employees under § 127 of the Internal Revenue Code as amended by the Small Business Job Protection Act of 1996, Pub. L. 104-188 (the "Act").

Section 1202 of the Act restores the exclusion from gross income for up to \$5,250 of educational assistance provided under an educational assistance program described in § 127, effective for an employee's first taxable year beginning after December 31, 1994. The Act amends the definition of "educational assistance" to provide that, for graduate level courses, the exclusion does not apply to expenses relating to courses "beginning after June 30, 1996." For this purpose, a "graduate level course" will be treated as meaning any course taken by an employee who has a bachelor's degree or is receiving credit toward a more advanced degree, if the particular course can be taken for credit by any individual in a program leading to a law, business, medical, or other advanced academic or professional degree. Section 127(c)(1). This is the same definition set forth in Notice 89-33, 1989-1 C.B. 674, with respect to amendments made by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, relating to graduate level courses.

The amendment of the term "educational assistance" to exclude graduate level courses applies to courses beginning after June 30, 1996. Similarly, the § 127 exclusion only applies with respect to "courses beginning" before a specified date in 1997. For purposes of

both of these provisions, a course ordinarily will be considered to begin on the first regular day of class for the course. The first regular day of class for any course that is offered during a regular academic term at an educational institution will be considered to be the first day on which regular classes generally begin for courses offered during that term. A regular academic term during which a course is offered might be, for example, a semester or, if the semester consists of more than one session, the session during which the course is offered. The date on which an individual registers for or enrolls in a course does not determine when the course begins.

For example, assume an employee registers in January 1996 for a graduate

level independent study course for the upcoming summer term. The course consists of working with a professor to write a paper. Other courses offered for the summer term hold their first regular class during the first week of June 1996. The first day on which regular classes are held in the term is Monday, June 3, 1996, and classes continue until August. The employee does not meet with the professor until the second week of July 1996. Under the preceding paragraph, the independent study course would be treated as beginning on or before June 30, 1996 for purposes of § 127. This is because regular classes for courses offered during the summer term in which this course was taken generally began on June 3, 1996.

The amendments to § 127 do not affect the tax treatment of educational benefits under any other section of the Internal Revenue Code including employment related education described in Treas. Reg. § 1.162-5.

FURTHER INFORMATION

For further information regarding this Notice, contact Monice Rosenbaum of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-6070 (not a toll-free number).
