

Public Law 95-427
95th Congress

An Act

Oct. 7, 1978

[H.R. 12841]

To prohibit the issuance of regulations on the taxation of fringe benefits, and for other purposes.

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

SECTION 1. FRINGE BENEFIT REGULATIONS.

(a) **IN GENERAL.**—No fringe benefit regulation shall be issued—

(1) in final form on or after May 1, 1978, and on or before December 31, 1979, or

(2) in proposed or final form on or after May 1, 1978, if such regulation has an effective date on or before December 31, 1979.

(b) **DEFINITION OF FRINGE BENEFIT REGULATION.**—For purposes of subsection (a), the term “fringe benefit regulation” means a regulation providing for the inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1954.

SEC. 2. COMMUTING EXPENSES.

With respect to transportation costs paid or incurred after December 31, 1976, and on or before December 31, 1979, the application of sections 62, 162, and 262 and of chapters 21, 23, and 24 of the Internal Revenue Code of 1954 to transportation expenses in traveling between a taxpayer's residence and place of work shall be determined—

(1) without regard to Revenue Ruling 76-453 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue Ruling); and

(2) with full regard to the rules in effect before Revenue Ruling 76-453.

SEC. 3. TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW RECEIVED BY STATE POLICE OFFICERS BEFORE JANUARY 1, 1978.

(a) **GENERAL RULE.**—If—

(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

(3) this section applies to such allowance,

then, for purposes of the Internal Revenue Code of 1954, such allowance shall not be included in such individual's gross income.

(b) **ALLOWANCES TO WHICH SECTION APPLIES.**—For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received—

(1) after December 31, 1969, and before January 1, 1977, to the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

(2) during the calendar year 1977.

Taxes.
Regulations on
taxation of fringe
benefits,
prohibition.
26 USC 61 note.

26 USC 61.
26 USC 62 note.

26 USC 62, 162,
262, 3101 *et seq.*,
3301 *et seq.*,
3401 *et seq.*

26 USC 119 note.

26 USC 1 *et seq.*

(c) **OTHER DEFINITIONS.**—For purposes of this section—

(1) **STATE POLICE OFFICER.**—The term “State police officer” means any police officer (including a highway patrolman) employed by a State (or the District of Columbia) on a full-time basis with the power to arrest.

(2) **INCOME TAX RETURN.**—The term “income tax return” means the return of the taxes imposed by subtitle A of the Internal Revenue Code of 1954. If an individual filed before November 29, 1977, an amended return for any taxable year, such amended return shall be treated as the return for such taxable year.

26 USC 1 *et seq.*

(d) **LIMITATION ON DEDUCTION.**—If any individual receives a subsistence allowance which is excluded from gross income under subsection (a), no deduction shall be allowed under any provision of chapter 1 of the Internal Revenue Code of 1954 for expenses in respect of which he has received such allowance, except to the extent that such expenses exceed the amount excludable from gross income under subsection (a) and the excess is otherwise allowed as a deduction under such chapter 1.

(e) **STATUTE OF LIMITATIONS.**—If refund or credit of any overpayment of tax resulting from the application of this section is prevented at any time on or before April 15, 1979, by the operation of any law or rule of law (including *res judicata*), refund or credit of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1979.

SEC. 4. MEALS FURNISHED FOR THE CONVENIENCE OF THE EMPLOYER.

(a) **IN GENERAL.**—Section 119 of the Internal Revenue Code of 1954 (relating to meals or lodging furnished for the convenience of the employer) is amended to read as follows:

26 USC 119.

“SEC. 119. MEALS OR LODGING FURNISHED FOR THE CONVENIENCE OF THE EMPLOYER.

“(a) **GENERAL RULE.**—There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him by his employer for the convenience of the employer, but only if—

“(1) in the case of meals, the meals are furnished on the business premises of the employer, or

“(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

“(b) **SPECIAL RULES.**—For purposes of subsection (a)—

“(1) **PROVISIONS OF EMPLOYMENT CONTRACT OR STATE STATUTE NOT TO BE DETERMINATIVE.**—In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

“(2) **CERTAIN FACTORS NOT TAKEN INTO ACCOUNT WITH RESPECT TO MEALS.**—In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

“(3) **CERTAIN FIXED CHARGES FOR MEALS.**—

“(A) **IN GENERAL.**—If—

“(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

“(ii) such meals are furnished by the employer for the convenience of the employer, there shall be excluded from the employee's gross income an amount equal to such fixed charge.

“(B) APPLICATION OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply—

“(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

“(ii) only if the employee is required to make the payment whether he accepts or declines the meals.”

26 USC 119 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.

Approved October 7, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1232 (Comm. on Ways and Means).

CONGRESSIONAL RECORD, Vol. 124 (1978):

June 28, considered and passed House.

Aug. 2, 4, considered and passed Senate, amended.

Sept. 19, House concurred in Senate amendments.