

**§ 1.105-5**

**26 CFR Ch. I (4-1-02 Edition)**

the rate of \$65 per week thereafter. B was absent from work on account of sickness from Monday, March 16, 1964, through Tuesday, March 31, 1964, and was hospitalized from Wednesday, March 18, through Tuesday, March 24. B received total benefits of \$137 for

the period of absence, which does not exceed 75 percent of his "regular weekly rate of wages" as determined under paragraph (e)(5) of this section. B is permitted an exclusion under section 105(d) of \$127 calculated as follows:

Period of absence	Weekly rate of benefits	Maximum weekly rate of exclusion	Daily rate of exclusion	Days of absence in period	Maximum exclusion
Mar. 16-18 .....	0	\$75	0	3	0
Mar. 19-25 .....	\$85	75	\$15	5	\$75
Mar. 26-31 .....	65	75	13	4	52
Total exclusion .....					\$127

(g) *Definitions.* The term "personal injury" as used in this section, means an externally caused sudden hurt or damage to the body brought about by an identifiable event. The term "sickness" as used in this section, means mental illnesses and all bodily infirmities and disorders other than "personal injuries". Diseases, whether resulting from the occupation or otherwise, are not considered personal injuries, but they are treated as a sickness.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6770, 29 FR 15366, Nov. 17, 1964; T.D. 7352, 40 FR 16666, Apr. 14, 1975]

**§ 1.105-5 Accident and health plans.**

(a) *In general.* Sections 104(a)(3) and 105 (b), (c), and (d) exclude from gross income certain amounts received through accident or health insurance. Section 105(e) provides that for purposes of sections 104 and 105 amounts received through an accident or health plan for employees, and amounts received from a sickness and disability fund for employees maintained under the law of a State, a Territory, or the District of Columbia, shall be treated as amounts received through accident or health insurance. In general, an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness. A plan may cover one or more employees, and there may be different plans for different employees or classes of employees. An accident or health plan may be either insured or noninsured, and it is not necessary that the plan be in writing or that the employee's rights to benefits under the plan be enforceable. How-

ever, if the employee's rights are not enforceable, an amount will be deemed to be received under a plan only if, on the date the employee became sick or injured, the employee was covered by a plan (or a program, policy, or custom having the effect of a plan) providing for the payment of amounts to the employee in the event of personal injuries or sickness, and notice or knowledge of such plan was reasonably available to the employee. It is immaterial who makes payment of the benefits provided by the plan. For example, payment may be made by the employer, a welfare fund, a State sickness or disability benefits fund, an association of employers or employees, or by an insurance company.

(b) *Self-employed individuals.* Under section 105(g), a self-employed individual is not treated as an employee for purposes of section 105. Therefore, for example, benefits paid under an accident or health plan as referred to in section 105(e) to or on behalf of an individual who is self-employed in the business with respect to which the plan is established will not be treated as received through accident and health insurance for purposes of sections 104(a)(3) and 105.

[T.D. 6722, 29 FR 5071, Apr. 14, 1964]

**§ 1.105-6 Special rules for employees retired before January 27, 1975.**

(a) *Application of section 105(d) to amounts received as retirement annuities.* An employee who retired from work before January 27, 1975, receiving payments under his employer-established plan (to which §1.72-15(a) applies) which payments were not treated as