

§ 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

amounts received under a wage continuation plan for purposes of section 105(d), may, as of the date the employee retired, treat such plan as such a wage continuation plan to the extent such payments are received prior to mandatory retirement age (as described in § 1.105-4(a)(3)(i)(B)), if—

(1) His employer had in operation at the time of his retirement a program providing accident and health benefits under a wage continuation plan to which section 105(d) would apply;

(2) The employer certifies, under procedures approved in advance under paragraph (c) of this section, that the employee would have been eligible for wage continuation benefits, under the terms and conditions of his employer's plan, because of personal injuries or sickness;

(3) At the time of the employee's retirement there was no substantive difference between the benefits being actually received and the benefits he would have received had he retired under his employer's wage continuation plan; and

(4) The employee agrees to the adjustments and conditions required by the Commissioner with respect to amounts excluded under section 72 (b) or (d) in taxable years ending before January 27, 1975.

(b) *Filing requirements.* (1) The certification required in paragraph (a)(2) and the agreement required in paragraph (a)(4) of this section shall be filed on or before April 15, 1977, with the return, or timely amended return or claim, made for the taxable year in which the employee reached retirement age as described in § 1.79-2(b)(3), or, for the first taxable year for which the taxpayer files an income tax return claiming an exclusion under section 105(d), as provided in paragraph (a) of this section.

(2) The Commissioner may prescribe a form and instructions with respect to the agreement provided for in paragraph (a)(4) of this section.

(c) *Employer certification*—(1) *Advance approval of procedures.* Any reasonable and consistently applied procedures, approved in advance by the Internal Revenue Service, which require the employee to provide the employer or the insurer with medical documentation sufficient to show that an illness

or disability existed as of the date of the employee's retirement, which would have entitled him to retire on account of personal injuries or sickness alone, are sufficient for purposes of this paragraph.

(2) *Place of submission.* Request for advance approval of procedures for certification shall be submitted to the district director.

(d) *Cross reference.* For special rules pertaining to taxpayers retired on disability before January 27, 1975, see § 1.72-15(i).

[T.D. 7352, 40 FR 16666, Apr. 14, 1975]

§ 1.105-11 Self-insured medical reimbursement plan.

(a) *In general.* Under section 105(a), amounts received by an employee through a self-insured medical reimbursement plan which are attributable to contributions of the employer, or are paid by the employer, are included in the employee's gross income unless such amounts are excludable under section 105(b). For amounts reimbursed to a highly compensated individual to be fully excludable from such individual's gross income under section 105(b), the plan must satisfy the requirements of section 105(h) and this section. Section 105(h) is not satisfied if the plan discriminates in favor of highly compensated individuals as to eligibility to participate or benefits. All or a portion of the reimbursements or payments on behalf of such individuals under a discriminatory plan are not excludable from gross income under section 105(b). However, benefits paid to participants who are not highly compensated individuals may be excluded from gross income if the requirements of section 105(b) are satisfied, even if the plan is discriminatory.

(b) *Self-insured medical reimbursement plan*—(1) *General rule*—(i) *Definition.* A self-insured medical reimbursement plan is a separate written plan for the benefit of employees which provides for reimbursement of employee medical expenses referred to in section 105(b). A plan or arrangement is self-insured unless reimbursement is provided under an individual or group policy of accident or health insurance issued by a licensed insurance company or under an arrangement in the nature of a prepaid