

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter A - Determination of Tax Liability****PART IV - CREDITS AGAINST TAX****Subpart A - Nonrefundable Personal Credits****§ 25B. Elective deferrals and IRA contributions by certain individuals****(a) Allowance of credit**

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the applicable percentage of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed \$2,000.

(b) Applicable percentage

For purposes of this section—

(1) Joint returns

In the case of a joint return, the applicable percentage is—

- (A)** if the adjusted gross income of the taxpayer is not over \$30,000, 50 percent,
- (B)** if the adjusted gross income of the taxpayer is over \$30,000 but not over \$32,500, 20 percent,
- (C)** if the adjusted gross income of the taxpayer is over \$32,500 but not over \$50,000, 10 percent, and
- (D)** if the adjusted gross income of the taxpayer is over \$50,000, zero percent.

(2) Other returns

In the case of—

- (A)** a head of household, the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 75 percent of such dollar amount, and
- (B)** any taxpayer not described in paragraph (1) or subparagraph (A), the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 50 percent of such dollar amount.

(3) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, each of the dollar amounts in paragraph (1) shall be increased by an amount equal to—

- (A)** such dollar amount, multiplied by
- (B)** the cost-of-living adjustment determined under section 1 (f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2005” for “calendar year 1992” in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$500.

(c) Eligible individual

For purposes of this section—

(1) In general

The term “eligible individual” means any individual if such individual has attained the age of 18 as of the close of the taxable year.

(2) Dependents and full-time students not eligible

The term “eligible individual” shall not include—

(A) any individual with respect to whom a deduction under section 151 is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual’s taxable year begins, and

(B) any individual who is a student (as defined in section 152 (f)(2)).

(d) Qualified retirement savings contributions

For purposes of this section—

(1) In general

The term “qualified retirement savings contributions” means, with respect to any taxable year, the sum of—

(A) the amount of the qualified retirement contributions (as defined in section 219 (e)) made by the eligible individual,

(B) the amount of—

(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

(ii) any elective deferral of compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457 (e)(1)(A), and

(C) the amount of voluntary employee contributions by such individual to any qualified retirement plan (as defined in section 4974 (c)).

(2) Reduction for certain distributions**(A) In general**

The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made. The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

(B) Testing period

For purposes of subparagraph (A), the testing period, with respect to a taxable year, is the period which includes—

(i) such taxable year,

(ii) the 2 preceding taxable years, and

(iii) the period after such taxable year and before the due date (including extensions) for filing the return of tax for such taxable year.

(C) Excepted distributions

There shall not be taken into account under subparagraph (A)—

(i) any distribution referred to in section 72 (p), 401 (k)(8), 401 (m)(6), 402 (g)(2), 404 (k), or 408 (d)(4), and

(ii) any distribution to which section 408A (d)(3) applies.

(D) Treatment of distributions received by spouse of individual

For purposes of determining distributions received by an individual under subparagraph (A) for any taxable year, any distribution received by the spouse of such individual shall be treated as received by such individual if such individual and spouse file a joint return for such taxable year and for the taxable year during which the spouse receives the distribution.

(e) Adjusted gross income

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

For purposes of this section, adjusted gross income shall be determined without regard to sections 911, 931, and 933.

(f) Investment in the contract

Notwithstanding any other provision of law, a qualified retirement savings contribution shall not fail to be included in determining the investment in the contract for purposes of section 72 by reason of the credit under this section.

(g) Limitation based on amount of tax

In the case of a taxable year to which section 26 (a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

- (1) the sum of the regular tax liability (as defined in section 26 (b)) plus the tax imposed by section 55, over
- (2) the sum of the credits allowable under this subpart (other than this section and sections 23, 25A (i), 25D, 30, 30B, and 30D) and section 27 for the taxable year.

(Added and amended Pub. L. 107–16, title VI, § 618(a), (b)(1), June 7, 2001, 115 Stat. 106, 108; Pub. L. 107–147, title IV, §§ 411(m), 417 (1), Mar. 9, 2002, 116 Stat. 48, 56; Pub. L. 108–311, title II, § 207(4), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 109–135, title IV, § 402(i)(3)(D), Dec. 21, 2005, 119 Stat. 2614; Pub. L. 109–280, title VIII, §§ 812, 833 (a), Aug. 17, 2006, 120 Stat. 997, 1003; Pub. L. 110–343, div. B, title I, § 106(e)(2)(C), title II, § 205(d)(1)(C), Oct. 3, 2008, 122 Stat. 3817, 3838; Pub. L. 111–5, div. B, title I, §§ 1004(b)(4), 1142 (b)(1)(C), 1144 (b)(1)(C), Feb. 17, 2009, 123 Stat. 314, 330, 332.)

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Revenue Notices listed in a table under section 401 of this title.

Amendment of Section

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendment note below.

Amendments

2009—Subsec. (g)(2). Pub. L. 111–5, § 1144(b)(1)(C), inserted “30B,” after “30,”.

Pub. L. 111–5, § 1142(b)(1)(C), inserted “30,” after “25D,”.

Pub. L. 111–5, § 1004(b)(4), inserted “25A(i),” after “23,”.

2008—Subsec. (g)(2). Pub. L. 110–343, § 205(d)(1)(C), substituted “, 25D, and 30D” for “and 25D”.

Pub. L. 110–343, § 106(e)(2)(C), substituted “sections 23 and 25D” for “section 23”.

2006—Subsec. (b). Pub. L. 109–280, § 833(a), reenacted heading without change and amended text of subsec. (b) generally, substituting provisions consisting of introductory provisions and pars. (1) to (3) for former provisions consisting of introductory provisions and a table of applicable percentages for amounts of adjusted gross income for a joint return, a head of household, and all other cases.

Subsec. (h). Pub. L. 109–280, § 812, struck out heading and text of subsec. (h). Text read as follows: “This section shall not apply to taxable years beginning after December 31, 2006.”

2005—Subsec. (g). Pub. L. 109–135, § 402(i)(3)(D), (H), temporarily substituted “In the case of a taxable year to which section 26 (a)(2) does not apply, the credit” for “The credit” in introductory provisions. See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (c)(2)(B). Pub. L. 108–311 substituted “152(f)(2)” for “151(c)(4)”.

2002—Subsec. (d)(2)(A). Pub. L. 107–147, § 411(m), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the sum of—

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“(i) any distribution from a qualified retirement plan (as defined in section 4974 (c)), or from an eligible deferred compensation plan (as defined in section 457 (b)), received by the individual during the testing period which is includible in gross income, and

“(ii) any distribution from a Roth IRA or a Roth account received by the individual during the testing period which is not a qualified rollover contribution (as defined in section 408A (e)) to a Roth IRA or a rollover under section 402 (c)(8)(B) to a Roth account.”

Subsecs. (g), (h). Pub. L. 107–147, § 417(1), redesignated subsec. (g), relating to termination, as (h).

2001—Subsec. (g). Pub. L. 107–16, § 618(b)(1), added subsec. (g) relating to limitation based on amount of tax.

Effective Date of 2009 Amendment

Amendment by section 1004(b)(4) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(C) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(C) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Effective Date of 2008 Amendment

Amendment by section 106(e)(2)(C) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

Amendment by section 205(d)(1)(C) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Effective Date of 2006 Amendment

Pub. L. 109–280, title VIII, § 833(d), Aug. 17, 2006, 120 Stat. 1004, provided that: “The amendments made by this section [amending this section and sections 219 and 408A of this title] shall apply to taxable years beginning after 2006.”

Effective and Termination Dates of 2005 Amendment

Amendment by section 402(i)(3)(D) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

Effective Date of 2004 Amendment

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Effective Date of 2002 Amendment

Pub. L. 107–147, title IV, § 411(x), Mar. 9, 2002, 116 Stat. 53, provided that: “Except as provided in subsection (c) [amending sections 23 and 137 of this title and enacting provisions set out as a note under section 23 of this title], the amendments made by this section [amending this section, sections 23, 24, 38, 45E, 45F, 63, 137, 401 to 404, 408, 409, 412, 414 to 417, 457, 530, 2016, 2101, 2511, 4980F, and 6428 of this title, sections 1003, 1054, 1055, 1082, and 1104 of Title 29, Labor, and provisions set out as notes under sections 38, 415, and 4980F of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Effective Date

Amendment by section 618(b)(1) of Pub. L. 107-16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108-311, set out as an Effective and Termination Dates of 2001 Amendment note under section 23 of this title.

Amendment by section 618(b)(1) of Pub. L. 107-16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107-147, set out as an Effective and Termination Dates of 2001 Amendment note under section 23 of this title.

Amendment by section 618(b)(1) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 24 of this title.