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## Code Arranged Explanations

### EXP ¶1294 Dependent care assistance programs.

Employees can exclude amounts paid or incurred by their employer for furnishing dependent care assistance to them under a dependent care assistance program up to the amount of their earned income (for a married employee, the earned income of the lower earning spouse). This exclusion is subject to a limit of \$5,000 a year (\$2,500 for marrieds filing separately). [Code Sec. 129](#). Marital status is determined under the child and dependent care credit rules of [Code Sec. 21\(e\)\(3\)](#) and [Code Sec. 21\(e\)\(4\)](#). In addition, amounts received under dependent care assistance programs by uniformed services personnel are also excluded from gross income under [Code Sec. 134\(b\)\(4\)](#).

Excess dependent care assistance is included in income in the tax year the services are provided even if payment is made in a later year. [Code Sec. 129\(a\)](#). This rule applies to tax years beginning after 1987. An employee could elect to have this rule apply to tax years beginning in 1987. If he or she didn't make the election, any dependent care assistance provided in a tax year beginning in 1987, but not reimbursed in that year, was treated as provided in the employee's first tax year beginning after 12-31-87. [Sec. 1011B\(c\)\(2\)\(C\), PL 100-647, 11/10/88](#), 1988-3 CB 1.

[Code Sec. 21\(d\)\(2\)](#) applies in determining the earned income of a spouse who is a student or incapable of caring for himself. There is no exclusion for amounts paid by an employer to an individual for whom the employee can claim a dependency deduction or to a child of an employee who is under age 19 at the close of the tax year.

Cafeteria plans established by employers under [Code Sec. 125](#) often offer dependent care assistance coverage as a benefit to employees. For this assistance to be a qualified benefit, dependent care expenses must be incurred in the plan year for which coverage is elected. [Prop Reg §1.125-1](#), Q&A 18 provides that dependent care expenses are treated as incurred when the dependent care is provided and not when the employee is billed or charged, or pays for the dependent care.

#### *Treatment of on-site facilities.*

The law provides rules for valuing child care when it's provided at a facility located on the employer's premises and maintained by the employer. Except to the extent provided in Regs, the amount excludable is the value of services provided to the employee's dependent for actual use of the facility.

For the definition of a dependent care assistance program, see [¶1294.01](#).

For the definition of what constitutes dependent care assistance, see [§1294.02](#).

For the information reporting requirements for taxpayers claiming the exclusion for dependent care, see [§1294.03](#).

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