

Internal Revenue Code Section 62(a)(21)(A)(ii)

Adjusted gross income defined.

(a) General rule.

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions.

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Certain trade and business deductions of employees.

(A) Reimbursed expenses of employees. The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) Certain expenses of performing artists. The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) Certain expenses of officials. The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) Certain expenses of elementary and secondary school teachers. The deductions allowed by section 162 which consist of expenses, not in excess of \$250, paid or incurred by an eligible educator-

(i) by reason of the participation of the educator in professional development courses related to the curriculum in which the educator provides instruction or to the students for which the educator provides instruction, and

(ii) in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) Certain expenses of members of reserve components of the Armed Forces of the United States. The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

(3) Losses from sale or exchange of property.

The deductions allowed by part VI (Sec. 161 and following) as losses from the sale or exchange of property.

(4) Deductions attributable to rents and royalties.

The deductions allowed by part VI (Sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) Certain deductions of life tenants and income beneficiaries of property.

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611 .

(6) Pension, profit-sharing, and annuity plans of self-employed individuals.

In the case of an individual who is an employee within the meaning of section 401(c)(1) , the deduction allowed by section 404 .

(7) Retirement savings.

The deduction allowed by section 219 (relating to deduction of certain retirement savings).

(8) Repealed.

(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits.

The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

Note: Code Section 62(a)(10), below, is generally effective for divorce or separation instruments executed before January 1, 2019.

(10) Alimony.

The deduction allowed by section 215 .

Note: Code Section 62(a)(10), below, is effective for divorce or separation instruments executed after December 31, 2018.

(10) Repealed.

(11) Reforestation expenses.

The deduction allowed by section 194 .

(12) Certain required repayments of supplemental unemployment compensation benefits. The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(13) Jury duty pay remitted to employer.

Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term "jury pay" means any payment received by the individual for the discharge of jury duty.

(14) Repealed.

(15) Moving expenses.

The deduction allowed by section 217 .

(16) Archer MSAs.

The deduction allowed by section 220 .

(17) Interest on education loans.

The deduction allowed by section 221 .

(18) Higher education expenses.

The deduction allowed by section 222 .

(19) Health savings accounts.

The deduction allowed by section 223 .

(20) Costs involving discrimination suits, etc.

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code, or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

(21) Attorneys' fees relating to awards to whistleblowers.

(A) In general. Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under-

(i) section 7623(b), or

(ii) in the case of taxable years beginning after December 31, 2017, any action brought under-

(I) section 21F of the Securities Exchange Act of 1934 (15 U.S.C. 78u-6),

(II) a State law relating to false or fraudulent claims that meets the requirements described in section 1909(b) of the Social Security Act (42 U.S.C. 1396h(b)), or

(III) section 23 of the Commodity Exchange Act (7 U.S.C. 26).

(B) May not exceed award. Subparagraph (A) shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.

Nothing in this section shall permit the same item to be deducted more than once. Any deduction allowed by section 199A shall not be treated as a deduction described in any of the preceding paragraphs of this subsection.

(b) Qualified performing artist.

(1) In general.

For purposes of subsection (a)(2)(B) , the term "qualified performing artist" means, with respect to any taxable year, any individual if-

(A) such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B) the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C) the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed \$16,000.

(2) Nominal employer not taken into account.

An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds \$200.

(3) Special rules for married couples.

(A) In general. Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(B) Application of paragraph (1) . In the case of a joint return-
(i) paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii) paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

(C) Determination of marital status. For purposes of this subsection , marital status shall be determined under section 7703(a) .

(D) Joint return. For purposes of this subsection , the term "joint return" means the joint return of a husband and wife made under section 6013 .

(c) Certain arrangements not treated as reimbursement arrangements.

For purposes of subsection (a)(2)(A) , an arrangement shall in no event be treated as a reimbursement or other expense allowance arrangement if-

(1) such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2) such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274(d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.

(d) Definition; special rules.

(1) Eligible educator.

(A) In general. For purposes of subsection (a)(2)(D) , the term "eligible educator" means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

(B) School. The term "school" means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(2) Coordination with exclusions.

A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135 , 529(c)(1) , or 530(d)(2) for the taxable year.

(3) Inflation adjustment.

In the case of any taxable year beginning after 2015, the \$250 amount in subsection (a)(2)(D) 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 2014" for "calendar year 2016" in subparagraph (A)(ii) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$50.

(e) Unlawful discrimination defined.

For purposes of subsection (a)(20), the term "unlawful discrimination" means an act that is unlawful under any of the following:

- (1) Section 302 of the Civil Rights Act of 1991 (42 U.S.C. 2000e-16b).
- (2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311 , 1312 , 1313 , 1314 , 1315 , 1316 , or 1317).
- (3) The National Labor Relations Act (29 U.S.C. 151 et seq.).
- (4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).
- (5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).
- (6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).
- (7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).
- (8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).
- (9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).
- (10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).
- (11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).
- (12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).
- (13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981 , 1983 , or 1985).
- (14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2 , 2000e-3 , or 2000e-16).
- (15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605 , 3606 , 3608 , or 3617).
- (16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112 , 12132 , 12182 , or 12203).

(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law-

(i) providing for the enforcement of civil rights, or

(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.