

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title I, §103(b), June 7, 2001, 115 Stat. 45, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. J, title IV, §4004(c)(3), Oct. 21, 1998, 112 Stat. 2681-911, provided that: “The amendment made by subsection (b)(2) [amending this section] shall apply to taxable years beginning after December 31, 1990.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13201(b)(3)(E) of Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103-66, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1990, see section 11103(e) of Pub. L. 101-508, set out as an Effective Date of 1990 Amendment note under section 1 of this title.

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec.

[71.	Repealed.]
72.	Annuities; certain proceeds of endowment and life insurance contracts.
73.	Services of child.
74.	Prizes and awards.
75.	Dealers in tax-exempt securities.
[76.	Repealed.]
77.	Commodity credit loans.
78.	Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit. ¹
79.	Group-term life insurance purchased for employees.
80.	Restoration of value of certain securities.
[81.	Repealed.]
82.	Reimbursement of moving expenses.
83.	Property transferred in connection with performance of services.
84.	Transfer of appreciated property to political organizations.
85.	Unemployment compensation.
86.	Social security and tier 1 railroad retirement benefits.
87.	Alcohol and biodiesel fuels credits.
88.	Certain amounts with respect to nuclear decommissioning costs.
[89.	Repealed.]
90.	Illegal Federal irrigation subsidies.
91.	Certain foreign branch losses transferred to specified 10-percent owned foreign corporations.

Editorial Notes

AMENDMENTS

2017—Pub. L. 115-97, title I, §§11051(b)(1)(B), 14102(d)(2), Dec. 22, 2017, 131 Stat. 2089, 2194, struck out item 71 “Alimony and separate maintenance payments” and added item 91.

2004—Pub. L. 108-357, title III, §302(c)(1)(B), Oct. 22, 2004, 118 Stat. 1465, substituted “and biodiesel fuels credits” for “fuel credit” in item 87.

1989—Pub. L. 101-239, title VII, §7822(c), Dec. 19, 1989, 103 Stat. 2425, substituted “Illegal Federal irrigation” for “Federal irrigation” in item 90.

Pub. L. 101-140, title II, §202(b), Nov. 8, 1989, 103 Stat. 830, struck out item 89 “Benefits provided under certain employee benefit plans”.

¹Section catchline amended by Pub. L. 115-97 without corresponding amendment of analysis.

1987—Pub. L. 100-203, title X, §§10201(b)(6), 10611(b), Dec. 22, 1987, 101 Stat. 1330-387, 1330-452, struck out item 81 “Increase in vacation pay suspense account” and added item 90.

1986—Pub. L. 99-514, title VIII, §805(c)(1)(B), title XI, §1151(j)(1), Oct. 22, 1986, 100 Stat. 2362, 2508, substituted “Increase in vacation pay suspense account” for “Certain increases in suspense accounts” in item 81, and added item 89.

1984—Pub. L. 98-369, div. A, title I, §91(f)(2), July 18, 1984, 98 Stat. 608, added item 88.

1983—Pub. L. 98-21, title I, §121(f)(3), Apr. 20, 1983, 97 Stat. 84, added item 86 and redesignated former item 86 as 87.

1980—Pub. L. 96-223, title II, §232(c)(3), Apr. 2, 1980, 94 Stat. 277, added item 86.

1978—Pub. L. 95-600, title I, §112(c)(1), Nov. 6, 1978, 92 Stat. 2778, added item 85.

1976—Pub. L. 94-455, title XIX, §1901(b)(5), Oct. 4, 1976, 90 Stat. 1793, struck out item 76 “Mortgages made or obligations issued by joint-stock land banks”.

1975—Pub. L. 93-625, §§4(c)(2), 13(a)(2), Jan. 3, 1975, 88 Stat. 2111, 2121, substituted “Certain increases in suspense accounts” for “Increases in suspense account under section 166(g)” in item 81, and added item 84.

1969—Pub. L. 91-172, title II, §231(c)(1), title III, §321(c), Dec. 30, 1969, 83 Stat. 579, 591, added items 82, 83.

1966—Pub. L. 89-722, §1(b)(2), Nov. 2, 1966, 80 Stat. 1152, added item 81.

Pub. L. 89-384, §1(b)(2), Apr. 8, 1966, 80 Stat. 102, added item 80.

1964—Pub. L. 88-272, title II, §204(a)(2), Feb. 26, 1964, 78 Stat. 36, added item 79.

1962—Pub. L. 87-834, §9(d)(1), Oct. 16, 1962, 76 Stat. 1001, added item 78.

[§ 71. Repealed. Pub. L. 115-97, title I, § 11051(b)(1)(B), Dec. 22, 2017, 131 Stat. 2089]

Section, Aug. 16, 1954, ch. 736, 68A Stat. 19; Pub. L. 98-369, div. A, title IV, §422(a), July 18, 1984, 98 Stat. 795; Pub. L. 99-514, title XVIII, §1843(a)-(c)(1), (d), Oct. 22, 1986, 100 Stat. 2853, 2855, related to inclusion in gross income of amounts received as alimony or separate maintenance payments.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal applicable to any divorce or separation instrument (as defined in former subsec. (b)(2) of this section as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115-97 applies to such modification, see section 11051(c) of Pub. L. 115-97, set out as an Effective Date of 2017 Amendment note under section 61 of this title.

§ 72. Annuities; certain proceeds of endowment and life insurance contracts

(a) General rules for annuities

(1) Income inclusion

Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

(2) Partial annuitization

If any amount is received as an annuity for a period of 10 years or more or during one or more lives under any portion of an annuity, endowment, or life insurance contract—

(A) such portion shall be treated as a separate contract for purposes of this section,

(B) for purposes of applying subsections (b), (c), and (e), the investment in the contract shall be allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity, and

(C) a separate annuity starting date under subsection (c)(4) shall be determined with respect to each portion of the contract from which amounts are received as an annuity.

(b) Exclusion ratio

(1) In general

Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date).

(2) Exclusion limited to investment

The portion of any amount received as an annuity which is excluded from gross income under paragraph (1) shall not exceed the unrecovered investment in the contract immediately before the receipt of such amount.

(3) Deduction where annuity payments cease before entire investment recovered

(A) In general

If—

(i) after the annuity starting date, payments as an annuity under the contract cease by reason of the death of an annuitant, and

(ii) as of the date of such cessation, there is unrecovered investment in the contract,

the amount of such unrecovered investment (in excess of any amount specified in subsection (e)(5) which was not included in gross income) shall be allowed as a deduction to the annuitant for his last taxable year.

(B) Payments to other persons

In the case of any contract which provides for payments meeting the requirements of subparagraphs (B) and (C) of subsection (c)(2), the deduction under subparagraph (A) shall be allowed to the person entitled to such payments for the taxable year in which such payments are received.

(C) Net operating loss deductions provided

For purposes of section 172, a deduction allowed under this paragraph shall be treated as if it were attributable to a trade or business of the taxpayer.

(4) Unrecovered investment

For purposes of this subsection, the unrecovered investment in the contract as of any date is—

(A) the investment in the contract (determined without regard to subsection (c)(2)) as of the annuity starting date, reduced by

(B) the aggregate amount received under the contract on or after such annuity starting date and before the date as of which the

determination is being made, to the extent such amount was excludable from gross income under this subtitle.

(c) Definitions

(1) Investment in the contract

For purposes of subsection (b), the investment in the contract as of the annuity starting date is—

(A) the aggregate amount of premiums or other consideration paid for the contract, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

(2) Adjustment in investment where there is refund feature

If—

(A) the expected return under the contract depends in whole or in part on the life expectancy of one or more individuals;

(B) the contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and

(C) such payments are in the nature of a refund of the consideration paid,

then the value (computed without discount for interest) of such payments on the annuity starting date shall be subtracted from the amount determined under paragraph (1). Such value shall be computed in accordance with actuarial tables prescribed by the Secretary. For purposes of this paragraph and of subsection (e)(2)(A), the term “refund of the consideration paid” includes amounts payable after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain, but (if part of the consideration was contributed by an employer) does not include that part of any payment to a beneficiary (or to the estate of the annuitant) which is not attributable to the consideration paid by the employee for the contract as determined under paragraph (1)(A).

(3) Expected return

For purposes of subsection (b), the expected return under the contract shall be determined as follows:

(A) Life expectancy

If the expected return under the contract, for the period on and after the annuity starting date, depends in whole or in part on the life expectancy of one or more individuals, the expected return shall be computed with reference to actuarial tables prescribed by the Secretary.

(B) Installment payments

If subparagraph (A) does not apply, the expected return is the aggregate of the amounts receivable under the contract as an annuity.

(4) Annuity starting date

For purposes of this section, the annuity starting date in the case of any contract is the

first day of the first period for which an amount is received as an annuity under the contract.

(d) Special rules for qualified employer retirement plans

(1) Simplified method of taxing annuity payments

(A) In general

In the case of any amount received as an annuity under a qualified employer retirement plan—

- (i) subsection (b) shall not apply, and
- (ii) the investment in the contract shall be recovered as provided in this paragraph.

(B) Method of recovering investment in contract

(i) In general

Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

- (I) the investment in the contract (as of the annuity starting date), by
- (II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

(ii) Certain rules made applicable

Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

(iii) Number of anticipated payments

If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:

If the age of the annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	360
More than 55 but not more than 60	310
More than 60 but not more than 65	260
More than 65 but not more than 70	210
More than 70	160.

(iv) Number of anticipated payments where more than one life

If the annuity is payable over the lives of more than 1 individual, the number of anticipated payments shall be determined as follows:

If the combined ages of annuitants are:	The number is:
Not more than 110	410
More than 110 but not more than 120 ..	360
More than 120 but not more than 130 ..	310
More than 130 but not more than 140 ..	260
More than 140	210.

(C) Adjustment for refund feature not applicable

For purposes of this paragraph, investment in the contract shall be determined under

subsection (c)(1) without regard to subsection (c)(2).

(D) Special rule where lump sum paid in connection with commencement of annuity payments

If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump-sum payment—

- (i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and
- (ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

(E) Exception

This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

(F) Adjustment where annuity payments not on monthly basis

In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

(G) Qualified employer retirement plan

For purposes of this paragraph, the term “qualified employer retirement plan” means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

(2) Treatment of employee contributions under defined contribution plans

For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.

(e) Amounts not received as annuities

(1) Application of subsection

(A) In general

This subsection shall apply to any amount which—

- (i) is received under an annuity, endowment, or life insurance contract, and
- (ii) is not received as an annuity,

if no provision of this subtitle (other than this subsection) applies with respect to such amount.

(B) Dividends

For purposes of this section, any amount received which is in the nature of a dividend or similar distribution shall be treated as an amount not received as an annuity.

(2) General rule

Any amount to which this subsection applies—

- (A) if received on or after the annuity starting date, shall be included in gross income, or
- (B) if received before the annuity starting date—

(i) shall be included in gross income to the extent allocable to income on the contract, and

(ii) shall not be included in gross income to the extent allocable to the investment in the contract.

(3) Allocation of amounts to income and investment

For purposes of paragraph (2)(B)—

(A) Allocation to income

Any amount to which this subsection applies shall be treated as allocable to income on the contract to the extent that such amount does not exceed the excess (if any) of—

(i) the cash value of the contract (determined without regard to any surrender charge) immediately before the amount is received, over

(ii) the investment in the contract at such time.

(B) Allocation to investment

Any amount to which this subsection applies shall be treated as allocable to investment in the contract to the extent that such amount is not allocated to income under subparagraph (A).

(4) Special rules for application of paragraph (2)(B)

For purposes of paragraph (2)(B)—

(A) Loans treated as distributions

If, during any taxable year, an individual—

(i) receives (directly or indirectly) any amount as a loan under any contract to which this subsection applies, or

(ii) assigns or pledges (or agrees to assign or pledge) any portion of the value of any such contract,

such amount or portion shall be treated as received under the contract as an amount not received as an annuity. The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence.

(B) Treatment of policyholder dividends

Any amount described in paragraph (1)(B) shall not be included in gross income under paragraph (2)(B)(i) to the extent such amount is retained by the insurer as a premium or other consideration paid for the contract.

(C) Treatment of transfers without adequate consideration

(i) In general

If an individual who holds an annuity contract transfers it without full and adequate consideration, such individual shall be treated as receiving an amount equal to the excess of—

(I) the cash surrender value of such contract at the time of transfer, over

(II) the investment in such contract at such time,

under the contract as an amount not received as an annuity.

(ii) Exception for certain transfers between spouses or former spouses

Clause (i) shall not apply to any transfer to which section 1041(a) (relating to transfers of property between spouses or incident to divorce) applies.

(iii) Adjustment to investment in contract of transferee

If under clause (i) an amount is included in the gross income of the transferor of an annuity contract, the investment in the contract of the transferee in such contract shall be increased by the amount so included.

(5) Retention of existing rules in certain cases

(A) In general

In any case to which this paragraph applies—

(i) paragraphs (2)(B) and (4)(A) shall not apply, and

(ii) if paragraph (2)(A) does not apply,

the amount shall be included in gross income, but only to the extent it exceeds the investment in the contract.

(B) Existing contracts

This paragraph shall apply to contracts entered into before August 14, 1982. Any amount allocable to investment in the contract after August 13, 1982, shall be treated as from a contract entered into after such date.

(C) Certain life insurance and endowment contracts

Except as provided in paragraph (10) and except to the extent prescribed by the Secretary by regulations, this paragraph shall apply to any amount not received as an annuity which is received under a life insurance or endowment contract.

(D) Contracts under qualified plans

Except as provided in paragraph (8), this paragraph shall apply to any amount received—

(i) from a trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) from a contract—

(I) purchased by a trust described in clause (i),

(II) purchased as part of a plan described in section 403(a),

(III) described in section 403(b), or

(IV) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

(iii) from an individual retirement account or an individual retirement annuity.

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies.

(E) Full refunds, surrenders, redemptions, and maturities

This paragraph shall apply to—

(i) any amount received, whether in a single sum or otherwise, under a contract in full discharge of the obligation under the contract which is in the nature of a refund of the consideration paid for the contract, and

(ii) any amount received under a contract on its complete surrender, redemption, or maturity.

In the case of any amount to which the preceding sentence applies, the rule of paragraph (2)(A) shall not apply.

(6) Investment in the contract

For purposes of this subsection, the investment in the contract as of any date is—

(A) the aggregate amount of premiums or other consideration paid for the contract before such date, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

[(7) Repealed. Pub. L. 100-647, title I, § 1011A(b)(9)(A), Nov. 10, 1988, 102 Stat. 3474]

(8) Extension of paragraph (2)(b)¹ to qualified plans

(A) In general

Notwithstanding any other provision of this subsection, in the case of any amount received before the annuity starting date from a trust or contract described in paragraph (5)(D), paragraph (2)(B) shall apply to such amounts.

(B) Allocation of amount received

For purposes of paragraph (2)(B), the amount allocated to the investment in the contract shall be the portion of the amount described in subparagraph (A) which bears the same ratio to such amount as the investment in the contract bears to the account balance. The determination under the preceding sentence shall be made as of the time of the distribution or at such other time as the Secretary may prescribe.

(C) Treatment of forfeitable rights

If an employee does not have a nonforfeitable right to any amount under any trust or contract to which subparagraph (A) applies, such amount shall not be treated as part of the account balance.

(D) Investment in the contract before 1987

In the case of a plan which on May 5, 1986, permitted withdrawal of any employee contributions before separation from service, subparagraph (A) shall apply only to the extent that amounts received before the annuity starting date (when increased by amounts previously received under the contract after December 31, 1986) exceed the investment in the contract as of December 31, 1986.

(9) Extension of paragraph (2)(B) to qualified tuition programs and Coverdell education savings accounts

Notwithstanding any other provision of this subsection, paragraph (2)(B) shall apply to amounts received under a qualified tuition program (as defined in section 529(b)) or under a Coverdell education savings account (as defined in section 530(b)). The rule of paragraph (8)(B) shall apply for purposes of this paragraph.

(10) Treatment of modified endowment contracts

(A) In general

Notwithstanding paragraph (5)(C), in the case of any modified endowment contract (as defined in section 7702A)—

(i) paragraphs (2)(B) and (4)(A) shall apply, and

(ii) in applying paragraph (4)(A), “any person” shall be substituted for “an individual”.

(B) Treatment of certain burial contracts

Notwithstanding subparagraph (A), paragraph (4)(A) shall not apply to any assignment (or pledge) of a modified endowment contract if such assignment (or pledge) is solely to cover the payment of expenses referred to in section 7702(e)(2)(C)(iii) and if the maximum death benefit under such contract does not exceed \$25,000.

(11) Special rules for certain combination contracts providing long-term care insurance

Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

(B) such charge shall not be includible in gross income.

(12) Anti-abuse rules

(A) In general

For purposes of determining the amount includible in gross income under this subsection—

(i) all modified endowment contracts issued by the same company to the same policyholder during any calendar year shall be treated as 1 modified endowment contract, and

(ii) all annuity contracts issued by the same company to the same policyholder during any calendar year shall be treated as 1 annuity contract.

The preceding sentence shall not apply to any contract described in paragraph (5)(D).

(B) Regulatory authority

The Secretary may by regulations prescribe such additional rules as may be necessary or appropriate to prevent avoidance

¹ So in original. Probably should be paragraph “(2)(B)”.

of the purposes of this subsection through serial purchases of contracts or otherwise.

(f) Special rules for computing employees' contributions

In computing, for purposes of subsection (c)(1)(A), the aggregate amount of premiums or other consideration paid for the contract, and for purposes of subsection (e)(6), the aggregate premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(1) such amounts were includible in the gross income of the employee under this subtitle or prior income tax laws; or

(2) if such amounts had been paid directly to the employee at the time they were contributed, they would not have been includible in the gross income of the employee under the law applicable at the time of such contribution.

Paragraph (2) shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911 if such amounts had been paid directly to the employee at the time of contribution. The preceding sentence shall not apply to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services, or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of section 403(b)(2)(D)(iii), as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(g) Rules for transferee where transfer was for value

Where any contract (or any interest therein) is transferred (by assignment or otherwise) for a valuable consideration, to the extent that the contract (or interest therein) does not, in the hands of the transferee, have a basis which is determined by reference to the basis in the hands of the transferor, then—

(1) for purposes of this section, only the actual value of such consideration, plus the amount of the premiums and other consideration paid by the transferee after the transfer, shall be taken into account in computing the aggregate amount of the premiums or other consideration paid for the contract;

(2) for purposes of subsection (c)(1)(B), there shall be taken into account only the aggregate amount received under the contract by the transferee before the annuity starting date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws; and

(3) the annuity starting date is the first day of the first period for which the transferee received an amount under the contract as an annuity.

For purposes of this subsection, the term "transferee" includes a beneficiary of, or the estate of, the transferee.

(h) Option to receive annuity in lieu of lump sum

If—

(1) a contract provides for payment of a lump sum in full discharge of an obligation under the contract, subject to an option to receive an annuity in lieu of such lump sum;

(2) the option is exercised within 60 days after the day on which such lump sum first became payable; and

(3) part or all of such lump sum would (but for this subsection) be includible in gross income by reason of subsection (e)(1),

then, for purposes of this subtitle, no part of such lump sum shall be considered as includible in gross income at the time such lump sum first became payable.

[(i) Repealed. Pub. L. 94-455, title XIX, § 1951(b)(1)(A), Oct. 4, 1976, 90 Stat. 1836]

(j) Interest

Notwithstanding any other provision of this section, if any amount is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

[(k) Repealed. Pub. L. 98-369, div. A, title IV, § 421(b)(1), July 18, 1984, 98 Stat. 794]

(l) Face-amount certificates

For purposes of this section, the term "endowment contract" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a-2), issued after December 31, 1954.

(m) Special rules applicable to employee annuities and distributions under employee plans

[(1) Repealed. Pub. L. 93-406, title II, § 2001(h)(2), Sept. 2, 1974, 88 Stat. 957]

(2) Computation of consideration paid by the employee

In computing—

(A) the aggregate amount of premiums or other consideration paid for the contract for purposes of subsection (c)(1)(A) (relating to the investment in the contract), and

(B) the aggregate premiums or other consideration paid for purposes of subsection (e)(6) (relating to certain amounts not received as an annuity),

any amount allowed as a deduction with respect to the contract under section 404 which was paid while the employee was an employee within the meaning of section 401(c)(1) shall be treated as consideration contributed by the employer, and there shall not be taken into account any portion of the premiums or other consideration for the contract paid while the employee was an owner-employee which is properly allocable (as determined under regulations prescribed by the Secretary) to the cost of life, accident, health, or other insurance.

(3) Life insurance contracts

(A) This paragraph shall apply to any life insurance contract—

(i) purchased as a part of a plan described in section 403(a), or

(ii) purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant.

(B) Any contribution to a plan described in subparagraph (A)(i) or a trust described in subparagraph (A)(ii) which is allowed as a deduction under section 404, and any income of a trust described in subparagraph (A)(ii), which is determined in accordance with regulations prescribed by the Secretary to have been applied to purchase the life insurance protection under a contract described in subparagraph (A), is includible in the gross income of the participant for the taxable year when so applied.

(C) In the case of the death of an individual insured under a contract described in subparagraph (A), an amount equal to the cash surrender value of the contract immediately before the death of the insured shall be treated as a payment under such plan or a distribution by such trust, and the excess of the amount payable by reason of the death of the insured over such cash surrender value shall not be includible in gross income under this section and shall be treated as provided in section 101.

[(4) Repealed. Pub. L. 97-248, title II, § 236(b)(1), Sept. 3, 1982, 96 Stat. 510]

(5) Penalties applicable to certain amounts received by 5-percent owners

(A) This paragraph applies to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner, or by a successor of such an individual, but only to the extent such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.

(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year.

(C) For purposes of this paragraph, the term "5-percent owner" means any individual who, at any time during the 5 plan years preceding the plan year ending in the taxable year in which the amount is received, is a 5-percent owner (as defined in section 416(i)(1)(B)).

(6) Owner-employee defined

For purposes of this subsection, the term "owner-employee" has the meaning assigned to it by section 401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section

408(a) or (b) is maintained. For purposes of the preceding sentence, the term "owner-employee" shall include an employee within the meaning of section 401(c)(1).

(7) Meaning of disabled

For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.

[(8) Repealed. Pub. L. 97-248, title II, § 236(b)(1), Sept. 3, 1982, 96 Stat. 510]

[(9) Repealed. Pub. L. 98-369, div. A, title VII, § 713(d)(1), July 18, 1984, 98 Stat. 957]

(10) Determination of investment in the contract in the case of qualified domestic relations orders

Under regulations prescribed by the Secretary, in the case of a distribution or payment made to an alternate payee who is the spouse or former spouse of the participant pursuant to a qualified domestic relations order (as defined in section 414(p)), the investment in the contract as of the date prescribed in such regulations shall be allocated on a pro rata basis between the present value of such distribution or payment and the present value of all other benefits payable with respect to the participant to which such order relates.

(n) Annuities under retired serviceman's family protection plan or survivor benefit plan

Subsection (b) shall not apply in the case of amounts received after December 31, 1965, as an annuity under chapter 73 of title 10 of the United States Code, but all such amounts shall be excluded from gross income until there has been so excluded (under section 122(b)(1) or this section, including amounts excluded before January 1, 1966) an amount equal to the consideration for the contract (as defined by section 122(b)(2)), plus any amount treated pursuant to section 101(b)(2)(D) (as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996) as additional consideration paid by the employee. Thereafter all amounts so received shall be included in gross income.

(o) Special rules for distributions from qualified plans to which employee made deductible contributions

(1) Treatment of contributions

For purposes of this section and sections 402 and 403, notwithstanding section 414(h), any deductible employee contribution made to a qualified employer plan or government plan shall be treated as an amount contributed by the employer which is not includible in the gross income of the employee.

[(2) Repealed. Pub. L. 100-647, title I, § 1011A(c)(8), Nov. 10, 1988, 102 Stat. 3476]

(3) Amounts constructively received

(A) In general

For purposes of this subsection, rules similar to the rules provided by subsection (p) (other than the exception contained in paragraph (2) thereof) shall apply.

(B) Purchase of life insurance

To the extent any amount of accumulated deductible employee contributions of an employee are applied to the purchase of life insurance contracts, such amount shall be treated as distributed to the employee in the year so applied.

(4) Special rule for treatment of rollover amounts

For purposes of sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16), the Secretary shall prescribe regulations providing for such allocations of amounts attributable to accumulated deductible employee contributions, and for such other rules, as may be necessary to insure that such accumulated deductible employee contributions do not become eligible for additional tax benefits (or freed from limitations) through the use of rollovers.

(5) Definitions and special rules

For purposes of this subsection—

(A) Deductible employee contributions

The term “deductible employee contributions” means any qualified voluntary employee contribution (as defined in section 219(e)(2)) made after December 31, 1981, in a taxable year beginning after such date and made for a taxable year beginning before January 1, 1987, and allowable as a deduction under section 219(a) for such taxable year.

(B) Accumulated deductible employee contributions

The term “accumulated deductible employee contributions” means the deductible employee contributions—

(i) increased by the amount of income and gain allocable to such contributions, and

(ii) reduced by the sum of the amount of loss and expense allocable to such contributions and the amounts distributed with respect to the employee which are attributable to such contributions (or income or gain allocable to such contributions).

(C) Qualified employer plan

The term “qualified employer plan” has the meaning given to such term by subsection (p)(3)(A)(i).

(D) Government plan

The term “government plan” has the meaning given such term by subsection (p)(3)(B).

(6) Ordering rules

Unless the plan specifies otherwise, any distribution from such plan shall not be treated

as being made from the accumulated deductible employee contributions, until all other amounts to the credit of the employee have been distributed.

(p) Loans treated as distributions

For purposes of this section—

(1) Treatment as distributions

(A) Loans

If during any taxable year a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan, such amount shall be treated as having been received by such individual as a distribution under such plan.

(B) Assignments or pledges

If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

(2) Exception for certain loans

(A) General rule

Paragraph (1) shall not apply to any loan to the extent that such loan (when added to the outstanding balance of all other loans from such plan whether made on, before, or after August 13, 1982), does not exceed the lesser of—

(i) \$50,000, reduced by the excess (if any) of—

(I) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over

(II) the outstanding balance of loans from the plan on the date on which such loan was made, or

(ii) the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) \$10,000.

For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (o)(5)(B)).

(B) Requirement that loan be repayable within 5 years

(i) In general

Subparagraph (A) shall not apply to any loan unless such loan, by its terms, is required to be repaid within 5 years.

(ii) Exception for home loans

Clause (i) shall not apply to any loan used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as the principal residence of the participant.

(C) Requirement of level amortization

Except as provided in regulations, this paragraph shall not apply to any loan unless substantially level amortization of such loan

(with payments not less frequently than quarterly) is required over the term of the loan.

(D) Prohibition of loans through credit cards and other similar arrangements

Subparagraph (A) shall not apply to any loan which is made through the use of any credit card or any other similar arrangement.

(E) Related employers and related plans

For purposes of this paragraph—

(i) the rules of subsections (b), (c), and (m) of section 414 shall apply, and

(ii) all plans of an employer (determined after the application of such subsections) shall be treated as 1 plan.

(3) Denial of interest deductions in certain cases

(A) In general

No deduction otherwise allowable under this chapter shall be allowed under this chapter for any interest paid or accrued on any loan to which paragraph (1) does not apply by reason of paragraph (2) during the period described in subparagraph (B).

(B) Period to which subparagraph (A) applies

For purposes of subparagraph (A), the period described in this subparagraph is the period—

(i) on or after the 1st day on which the individual to whom the loan is made is a key employee (as defined in section 416(i)), or

(ii) such loan is secured by amounts attributable to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3).

(4) Qualified employer plan, etc.

For purposes of this subsection—

(A) Qualified employer plan

(i) In general

The term “qualified employer plan” means—

(I) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(II) an annuity plan described in section 403(a), and

(III) a plan under which amounts are contributed by an individual’s employer for an annuity contract described in section 403(b).

(ii) Special rule

The term “qualified employer plan” shall include any plan which was (or was determined to be) a qualified employer plan or a government plan.

(B) Government plan

The term “government plan” means any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.

(5) Special rules for loans, etc., from certain contracts

For purposes of this subsection, any amount received as a loan under a contract purchased

under a qualified employer plan (and any assignment or pledge with respect to such a contract) shall be treated as a loan under such employer plan.

(q) 10-percent penalty for premature distributions from annuity contracts

(1) Imposition of penalty

If any taxpayer receives any amount under an annuity contract, the taxpayer’s tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Paragraph (1) shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) made on or after the death of the holder (or, where the holder is not an individual, the death of the primary annuitant (as defined in subsection (s)(6)(B))),

(C) attributable to the taxpayer’s becoming disabled within the meaning of subsection (m)(7),

(D) which is a part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his designated beneficiary,

(E) from a plan, contract, account, trust, or annuity described in subsection (e)(5)(D),

(F) allocable to investment in the contract before August 14, 1982, or²

(G) under a qualified funding asset (within the meaning of section 130(d), but without regard to whether there is a qualified assignment),

(H) to which subsection (t) applies (without regard to paragraph (2) thereof),

(I) under an immediate annuity contract (within the meaning of section 72(u)(4)), or

(J) which is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and which is held by the employer until such time as the employee separates from service.

(3) Change in substantially equal payments

If—

(A) paragraph (1) does not apply to a distribution by reason of paragraph (2)(D), and

(B) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

(i) before the close of the 5-year period beginning on the date of the first payment and after the taxpayer attains age 59½, or

(ii) before the taxpayer attains age 59½,

the taxpayer’s tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(D)) would have been imposed, plus

²So in original. The word “or” probably should not appear.

interest for the deferral period (within the meaning of subsection (t)(4)(B)).

(r) Certain railroad retirement benefits treated as received under employer plans

(1) In general

Notwithstanding any other provision of law, any benefit provided under the Railroad Retirement Act of 1974 (other than a tier 1 railroad retirement benefit) shall be treated for purposes of this title as a benefit provided under an employer plan which meets the requirements of section 401(a).

(2) Tier 2 taxes treated as contributions

(A) In general

For purposes of paragraph (1)—

(i) the tier 2 portion of the tax imposed by section 3201 (relating to tax on employees) shall be treated as an employee contribution,

(ii) the tier 2 portion of the tax imposed by section 3211 (relating to tax on employee representatives) shall be treated as an employee contribution, and

(iii) the tier 2 portion of the tax imposed by section 3221 (relating to tax on employers) shall be treated as an employer contribution.

(B) Tier 2 portion

For purposes of subparagraph (A)—

(i) After 1984

With respect to compensation paid after 1984, the tier 2 portion shall be the taxes imposed by sections 3201(b), 3211(b), and 3221(b).

(ii) After September 30, 1981, and before 1985

With respect to compensation paid before 1985 for services rendered after September 30, 1981, the tier 2 portion shall be—

(I) so much of the tax imposed by section 3201 as is determined at the 2 percent rate, and

(II) so much of the taxes imposed by sections 3211 and 3221 as is determined at the 11.75 percent rate.

With respect to compensation paid for services rendered after December 31, 1983, and before 1985, subclause (I) shall be applied by substituting “2.75 percent” for “2 percent”, and subclause (II) shall be applied by substituting “12.75 percent” for “11.75 percent”.

(iii) Before October 1, 1981

With respect to compensation paid for services rendered during any period before October 1, 1981, the tier 2 portion shall be the excess (if any) of—

(I) the tax imposed for such period by section 3201, 3211, or 3221, as the case may be (other than any tax imposed with respect to man-hours), over

(II) the tax which would have been imposed by such section for such period had the rates of the comparable taxes imposed by chapter 21 for such period applied under such section.

(C) Contributions not allocable to supplemental annuity or windfall benefits

For purposes of paragraph (1), no amount treated as an employee contribution under this paragraph shall be allocated to—

(i) any supplemental annuity paid under section 2(b) of the Railroad Retirement Act of 1974, or

(ii) any benefit paid under section 3(h), 4(e), or 4(h) of such Act.

(3) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term “tier 1 railroad retirement benefit” has the meaning given such term by section 86(d)(4).

(s) Required distributions where holder dies before entire interest is distributed

(1) In general

A contract shall not be treated as an annuity contract for purposes of this title unless it provides that—

(A) if any holder of such contract dies on or after the annuity starting date and before the entire interest in such contract has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used as of the date of his death, and

(B) if any holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within 5 years after the death of such holder.

(2) Exception for certain amounts payable over life of beneficiary

If—

(A) any portion of the holder’s interest is payable to (or for the benefit of) a designated beneficiary,

(B) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(C) such distributions begin not later than 1 year after the date of the holder’s death or such later date as the Secretary may by regulations prescribe,

then for purposes of paragraph (1), the portion referred to in subparagraph (A) shall be treated as distributed on the day on which such distributions begin.

(3) Special rule where surviving spouse beneficiary

If the designated beneficiary referred to in paragraph (2)(A) is the surviving spouse of the holder of the contract, paragraphs (1) and (2) shall be applied by treating such spouse as the holder of such contract.

(4) Designated beneficiary

For purposes of this subsection, the term “designated beneficiary” means any individual designated a beneficiary by the holder of the contract.

(5) Exception for certain annuity contracts

This subsection shall not apply to any annuity contract—

(A) which is provided—

(i) under a plan described in section 401(a) which includes a trust exempt from tax under section 501, or

(ii) under a plan described in section 403(a),

(B) which is described in section 403(b),

(C) which is an individual retirement annuity or provided under an individual retirement account or annuity, or

(D) which is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment).

(6) Special rule where holder is corporation or other non-individual

(A) In general

For purposes of this subsection, if the holder of the contract is not an individual, the primary annuitant shall be treated as the holder of the contract.

(B) Primary annuitant

For purposes of subparagraph (A), the term “primary annuitant” means the individual, the events in the life of whom are of primary importance in affecting the timing or amount of the payout under the contract.

(7) Treatment of changes in primary annuitant where holder of contract is not an individual

For purposes of this subsection, in the case of a holder of an annuity contract which is not an individual, if there is a change in a primary annuitant (as defined in paragraph (6)(B)), such change shall be treated as the death of the holder.

(t) 10-percent additional tax on early distributions from qualified retirement plans

(1) Imposition of additional tax

If any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer’s tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Except as provided in paragraphs (3) and (4), paragraph (1) shall not apply to any of the following distributions:

(A) In general

Distributions which are—

(i) made on or after the date on which the employee attains age 59½,

(ii) made to a beneficiary (or to the estate of the employee) on or after the death of the employee,

(iii) attributable to the employee’s being disabled within the meaning of subsection (m)(7),

(iv) part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his designated beneficiary,

(v) made to an employee after separation from service after attainment of age 55,

(vi) dividends paid with respect to stock of a corporation which are described in section 404(k),

(vii) made on account of a levy under section 6331 on the qualified retirement plan, or

(viii) payments under a phased retirement annuity under section 8366a(a)(5)³ or 8412a(a)(5) of title 5, United States Code, or a composite retirement annuity under section 8366a(a)(1)³ or 8412a(a)(1) of such title.

(B) Medical expenses

Distributions made to the employee (other than distributions described in subparagraph (A), (C), or (D)) to the extent such distributions do not exceed the amount allowable as a deduction under section 213 to the employee for amounts paid during the taxable year for medical care (determined without regard to whether the employee itemizes deductions for such taxable year).

(C) Payments to alternate payees pursuant to qualified domestic relations orders

Any distribution to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)(1)).

(D) Distributions to unemployed individuals for health insurance premiums

(i) In general

Distributions from an individual retirement plan to an individual after separation from employment—

(I) if such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation,

(II) if such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year, and

(III) to the extent such distributions do not exceed the amount paid during the taxable year for insurance described in section 213(d)(1)(D) with respect to the individual and the individual’s spouse and dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(ii) Distributions after reemployment

Clause (i) shall not apply to any distribution made after the individual has been employed for at least 60 days after the separation from employment to which clause (i) applies.

(iii) Self-employed individuals

To the extent provided in regulations, a self-employed individual shall be treated as meeting the requirements of clause (i)(I) if, under Federal or State law, the individual would have received unemploy-

³ So in original. Probably should refer to section 8336a.

ment compensation but for the fact the individual was self-employed.

(E) Distributions from individual retirement plans for higher education expenses

Distributions to an individual from an individual retirement plan to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year. Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), or (D) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).

(F) Distributions from certain plans for first home purchases

Distributions to an individual from an individual retirement plan which are qualified first-time homebuyer distributions (as defined in paragraph (8)). Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), (D), or (E) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).

(G) Distributions from retirement plans to individuals called to active duty

(i) In general

Any qualified reservist distribution.

(ii) Amount distributed may be repaid

Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

(iii) Qualified reservist distribution

For purposes of this subparagraph, the term “qualified reservist distribution” means any distribution to an individual if—

(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

(iv) Application of subparagraph

This subparagraph applies to individuals ordered or called to active duty after September 11, 2001. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.

(H) Distributions from retirement plans in case of birth of child or adoption

(i) In general

Any qualified birth or adoption distribution.

(ii) Limitation

The aggregate amount which may be treated as qualified birth or adoption distributions by any individual with respect to any birth or adoption shall not exceed \$5,000.

(iii) Qualified birth or adoption distribution

For purposes of this subparagraph—

(I) In general

The term “qualified birth or adoption distribution” means any distribution from an applicable eligible retirement plan to an individual if made during the 1-year period beginning on the date on which a child of the individual is born or on which the legal adoption by the individual of an eligible adoptee is finalized.

(II) Eligible adoptee

The term “eligible adoptee” means any individual (other than a child of the taxpayer’s spouse) who has not attained age 18 or is physically or mentally incapable of self-support.

(iv) Treatment of plan distributions

(I) In general

If a distribution to an individual would (without regard to clause (ii)) be a qualified birth or adoption distribution, a plan shall not be treated as failing to meet any requirement of this title merely because the plan treats the distribution as a qualified birth or adoption distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds \$5,000.

(II) Controlled group

For purposes of subclause (I), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

(v) Amount distributed may be repaid

(I) In general

Any individual who receives a qualified birth or adoption distribution may make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an applicable eligi-

ble retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as the case may be.

(II) Limitation on contributions to applicable eligible retirement plans other than IRAs

The aggregate amount of contributions made by an individual under subclause (I) to any applicable eligible retirement plan which is not an individual retirement plan shall not exceed the aggregate amount of qualified birth or adoption distributions which are made from such plan to such individual. Subclause (I) shall not apply to contributions to any applicable eligible retirement plan which is not an individual retirement plan unless the individual is eligible to make contributions (other than those described in subclause (I)) to such applicable eligible retirement plan.

(III) Treatment of repayments of distributions from applicable eligible retirement plans other than IRAs

If a contribution is made under subclause (I) with respect to a qualified birth or adoption distribution from an applicable eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received such distribution in an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to the applicable eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(IV) Treatment of repayments for distributions from IRAs

If a contribution is made under subclause (I) with respect to a qualified birth or adoption distribution from an individual retirement plan, then, to the extent of the amount of the contribution, such distribution shall be treated as a distribution described in section 408(d)(3) and as having been transferred to the applicable eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(vi) Definition and special rules

For purposes of this subparagraph—

(I) Applicable eligible retirement plan

The term “applicable eligible retirement plan” means an eligible retirement plan (as defined in section 402(c)(8)(B)) other than a defined benefit plan.

(II) Exemption of distributions from trustee to trustee transfer and withholding rules

For purposes of sections 401(a)(31), 402(f), and 3405, a qualified birth or adoption distribution shall not be treated as an eligible rollover distribution.

(III) Taxpayer must include TIN

A distribution shall not be treated as a qualified birth or adoption distribution with respect to any child or eligible adoptee unless the taxpayer includes the name, age, and TIN of such child or eligible adoptee on the taxpayer’s return of tax for the taxable year.

(IV) Distributions treated as meeting plan distribution requirements

Any qualified birth or adoption distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A).

(3) Limitations

(A) Certain exceptions not to apply to individual retirement plans

Subparagraphs (A)(v) and (C) of paragraph (2) shall not apply to distributions from an individual retirement plan.

(B) Periodic payments under qualified plans must begin after separation

Paragraph (2)(A)(iv) shall not apply to any amount paid from a trust described in section 401(a) which is exempt from tax under section 501(a) or from a contract described in section 72(e)(5)(D)(ii) unless the series of payments begins after the employee separates from service.

(4) Change in substantially equal payments

(A) In general

If—

(i) paragraph (1) does not apply to a distribution by reason of paragraph (2)(A)(iv), and

(ii) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability or a distribution to which paragraph (10) applies)—

(I) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59½, or

(II) before the employee attains age 59½,

the taxpayer’s tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(A)(iv)) would have been imposed, plus interest for the deferral period.

(B) Deferral period

For purposes of this paragraph, the term “deferral period” means the period beginning with the taxable year in which (without regard to paragraph (2)(A)(iv)) the distribution would have been includible in gross income and ending with the taxable year in which the modification described in subparagraph (A) occurs.

(5) Employee

For purposes of this subsection, the term “employee” includes any participant, and in the case of an individual retirement plan, the individual for whose benefit such plan was established.

(6) Special rules for simple retirement accounts

In the case of any amount received from a simple retirement account (within the meaning of section 408(p)) during the 2-year period beginning on the date such individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under section 408(p)(2), paragraph (1) shall be applied by substituting "25 percent" for "10 percent".

(7) Qualified higher education expenses

For purposes of paragraph (2)(E)—

(A) In general

The term "qualified higher education expenses" means qualified higher education expenses (as defined in section 529(e)(3)) for education furnished to—

- (i) the taxpayer,
- (ii) the taxpayer's spouse, or
- (iii) any child (as defined in section 152(f)(1)) or grandchild of the taxpayer or the taxpayer's spouse,

at an eligible educational institution (as defined in section 529(e)(5)).

(B) Coordination with other benefits

The amount of qualified higher education expenses for any taxable year shall be reduced as provided in section 25A(g)(2).

(8) Qualified first-time homebuyer distributions

For purposes of paragraph (2)(F)—

(A) In general

The term "qualified first-time homebuyer distribution" means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 120th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual, the spouse of such individual, or any child, grandchild, or ancestor of such individual or the individual's spouse.

(B) Lifetime dollar limitation

The aggregate amount of payments or distributions received by an individual which may be treated as qualified first-time homebuyer distributions for any taxable year shall not exceed the excess (if any) of—

- (i) \$10,000, over
- (ii) the aggregate amounts treated as qualified first-time homebuyer distributions with respect to such individual for all prior taxable years.

(C) Qualified acquisition costs

For purposes of this paragraph, the term "qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

(D) First-time homebuyer; other definitions

For purposes of this paragraph—

(i) First-time homebuyer

The term "first-time homebuyer" means any individual if—

(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

(II) subsection (h) or (k) of section 1034⁴ (as in effect on the day before the date of the enactment of this paragraph) did not suspend the running of any period of time specified in section 1034⁴ (as so in effect) with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

(ii) Principal residence

The term "principal residence" has the same meaning as when used in section 121.

(iii) Date of acquisition

The term "date of acquisition" means the date—

(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

(II) on which construction or reconstruction of such a principal residence is commenced.

(E) Special rule where delay in acquisition

If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting "120th day" for "60th day" in such section), except that—

(i) section 408(d)(3)(B) shall not be applied to such contribution, and

(ii) such amount shall not be taken into account in determining whether section 408(d)(3)(B) applies to any other amount.

(9) Special rule for rollovers to section 457 plans

For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).

(10) Distributions to qualified public safety employees in governmental plans**(A) In general**

In the case of a distribution to a qualified public safety employee from a governmental

⁴See References in Text note below.

plan (within the meaning of section 414(d)), paragraph (2)(A)(v) shall be applied by substituting “age 50” for “age 55”.

(B) Qualified public safety employee

For purposes of this paragraph, the term “qualified public safety employee” means—

(i) any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision, or

(ii) any Federal law enforcement officer described in section 8331(20) or 8401(17) of title 5, United States Code, any Federal customs and border protection officer described in section 8331(31) or 8401(36) of such title, any Federal firefighter described in section 8331(21) or 8401(14) of such title, any air traffic controller described in 8331(30) or 8401(35) of such title, any nuclear materials courier described in section 8331(27) or 8401(33) of such title, any member of the United States Capitol Police, any member of the Supreme Court Police, or any diplomatic security special agent of the Department of State.

(u) Treatment of annuity contracts not held by natural persons

(1) In general

If any annuity contract is held by a person who is not a natural person—

(A) such contract shall not be treated as an annuity contract for purposes of this subtitle (other than subchapter L), and

(B) the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the owner during such taxable year.

For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account.

(2) Income on the contract

(A) In general

For purposes of paragraph (1), the term “income on the contract” means, with respect to any taxable year of the policyholder, the excess of—

(i) the sum of the net surrender value of the contract as of the close of the taxable year plus all distributions under the contract received during the taxable year or any prior taxable year, reduced by

(ii) the sum of the amount of net premiums under the contract for the taxable year and prior taxable years and amounts includible in gross income for prior taxable years with respect to such contract under this subsection.

Where necessary to prevent the avoidance of this subsection, the Secretary may substitute “fair market value of the contract” for “net surrender value of the contract” each place it appears in the preceding sentence.

(B) Net premiums

For purposes of this paragraph, the term “net premiums” means the amount of pre-

miums paid under the contract reduced by any policyholder dividends.

(3) Exceptions

This subsection shall not apply to any annuity contract which—

(A) is acquired by the estate of a decedent by reason of the death of the decedent,

(B) is held under a plan described in section 401(a) or 403(a), under a program described in section 403(b), or under an individual retirement plan,

(C) is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment),

(D) is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and is held by the employer until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary, or

(E) is an immediate annuity.

(4) Immediate annuity

For purposes of this subsection, the term “immediate annuity” means an annuity—

(A) which is purchased with a single premium or annuity consideration,

(B) the annuity starting date (as defined in subsection (c)(4)) of which commences no later than 1 year from the date of the purchase of the annuity, and

(C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period.

(v) 10-percent additional tax for taxable distributions from modified endowment contracts

(1) Imposition of additional tax

If any taxpayer receives any amount under a modified endowment contract (as defined in section 7702A), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Paragraph (1) shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) which is attributable to the taxpayer's becoming disabled (within the meaning of subsection (m)(7)), or

(C) which is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary.

(w) Application of basis rules to nonresident aliens

(1) In general

Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in

gross income of a distributee who is a citizen or resident of the United States, the investment in the contract shall not include any applicable nontaxable contributions or applicable nontaxable earnings.

(2) Applicable nontaxable contribution

For purposes of this subsection, the term “applicable nontaxable contribution” means any employer or employee contribution—

(A) which was made with respect to compensation—

(i) for labor or personal services performed by an employee who, at the time the labor or services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, and

(ii) which is treated as from sources without the United States, and

(B) which was not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were rendered) under the laws of the United States or any foreign country.

(3) Applicable nontaxable earnings

For purposes of this subsection, the term “applicable nontaxable earnings” means earnings—

(A) which are paid or accrued with respect to any employer or employee contribution which was made with respect to compensation for labor or personal services performed by an employee,

(B) with respect to which the employee was at the time the earnings were paid or accrued a nonresident alien for purposes of the laws of the United States, and

(C) which were not subject to income tax under the laws of the United States or any foreign country.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions and earnings as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.

(x) Cross reference

For limitation on adjustments to basis of annuity contracts sold, see section 1021.

(Aug. 16, 1954, ch. 736, 68A Stat. 20; Pub. L. 87-792, §4(a), (b), Oct. 10, 1962, 76 Stat. 821; Pub. L. 87-834, §11(b), Oct. 16, 1962, 76 Stat. 1005; Pub. L. 88-272, title II, §232(b), Feb. 26, 1964, 78 Stat. 110; Pub. L. 89-44, title VIII, §809(d)(2), June 21, 1965, 79 Stat. 167; Pub. L. 89-97, title I, §106(d)(2), July 30, 1965, 79 Stat. 337; Pub. L. 89-365, §1(b), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91-172, title V, §515(b), Dec. 30, 1969, 83 Stat. 644; Pub. L. 93-406, title II, §§2001(e)(5), (g)(1), (2)(A), (h)(2), (3), 2002(g)(10), 2005(c)(3), 2007(b)(2), Sept. 2, 1974, 88 Stat. 955, 957, 970, 991, 994; Pub. L. 94-455, title XIX, §§1901(a)(12), (13), 1906(b)(13)(A), 1951(b)(1)(A), Oct. 4, 1976, 90 Stat. 1765, 1834, 1836; Pub. L. 97-34, title III, §§311(b)(1), 312(d), (e)(1), Aug. 13, 1981, 95 Stat. 278, 284; Pub. L. 97-248, title II, §§236(a), (b), 237(d), 265(a), (b)(1), Sept. 3, 1982, 96 Stat. 509-511,

544-546; Pub. L. 97-448, title I, §103(c)(3)(B)(i), (6), Jan. 12, 1983, 96 Stat. 2376; Pub. L. 98-76, title II, §224(a), Aug. 12, 1983, 97 Stat. 421; Pub. L. 98-369, div. A, title II, §§211(b)(1), 222(a), (b), title IV, §§421(b)(1), 491(d)(3), (4), title V, §§521(d), 523(a), (b), title VII, §713(b)(1)-(c)(1)(B), (d)(1), July 18, 1984, 98 Stat. 754, 774, 794, 849, 868, 871, 872, 956, 957; Pub. L. 98-397, title II, §204(c)(2), Aug. 23, 1984, 98 Stat. 1448; Pub. L. 99-514, title XI, §§1101(b)(2)(B), (C), 1122(c), 1123(a), (b), (d)(1), 1134(a)-(d), 1135(a), title XVIII, §§1826(a), (b)(1)-(3), (c), (d), 1852(a)(2), (c)(1)-(4), 1854(b)(1), 1898(c)(1)(B), Oct. 22, 1986, 100 Stat. 2413, 2414, 2467, 2472, 2474, 2475, 2483, 2484, 2848-2850, 2864, 2867, 2878, 2951; Pub. L. 100-647, title I, §§1011A(b)(1)(A), (B), (2), (9), (c)(1)-(8), (h), (i), 1018(k), (t)(1)(A), (B), (u)(8), title V, §5012(a), (b)(1), (d), Nov. 10, 1988, 102 Stat. 3472, 3474-3476, 3482, 3583, 3587, 3590, 3661, 3662, 3664; Pub. L. 101-239, title VII, §§7811(m)(4), 7815(a)(3), (5), Dec. 19, 1989, 103 Stat. 2412, 2414; Pub. L. 101-508, title XI, §11802(a), Nov. 5, 1990, 104 Stat. 1388-529; Pub. L. 102-318, title V, §521(b)(3), July 3, 1992, 106 Stat. 310; Pub. L. 104-188, title I, §§1403(a), 1421(b)(4)(A), 1463(a), 1704(j)(1), (t)(2), (77), Aug. 20, 1996, 110 Stat. 1790, 1796, 1824, 1882, 1887, 1891; Pub. L. 104-191, title III, §361(a)-(c), Aug. 21, 1996, 110 Stat. 2071, 2072; Pub. L. 105-34, title II, §203(a), (b), title III, §303(a), (b), title X, §1075(a), (b), Aug. 5, 1997, 111 Stat. 809, 829, 949; Pub. L. 105-206, title III, §3436(a), title VI, §§6004(d)(3)(B), 6005(c)(1), 6023(3), (4), July 22, 1998, 112 Stat. 761, 794, 800, 824; Pub. L. 107-16, title IV, §402(a)(4)(A), (B), title VI, §§632(a)(3)(A), 641(a)(2)(C), (e)(1), June 7, 2001, 115 Stat. 60, 61, 113, 120; Pub. L. 107-22, §1(b)(1)(A), (3)(A), July 26, 2001, 115 Stat. 196, 197; Pub. L. 107-90, title II, §204(e)(2), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108-311, title II, §207(6), (7), title IV, §408(a)(4), (b)(3), Oct. 4, 2004, 118 Stat. 1177, 1191, 1192; Pub. L. 108-357, title VIII, §906(a), Oct. 22, 2004, 118 Stat. 1653; Pub. L. 109-280, title VIII, §§827(a), 828(a), 844(a), Aug. 17, 2006, 120 Stat. 999, 1001, 1010; Pub. L. 110-245, title I, §107(a), June 17, 2008, 122 Stat. 1631; Pub. L. 110-458, title I, §108(e), Dec. 23, 2008, 122 Stat. 5109; Pub. L. 111-240, title II, §2113(a), Sept. 27, 2010, 124 Stat. 2566; Pub. L. 112-141, div. F, title I, §100121(c), July 6, 2012, 126 Stat. 914; Pub. L. 113-295, div. A, title II, §221(a)(14), Dec. 19, 2014, 128 Stat. 4039; Pub. L. 114-26, §2(a)-(c), June 29, 2015, 129 Stat. 319; Pub. L. 114-113, div. Q, title III, §308(a), Dec. 18, 2015, 129 Stat. 3089; Pub. L. 116-94, div. O, title I, §§108(a), 113(a), Dec. 20, 2019, 133 Stat. 3149, 3154.)

Editorial Notes

REFERENCES IN TEXT

The enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (f), means the enactment of Pub. L. 107-16, which was approved June 7, 2001.

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (n), is the date of enactment of Pub. L. 104-188, which was approved Aug. 20, 1996.

The Railroad Retirement Act of 1974, referred to in subsec. (r)(1), (2)(C)(i), (ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Sections 2(b), 3(h), and 4(e) and (h) of the Act are classified to sections 231a(b), 231b(h), and 231c(e)

and (h), respectively, of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (t)(2)(G)(iv), is the date of enactment of Pub. L. 109-280, which was approved Aug. 17, 2006.

Section 1034 (as in effect on the day before the date of the enactment of this paragraph), referred to in subsec. (t)(8)(D)(i)(II), means section 1034 of this title as in effect on the day before Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105-34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

AMENDMENTS

2019—Subsec. (p)(2)(D), (E). Pub. L. 116-94, §108(a), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (t)(2)(H). Pub. L. 116-94, §113(a), added subpar. (H).

2015—Subsec. (t)(4)(A)(ii). Pub. L. 114-26, §2(c), inserted “or a distribution to which paragraph (10) applies” after “other than by reason of death or disability” in introductory provisions.

Subsec. (t)(10)(A). Pub. L. 114-26, §2(b), struck out “which is a defined benefit plan” after “section 414(d)”.

Subsec. (t)(10)(B). Pub. L. 114-26, §2(a), substituted “means—” for “means”, designated remainder of existing provisions as cl. (i), and added cl. (ii).

Subsec. (t)(10)(B)(ii). Pub. L. 114-113 substituted “any air traffic controller” for “or any air traffic controller” and inserted before period at end “, any nuclear materials courier described in section 8331(27) or 8401(33) of such title, any member of the United States Capitol Police, any member of the Supreme Court Police, or any diplomatic security special agent of the Department of State”.

2014—Subsec. (c)(4). Pub. L. 113-295, §221(a)(14)(A), struck out “; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954” before period at end.

Subsec. (g)(3). Pub. L. 113-295, §221(a)(14)(B), struck out “January 1, 1954, or” before “the first day”.

Pub. L. 113-295, §221(a)(14)(B), which directed striking out “, whichever is later”, was executed by striking out “, whichever is the later” after “as an annuity” to reflect the probable intent of Congress.

2012—Subsec. (t)(2)(A)(viii). Pub. L. 112-141 added cl. (viii).

2010—Subsec. (a). Pub. L. 111-240 amended subsec. (a) generally. Prior to amendment, text read as follows: “Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.”

2008—Subsec. (t)(2)(G)(iv). Pub. L. 110-245, which directed amendment by striking out “, and before December 31, 2007” after “September 11, 2001”, was executed by striking out “, and on or before December 31, 2007” after “September 11, 2001”, to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110-458. See Amendment note and Effective Date of 2008 Amendment note below.

Pub. L. 110-458 inserted “on or” before “before” in first sentence.

2006—Subsec. (e)(11), (12). Pub. L. 109-280, §844(a), added par. (11) and redesignated former par. (11) as (12).

Subsec. (t)(2)(G). Pub. L. 109-280, §827(a), added subpar. (G).

Subsec. (t)(10). Pub. L. 109-280, §828(a), added par. (10).

2004—Subsec. (e)(9). Pub. L. 108-311, §408(b)(3), amended Pub. L. 107-22, §1(b)(3)(A). See 2001 Amendment note below.

Subsec. (f). Pub. L. 108-311, §408(a)(4), substituted “Economic Growth and Tax Relief Reconciliation Act of 2001” for “Economic Growth and Tax Relief Reconciliation Act of 2001” in concluding provisions.

Subsec. (t)(2)(D)(i)(III). Pub. L. 108-311, §207(6), inserted “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

Subsec. (t)(7)(A)(iii). Pub. L. 108-311, §207(7), substituted “152(f)(1)” for “151(c)(3)”.

Subsecs. (w), (x). Pub. L. 108-357 added subsec. (w) and redesignated former subsec. (w) as (x).

2001—Subsec. (e)(9). Pub. L. 107-22, §1(b)(3)(A), as amended by Pub. L. 108-311, §408(b)(3), substituted “Coverdell education savings” for “educational individual retirement” in heading.

Pub. L. 107-22, §1(b)(1)(A), substituted “a Coverdell education savings” for “an education individual retirement”.

Pub. L. 107-16, §402(a)(4)(A), (B), substituted “qualified tuition” for “qualified State tuition” in heading and text.

Subsec. (f). Pub. L. 107-16, §632(a)(3)(A), substituted “section 403(b)(2)(D)(iii), as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001” for “section 403(b)(2)(D)(iii)” in concluding provisions.

Subsec. (o)(4). Pub. L. 107-16, §641(e)(1), substituted “403(b)(8), 408(d)(3), and 457(e)(16)” for “and 408(d)(3)”.

Subsec. (r)(2)(B)(i). Pub. L. 107-90 substituted “3211(b)” for “3211(a)(2)”.

Subsec. (t)(9). Pub. L. 107-16, §641(a)(2)(C), added par. (9).

1998—Subsec. (e)(9). Pub. L. 105-206, §6004(d)(3)(B), added par. (9).

Subsec. (n). Pub. L. 105-206, §6023(3), inserted “(as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996)” after “section 101(b)(2)(D)”.

Subsec. (t)(2)(A)(iv). Pub. L. 105-206, §3436(a), which directed amendment of cl. (iv) by striking out “or” at end, could not be executed because the word “or” did not appear at end.

Subsec. (t)(2)(A)(vii). Pub. L. 105-206, §3436(a), added cl. (vii).

Subsec. (t)(3)(A). Pub. L. 105-206, §6023(4), substituted “(A)(v)” for “(A)(v),”.

Subsec. (t)(8)(E). Pub. L. 105-206, §6005(c)(1), in introductory provisions, substituted “120th day” for “120 days” and “60th day” for “60 days”.

1997—Subsec. (d)(1)(B)(iii). Pub. L. 105-34, §1075(b), inserted “If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:” before table and struck out “primary” after “If the age of the” in table.

Subsec. (d)(1)(B)(iv). Pub. L. 105-34, §1075(a), added cl. (iv).

Subsec. (t)(2)(E). Pub. L. 105-34, §203(a), added subpar. (E).

Subsec. (t)(2)(F). Pub. L. 105-34, §303(a), added subpar. (F).

Subsec. (t)(7). Pub. L. 105-34, §203(b), added par. (7).

Subsec. (t)(8). Pub. L. 105-34, §303(b), added par. (8).

1996—Subsec. (b)(4)(A). Pub. L. 104-188, §1704(I)(1), inserted “(determined without regard to subsection (c)(2))” after “contract”.

Subsec. (d). Pub. L. 104-188, §1403(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS AS SEPARATE CONTRACTS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.”

Subsec. (f). Pub. L. 104-188, §1463(a), in closing provisions, inserted before period at end “, or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of section 403(b)(2)(D)(iii))”.

Subsec. (m)(2)(A) to (C). Pub. L. 104-188, §1704(t)(2), inserted “and” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “the consideration for the contract contributed by the employee for purposes of subsection (d)(1) (relating to employee’s contributions recoverable

in 3 years) and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions), and”.

Subsec. (p)(4)(A)(ii). Pub. L. 104-188, §1704(t)(77), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “SPECIAL RULES.—The term ‘qualified employer plan’—

“(I) shall include any plan which was (or was determined to be) a qualified employer plan or a government plan, but

“(II) shall not include a plan described in subsection (e)(7).”

Subsec. (t)(2)(B). Pub. L. 104-191, §361(c), substituted “(C), or (D)” for “or (C)”.

Subsec. (t)(2)(D). Pub. L. 104-191, §361(b), added subpar. (D).

Subsec. (t)(3)(A). Pub. L. 104-191, §361(a), struck out “(B),” after “Subparagraphs (A)(v).”

Subsec. (t)(6). Pub. L. 104-188, §1421(b)(4)(A), added par. (6).

1992—Subsec. (o)(4). Pub. L. 102-318 substituted “402(c)” for “402(a)(5), 402(a)(7)”.

1990—Subsec. (t)(2)(C), (D). Pub. L. 101-508, §11802(a)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) “Exceptions for distributions from employee stock ownership plans” which read as follows: “Any distribution made before January 1, 1990, to an employee from an employee stock ownership plan (as defined in section 4975(e)(7)) or a tax credit employee stock ownership plan (as defined in section 409) if—

“(i) such distribution is attributable to assets which have been invested in employer securities (within the meaning of section 409(l)) at all times during the 5-plan-year period preceding the plan year in which the distribution is made, and

“(ii) at all times during such period the requirements of sections 401(a)(28) and 409 (as in effect at such times) are met with respect to such employer securities.”

Subsec. (t)(3)(A). Pub. L. 101-508, §11802(a)(3), substituted “and (C)” for “(C), and (D)”.

1989—Subsec. (e)(11)(A). Pub. L. 101-239, §7815(a)(3), (5), substituted “calendar year” for “12-month period” in cls. (i) and (ii), and inserted at end “The preceding sentence shall not apply to any contract described in paragraph (5)(D).”

Subsec. (q)(2)(B). Pub. L. 101-239, §7811(m)(4), inserted an additional closing parenthesis after “subsection (s)(6)(B)”.

1988—Subsec. (d). Pub. L. 100-647, §1011A(b)(2)(A), added subsec. (d).

Subsec. (e)(4)(A). Pub. L. 100-647, §5012(d)(1), inserted at end “The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence.”

Subsec. (e)(5)(C). Pub. L. 100-647, §5012(a)(2), substituted “Except as provided in paragraph (10) and except to the extent” for “Except to the extent”.

Subsec. (e)(5)(D). Pub. L. 100-647, §1011A(b)(9)(B), substituted “paragraph (8)” for “paragraphs (7) and (8)”.

Subsec. (e)(7). Pub. L. 100-647, §1011A(b)(9)(A), struck out par. (7) which related to special rules for plans where substantially all contributions are employee contributions.

Subsec. (e)(8)(A). Pub. L. 100-647, §1011A(b)(9)(C), struck out “(other than paragraph (7))” after “this subsection”.

Subsec. (e)(9). Pub. L. 100-647, §1011A(b)(2)(B), struck out par. (9) which related to treatment of employee contributions as separate contract.

Subsec. (e)(10). Pub. L. 100-647, §5012(a)(1), added par. (10).

Subsec. (e)(11). Pub. L. 100-647, §5012(d)(2), added par. (11).

Subsec. (f). Pub. L. 100-647, §1011A(b)(1)(A), struck out “for purposes of subsections (d)(1) and (e)(7), the consid-

eration for the contract contributed by the employee,” after “contract,” in introductory provisions.

Subsec. (n). Pub. L. 100-647, §1011A(b)(1)(B), substituted “Subsection (b)” for “Subsections (b) and (d)”.

Subsec. (o)(2). Pub. L. 100-647, §1011A(c)(8), struck out par. (2) which related to additional tax if amount received before age 59½.

Subsec. (p)(3)(A). Pub. L. 100-647, §1011A(h)(1), inserted “to which paragraph (1) does not apply by reason of paragraph (2) during the period” after “loan”.

Subsec. (p)(3)(B). Pub. L. 100-647, §1011A(h)(2), substituted “Period” for “Loans” in heading and amended text generally. Prior to amendment, text read as follows: “For purposes of subparagraph (A), a loan is described in this subparagraph—

“(i) if paragraph (1) does not apply to such loan by reason of paragraph (2), and

“(ii) if—

“(I) such loan is made to a key employee (as defined in section 416(i)), or

“(II) such loan is secured by amounts attributable to elective 401(k) or 403(b) deferrals (as defined in section 402(g)(3)).”

Subsec. (q)(2)(B). Pub. L. 100-647, §1018(t)(1)(B), substituted “subsection (s)(6)(B)” for “subsection (s)(6)(B))”.

Subsec. (q)(2)(D). Pub. L. 100-647, §1011A(c)(7), inserted “designated” before “beneficiary”.

Pub. L. 100-647, §§1011A(c)(4), 1018(u)(8), amended subpar. (D) identically, substituting a comma for period at end.

Subsec. (q)(2)(E). Pub. L. 100-647, §1011A(b)(9)(D), struck out “(determined without regard to subsection (e)(7))” after “subsection (e)(5)(D)”.

Subsec. (q)(2)(G). Pub. L. 100-647, §1011A(c)(4), substituted a comma for period at end.

Subsec. (q)(2)(H). Pub. L. 100-647, §1011A(c)(6), added subpar. (H).

Subsec. (q)(3)(B). Pub. L. 100-647, §1011A(c)(5), substituted “taxpayer” for “employee” in cls. (i) and (ii).

Subsec. (s)(5). Pub. L. 100-647, §1018(k)(2), substituted “certain annuity contracts” for “annuity contracts which are part of qualified plans” in heading.

Subsec. (s)(5)(D). Pub. L. 100-647, §1018(k)(1), added subpar. (D).

Subsec. (s)(7). Pub. L. 100-647, §1018(t)(1)(A), substituted “primary annuitant” for “primary annuity”.

Subsec. (t)(2)(A)(iv). Pub. L. 100-647, §1011A(c)(7), inserted “designated” before “beneficiary”.

Subsec. (t)(2)(A)(v). Pub. L. 100-647, §1011A(c)(1), struck out “on account of early retirement under the plan” after “separation from service”.

Subsec. (t)(2)(C). Pub. L. 100-647, §1011A(c)(2), substituted “Exceptions for distributions from employee stock ownership plans” for “Certain plans” in heading and amended text generally. Prior to amendment, text read as follows:

“(i) IN GENERAL.—Except as provided in clause (ii), any distribution made before January 1, 1990, to an employee from an employee stock ownership plan defined in section 4975(e)(7) to the extent that, on average, a majority of assets in the plan have been invested in employer securities (as defined in section 409(l)) for the 5-plan-year period preceding the plan year in which the distribution is made.

“(ii) BENEFITS DISTRIBUTED MUST BE INVESTED IN EMPLOYER SECURITIES FOR 5 YEARS.—Clause (i) shall not apply to any distribution which is attributable to assets which have not been invested in employer securities at all times during the period referred to in clause (i).”

Subsec. (t)(3)(A). Pub. L. 100-647, §1011A(c)(3), substituted “(C), and (D)” for “and (C)”.

Subsec. (u)(1)(A). Pub. L. 100-647, §1011A(i)(1), inserted “(other than subchapter L)” after “subtitle”.

Subsec. (u)(3)(D). Pub. L. 100-647, §1011A(i)(3), substituted “is purchased” for “which is purchased” and “is held” for “which is held”.

Pub. L. 100-647, §1011A(i)(2), substituted “until all amounts under such contract are distributed to the em-

ployee for whom such contract was purchased or the employee's beneficiary" for "until such time as the employee separates from service".

Subsec. (u)(3)(E). Pub. L. 100-647, §1011A(i)(3), substituted "is" for "which is".

Subsec. (u)(4)(C). Pub. L. 100-647, §1011A(i)(4), added subpar. (C).

Subsecs. (v), (w). Pub. L. 100-647, §5012(b)(1), added subsec. (v) and redesignated former subsec. (v) as (w).

1986—Subsec. (b). Pub. L. 99-514, §1122(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date). This subsection shall not apply to any amount to which subsection (d)(1) (relating to certain employee annuities) applies."

Subsec. (d). Pub. L. 99-514, §1122(c)(1), struck out subsec. (d) which related to employee's annuities where the employee's contributions were recoverable in 3 years.

Subsec. (e)(4)(C). Pub. L. 99-514, §1826(b)(3), added subpar. (C).

Subsec. (e)(5)(D). Pub. L. 99-514, §1122(c)(3)(B), substituted "paragraphs (7) and (8)" for "paragraph (7)" in introductory provisions.

Pub. L. 99-514, §1854(b)(1), inserted closing provisions which read as follows: "Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies."

Subsec. (e)(7)(B). Pub. L. 99-514, §1852(c)(1), in introductory provisions substituted "any plan or contract" for "any trust or contract", in cl. (ii) substituted "85 percent or more of" for "85 percent of", and inserted closing provision: "For purposes of clause (ii), deductible employee contributions (as defined in subsection (o)(5)(A)) shall not be taken into account."

Subsec. (e)(8), (9). Pub. L. 99-514, §1122(c)(3)(A), added pars. (8) and (9).

Subsec. (f). Pub. L. 99-514, §1852(c)(3), in introductory provisions, substituted "subsections (d)(1) and (e)(7)" for "subsection (d)(1)" and "subsection (e)(6)" for "subsection (e)(1)(B)".

Subsec. (m)(2)(B). Pub. L. 99-514, §1852(c)(4)(A), inserted "and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions)".

Subsec. (m)(2)(C). Pub. L. 99-514, §1852(c)(4)(B), substituted "subsection (e)(6)" for "subsection (e)(1)(B)".

Subsec. (m)(5). Pub. L. 99-514, §1852(a)(2)(C), which directed that par. (5) be amended by substituting "5-percent owners" for "owner-employees" in heading, was executed by substituting "5-percent owners" for "key employees", to reflect the probable intent of Congress and intervening amendment by section 713(e)(1)(B) of Pub. L. 98-369.

Subsec. (m)(5)(A). Pub. L. 99-514, §1123(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "This subparagraph shall apply—

"(i) to amounts which—

"(I) are received from a qualified trust described in section 401(a) or under a plan described in section 403(a), and

"(II) are received by a 5-percent owner before such owner attains the age of 59½ years, for any reason other than such owner becoming disabled (within the meaning of paragraph (7) of this section), and

"(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by a 5-percent owner, or by the successor of such owner, but only to the extent that such amounts are determined (under regulations prescribed by the Secretary) to exceed the benefits provided for such individual under the plan formula.

Clause (i) shall not apply to any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution and clause (i) shall not apply to amounts attributable to benefits accrued before January 1, 1985."

Pub. L. 99-514, §1852(a)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "This paragraph shall apply—

"(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, a 5-percent owner, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (other than contributions made by him as a 5-percent owner) while he was a 5-percent owner, and

"(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula."

Subsec. (m)(5)(C). Pub. L. 99-514, §1852(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "For purposes of this paragraph, the term '5 percent owner' have the same meanings as when used in section 416."

Subsec. (m)(10). Pub. L. 99-514, §1898(c)(1)(B), inserted "who is the spouse or former spouse of the participant".

Subsec. (o)(5). Pub. L. 99-514, §1101(b)(2)(C), inserted "and made for a taxable year beginning before January 1, 1987," in subpar. (A), substituted "subsection (p)(3)(A)(i)" for "section 219(e)(3)" in subpar. (C), and substituted "subsection (p)(3)(B)" for "section 219(e)(4)" in subpar. (D).

Subsec. (p)(2)(A)(i). Pub. L. 99-514, §1134(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "\$50,000, or".

Subsec. (p)(2)(B)(ii). Pub. L. 99-514, §1134(d), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "Clause (i) shall not apply to any loan used to acquire, construct, reconstruct, or substantially rehabilitate any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the participant or a member of the family (within the meaning of section 267(c)(4) of the participant."

Subsec. (p)(2)(C), (D). Pub. L. 99-514, §1134(b), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (p)(3). Pub. L. 99-514, §1134(c), added par. (3) and redesignated former par. (3) as (4).

Pub. L. 99-514, §1101(b)(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For purposes of this subsection, the term 'qualified employer plan' means any plan which was (or was determined to be) a qualified employer plan (as defined in section 219(e)(3) other than a plan described in subsection (e)(7)). For purposes of this subsection, such term includes any government plan (as defined in section 219(e)(4))."

Subsec. (p)(4), (5). Pub. L. 99-514, §1134(c), redesignated former pars. (3) and (4) as (4) and 5, respectively.

Subsec. (q). Pub. L. 99-514, §1123(b)(1)(B), substituted "10-percent" for "5-percent" in heading.

Subsec. (q)(1). Pub. L. 99-514, §1123(b)(1)(A), substituted "10 percent" for "5 percent".

Subsec. (q)(2). Pub. L. 99-514, §1123(b)(3), substituted "Paragraph (1)" for "This subsection" in introductory provisions.

Subsec. (q)(2)(B). Pub. L. 99-514, § 1826(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "made to a beneficiary (or to the estate of an annuitant) on or after the death of an annuitant."

Subsec. (q)(2)(D). Pub. L. 99-514, § 1123(b)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "which is one of a series of substantially equal periodic payments made for the life of a taxpayer or over a period extending for at least 60 months after the annuity starting date."

Subsec. (q)(2)(E). Pub. L. 99-514, § 1852(c)(2), inserted "(determined without regard to subsection (e)(7))".

Subsec. (q)(2)(G). Pub. L. 99-514, § 1826(d), added subpar. (G).

Subsec. (q)(2)(I), (J). Pub. L. 99-514, § 1123(b)(4), which added subpars. (I) and (J) directed the amendment of subpar. (G) by striking out "or" at the end thereof, and of subpar. (H) by striking out the period at the end thereof, could not be executed to subpars. (G) and (H) because subpar. (G) does not contain "or", and no subpar. (H) was enacted.

Subsec. (q)(3). Pub. L. 99-514, § 1123(b)(3), added par. (3).

Subsec. (s)(1). Pub. L. 99-514, § 1826(b)(2), substituted "any holder of such contract" for "the holder of such contract" in subpars. (A) and (B).

Subsec. (s)(5). Pub. L. 99-514, § 1826(a), added par. (5).

Subsec. (s)(6), (7). Pub. L. 99-514, § 1826(b)(1), added pars. (6) and (7).

Subsec. (t). Pub. L. 99-514, § 1123(a), added subsec. (t) and redesignated former subsec. (t) as (u).

Subsecs. (u), (v). Pub. L. 99-514, § 1135(a), added subsec. (u) and redesignated former subsec. (u) as (v).

1984—Subsec. (e)(5)(D). Pub. L. 98-369, § 523(b)(1), substituted "Except as provided in paragraph (7), this" for "This".

Subsec. (e)(5)(D)(ii)(IV). Pub. L. 98-369, § 211(b)(1), which directed substitution of "section 818(a)(3)" for "805(d)(3)" in subpar. (D)(i)(IV), was executed to subpar. (D)(ii)(IV) to reflect the probable intent of Congress.

Subsec. (e)(7). Pub. L. 98-369, § 523(a), added par. (7).

Subsec. (k). Pub. L. 98-369, § 421(b)(1), repealed subsec. (k) relating to payments in discharge of alimony.

Subsec. (m)(5). Pub. L. 98-369, § 713(c)(1)(B), substituted "key employees" for "owner-employees" in heading.

Subsec. (m)(5)(A). Pub. L. 98-369, § 521(d)(1), (2), substituted "5-percent owner" for "key employee" wherever appearing and struck out "in a top-heavy plan" at end of cl. (1).

Pub. L. 98-369, § 713(c)(1)(A), substituted "as a key employee" for "as an owner-employee" in cl. (1).

Subsec. (m)(5)(C). Pub. L. 98-369, § 521(d)(3), substituted "the term '5 percent owner'" for "the terms 'key employee' and 'top-heavy plan'".

Subsec. (m)(9). Pub. L. 98-369, § 713(d)(1), repealed par. (9) relating to return of excess contributions before due date of return.

Subsec. (m)(10). Pub. L. 98-397 added par. (10).

Subsec. (o)(1). Pub. L. 98-369, § 491(d)(3), substituted "402 and 403" for "402, 403, and 405".

Subsec. (o)(3)(A). Pub. L. 98-369, § 713(b)(1)(A), inserted "(other than the exception contained in paragraph (2) thereof)".

Subsec. (o)(4). Pub. L. 98-369, § 491(d)(4), substituted "and 408(d)(3)" for "408(d)(3), and 409(b)(3)(C)".

Subsec. (p)(2)(A). Pub. L. 98-369, § 713(b)(1)(B), inserted at end "For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (o)(5)(B))."

Subsec. (p)(2)(A)(ii). Pub. L. 98-369, § 713(b)(4), substituted as cl. (ii) "the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) \$10,000" for "½ of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than \$10,000)".

Subsec. (p)(3). Pub. L. 98-369, § 523(b)(2), inserted "other than a plan described in subsection (e)(7)".

Subsec. (q)(1). Pub. L. 98-369, § 222(a), amended par. (1) generally, striking out designation "(A) In general.—" preceding text, substituting "which is includible in gross income" for "includible in gross income which is properly allocable to any investment in the annuity contract made during the 10-year period ending on the date such amount was received by the taxpayer", and striking out former subpar. (B), which had provided that for purposes of subpar. (A), the amount includible in gross income would be allocated to the earliest investment in the contract with respect to which amounts had not been previously fully allocated under this par.

Subsecs. (s), (t). Pub. L. 98-369, § 222(b), added subsec. (s) and redesignated former subsec. (s) as (t).

1983—Subsec. (o)(2)(A). Pub. L. 97-448, § 103(c)(6), struck out "to which the employee made one or more deductible employee contributions" after "from a qualified employer plan or government plan".

Subsec. (p)(3). Pub. L. 97-448, § 103(c)(3)(B)(i), struck out "without regard to subparagraph (D) thereof" after "as defined in section 219(e)(3)".

Subsecs. (r), (s). Pub. L. 98-76 added subsec. (r) and redesignated former subsec. (r) as (s).

1982—Subsec. (e). Pub. L. 97-248, § 265(a), in par. (1) substituted provisions relating to the application of this subsection to amounts received under annuity, endowment, or life insurance contracts which are not received as annuities and to amounts received as dividends for provisions which stated a general rule relating to the includability as gross income of amounts that were received under annuity, endowment, or life insurance contracts which were not received as annuities and also stated that for the purposes of this section amounts which were received as dividends would be treated as amounts not received as an annuity, in par. (2) substituted provisions stating a general rule as to the includability as gross income of amounts received before or after the annuity starting date for provisions which set out those amounts which would be treated as amounts not received as an annuity, and added pars. (3) to (6).

Subsec. (m)(4). Pub. L. 97-248, § 236(b)(1), struck out par. (4) which related to amounts constructively received with respect to assignments or pledges, and loans on contracts.

Subsec. (m)(5). Pub. L. 97-248, § 237(d)(1), (2), in subpar. (A) substituted applicability to key employees for applicability to owner-employees and added subpar. (C).

Subsec. (m)(6). Pub. L. 97-248, § 237(d)(3), struck out "except in applying paragraph (5)," after "shall".

Subsec. (m)(8). Pub. L. 97-248, § 236(b)(1), struck out par. (8) which related to loans to owner-employees.

Subsec. (o)(3)(A). Pub. L. 97-248, § 236(b)(2), substituted reference to subsec. (p) of this section for references to subsec. (m)(4) and (8) of this section.

Subsec. (p). Pub. L. 97-248, § 236(a), added subsec. (p). Former subsec. (p) redesignated (q).

Subsec. (q). Pub. L. 97-248, § 265(b)(1), added subsec. (q). Former subsec. (q) redesignated (r).

Pub. L. 97-248, § 236(a), redesignated former subsec. (p) as (q).

Subsec. (r). Pub. L. 97-248, §§ 236(a), 265(b)(1), redesignated former subsec. (p) as (r).

1981—Subsec. (m)(6). Pub. L. 97-34, § 312(d)(1), expanded definition of "owner-employee" to include an employee within the meaning of section 401(c)(1) except in applying paragraph (5).

Subsec. (m)(8). Pub. L. 97-34, § 312(d)(2), added par. (8).

Subsec. (m)(9). Pub. L. 97-34, § 312(e)(1), added par. (9).

Subsecs. (o), (p). Pub. L. 97-34, § 311(b)(1), added subsec. (o) and redesignated former subsec. (o) as (p).

1976—Subsec. (c)(2), (3)(A). Pub. L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(1). Pub. L. 94-455, § 1901(a)(12), struck out in subpar. (B) "(whether or not before January 1, 1954)" after "beginning on the date", and in provisions fol-

lowing subpar. (B) struck out “(under this paragraph and prior income tax laws)” after “until there has been so excluded”.

Subsec. (f). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (i). Pub. L. 94-455, § 1951(b)(1)(A), struck out subsec. (i) which related to joint annuities where first annuitant died in 1951, 1952, or 1953.

Subsec. (m)(2), (3). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (m)(4)(A). Pub. L. 94-455, § 1901(a)(13), substituted “an individual retirement account” for “an individual retirement amount”.

Subsec. (m)(5)(A)(ii), (7). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1974—Subsec. (m)(1). Pub. L. 93-406, § 2001(h)(2), struck out par. (1) which related to certain amounts received before annuity starting date.

Subsec. (m)(4)(A). Pub. L. 93-406, § 2002(g)(10)(A), inserted references to an individual retirement amount described in section 408(a) and an individual retirement annuity described in section 408(b).

Subsec. (m)(5)(A). Pub. L. 93-406, § 2001(e)(5), (h)(3), substituted “(other than contributions made by him as an owner-employee)” for “(whether or not paid by him)” in cl. (i), and struck out cl. (iii) which had made reference to amounts which were received, by an individual who was or had been, an owner-employee, by reason of the distribution under the provisions of section 401(e)(2)(E) of his entire interest in all qualified trusts described in section 401(a) and in all plans described in section 403(a).

Subsec. (m)(5)(B). Pub. L. 93-406, § 2001(g)(1), substituted provisions that if a person receives an amount to which subsec. (m)(5) applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year for provisions that if the aggregate amounts to which subsec. (m)(5) applied received by any person in his taxable year equalled or exceeded \$2,500, the increase in his tax for the taxable year in which such amounts were received and attributable to such amounts could not be less than 110 percent of the aggregate increase in taxes, for the taxable year and the 4 immediately preceding taxable years, which would have resulted if such amounts had been included in such person’s gross income ratably over such taxable years, with provision for alternate computation if deductions had been allowed under section 404 for contributions paid for a number of prior taxable years less than 4.

Subsec. (m)(5)(C) to (E). Pub. L. 93-406, § 2001(g)(2)(A), struck out subpars. (C) to (E) which contained special rules for the application of subsec. (m)(5).

Subsec. (m)(6). Pub. L. 93-406, § 2002(g)(10)(B), inserted reference to an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained.

Subsec. (n). Pub. L. 93-406, §§ 2005(c)(3), 2007(b)(2), redesignated former subsec. (o) as (n) and in heading of subsec. (n) as so redesignated inserted reference to survivor benefit plan. Former subsec. (n), which set out provisions covering the treatment to be accorded total distributions, was struck out.

Subsec. (o). Pub. L. 93-406, § 2005(c)(3), redesignated former subsec. (p) as (o). Former subsec. (o) redesignated (n) and amended.

Subsec. (p). Pub. L. 93-406, § 2005(c)(3), redesignated subsec. (p) as (o).

1969—Subsec. (n)(1). Pub. L. 91-172, § 515(b)(1), altered section to accommodate the insertion into sections 402 and 403 of provisions under which employer contributions to qualified pension, profit sharing, stock bonus, and annuity plans for plan years beginning after 1969 are to be treated as ordinary income when received in a lump sum distribution, but with such amounts to be eligible for a special averaging procedure.

Subsec. (n)(4). Pub. L. 91-172, § 515(b)(2), added par. (4).

1966—Subsecs. (o), (p). Pub. L. 89-365 added subsec. (o) and redesignated former subsec. (o) as (p).

1965—Subsec. (m)(5)(A)(i). Pub. L. 89-97, § 106(d)(2)(A), substituted “paragraph (7) of this subsection” for “section 213(g)(3)”.

Subsec. (m)(7). Pub. L. 89-97, § 106(d)(2)(B), added par. (7).

Subsec. (n)(1). Pub. L. 89-97, § 106(d)(2)(C), substituted in subpars. (A)(iii) and (B)(iii) “subsection (m)(7)” for “section 213(g)(3)”.

Subsec. (n)(3). Pub. L. 89-44 substituted “sections 31 and 39” for “section 31” in sentence following subpar. (B).

1964—Subsec. (e)(3). Pub. L. 88-272 struck out par. (3) which provided for a limit on the tax attributable to the receipt of a lump sum.

1962—Subsec. (d)(2). Pub. L. 87-792, § 4(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (f). Pub. L. 87-834 inserted sentence providing that par. (2) shall not apply to amounts which were contributed by the employer after Dec. 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of Section 911 if such amounts had been paid directly to the employee at the time of contribution, and making such sentence inapplicable to amounts which were contributed by the employer, as determined under regulations, to provide pension or annuity credits, to the extent such credits are attributable to services performed before Jan. 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on Mar. 12, 1962, and on that date applicable to such services.

Subsecs. (m) to (o). Pub. L. 87-792, § 4(b), added subsecs. (m) and (n) and redesignated former subsec. (m) as (o).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. O, title I, § 108(b), Dec. 20, 2019, 133 Stat. 3149, provided that: “The amendments made by subsection (a) [amending this section] shall apply to loans made after the date of the enactment of this Act [Dec. 20, 2019].”

Pub. L. 116-94, div. O, title I, § 113(b), Dec. 20, 2019, 133 Stat. 3156, provided that: “The amendments made by this section [amending this section] shall apply to distributions made after December 31, 2019.”

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title III, § 308(b), Dec. 18, 2015, 129 Stat. 3089, provided that: “The amendments made by this section [amending this section] shall apply to distributions after December 31, 2015.”

Pub. L. 114-26, § 2(d), June 29, 2015, 129 Stat. 319, provided that: “The amendments made by this section [amending this section] shall apply to distributions after December 31, 2015.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-240, title II, § 2113(b), Sept. 27, 2010, 124 Stat. 2567, provided that: “The amendment made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 2010.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-458, title I, § 112, Dec. 23, 2008, 122 Stat. 5113, provided that: “Except as otherwise provided in this subtitle [subtitle A (§§ 101-112) of title I of Pub. L. 110-458, see Tables for classification], the amendments made by this subtitle shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109-280] to which the amendments relate.”

Pub. L. 110-245, title I, §107(b), June 17, 2008, 122 Stat. 1631, provided that: “The amendment made by this section [amending this section] shall apply to individuals ordered or called to active duty on or after December 31, 2007.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title VIII, §827(c), Aug. 17, 2006, 120 Stat. 1001, provided that:

“(1) EFFECTIVE DATE.—The amendment made by this section [amending this section and sections 401 and 403 of this title] shall apply to distributions after September 11, 2001.

“(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Aug. 17, 2006] by the operation of any law or rule of law (including *res judicata*), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.”

Pub. L. 109-280, title VIII, §828(b), Aug. 17, 2006, 120 Stat. 1001, provided that: “The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 17, 2006].”

Pub. L. 109-280, title VIII, §844(g), Aug. 17, 2006, 120 Stat. 1013, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6050U of this title and amending this section and sections 848, 1035, 6724, and 7702B of this title] shall apply to contracts issued after December 31, 1996, but only with respect to taxable years beginning after December 31, 2009.

“(2) TAX-FREE EXCHANGES.—The amendments made by subsection (b) [amending section 1035 of this title] shall apply with respect to exchanges occurring after December 31, 2009.

“(3) INFORMATION REPORTING.—The amendments made by subsection (d) [enacting section 6050U of this title and amending section 6724 of this title] shall apply to charges made after December 31, 2009.

“(4) POLICY ACQUISITION EXPENSES.—The amendment made by subsection (e) [amending section 848 of this title] shall apply to specified policy acquisition expenses determined for taxable years beginning after December 31, 2009.

“(5) TECHNICAL AMENDMENT.—The amendment made by subsection (f) [amending section 7702B of this title] shall take effect as if included in section 321(a) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191].”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §906(c), Oct. 22, 2004, 118 Stat. 1654, provided that: “The amendments made by this section [amending this section and section 83 of this title] shall apply to distributions on or after the date of the enactment of this Act [Oct. 22, 2004].”

Amendment by section 207(6), (7) of 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 2001 AMENDMENT

Amendment by Pub. L. 107-90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107-90, set out as a note under section 24 of this title.

Amendment by Pub. L. 107-22 effective July 26, 2001, see section 1(c) of Pub. L. 107-22, set out as a note under section 26 of this title.

Pub. L. 107-16, title IV, §402(h), June 7, 2001, 115 Stat. 63, provided that: “The amendments made by this section [amending this section and sections 135, 221, 529, 530, 4973, and 6693 of this title] shall apply to taxable years beginning after December 31, 2001.”

Pub. L. 107-16, title VI, §632(a)(4), June 7, 2001, 115 Stat. 115, provided that: “The amendments made by this subsection [amending this section and sections 402, 403, 404, 415, and 664 of this title] shall apply to years beginning after December 31, 2001.”

Amendment by section 641(a)(2)(C), (e)(1) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3436(b), July 22, 1998, 112 Stat. 761, provided that: “The amendments made by this section [amending this section] shall apply to distributions after December 31, 1999.”

Amendment by section 6023(3), (4) of Pub. L. 105-206 effective July 22, 1998, see section 6023(32) of Pub. L. 105-206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(3)(B) and 6005(c)(1) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title II, §203(c), Aug. 5, 1997, 111 Stat. 809, provided that: “The amendments made by this section [amending this section] shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.”

Pub. L. 105-34, title III, §303(c), Aug. 5, 1997, 111 Stat. 831, provided that: “The amendments made by this section [amending this section] shall apply to payments and distributions in taxable years beginning after December 31, 1997.”

Pub. L. 105-34, title X, §1075(c), Aug. 5, 1997, 111 Stat. 949, provided that: “The amendments made by this section [amending this section] shall apply with respect to annuity starting dates beginning after December 31, 1997.”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-191, title III, §361(d), Aug. 21, 1996, 110 Stat. 2072, provided that: “The amendments made by this section [amending this section] shall apply to distributions after December 31, 1996.”

Pub. L. 104-188, title I, §1403(b), Aug. 20, 1996, 110 Stat. 1791, provided that: “The amendment made by this section [amending this section] shall apply in cases where the annuity starting date is after the 90th day after the date of the enactment of this Act [Aug. 20, 1996].”

Pub. L. 104-188, title I, §1421(e), Aug. 20, 1996, 110 Stat. 1800, provided that: “The amendments made by this section [amending this section, sections 219, 280G, 402, 404, 408, 414, 416, 457, 3121, 3306, 3401, 4972, and 6693 of this title, sections 1021 and 1104 of Title 29, Labor, and section 409 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1996.”

Pub. L. 104-188, title I, §1463(b), Aug. 20, 1996, 110 Stat. 1824, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.”

Pub. L. 104-188, title I, §1704(l)(2), Aug. 20, 1996, 110 Stat. 1882, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1122(c) of the Tax Reform Act of 1986 [Pub. L. 99-514].”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of

the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011A(b)(1)(A), (B), (2), (9), (c)(1)-(8), (h), (i), and 1018(k), (t)(1)(A), (B), and (u)(8) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 5012(a), (b)(1), (d) of Pub. L. 100-647 applicable to contracts entered into on or after June 21, 1988, with special rule where death benefit increases by more than \$150,000, certain other material changes taken into account, certain exchanges permitted, and special rule in the case of annuity contracts, see section 5012(e) of Pub. L. 100-647, set out as an Effective Date note under section 7702A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XI, §1101(c), Oct. 22, 1986, 100 Stat. 2414, provided that: "The amendments made by this section [amending this section and section 219 of this title] shall apply to contributions for taxable years beginning after December 31, 1986."

Amendment by section 1122(c)(1) of Pub. L. 99-514 applicable to individuals whose annuity starting date is after July 1, 1986, amendment by section 1122(c)(2) of Pub. L. 99-514 applicable to individuals whose annuity starting date is after Dec. 31, 1986, and amendment by section 1122(c)(3) of Pub. L. 99-514 applicable to amounts received after July 1, 1986, in the case of any plan not described in section 72(e)(8)(D) of this title, see section 1122(h)(2) of Pub. L. 99-514, set out as a note under section 402 of this title.

Pub. L. 99-514, title XI, §1123(e), Oct. 22, 1986, 100 Stat. 2475, as amended by Pub. L. 100-647, title I, §1011A(c)(11), (12), Nov. 10, 1988, 102 Stat. 3476, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 403 and 408 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending section 403 of this title] shall apply to years beginning after December 31, 1988, but only with respect to distributions from contracts described in section 403(b) of the Internal Revenue Code of 1986 which are attributable to assets other than assets held as of the close of the last year beginning before January 1, 1989.

"(3) EXCEPTION WHERE DISTRIBUTION COMMENCES.—The amendments made by this section shall not apply to distributions to any employee from a plan maintained by any employer if—

"(A) as of March 1, 1986, the employee separated from service with the employer,

"(B) as of March 1, 1986, the accrued benefit of the employee was in pay status pursuant to a written election providing a specific schedule for the distribution of the entire accrued benefit of the employee, and

"(C) such distribution is made pursuant to such written election.

"(4) TRANSITION RULE.—The amendments made by this section shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97-248, formerly set out as an Effective Date of 1982 Amendment note under section 401 of this title].

"(5) SPECIAL RULE FOR DISTRIBUTIONS UNDER AN ANNUITY CONTRACT.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) [amending this section] shall not apply to any distribution under an annuity contract if—

"(A) as of March 1, 1986, payments were being made under such contract pursuant to a written election providing a specific schedule for the distribution of the taxpayer's interest in such contract, and

"(B) such distribution is made pursuant to such written election."

Pub. L. 99-514, title XI, §1134(e), Oct. 22, 1986, 100 Stat. 2484, provided that: "The amendments made by this section [amending this section] shall apply to loans made, renewed, renegotiated, modified, or extended after December 31, 1986."

Pub. L. 99-514, title XI, §1135(b), Oct. 22, 1986, 100 Stat. 2485, provided that: "The amendment made by subsection (a) [amending this section] shall apply to contributions to annuity contracts after February 28, 1986."

Amendment by sections 1826(a), (d), 1852(a)(2), (c)(1)-(4), and 1854(b)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Pub. L. 99-514, title XVIII, §1826(b)(4), Oct. 22, 1986, 100 Stat. 2850, provided that: "The amendments made by this subsection [amending this section] shall apply to contracts issued after the date which is 6 months after the date of the enactment of this Act [Oct. 22, 1986] in taxable years ending after such date."

Pub. L. 99-514, title XVIII, §1826(c), Oct. 22, 1986, 100 Stat. 2850, as amended by Pub. L. 100-647, title I, §1018(t)(1)(D), Nov. 10, 1988, 102 Stat. 3587, provided that the amendment made by section 1826(c) of Pub. L. 99-514 is effective with respect to distributions commencing after the date 6 months after Oct. 22, 1986.

Pub. L. 99-514, title XVIII, §1854(b)(6), Oct. 22, 1986, 100 Stat. 2878, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 404 of this title] shall not apply to dividends paid before January 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendments on a return filed with the Secretary before the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99-514, title XVIII, §1898(c)(1)(C), Oct. 22, 1986, 100 Stat. 2951, provided that: "The amendments made by this paragraph [amending this section and section 402 of this title] shall apply to payments made after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 211(b)(1) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Pub. L. 98-369, div. A, title II, §222(c), July 18, 1984, 98 Stat. 774, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to contracts issued after the day which is 6 months after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) TRANSITIONAL RULES FOR CONTRACTS ISSUED BEFORE EFFECTIVE DATE.—In the case of any contract (other than a single premium contract) which is issued on or before the day which is 6 months after the date of the enactment of this Act, for purposes of section 72(q)(1)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act), any investment in such contract which is made during any calendar year shall be treated as having been made on January 1 of such calendar year."

Amendment by section 421(b)(1) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have re-

peal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 491(d)(3), (4) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Amendment by section 521(d) of Pub. L. 98-369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98-369, set out as a note under section 401 of this title.

Pub. L. 98-369, div. A, title V, § 523(c), July 18, 1984, 98 Stat. 872, provided that: "The amendments made by this section [amending this section] shall apply to any amount received or loan made after the 90th day after the date of enactment of this Act [July 18, 1984]."

Amendment by section 713(b)(1), (4), (c)(1)(A), (B) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Pub. L. 98-369, div. A, title VII, § 713(d)(1), July 18, 1984, 98 Stat. 957, as amended by Pub. L. 99-514, title XVIII, § 1875(c)(5), Oct. 22, 1986, 100 Stat. 2895, provided that the amendment made by section 713(d)(1) of Pub. L. 98-369 is effective with respect to contributions made in taxable years beginning after Dec. 31, 1983.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-76, title II, § 227(b), Aug. 12, 1983, 97 Stat. 426, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 224 [enacting section 6050G of this title, amending this section and section 86 of this title, and enacting provisions set out as a note under section 231n of Title 45, Railroads] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

"(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983.—The amendments made by section 224 shall not apply to any portion of a lump-sum payment received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984.

"(3) NO FRESH START.—For purposes of determining whether any benefit received after December 31, 1983, is includible in gross income by reason of section 72(r) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this Act, the amendments made by section 224 be treated as having been in effect during all periods before 1984."

Pub. L. 97-448, title I, § 103(c)(3)(B)(ii), Jan. 12, 1983, 96 Stat. 2376, provided that: "The amendment made by clause (i) [amending this section] shall take effect as if the matter struck out had never been included in such paragraph."

Amendment by title I of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, § 236(c), Sept. 3, 1982, 96 Stat. 510, as amended by Pub. L. 97-448, title III, § 306(a)(11), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98-369, div. A, title V, § 554, title VII, § 713(b)(2), July 18, 1984, 98 Stat. 897, 957; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to loans, assignments, and pledges made after August 13, 1982. For purposes of the preceding sentence, the outstanding balance of any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as an

amount received as a loan on the date of such renegotiation, extension, renewal, or revision.

"(2) EXCEPTION FOR CERTAIN LOANS USED TO REPAY OUTSTANDING OBLIGATIONS.—

"(A) IN GENERAL.—Any qualified refunding loan shall not be treated as a distribution by reason of the amendments made by this section to the extent such loan is repaid before August 14, 1983.

"(B) QUALIFIED REFUNDING LOAN.—For purposes of subparagraph (A), the term 'qualified refunding loan' means any loan made after August 13, 1982, and before August 14, 1983, to the extent such loan is used to make a required principal payment.

"(C) REQUIRED PRINCIPAL PAYMENT.—For purposes of subparagraph (B), the term 'required principal payment' means any principal repayment on a loan made under the plan which was outstanding on August 13, 1982, if such repayment is required to be made after August 13, 1982, and before August 14, 1983 or if such loan was payable on demand.

"(D) SPECIAL RULE FOR NON-KEY EMPLOYEES.—In the case of a non-key employee (within the meaning of section 416(i)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), this paragraph shall be applied by substituting 'January 1, 1985' for 'August 14, 1983' each place it appears.

"(3) TREATMENT OF CERTAIN RENEGOTIATIONS.—If—

"(A) the taxpayer after August 13, 1982, and before September 4, 1982, borrows money from a government plan (as defined in section 219(e)(4) of the Internal Revenue Code of 1986),

"(B) under the applicable State law, such loan requires the renegotiation of all outstanding prior loans made to the taxpayer under such plan, and

"(C) the renegotiation described in subparagraph (B) does not change the interest rate on, or extend the duration of, any such outstanding prior loan, then the renegotiation described in subparagraph (B) shall not be treated as a renegotiation, extension, renewal, or revision for purposes of paragraph (1). If the renegotiation described in subparagraph (B) does not meet the requirements of subparagraph (C) solely because it extends the duration of any such outstanding prior loan, the requirements of subparagraph (C) shall be treated as met with respect to such renegotiation if, before April 1, 1983, such extension is eliminated."

Pub. L. 97-248, title II, § 265(c), Sept. 3, 1982, 96 Stat. 547, provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall take effect on August 13, 1982.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and sections 46, 50A, 53, 901, 1302, and 1304 of this title] shall apply to distributions after December 31, 1982."

Amendment by section 237(d) of Pub. L. 97-248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title III, § 312(f), Aug. 13, 1981, 95 Stat. 285, as amended by Pub. L. 97-448, title I, § 103(d)(3), 96 Stat. 2378, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 219, 401, 404, 408, 1379, and 4972 of this title] shall apply to taxable years beginning after December 31, 1981.

"(2) TRANSITIONAL RULE.—The amendments made by subsection (d) [amending this section] shall not apply to any loan from a plan to a self-employed individual who is an employee within the meaning of section 401(c)(1) which is outstanding on December 31, 1981. For purposes of the preceding sentence, any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as a new loan."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(12), (13) of Pub. L. 94-455 applicable with respect to taxable years begin-

ning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Pub. L. 94-455, title XIX, §1951(d), Oct. 4, 1976, 90 Stat. 1841, provided that: "Except as otherwise expressly provided, the amendments made by this section [see Tables for classification of section 1951 of Pub. L. 94-455] shall apply with respect to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(e)(5) of Pub. L. 93-406 applicable to contributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(4) of Pub. L. 93-406, set out as a note under section 401 of this title.

Pub. L. 93-406, title II, §2001(i)(5), (6), Sept. 2, 1974, 88 Stat. 958, provided that:

"(5) The amendments made by subsection (g) [amending this section and sections 46, 50A, 56, 404, and 901 of this title] apply to distributions made in taxable years beginning after December 31, 1975.

"(6) The amendments made by subsection (h) [amending this section and section 401 of this title] apply to taxable years ending after the date of enactment of this Act [Sept. 2, 1974]."

Amendment by section 2002(g)(10) of Pub. L. 93-406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(3) of Pub. L. 93-406, applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

Amendment by section 2007(b)(2) of Pub. L. 93-406 applicable to taxable years ending on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93-406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91-172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-365 applicable with respect to taxable years ending after Dec. 31, 1965, see section 1(d) of Pub. L. 89-365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89-97, set out as a note under section 213 of this title.

Amendment by Pub. L. 89-44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88-272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-834, §11(c)(2), Oct. 16, 1962, 76 Stat. 1006, provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1962."

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain

transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

Pub. L. 94-455, title XIX, §1951(b)(1)(B), Oct. 4, 1976, 90 Stat. 1836, provided that: "Notwithstanding subparagraph (A) [repealing subsec. (i) of this section], if the provisions of section 72(i) applied to amounts received in taxable years beginning before January 1, 1977, under an annuity contract, then amounts received under such contract on or after such date shall be treated as if such provisions were not repealed."

SPECIAL RULES FOR USE OF RETIREMENT FUNDS

Pub. L. 116-136, div. A, title II, §2202, Mar. 27, 2020, 134 Stat. 340, as amended by Pub. L. 116-260, div. N, title II, §280(a), Dec. 27, 2020, 134 Stat. 1982, provided that:

"(a) TAX-FAVORED WITHDRAWALS FROM RETIREMENT PLANS.—

"(1) IN GENERAL.—Section 72(t) of the Internal Revenue Code of 1986 shall not apply to any coronavirus-related distribution.

"(2) AGGREGATE DOLLAR LIMITATION.—

"(A) IN GENERAL.—For purposes of this subsection, the aggregate amount of distributions received by an individual which may be treated as coronavirus-related distributions for any taxable year shall not exceed \$100,000.

"(B) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would (without regard to subparagraph (A)) be a coronavirus-related distribution, a plan shall not be treated as violating any requirement of the Internal Revenue Code of 1986 merely because the plan treats such distribution as a coronavirus-related distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds \$100,000.

"(C) CONTROLLED GROUP.—For purposes of subparagraph (B), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

"(3) AMOUNT DISTRIBUTED MAY BE REPAID.—

"(A) IN GENERAL.—Any individual who receives a coronavirus-related distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make 1 or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), of the Internal Revenue Code of 1986, as the case may be.

"(B) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to subparagraph (A) with respect to a coronavirus-related distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the coronavirus-related distribution in an eligible rollover distribution (as defined in section 402(c)(4) of such Code) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

"(C) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM IRAS.—For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to subparagraph (A) with respect to a coronavirus-related distribution from an individual retirement plan (as defined by section 7701(a)(37) of such Code), then, to the extent of the amount of the contribu-

tion, the coronavirus-related distribution shall be treated as a distribution described in section 408(d)(3) of such Code and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) CORONAVIRUS-RELATED DISTRIBUTION.—Except as provided in paragraph (2), the term ‘coronavirus-related distribution’ means any distribution from an eligible retirement plan made—

“(i) on or after January 1, 2020, and before December 31, 2020,

“(ii) to an individual—

“(I) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention,

“(II) whose spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) is diagnosed with such virus or disease by such a test, or

“(III) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary’s delegate).

“(B) EMPLOYEE CERTIFICATION.—The administrator of an eligible retirement plan may rely on an employee’s certification that the employee satisfies the conditions of subparagraph (A)(ii) in determining whether any distribution is a coronavirus-related distribution.

“(C) ELIGIBLE RETIREMENT PLAN.—The term ‘eligible retirement plan’ has the meaning given such term by section 402(c)(8)(B) of the Internal Revenue Code of 1986.

“(5) INCOME INCLUSION SPREAD OVER 3-YEAR PERIOD.—

“(A) IN GENERAL.—In the case of any coronavirus-related distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable-year period beginning with such taxable year.

“(B) SPECIAL RULE.—For purposes of subparagraph (A), rules similar to the rules of subparagraph (E) of section 408A(d)(3) of the Internal Revenue Code of 1986 shall apply.

“(6) SPECIAL RULES.—

“(A) EXEMPTION OF DISTRIBUTIONS FROM TRUSTEE TO TRUSTEE TRANSFER AND WITHHOLDING RULES.—For purposes of sections 401(a)(31), 402(f), and 3405 of the Internal Revenue Code of 1986, coronavirus-related distributions shall not be treated as eligible roll-over distributions.

“(B) CORONAVIRUS-RELATED DISTRIBUTIONS TREATED AS MEETING PLAN DISTRIBUTION REQUIREMENTS.—For purposes of the Internal Revenue Code of 1986, a coronavirus-related distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A) of such Code and section 8433(h)(1) of title 5, United States Code, and, in the case of a money purchase pension plan, a coronavirus-related distribution which is an in-service withdrawal shall be treated as meeting the distribution rules of section 401(a) of the Internal Revenue Code of 1986.

“(b) LOANS FROM QUALIFIED PLANS.—

“(1) INCREASE IN LIMIT ON LOANS NOT TREATED AS DISTRIBUTIONS.—In the case of any loan from a qualified employer plan (as defined under section 72(p)(4) of the Internal Revenue Code of 1986) to a qualified individual made during the 180-day period beginning on the date of the enactment of this Act [Mar. 27, 2020]—

“(A) clause (i) of section 72(p)(2)(A) of such Code shall be applied by substituting ‘\$100,000’ for ‘\$50,000’, and

“(B) clause (ii) of such section shall be applied by substituting ‘the present value of the nonforfeitable accrued benefit of the employee under the plan’ for ‘one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan’.

“(2) DELAY OF REPAYMENT.—In the case of a qualified individual with an outstanding loan (on or after the date of the enactment of this Act) from a qualified employer plan (as defined in section 72(p)(4) of the Internal Revenue Code of 1986)—

“(A) if the due date pursuant to subparagraph (B) or (C) of section 72(p)(2) of such Code for any repayment with respect to such loan occurs during the period beginning on the date of the enactment of this Act and ending on December 31, 2020, such due date shall be delayed for 1 year,

“(B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under subparagraph (A) and any interest accruing during such delay, and

“(C) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2) of such Code, the period described in subparagraph (A) of this paragraph shall be disregarded.

“(3) QUALIFIED INDIVIDUAL.—For purposes of this subsection, the term ‘qualified individual’ means any individual who is described in subsection (a)(4)(A)(ii).

“(c) PROVISIONS RELATING TO PLAN AMENDMENTS.—

“(1) IN GENERAL.—If this subsection applies to any amendment to any plan or annuity contract—

“(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i), and

“(B) except as provided by the Secretary of the Treasury (or the Secretary’s delegate), such plan or contract shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

“(2) AMENDMENTS TO WHICH SUBSECTION APPLIES.—

“(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

“(i) pursuant to any provision of this section, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor (or the delegate of either such Secretary) under any provision of this section, and

“(ii) on or before the last day of the first plan year beginning on or after January 1, 2022, or such later date as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

“(B) CONDITIONS.—This subsection shall not apply to any amendment unless—

“(i) during the period—

“(I) beginning on the date that this section or the regulation described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by this section or such regulation, the effective date specified by the plan), and

“(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

“(ii) such plan or contract amendment applies retroactively for such period.”

[Pub. L. 116-260, div. N, title II, §280(b), Dec. 27, 2020, 134 Stat. 1982, provided that: “The amendment made by this section [amending section 2202 of Pub. L. 116-136, set out above] shall apply as if included in the enactment of section 2202 of the CARES Act [Pub. L. 116-136, approved Mar. 27, 2020].”]

APPLICABILITY OF SUBSECTION (t)

Pub. L. 100-647, title I, §1011A(c)(13), Nov. 10, 1988, 102 Stat. 3476, provided that: “Section 72(t) of the 1986 Code shall apply to any distribution without regard to whether such distribution is made without the consent of the participant pursuant to section 411(a)(11) or section 417(e) of the 1986 Code.”

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

DEFINITION OF TERMS USED IN TITLE I OF PUB. L. 110-458

Pub. L. 110-458, title I, §100, Dec. 23, 2008, 122 Stat. 5093, provided that: “For purposes of this title [see Tables for classification]:

“(1) AMENDMENT OF 1986 CODE.—The term ‘1986 Code’ means the Internal Revenue Code of 1986.

“(2) AMENDMENT OF ERISA.—The term ‘ERISA’ means the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; see Short Title note under section 1001 of Title 29, Labor].

“(3) 2006 ACT.—The term ‘2006 Act’ means the Pension Protection Act of 2006 [Pub. L. 109-280; see Short Title of 2006 Amendment note under section 1001 of Title 29, Labor].”

§ 73. Services of child

(a) Treatment of amounts received

Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child.

(b) Treatment of expenditures

All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child (and not of the parent) solely by reason of subsection (a) shall be treated as paid or incurred by the child.

(c) Parent defined

For purposes of this section, the term “parent” includes an individual who is entitled to

the services of a child by reason of having parental rights and duties in respect of the child.

(d) Cross reference

For assessment of tax against parent in certain cases, see section 6201(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 24.)

§ 74. Prizes and awards

(a) General rule

Except as otherwise provided in this section or in section 117 (relating to qualified scholarships), gross income includes amounts received as prizes and awards.

(b) Exception for certain prizes and awards transferred to charities

Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if—

(1) the recipient was selected without any action on his part to enter the contest or proceeding;

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award; and

(3) the prize or award is transferred by the payor to a governmental unit or organization described in paragraph (1) or (2) of section 170(c) pursuant to a designation made by the recipient.

(c) Exception for certain employee achievement awards

(1) In general

Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) Excess deduction award

If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

(3) Treatment of tax-exempt employers

In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.