''(C) PERIOD OF LIMITATIONS.—If an individual has made the election provided by subparagraph (B), then—

''(i) the period provided by the Internal Revenue Code of 1986 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Secretary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

''(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) of such Code or the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(2) ROLLOVER CONTRIBUTION FOR CERTAIN PROPERTY SOLD.—Sections 402(a)(5)(C) and 403(a)(4)(C) of the Internal Revenue Code of 1986 (relating to the requirement that rollover amount must consist of property received in a distribution) shall not apply with respect to that portion of the property received in a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] or 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] of such Code which is sold or exchanged by the employee on or before the date of the enactment of this Act, [Apr. 15, 1976], if the employee transfers an amount of cash equal to the proceeds received from the sale or exchange of such property in excess of the amount considered contributed by the employee (within the meaning of section 402(a)(4)(D)(i) of such Code).

''(3) NONRECOGNITION OF GAIN OR LOSS.—For purposes of the Internal Revenue Code of 1986 [this title] no gain or loss shall be recognized with respect to the sale or exchange of property described in paragraph (2) if the proceeds of such sale or exchange are transferred by an employee in accordance with this subsection and the applicable provisions of section 402(a)(5) or 403(a)(4) of such Code.''

## § 402A. Optional treatment of elective deferrals as Roth contributions

### (a) General rule

If an applicable retirement plan includes a qualified Roth contribution program—

(1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

### (b) Qualified Roth contribution program

For purposes of this section—

#### (1) In general

The term ''qualified Roth contribution program'' means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

#### (2) Separate accounting required

A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

(A) establishes separate accounts (''designated Roth accounts'') for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and

(B) maintains separate recordkeeping with respect to each account.

### (c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

#### (1) Designated Roth contribution

The term ''designated Roth contribution'' means any elective deferral which—

(A) is excludable from gross income of an employee without regard to this section, and

(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

#### (2) Designation limits

The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

#### (3) Rollover contributions

##### (A) In general

A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to—

(i) another designated Roth account of the individual from whose account the payment or distribution was made, or

(ii) a Roth IRA of such individual.

##### (B) Coordination with limit

Any rollover contribution to a designated Roth account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

#### (4) Taxable rollovers to designated Roth accounts

##### (A) In general

Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount re-

quired to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

**(B) Distributions to which paragraph applies**

In the case of an applicable retirement plan which includes a qualified Roth contribution program, this paragraph shall apply to a distribution from such plan other than from a designated Roth account which is contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to the designated Roth account maintained under such plan for the benefit of the individual to whom the distribution is made.

**(C) Coordination with limit**

Any distribution to which this paragraph applies shall not be taken into account for purposes of paragraph (1).

**(D) Other rules**

The rules of subparagraphs (D), (E), and (F) of section 408A(d)(3) (as in effect for taxable years beginning after 2009) shall apply for purposes of this paragraph.

**(E) Special rule for certain transfers**

In the case of an applicable retirement plan which includes a qualified Roth contribution program—

(i) the plan may allow an individual to elect to have the plan transfer any amount not otherwise distributable under the plan to a designated Roth account maintained for the benefit of the individual,

(ii) such transfer shall be treated as a distribution to which this paragraph applies which was contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to such account, and

(iii) the plan shall not be treated as violating the provisions of section 401(k)(2)(B)(i), 403(b)(7)(A)(ii),[1] 403(b)(11), or 457(d)(1)(A), or of section 8433 of title 5, United States Code, solely by reason of such transfer.

**(d) Distribution rules**

For purposes of this title—

**(1) Exclusion**

Any qualified distribution from a designated Roth account shall not be includible in gross income.

**(2) Qualified distribution**

For purposes of this subsection—

**(A) In general**

The term ''qualified distribution'' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

**(B) Distributions within nonexclusion period**

A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

(i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or

(ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

**(C) Distributions of excess deferrals and contributions and earnings thereon**

The term ''qualified distribution'' shall not include any distribution of any excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

**(3) Treatment of distributions of certain excess deferrals**

Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

(A) not be treated as investment in the contract, and

(B) be included in gross income for the taxable year in which such excess is distributed.

**(4) Aggregation rules**

Section 72 shall be applied separately with respect to distributions and payments from a designated Roth account and other distributions and payments from the plan.

**(e) Other definitions**

For purposes of this section—

**(1) Applicable retirement plan**

The term ''applicable retirement plan'' means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b), and

(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

**(2) Elective deferral**

The term ''elective deferral'' means—

(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section

[1] See References in Text note below.

457(b)) of an eligible employer described in section 457(e)(1)(A).

(Added Pub. L. 107–16, title VI, § 617(a), June 7, 2001, 115 Stat. 103; amended Pub. L. 111–240, title II, §§ 2111(a), (b), 2112(a), Sept. 27, 2010, 124 Stat. 2565, 2566; Pub. L. 112–240, title IX, § 902(a), Jan. 2, 2013, 126 Stat. 2371; Pub. L. 113–295, div. A, title II, § 220(k), Dec. 19, 2014, 128 Stat. 4036.)

**Editorial Notes**

REFERENCES IN TEXT

Section 403(b)(7)(A)(ii), referred to in subsec. (c)(4)(E)(iii), probably means section 403(b)(7)(A)(ii) of this title prior to amendment by Pub. L. 116–94, div. O, title I, § 109(c)(2), Dec. 20, 2019, 133 Stat. 3151.

AMENDMENTS

2014—Subsec. (c)(4)(E)(iii). Pub. L. 113–295 substituted ''403(b)(7)(A)(ii)'' for ''403(b)(7)(A)(i)''.

2013—Subsec. (c)(4)(E). Pub. L. 112–240 added subpar. (E).

2010—Subsec. (c)(4). Pub. L. 111–240, § 2112(a), added par. (4).

Subsec. (e)(1)(C). Pub. L. 111–240, § 2111(a), added subpar. (C).

Subsec. (e)(2). Pub. L. 111–240, § 2111(b), amended par. (2) generally. Prior to amendment, text read as follows: ''The term 'elective deferral' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).''

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IX, § 902(b), Jan. 2, 2013, 126 Stat. 2371, provided that: ''The amendment made by this section [amending this section] shall apply to transfers after December 31, 2012, in taxable years ending after such date.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2111(c), Sept. 27, 2010, 124 Stat. 2566, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

Pub. L. 111–240, title II, § 2112(b), Sept. 27, 2010, 124 Stat. 2566, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Sept. 27, 2010].''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

## § 403. Taxation of employee annuities

### (a) Taxability of beneficiary under a qualified annuity plan

#### (1) Distributee taxable under section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

#### (2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

#### (3) Self-employed individuals

For purposes of this subsection, the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

#### (4) Rollover amounts

##### (A) General rule

If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

##### (B) Certain rules made applicable

The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

#### (5) Direct trustee-to-trustee transfer

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

### (b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

#### (1) General rule

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the non-