1998—Subsec. (c)(3). Pub. L. 105–277 substituted ''for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)'' for ''for losses described in subsection (c)(3) or (d) of section 165''.

1993—Subsec. (b)(2)(B). Pub. L. 103–66, § 13201(b)(3)(E), substituted ''1992'' for ''1989''.

Subsec. (f). Pub. L. 103–66, § 13204, struck out heading and text of subsec. (f). Text read as follows: ''This section shall not apply to any taxable year beginning after December 31, 1995.''

EFFECTIVE AND TERMINATION DATES 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.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

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. Alimony and separate maintenance payments.
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 Repealed.]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.
79. Group-term life insurance purchased for employees.
80. Restoration of value of certain securities.
[81. Repealed.]
82. Reimbursement of moving expenses.[1]
83. Property transferred in connection with performance of services.
84. Transfer of appreciated property to political organizations.[1]
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.

[1] So in original. Does not conform to section catchline.

AMENDMENTS

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''.

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. Alimony and separate maintenance payments

(a) General rule

Gross income includes amounts received as alimony or separate maintenance payments.

(b) Alimony or separate maintenance payments defined

For purposes of this section—

(1) In general

The term ''alimony or separate maintenance payment'' means any payment in cash if—

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to

make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

(2) Divorce or separation instrument

The term ''divorce or separation instrument'' means—

(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(B) a written separation agreement, or

(C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(c) Payments to support children

(1) In general

Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

(2) Treatment of certain reductions related to contingencies involving child

For purposes of paragraph (1), if any amount specified in the instrument will be reduced—

(A) on the happening of a contingency specified in the instrument relating to a child (such as attaining a specified age, marrying, dying, leaving school, or a similar contingency), or

(B) at a time which can clearly be associated with a contingency of a kind specified in subparagraph (A),

an amount equal to the amount of such reduction will be treated as an amount fixed as payable for the support of children of the payor spouse.

(3) Special rule where payment is less than amount specified in instrument

For purposes of this subsection, if any payment is less than the amount specified in the instrument, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(d) Spouse

For purposes of this section, the term ''spouse'' includes a former spouse.

(e) Exception for joint returns

This section and section 215 shall not apply if the spouses make a joint return with each other.

(f) Recomputation where excess front-loading of alimony payments

(1) In general

If there are excess alimony payments—

(A) the payor spouse shall include the amount of such excess payments in gross income for the payor spouse's taxable year beginning in the 3rd post-separation year, and

(B) the payee spouse shall be allowed a deduction in computing adjusted gross income for the amount of such excess payments for the payee's taxable year beginning in the 3rd post-separation year.

(2) Excess alimony payments

For purposes of this subsection, the term ''excess alimony payments'' mean the sum of—

(A) the excess payments for the 1st post-separation year, and

(B) the excess payments for the 2nd post-separation year.

(3) Excess payments for 1st post-separation year

For purposes of this subsection, the amount of the excess payments for the 1st post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 1st post-separation year, over

(B) the sum of—

(i) the average of—

(I) the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, reduced by the excess payments for the 2nd post-separation year, and

(II) the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(4) Excess payments for 2nd post-separation year

For purposes of this subsection, the amount of the excess payments for the 2nd post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, over

(B) the sum of—

(i) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(5) Exceptions

(A) Where payment ceases by reason of death or remarriage

Paragraph (1) shall not apply if—

(i) either spouse dies before the close of the 3rd post-separation year, or the payee spouse remarries before the close of the 3rd post-separation year, and

(ii) the alimony or separate maintenance payments cease by reason of such death or remarriage.

(B) Support payments

For purposes of this subsection, the term ''alimony or separate maintenance payment'' shall not include any payment received under a decree described in subsection (b)(2)(C).

(C) Fluctuating payments not within control of payor spouse

For purposes of this subsection, the term ''alimony or separate maintenance payment'' shall not include any payment to the extent it is made pursuant to a continuing

liability (over a period of not less than 3 years) to pay a fixed portion or portions of the income from a business or property or from compensation for employment or self-employment.

(6) Post-separation years

For purposes of this subsection, the term ''1st post-separation years'' means the 1st calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies. The 2nd and 3rd post-separation years shall be the 1st and 2nd succeeding calendar years, respectively.

(g) Cross references

(1) For deduction of alimony or separate maintenance payments, see section 215.

(2) For taxable status of income of an estate or trust in the case of divorce, etc., see section 682.

(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.)

AMENDMENTS

1986—Subsec. (b)(1)(D). Pub. L. 99–514, § 1843(b), struck out ''(and the divorce or separation instrument states that there is no such liability)'' after ''for such payments after the death of the payee spouse''.

Subsec. (c)(2)(B). Pub. L. 99–514, § 1843(d), substituted ''specified in subparagraph (A)'' for ''specified in paragraph (1)''.

Subsec. (f). Pub. L. 99–514, § 1843(c)(1), amended subsec. (f) generally, substituting provisions for the recomputation of liability where there has been excess front-loading of alimony payments for provisions setting forth special rules to prevent excess front-loading of alimony payments.

Subsec. (g). Pub. L. 99–514, § 1843(a), added subsec. (g).

1984—Pub. L. 98–369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a), a general rule as to decree of divorce or separate maintenance in par. (1), written separation agreement in par. (2), and decree for support in par. (3); subsec. (b), payments to support minor children; subsec. (c), principal sum paid in installments, par. (1) stating a general rule and par. (2) the rule where period for payment is more than 10 years; subsec. (d), the rule for husband in case of transferred property; and subsec. (e), cross references to sections 7701(a)(17), 215, and 682.

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULE

Section 1843(c)(2), (3) of Pub. L. 99–514 provided that: ''(2) EFFECTIVE DATES.—

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2)) of the Internal Revenue Code of 1986 executed after December 31, 1986.

''(B) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1987.—The amendments made by paragraph (1) [amending this section] shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1987, but modified on or after such date if the modification expressly provides that the amendments made by paragraph (1) shall apply to such modification.

''(3) TRANSITIONAL RULE.—In the case of any instrument to which the amendment made by paragraph (1) [amending this section] does not apply, paragraph (2) of section 71(f) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall apply only with respect to the first 3 post-separation years.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 422(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 215, 219, 682, 6676, and 7701 of this title] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section) executed after December 31, 1984.

''(2) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1985.—The amendments made by this section shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1985, but modified on or after such date if the modification expressly provides that the amendments made by this section shall apply to such modification.

''(3) REQUIREMENT OF IDENTIFICATION NUMBER.—Section 215(c) of the Internal Revenue Code of 1986 (as amended by subsection (b)) and the amendments made by subsection (c) [amending section 6676 of this title] shall apply to payments made after December 31, 1984.''

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.

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

(a) General rule for annuities

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.

(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 sub-