

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	Repealed.]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	Repealed.]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. <sup>1</sup>
83.	Property transferred in connection with performance of services.
84.	Transfer of appreciated property to political organizations. <sup>1</sup>
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.

<sup>1</sup> 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 re-computation 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-

section (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; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954.

**(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 antici-

pated payments shall be determined as follows:

<b>If the age of the annuitant on the annuity starting date is:</b>	<b>The number of anticipated payments is:</b>
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:

<b>If the combined ages of annuitants are:</b>	<b>The number is:</b>
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)<sup>1</sup> 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.

<sup>1</sup> So in original. Probably should be paragraph "(2)(B)".

**(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 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 January 1, 1954, or the first day of the first period for which the transferee received an amount under the contract as an annuity, whichever is the later.

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 de-

scribed 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), and 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) 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 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, or<sup>2</sup>

(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 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

<sup>2</sup> So in original. The word "or" probably should not appear.

(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), or

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

**(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 unemployment 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.

**(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)—

(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 distribu-

tions 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 1034<sup>3</sup> (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 1034<sup>3</sup> (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 plan (within the meaning of section 414(d)) which is a defined benefit plan, 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 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.

**(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-

<sup>3</sup> See References in Text note below.

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, §§781(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(l)(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.)

## 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

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(l)(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 pur-

poses 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 consideration 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 employee 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(c)(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 reha-

bilitate 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. (i).

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

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 following 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).

#### 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 AMENDMENTS

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 AMENDMENTS

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 an Effective and Termination Dates of 2001 Amendment 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 an Effective and Termination Dates of 2001 Amendment 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

Section 203(c) of Pub. L. 105-34 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.”

Section 303(c) of Pub. L. 105-34 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.”

Section 1075(c) of Pub. L. 105-34 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 AMENDMENTS

Section 361(d) of Pub. L. 104-191 provided that: “The amendments made by this section [amending this section] shall apply to distributions after December 31, 1996.”

Section 1403(b) of Pub. L. 104-188 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].”

Section 1421(e) of Pub. L. 104-188 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.”

Section 1463(b) of Pub. L. 104-188 provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.”

Section 1704(l)(2) of Pub. L. 104-188 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

Section 1101(c) of Pub. L. 99-514 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.

Section 1123(e) of Pub. L. 99-514, 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."

Section 1134(e) of Pub. L. 99-514 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."

Section 1135(b) of Pub. L. 99-514 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.

Section 1826(b)(4) of Pub. L. 99-514 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."

Section 1826(c) of Pub. L. 99-514, 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.

Section 1854(b)(6) of Pub. L. 99-514 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]."

Section 1898(c)(1)(C) of Pub. L. 99-514 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 AMENDMENTS

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.

Section 222(c) of Pub. L. 98-369, 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 repeal 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.

Section 523(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this sec-

tion] 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.

Section 713(d)(1) of Pub. L. 98-369, 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 AMENDMENTS

Section 227(b) of Pub. L. 98-76, 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.”

Section 103(c)(3)(B)(ii) of Pub. L. 97-448 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

Section 236(c) of Pub. L. 97-248, 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.”

Section 265(c) of Pub. L. 97-248 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

Section 312(f) of Pub. L. 97-34, 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 beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Section 1951(d) of Pub. L. 94-455 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.

Section 2001(i)(5), (6) of Pub. L. 93-406 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 AMENDMENTS

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 AMENDMENTS

Section 11(c)(2) of Pub. L. 87-834 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.

Section 1951(b)(1)(B) of Pub. L. 94-455 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.”

#### APPLICABILITY OF SUBSECTION (t)

Section 1011A(c)(13) of Pub. L. 100-647 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 pursu-

ant 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.

**(4) Cross reference**

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 24; Pub. L. 99-514, title I, §§122(a)(1), 123(b)(1), Oct. 22, 1986, 100 Stat. 2109, 2113.)

## AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514, §123(b)(1), which directed that subsec. (a) be amended by substituting “(relating to qualified scholarships)” for “(relating to scholarship and fellowship grants)”, was executed by making the substitution for “(relating to scholarships and fellowship grants)” to reflect the probable intent of Congress.

Pub. L. 99-514, §122(a)(1)(A), substituted “Except as otherwise provided in this section or” for “Except as provided in subsection (b) and”.

Subsec. (b). Pub. L. 99-514, §122(a)(1)(B), (C), inserted “for certain prizes and awards transferred to charities” in heading and added par. (3).

Subsec. (c). Pub. L. 99-514, §122(a)(1)(D), added subsec. (c).

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(a)(1) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 123(b)(1) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99-514, set out as a note under section 1 of this title.

## APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(b)(1) of Pub. L. 99-514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(3) of Pub. L. 100-647, set out as a note under section 861 of this title.

**§ 75. Dealers in tax-exempt securities****(a) Adjustment for bond premium**

In computing the gross income of a taxpayer who holds during the taxable year a short-term municipal bond (as defined in subsection (b)(1) primarily for sale to customers in the ordinary course of his trade or business—

(1) if the gross income of the taxpayer from such trade or business is computed by the use of inventories and his inventories are valued on any basis other than cost, the cost of securities sold (as defined in subsection (b)(2) during such year shall be reduced by an amount equal to the amortizable bond premium which would be disallowed as a deduction for such year by section 171(a)(2) (relating to deduction for amortizable bond premium) if the definition in section 171(d) of the term “bond” did not exclude such municipal bond; or

(2) if the gross income of the taxpayer from such trade or business is computed without the use of inventories, or by use of inventories valued at cost, and the municipal bond is sold or otherwise disposed of during such year, the adjusted basis (computed without regard to this paragraph) of the municipal bond shall be reduced by the amount of the adjustment which would be required under section 1016(a)(5) (relating to adjustment to basis for amortizable bond premium) if the definition in section 171(d) of the term “bond” did not exclude such municipal bond.

Notwithstanding the provisions of paragraph (1), no reduction to the cost of securities sold during the taxable year shall be made in respect of any

obligation described in subsection (b)(1)(A)(ii) which is held by the taxpayer at the close of the taxable year; but in the taxable year in which any such obligation is sold or otherwise disposed of, if such obligation is a municipal bond (as defined in subsection (b)(1)), the cost of securities sold during such year shall be reduced by an amount equal to the adjustment described in paragraph (2), without regard to the fact that the taxpayer values his inventories on any basis other than cost.

**(b) Definitions**

For purposes of subsection (a)—

(1) The term “municipal bond” means any obligation issued by a government or political subdivision thereof if the interest on such obligation is excludable from gross income; but such term does not include such an obligation if—

(A)(i) it is sold or otherwise disposed of by the taxpayer within 30 days after the date of its acquisition by him, or

(ii) its earliest maturity or call date is a date more than 5 years from the date on which it was acquired by the taxpayer; and

(B) when it is sold or otherwise disposed of by the taxpayer—

(i) in the case of a sale, the amount realized, or

(ii) in the case of any other disposition, its fair market value at the time of such disposition,

is higher than its adjusted basis (computed without regard to this section and section 1016(a)(6)).

Determinations under subparagraph (B) shall be exclusive of interest.

(2) The term “cost of securities sold” means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of—

(A) the inventory value of the opening inventory for such year, and

(B) the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Pub. L. 85-866, title I, §2(a), Sept. 2, 1958, 72 Stat. 1606.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-866, §2(a)(2), (3), struck out “short-term” each place it appeared, and inserted sentence to provide that no reduction to cost of securities sold during taxable year shall be made in respect of subsec. (b)(1)(A)(ii) obligations held at close of year, and to permit reduction in cost of securities sold in taxable year sold if obligation is municipal bond.

Subsec. (b)(1). Pub. L. 85-866, §2(a)(1), substituted “municipal bond” for “short-term municipal bond”, designated former subpars. (A) and (B) as (A)(i) and (ii), respectively, and added subpar. (B).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2(c) of Pub. L. 85-866 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1016 of this title] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date.”

**[§ 76. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(14), Oct. 4, 1976, 90 Stat. 1765]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 25, related to inclusion in gross of all income derived from mortgages made, or obligations issued, by a joint-stock land bank.

**§ 77. Commodity credit loans**

**(a) Election to include loans in income**

Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

**(b) Effect of election on adjustments for subsequent years**

If a taxpayer exercises the election provided for in subsection (a) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Secretary a change to a different method is authorized.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

**§ 78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit**

If a domestic corporation chooses to have the benefits of subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year, an amount equal to the taxes deemed to be paid by such corporation under section 902(a) (relating to credit for corporate stockholder in foreign corporation) or under section 960(a)(1) (relating to taxes paid by foreign corporation) for such taxable year shall be treated for purposes of this title (other than section 245) as a dividend received by such domestic corporation from the foreign corporation.

(Added Pub. L. 87-834, §9(b), Oct. 16, 1962, 76 Stat. 1001; amended Pub. L. 94-455, title X, §1033(b)(1), Oct. 4, 1976, 90 Stat. 1628.)

AMENDMENTS

1976—Pub. L. 94-455 substituted “section 902(a)” for “section 902(a)(1)” and “section 960(a)(1)” for “section 960(a)(1)(C)”.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable on different dates depending on the date the distributions were received, see section 1033(c) of Pub. L. 94-455, set out as a note under section 902 of this title.

EFFECTIVE DATE

Section applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec.

31, 1962, see section 9(e) of Pub. L. 87-834, set out as an Effective Date of 1962 Amendment note under section 902 of this title.

**§ 79. Group-term life insurance purchased for employees**

**(a) General rule**

There shall be included in the gross income of an employee for the taxable year an amount equal to the cost of group-term life insurance on his life provided for part or all of such year under a policy (or policies) carried directly or indirectly by his employer (or employers); but only to the extent that such cost exceeds the sum of—

- (1) the cost of \$50,000 of such insurance, and
- (2) the amount (if any) paid by the employee toward the purchase of such insurance.

**(b) Exceptions**

Subsection (a) shall not apply to—

(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and is disabled (within the meaning of section 72(m)(7)),

(2) the cost of any portion of the group-term life insurance on the life of an employee provided during part or all of the taxable year of the employee under which—

- (A) the employer is directly or indirectly the beneficiary, or
- (B) a person described in section 170(c) is the sole beneficiary,

for the entire period during such taxable year for which the employee receives such insurance, and

(3) the cost of any group-term life insurance which is provided under a contract to which section 72(m)(3) applies.

**(c) Determination of cost of insurance**

For purposes of this section and section 6052, the cost of group-term insurance on the life of an employee provided during any period shall be determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by regulations by the Secretary.

**(d) Nondiscrimination requirements**

**(1) In general**

In the case of a discriminatory group-term life insurance plan—

- (A) subsection (a)(1) shall not apply with respect to any key employee, and
- (B) the cost of group-term life insurance on the life of any key employee shall be the greater of—
  - (i) such cost determined without regard to subsection (c), or
  - (ii) such cost determined with regard to subsection (c).

**(2) Discriminatory group-term life insurance plan**

For purposes of this subsection, the term “discriminatory group-term life insurance plan” means any plan of an employer for providing group-term life insurance unless—

(A) the plan does not discriminate in favor of key employees as to eligibility to participate, and

(B) the type and amount of benefits available under the plan do not discriminate in favor of participants who are key employees.

**(3) Nondiscriminatory eligibility classification**

**(A) In general**

A plan does not meet requirements of subparagraph (A) of paragraph (2) unless—

- (i) such plan benefits 70 percent or more of all employees of the employer,
- (ii) at least 85 percent of all employees who are participants under the plan are not key employees,
- (iii) such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of key employees, or
- (iv) in the case of a plan which is part of a cafeteria plan, the requirements of section 125 are met.

**(B) Exclusion of certain employees**

For purposes of subparagraph (A), there may be excluded from consideration—

- (i) employees who have not completed 3 years of service;
- (ii) part-time or seasonal employees;
- (iii) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if the benefits provided under the plan were the subject of good faith bargaining between such employee representatives and such employer or employers; and
- (iv) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

**(4) Nondiscriminatory benefits**

A plan does not meet the requirements of paragraph (2)(B) unless all benefits available to participants who are key employees are available to all other participants.

**(5) Special rule**

A plan shall not fail to meet the requirements of paragraph (2)(B) merely because the amount of life insurance on behalf of the employees under the plan bears a uniform relationship to the total compensation or the basic or regular rate of compensation of such employees.

**(6) Key employee defined**

For purposes of this subsection, the term “key employee” has the meaning given to such term by paragraph (1) of section 416(i). Such term also includes any former employee if such employee when he retired or separated from service was a key employee.

**(7) Exemption for church plans****(A) In general**

This subsection shall not apply to a church plan maintained for church employees.

**(B) Definitions**

For purposes of subparagraph (A), the terms “church plan” and “church employee” have the meaning given such terms by paragraphs (1) and (3)(B) of section 414(e), respectively, except that—

(i) section 414(e) shall be applied by substituting “section 501(c)(3)” for “section 501” each place it appears, and

(ii) the term “church employee” shall not include an employee of—

(I) an organization described in section 170(b)(1)(A)(ii) above the secondary school level (other than a school for religious training),

(II) an organization described in section 170(b)(1)(A)(iii), and

(III) an organization described in section 501(c)(3), the basis of the exemption for which is substantially similar to the basis for exemption of an organization described in subclause (II).

**(8) Treatment of former employees**

To the extent provided in regulations, this subsection shall be applied separately with respect to former employees.

**(e) Employee includes former employee**

For purposes of this section, the term “employee” includes a former employee.

(Added Pub. L. 88-272, title II, §204(a)(1), Feb. 26, 1964, 78 Stat. 36; amended Pub. L. 89-97, title I, §106(d)(3), July 30, 1965, 79 Stat. 337; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-248, title II, §244(a), Sept. 3, 1982, 96 Stat. 523; Pub. L. 98-369, div. A, title II, §223(a), (b), July 18, 1984, 98 Stat. 775; Pub. L. 99-514, title XI, §1151(c)(1), title XVIII, §1827(a)(1), (c), (d), Oct. 22, 1986, 100 Stat. 2503, 2850, 2851; Pub. L. 100-647, title V, §5013(a), Nov. 10, 1988, 102 Stat. 3666; Pub. L. 101-140, title II, §203(a)(1), (b)(1)(A), Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101-508, title XI, §11703(e)(1), Nov. 5, 1990, 104 Stat. 1388-517.)

## AMENDMENTS

1990—Subsec. (d)(6). Pub. L. 101-508 substituted “any former employee” for “any retired employee”.

1989—Subsec. (d). Pub. L. 101-140, §203(a)(1), amended subsec. (d) to read as if amendments by Pub. L. 99-514, §1151(c)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(7). Pub. L. 101-140, §203(b)(1)(A), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.”

1988—Subsec. (c). Pub. L. 100-647 struck out at end “In the case of an employee who has attained age 64, the cost prescribed shall not exceed the cost with respect to such individual if he were age 63.”

1986—Subsec. (d). Pub. L. 99-514, §1151(c)(1), amended subsec. (d) generally, substituting “In the case of a group-term life insurance plan which is a discriminatory employee benefit plan, subsection (a)(1) shall apply only to the extent provided in section 89.” for

provisions formerly designated as pars. (1)(A) and (B) that in the case of a discriminatory group-term life insurance plan subsec. (a)(1) shall not apply with respect to any key employee and the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsec. (c), and striking out pars. (2) to (7) relating to classifications and eligibility classifications of nondiscriminatory plans.

Subsec. (d)(1)(B). Pub. L. 99-514, §1827(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsection (c).”

Subsec. (d)(6). Pub. L. 99-514, §1827(c), struck out “, except that subparagraph (A)(iv) of such paragraph shall be applied by not taking into account employees described in paragraph (3)(B) who are not participants in the plan” from first sentence and inserted provision that such term also includes any retired employee if such employee when he retired or separated from service was a key employee.

Subsec. (d)(8). Pub. L. 99-514, §1827(d), added par. (8). 1984—Subsec. (b)(1). Pub. L. 98-369, §223(a)(2), struck out “either has reached the retirement age with respect to such employer or” before “is disabled”.

Subsec. (d)(1). Pub. L. 98-369, §223(b), designated existing provisions as subpar. (A) and added subpar. (B). Subsec. (e). Pub. L. 98-369, §223(a)(1), added subsec. (e).

1982—Subsec. (d). Pub. L. 97-248 added subsec. (d).

1976—Subsec. (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1965—Subsec. (b)(1). Pub. L. 89-97 substituted “section 72(m)(7)” for “paragraph (3) of section 213(g), determined without regard to paragraph (4) thereof”.

## EFFECTIVE DATE OF 1990 AMENDMENT

Section 11703(e)(2) of Pub. L. 101-508 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to employees separating from service after the date of the enactment of this Act [Nov. 5, 1990].”

## EFFECTIVE DATE OF 1989 AMENDMENT

Section 203(c) of Pub. L. 101-140 provided that: “The amendments made by this section [amending this section and sections 105, 117, 120, 125, 127, 129, 132, 162, 401, 414, 505, 3121, 3231, 3306, 3401, 4976, and 6652 of this title, section 409 of title 42, The Public Health and Welfare, and provisions set out as notes under sections 89 and 3121 of this title] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99-514, see section 1151(k) set out below].”

## EFFECTIVE DATE OF 1988 AMENDMENT

Section 5013(b) of Pub. L. 100-647 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.”

## EFFECTIVE DATE OF 1986 AMENDMENT

Section 1151(k) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1011B(a)(25), (26), Nov. 10, 1988, 102 Stat. 3486, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall apply to years beginning after the later of—

“(A) December 31, 1987, or

“(B) the earlier of—

“(i) the date which is 3 months after the date on which the Secretary of the Treasury or his delegate issues such regulations as are necessary to carry out the provisions of section 89 of the Internal Revenue Code of 1986 (as added by this section), or

“(ii) December 31, 1988.

Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) [amend-

ing section 414 of this title] shall, to the extent they relate to sections 106, 162(i)(2), and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986.

“(2) SPECIAL RULE FOR COLLECTIVE BARGAINING PLAN.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall not apply to employees covered by such an agreement in years beginning before the earlier of—

“(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

“(B) January 1, 1991.

A plan shall not be required to take into account employees to which the preceding sentence applies for purposes of applying section 89 of the Internal Revenue Code of 1986 (as added by this section) to employees to which the preceding sentence does not apply for any year preceding the year described in the preceding sentence.

“(3) EXCEPTION FOR CERTAIN GROUP-TERM INSURANCE PLANS.—In the case of a plan described in section 223(d)(2) of the Tax Reform Act of 1984 [section 232(d)(2) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note below], such plan shall be treated as meeting the requirements of section 89 of the Internal Revenue Code of 1986 (as added by this section) with respect to individuals described in section 223(d)(2) of such Act. An employer may elect to disregard such individuals in applying section 89 of such Code (as so added) to other employees of the employer.

“(4) SPECIAL RULE FOR CHURCH PLANS.—In the case of a church plan (within the meaning of section 414(e)(3) of the Internal Revenue Code of 1986) maintaining an insured accident and health plan, the amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall apply to years beginning after December 31, 1988.

“(5) CAFETERIA PLANS.—The amendments made by subsection (d)(2) [amending sections 3121 and 3306 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1983.

“(6) CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—If an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 makes an election under this paragraph with respect to a plan described in section 125(c)(2)(C) of such Code, the amendments made by this section shall apply with respect to such plan for plan years beginning after the date of the enactment of this Act [Oct. 22, 1986].”

Section 1827(a)(2) of Pub. L. 99-514 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 1827(c), (d) 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.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 223(d) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, title XVIII, § 1827(b), Oct. 22, 1986, 100 Stat. 2095, 2850, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 83 of this title] shall apply to taxable years beginning after December 31, 1983.

“(2) INCLUSION OF FORMER EMPLOYEES IN THE CASE OF EXISTING GROUP-TERM INSURANCE PLANS.—

“(A) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall not apply—

“(i) to any group-term life insurance plan of the employer in existence on January 1, 1984, or

“(ii) to any group-term life insurance plan of the employer (or a successor employer) which is a comparable successor to a plan described in clause (i), but only with respect to an individual who attained age 55 on or before January 1, 1984, and was employed by such employer (or a predecessor employer) at any time during 1983. Such amendments also shall not apply to any employee who retired from employment on or before January 1, 1984, and who, when he retired, was covered by the plan (or a predecessor plan).

“(B) SPECIAL RULE IN THE CASE OF DISCRIMINATORY GROUP-TERM LIFE INSURANCE PLAN.—In the case of any plan which, after December 31, 1986, is a discriminatory group-term life insurance plan (as defined in section 79(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), subparagraph (A) shall not apply in the case of any individual retiring under such plan after December 31, 1986.

“(C) BENEFITS TO CERTAIN RETIRED INDIVIDUALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING WHETHER PLAN IS DISCRIMINATORY.—For purposes of determining whether a plan described in subparagraph (A) meets the requirements of section 79(d) of the Internal Revenue Code of 1986 with respect to group-term life insurance for former employees, coverage provided to employees who retired on or before December 31, 1986, may, at the employer's election, be disregarded.

“(D) COMPARABLE SUCCESSOR PLANS.—For purposes of subparagraph (A), a plan shall not fail to be treated as a comparable successor to a plan described in subparagraph (A)(i) with respect to any employee whose benefits do not increase under the successor plan.”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 244(b) of Pub. L. 97-248 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.”

#### 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.

#### EFFECTIVE DATE

Section 204(d) of Pub. L. 88-272, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by subsections (a) [amending this section and section 7701 of this title] and (c) [amending sections 6052 and 6678 of this title] and paragraph (3) of section 6652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 221(b)(2) of this Act), shall apply with respect to group-term life insurance provided after December 31, 1963, in taxable years ending after such date. The amendments made by subsection (b) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1963, in the form of group-term life insurance provided after such date. In applying section 79(b) of the Internal Revenue Code of 1986 (as added by subsection (a)(1) of this section) to a taxable year beginning before May 1, 1964, if paragraph (2)(B) of such section applies with respect to an employee for the period beginning May 1, 1964, and ending with the close of his first taxable year ending after April 30, 1964, such paragraph (2)(B) shall be treated as applying with respect to such employee for the period beginning January 1, 1964, and ending April 30, 1964.”

#### NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101-136 to be used to implement or enforce section 1151 of Pub. L. 99-514 or the amendments made by such section, see section

528 of Pub. L. 101-136, set out as a note under section 89 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.

**§ 80. Restoration of value of certain securities**

**(a) General rule**

In the case of a domestic corporation subject to the tax imposed by section 11 or 801, if the value of any security (as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing of property to which such security was related, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165,

is restored in whole or in part during any taxable year by reason of any recovery of money or other property in respect of the property to which such security was related, the value so restored (to the extent that, when added to the value so restored during prior taxable years, it does not exceed the amount of the loss described in paragraph (2)) shall, except as provided in subsection (b), be included in gross income for the taxable year in which such restoration occurs.

**(b) Reduction for failure to receive tax benefit**

The amount otherwise includible in gross income under subsection (a) in respect of any security shall be reduced by an amount equal to the amount (if any) of the loss described in subsection (a)(2) which did not result in a reduction of the taxpayer's tax under this subtitle for any taxable year, determined under regulations prescribed by the Secretary.

**(c) Character of income**

For purposes of this subtitle—

(1) Except as provided in paragraph (2), the amount included in gross income under this section shall be treated as ordinary income.

(2) If the loss described in subsection (a)(2) was taken into account as a loss from the sale or exchange of a capital asset, the amount included in gross income under this section shall be treated as long-term capital gain.

**(d) Treatment under foreign expropriation loss recovery provisions**

This section shall not apply to any recovery of a foreign expropriation loss to which section 1351 applies.

(Added Pub. L. 89-384, §1(b)(1), Apr. 8, 1966, 80 Stat. 101; amended Pub. L. 94-455, title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat.

1793, 1834; Pub. L. 98-369, div. A, title II, §211(b)(2), July 18, 1984, 98 Stat. 754.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted “801” for “802”.

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

Subsec. (c)(1). Pub. L. 94-455, §1901(b)(3)(K), substituted “ordinary income” for “gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 1(b)(3) of Pub. L. 89-384, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this subsection [enacting this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to losses described in section 80(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by paragraph (1) of this subsection) which were sustained after December 31, 1958.”

**[§ 81. Repealed. Pub. L. 100-203, title X, § 10201(b)(1), Dec. 22, 1987, 101 Stat. 1330-387]**

Section, added Pub. L. 89-722, §1(b)(1), Nov. 2, 1966, 80 Stat. 1152; amended Pub. L. 93-625, §4(c)(1), Jan. 3, 1975, 88 Stat. 2111; Pub. L. 94-455, title VI, §605(b), Oct. 4, 1976, 90 Stat. 1575; Pub. L. 99-514, title VIII, §805(c)(1)(A), Oct. 22, 1986, 100 Stat. 2362, included increase in vacation pay suspense account in gross income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100-203, set out as an Effective Date of 1987 Amendment note under section 404 of this title.

**§ 82. Reimbursement for expenses of moving**

Except as provided in section 132(a)(6), there shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

(Added Pub. L. 91-172, title II, §231(b), Dec. 30, 1969, 83 Stat. 579; amended Pub. L. 103-66, title XIII, §13213(d)(3)(A), Aug. 10, 1993, 107 Stat. 474.)

AMENDMENTS

1993—Pub. L. 103-66 substituted “Except as provided in section 132(a)(6), there shall” for “There shall”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103-66, set out as a note under section 62 of this title.

## EFFECTIVE DATE

Section applicable to taxable years beginning after December 31, 1969, except that it does not apply to moving expenses paid or incurred before July 1, 1970, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969, see section 231(d) of Pub. L. 91-172, set out as an Effective Date of 1969 Amendment note under section 217 of this title.

## MOVING EXPENSES OF MEMBERS OF THE UNIFORMED SERVICES

Withholding, reporting, inclusion within adjusted gross income, and deduction for reimbursement for moving expenses of members of the uniformed services, see section 2 of Pub. L. 93-490, Oct. 26, 1974, 88 Stat. 1466, set out as a note under section 217 of this title.

**§ 83. Property transferred in connection with performance of services****(a) General rule**

If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of—

(1) the fair market value of such property (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over

(2) the amount (if any) paid for such property, shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.

**(b) Election to include in gross income in year of transfer****(1) In general**

Any person who performs services in connection with which property is transferred to any person may elect to include in his gross income for the taxable year in which such property is transferred, the excess of—

(A) the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), over

(B) the amount (if any) paid for such property.

If such election is made, subsection (a) shall not apply with respect to the transfer of such property, and if such property is subsequently forfeited, no deduction shall be allowed in respect of such forfeiture.

**(2) Election**

An election under paragraph (1) with respect to any transfer of property shall be made in

such manner as the Secretary prescribes and shall be made not later than 30 days after the date of such transfer. Such election may not be revoked except with the consent of the Secretary.

**(c) Special rules**

For purposes of this section—

**(1) Substantial risk of forfeiture**

The rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of such property are conditioned upon the future performance of substantial services by any individual.

**(2) Transferability of property**

The rights of a person in property are transferable only if the rights in such property of any transferee are not subject to a substantial risk of forfeiture.

**(3) Sales which may give rise to suit under section 16(b) of the Securities Exchange Act of 1934**

So long as the sale of property at a profit could subject a person to suit under section 16(b) of the Securities Exchange Act of 1934, such person's rights in such property are—

(A) subject to a substantial risk of forfeiture, and

(B) not transferable.

(4) For purposes of determining an individual's basis in property transferred in connection with the performance of services, rules similar to the rules of section 72(w) shall apply.

**(d) Certain restrictions which will never lapse****(1) Valuation**

In the case of property subject to a restriction which by its terms will never lapse, and which allows the transferee to sell such property only at a price determined under a formula, the price so determined shall be deemed to be the fair market value of the property unless established to the contrary by the Secretary, and the burden of proof shall be on the Secretary with respect to such value.

**(2) Cancellation**

If, in the case of property subject to a restriction which by its terms will never lapse, the restriction is canceled, then, unless the taxpayer establishes—

(A) that such cancellation was not compensatory, and

(B) that the person, if any, who would be allowed a deduction if the cancellation were treated as compensatory, will treat the transaction as not compensatory, as evidenced in such manner as the Secretary shall prescribe by regulations,

the excess of the fair market value of the property (computed without regard to the restrictions) at the time of cancellation over the sum of—

(C) the fair market value of such property (computed by taking the restriction into account) immediately before the cancellation, and

(D) the amount, if any, paid for the cancellation,

shall be treated as compensation for the taxable year in which such cancellation occurs.

**(e) Applicability of section**

This section shall not apply to—

- (1) a transaction to which section 421 applies,
- (2) a transfer to or from a trust described in section 401(a) or a transfer under an annuity plan which meets the requirements of section 404(a)(2),
- (3) the transfer of an option without a readily ascertainable fair market value,
- (4) the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant, or
- (5) group-term life insurance to which section 79 applies.

**(f) Holding period**

In determining the period for which the taxpayer has held property to which subsection (a) applies, there shall be included only the period beginning at the first time his rights in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier.

**(g) Certain exchanges**

If property to which subsection (a) applies is exchanged for property subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject, and if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applied to such exchange, or if such exchange was pursuant to the exercise of a conversion privilege—

- (1) such exchange shall be disregarded for purposes of subsection (a), and
- (2) the property received shall be treated as property to which subsection (a) applies.

**(h) Deduction by employer**

In the case of a transfer of property to which this section applies or a cancellation of a restriction described in subsection (d), there shall be allowed as a deduction under section 162, to the person for whom were performed the services in connection with which such property was transferred, an amount equal to the amount included under subsection (a), (b), or (d)(2) in the gross income of the person who performed such services. Such deduction shall be allowed for the taxable year of such person in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed such services.

(Added Pub. L. 91-172, title III, §321(a), Dec. 30, 1969, 83 Stat. 588; amended Pub. L. 94-455, title XIX, §§1901(a)(15), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97-34, title II, §252(a), Aug. 13, 1981, 95 Stat. 260; Pub. L. 97-448, title I, §102(k)(1), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98-369, div. A, title II, §223(c), July 18, 1984, 98 Stat. 775; Pub. L. 99-514, title XVIII, §1827(e), Oct. 22, 1986, 100 Stat. 2851; Pub. L. 101-508, title XI, §11801(a)(5), Nov. 5, 1990, 104 Stat. 1388-520; Pub. L. 108-357, title VIII, §906(b), Oct. 22, 2004, 118 Stat. 1654.)

REFERENCES IN TEXT

Section 16(b) of the Securities Exchange Act of 1934, referred to in subsec. (c)(3), is classified to section 78p(b) of Title 15, Commerce and Trade.

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108-357 added par. (4).

1990—Subsec. (i). Pub. L. 101-508 struck out subsec. (i) “Transition rules” which read as follows: “This section shall apply to property transferred after June 30, 1969, except that this section shall not apply to property transferred—

“(1) pursuant to a binding written contract entered into before April 22, 1969,

“(2) upon the exercise of an option granted before April 22, 1969,

“(3) before May 1, 1970, pursuant to a written plan adopted and approved before July 1, 1969,

“(4) before January 1, 1973, upon the exercise of an option granted pursuant to a binding written contract entered into before April 22, 1969, between a corporation and the transferor requiring the transferor to grant options to employees of such corporation (or a subsidiary of such corporation) to purchase a determinable number of shares of stock of such corporation, but only if the transferee was an employee of such corporation (or a subsidiary of such corporation) on or before April 22, 1969, or

“(5) in exchange for (or pursuant to the exercise of a conversion privilege contained in) property transferred before July 1, 1969, or for property to which this section does not apply (by reason of paragraphs (1), (2), (3), or (4)), if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, or if gain or loss is not otherwise required to be recognized upon the exercise of such conversion privilege, and if the property received in such exchange is subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject.”

1986—Subsec. (e)(5). Pub. L. 99-514 struck out “the cost of” before “group-life insurance”.

1984—Subsec. (e)(5). Pub. L. 98-369 added par. (5).

1983—Subsec. (c)(3). Pub. L. 97-448 substituted “Securities Exchange Act of 1934” for “Securities and Exchange Act of 1934” in heading and text.

1981—Subsec. (c)(3). Pub. L. 97-34 added par. (3).

1976—Subsec. (b)(2). Pub. L. 94-455, §1901(a)(15), struck out “(or, if later, 30 days after the date of the enactment of the Tax Reform Act of 1969)” after “after the date of such transfer”, and §1906(b)(13)(A), “or his delegate” after “Secretary” wherever appearing.

Subsec. (d)(1), (2)(B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to distributions on or after Oct. 22, 2004, see section 906(c) of Pub. L. 108-357, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 223(d)(1) of Pub. L. 98-369, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by 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 1981 AMENDMENT

Section 252(c) of Pub. L. 97-34, as amended by Pub. L. 97-448, title I, §102(k)(2), 96 Stat. 2374, provided that: "The amendment made by subsection (a) [amending this section] and the provisions of subsection (b) [set out below] shall apply to transfers after December 31, 1981."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(15) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

#### EFFECTIVE DATE

Section 321(d) of Pub. L. 91-172 provided that: "The amendments made by subsections (a) and (c) [amending sections 402, 403, and 404 of this title] shall apply to taxable years ending after June 30, 1969. The amendments made by subsection (b) [enacting this section] shall apply with respect to contributions made and premiums paid after August 1, 1969."

#### 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.

#### 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.

#### APPLICATION OF AMENDMENTS MADE BY SECTION 252 OF PUB. L. 97-34

Section 1879(p) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1018(q)(3), Nov. 10, 1988, 102 Stat. 3585, provided that:

"(1) Notwithstanding subsection (c) of section 252 of the Economic Recovery Tax Act of 1981 [section 252(c) of Pub. L. 97-34, set out above], the amendment made by subsection (a) of such section 252 [amending this section] (and the provisions of subsection (b) of such section 252 [set out below]) shall apply to any transfer of stock to any person if—

"(A) such transfer occurred in November or December of 1973 and was pursuant to the exercise of an option granted in November or December of 1971,

"(B) in December 1973 the corporation granting the option was acquired by another corporation in a transaction qualifying as a reorganization under section 368 of the Internal Revenue Code of 1954 [now 1986],

"(C) the fair market value (as of July 1, 1974) of the stock received by such person in the reorganization in exchange for the stock transferred to him pursuant to the exercise of such option was less than 50 percent of the fair market value of the stock so received (as of December 4, 1973),

"(D) in 1975 or 1976 such person sold substantially all of the stock received in such reorganization, and

"(E) such person makes an election under this section at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

"(2) LIMITATION ON AMOUNT OF BENEFIT.—Paragraph (1) shall not apply to transfers with respect to any employee to the extent that the application of paragraph (1) with respect to such employee would (but for this paragraph) result in a reduction in liability for income tax with respect to such employee for all taxable years in excess of \$100,000 (determined without regard to any interest).

"(3) STATUTE OF LIMITATIONS.—

"(A) OVERPAYMENTS.—If refund or credit of any overpayment of tax resulting from the application of paragraph (1) is prevented on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 6-month period.

"(B) DEFICIENCIES.—If the assessment of any deficiency of tax resulting from the application of paragraph (1) is prevented on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, assessment of such deficiency (to the extent attributable to the application of paragraph (1)) may, nevertheless, be made within such 6-month period."

#### TIME FOR MAKING CERTAIN SECTION 83(b) ELECTIONS

Section 556 of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, title XVIII, §1855(b), Oct. 22, 1986, 100 Stat. 2095, 2882, provided that: "In the case of any transfer of property in connection with the performance of services on or before November 18, 1982, the election permitted by section 83(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] may be made, notwithstanding paragraph (2) of such section 83(b), with the income tax return for any taxable year ending after July 18, 1984, and beginning before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] if—

"(1) the amount paid for such property was not less than its fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), and

"(2) the election is consented to by the person transferring such property.

The election shall contain that information required by the Secretary of the Treasury or his delegate for elections permitted by such section 83(b). The period for assessing any tax attributable to a transfer of property which is the subject of an election made pursuant to this section shall not expire before the date which is 3 years after the date such election was made."

#### PROPERTY SUBJECT TO TRANSFER RESTRICTIONS TO COMPLY WITH "POOLING-OF-INTERESTS ACCOUNTING" RULES

Section 252(b) of Pub. L. 97-34, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided, effective with respect to taxable years ending after Dec. 31, 1981, that: "For purposes of section 83 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], property is subject to substantial risk of forfeiture and is not transferable so long as such property is subject to a restriction on transfer to comply with the "Pooling-of-Interests Accounting" rules set forth in Accounting Series Release Numbered 130 ((10/5/72) 37 FR 20937; 17 CFR 211.130) and Accounting Series Release Numbered 135 ((1/18/73) 38 FR 1734; 17 CFR 211.135)."

### § 84. Transfer of appreciated property to political organization

#### (a) General rule

If—

(1) any person transfers property to a political organization, and

(2) the fair market value of such property exceeds its adjusted basis,  
then for purposes of this chapter the transferor shall be treated as having sold such property to the political organization on the date of the transfer, and the transferor shall be treated as having realized an amount equal to the fair market value of such property on such date.

**(b) Basis of property**

In the case of a transfer of property to a political organization to which subsection (a) applies, the basis of such property in the hands of the political organization shall be the same as it would be in the hands of the transferor, increased by the amount of gain recognized to the transferor by reason of such transfer.

**(c) Political organization defined**

For purposes of this section, the term “political organization” has the meaning given to such term by section 527(e)(1).

(Added Pub. L. 93-625, §13(a)(1), Jan. 3, 1975, 88 Stat. 2120.)

EFFECTIVE DATE

Section 13(b) of Pub. L. 93-625 provided that: “The amendments made by subsection (a) [enacting this section] shall apply to transfers made after May 7, 1974, in taxable years ending after such date.”

NONRECOGNITION OF GAIN OR LOSS WHERE ORGANIZATION SOLD CONTRIBUTED PROPERTY BEFORE AUGUST 2, 1973

Section 13(c) of Pub. L. 93-625 provided that in the case of the sale or exchange of property before Aug. 2, 1973, which was acquired by the exempt political organization by contribution, no gain or loss shall be recognized by such organization.

**§ 85. Unemployment compensation**

**(a) General rule**

In the case of an individual, gross income includes unemployment compensation.

**(b) Unemployment compensation defined**

For purposes of this section, the term “unemployment compensation” means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

**(c) Special rule for 2009**

In the case of any taxable year beginning in 2009, gross income shall not include so much of the unemployment compensation received by an individual as does not exceed \$2,400.

(Added Pub. L. 95-600, title I, §112(a), Nov. 6, 1978, 92 Stat. 2777; amended Pub. L. 97-34, title I, §103(c)(1), Aug. 13, 1981, 95 Stat. 188; Pub. L. 97-248, title VI, §611(a), Sept. 3, 1982, 96 Stat. 706; Pub. L. 98-21, title I, §§121(f)(1), 122(c)(2), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 99-514, title I, §121, Oct. 22, 1986, 100 Stat. 2109; Pub. L. 111-5, div. B, title I, §1007(a), Feb. 17, 2009, 123 Stat. 317.)

AMENDMENTS

2009—Subsec. (c). Pub. L. 111-5 added subsec. (c).  
1986—Subsec. (a). Pub. L. 99-514 substituted “General rule” for “In general” in heading and amended text generally. Prior to amendment, text read as follows: “If the sum for the taxable year of the adjusted gross in-

come of the taxpayer (determined without regard to this section, section 86 and section 221) and the unemployment compensation exceeds the base amount, gross income for the taxable year includes unemployment compensation in an amount equal to the lesser of—

“(1) one-half of the amount of the excess of such sum over the base amount, or

“(2) the amount of the unemployment compensation.”

Subsecs. (b), (c). Pub. L. 99-514, in amending section generally, redesignated former subsec. (c) as (b) and struck out former subsec. (b), “Base amount defined”, which read as follows: “For purposes of this section, the term ‘base amount’ means—

“(1) except as provided in paragraphs (2) and (3), \$12,000,

“(2) \$18,000, in the case of a joint return under section 6013, or

“(3) zero, in the case of a taxpayer who—

“(A) is married at the close of the taxable year (within the meaning of section 143) but does not file a joint return for such year, and

“(B) does not live apart from his spouse at all times during the taxable year.”

1983—Subsec. (a). Pub. L. 98-21, §122(c)(2), struck out “, section 105(d),” after “section 86”.

Pub. L. 98-21, §121(f)(1), inserted “section 86,” after “this section,”.

1982—Subsec. (b)(1). Pub. L. 97-248, §611(a)(1), substituted “\$12,000” for “\$20,000”.

Subsec. (b)(2). Pub. L. 97-248, §611(a)(2), substituted “\$18,000” for “\$25,000”.

1981—Subsec. (a). Pub. L. 97-34 substituted “this section, section 105(d), and section 221” for “this section and without regard to section 105(d)” in parenthetical provision preceding par. (1).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1007(b), Feb. 17, 2009, 123 Stat. 317, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, see section 151(b) of Pub. L. 99-514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(f)(1) of Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

Amendment by section 122(c)(2) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual’s annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual’s first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 611(b) of Pub. L. 97-248, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “(1) COMPENSATION PAID AFTER 1981.—The amendments made by this section [amending this section] shall apply to payments of unemployment compensation made after December 31, 1981, in taxable years ending after such date.

“(2) NO ADDITION TO TAX FOR UNDERPAYMENT OF ESTIMATED TAX ATTRIBUTABLE TO APPLICATION OF AMENDMENTS TO COMPENSATION PAID IN 1982.—No addition to tax shall be made under section 6654 of the Internal

Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any underpayment to the extent such underpayment is attributable to unemployment compensation which is received during 1982 and which (but for the amendments made by subsection (a)) would not be includable in gross income.

“(3) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxable year (other than a calendar year) which includes January 1, 1982—

“(A) the amendments made by this section shall be applied by taking into account the entire amount of unemployment compensation received during such taxable year, but

“(B) the increase in gross income for such taxable year as a result of such amendments shall not exceed the amount of unemployment compensation paid after December 31, 1981.

“(4) UNEMPLOYMENT COMPENSATION DEFINED.—For purposes of this subsection, the term ‘unemployment compensation’ has the meaning given to such term by section 85(c) of the Internal Revenue Code of 1986.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 103(d) of Pub. L. 97-34, set out as a note under section 62 of this title.

#### EFFECTIVE DATE

Section 112(d) of Pub. L. 95-600, as amended by Pub. L. 98-369, div. A, title X, §1075(a), July 18, 1984, 98 Stat. 1053, provided that: “The amendments made by this section [enacting this section and section 6050B of this title] shall apply to payments of unemployment compensation made after December 31, 1978, in taxable years ending after such date, except that such amendments shall not apply to payments made for weeks of unemployment ending before December 1, 1978.”

#### WAIVER OF STATUTE OF LIMITATIONS

Pub. L. 98-369, div. A, title X, §1075(b), July 18, 1984, 98 Stat. 1053, provided that: “If credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) [amending section 112(d) of Pub. L. 95-600, set out as an Effective Date note above] is barred on the date of the enactment of this Act [July 18, 1984] or at any time during the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.”

### § 86. Social security and tier 1 railroad retirement benefits

#### (a) In general

##### (1) In general

Except as provided in paragraph (2), gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

(A) one-half of the social security benefits received during the taxable year, or

(B) one-half of the excess described in subsection (b)(1).

##### (2) Additional amount

In the case of a taxpayer with respect to whom the amount determined under subsection (b)(1)(A) exceeds the adjusted base amount, the amount included in gross income under this section shall be equal to the lesser of—

(A) the sum of—

(i) 85 percent of such excess, plus

(ii) the lesser of the amount determined under paragraph (1) or an amount equal to one-half of the difference between the adjusted base amount and the base amount of the taxpayer, or

(B) 85 percent of the social security benefits received during the taxable year.

#### (b) Taxpayers to whom subsection (a) applies

##### (1) In general

A taxpayer is described in this subsection if—

(A) the sum of—

(i) the modified adjusted gross income of the taxpayer for the taxable year, plus

(ii) one-half of the social security benefits received during the taxable year, exceeds

(B) the base amount.

##### (2) Modified adjusted gross income

For purposes of this subsection, the term “modified adjusted gross income” means adjusted gross income—

(A) determined without regard to this section and sections 135, 137, 199, 221, 222, 911, 931, and 933, and

(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

#### (c) Base amount and adjusted base amount

For purposes of this section—

##### (1) Base amount

The term “base amount” means—

(A) except as otherwise provided in this paragraph, \$25,000,

(B) \$32,000 in the case of a joint return, and

(C) zero in the case of a taxpayer who—

(i) is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

(ii) does not live apart from his spouse at all times during the taxable year.

##### (2) Adjusted base amount

The term “adjusted base amount” means—

(A) except as otherwise provided in this paragraph, \$34,000,

(B) \$44,000 in the case of a joint return, and

(C) zero in the case of a taxpayer described in paragraph (1)(C).

#### (d) Social security benefit

##### (1) In general

For purposes of this section, the term “social security benefit” means any amount received by the taxpayer by reason of entitlement to—

(A) a monthly benefit under title II of the Social Security Act, or

(B) a tier 1 railroad retirement benefit.

##### (2) Adjustment for repayments during year

###### (A) In general

For purposes of this section, the amount of social security benefits received during any

taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

**(B) Denial of deduction**

If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

**(3) Workmen's compensation benefits substituted for social security benefits**

For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term "social security benefit" includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

**(4) Tier 1 railroad retirement benefit**

For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" means—

(A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being paid) had been included in the term "employment" as defined in the Social Security Act, and

(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.

**(5) Effect of early delivery of benefit checks**

For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.

**(e) Limitation on amount included where taxpayer receives lump-sum payment**

**(1) Limitation**

If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result

solely from taking into account such portion in the taxable years to which it is attributable.

**(2) Special rules**

**(A) Year to which benefit attributable**

For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

**(B) Election**

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

**(f) Treatment as pension or annuity for certain purposes**

For purposes of—

(1) section 22(c)(3)(A) (relating to reduction for amounts received as pension or annuity),

(2) section 32(c)(2) (defining earned income),

(3) section 219(f)(1) (defining compensation), and

(4) section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

(Added and amended Pub. L. 98-21, title I, §121(a), title III, §335(b)(2)(A), Apr. 20, 1983, 97 Stat. 80, 130; Pub. L. 98-76, title II, §224(d), Aug. 12, 1983, 97 Stat. 424; Pub. L. 98-369, div. A, title IV, §474(r)(2), div. B, title VI, §2661(o)(1), July 18, 1984, 98 Stat. 839, 1158; Pub. L. 99-272, title XII, §1211(b), title XIII, §13204(a), Apr. 7, 1986, 100 Stat. 287, 313; Pub. L. 99-514, title I, §131(b)(2), title XIII, §1301(j)(8), title XVIII, §1847(b)(2), Oct. 22, 1986, 100 Stat. 2113, 2658, 2856; Pub. L. 100-647, title I, §1001(e), title VI, §6009(c)(1), Nov. 10, 1988, 102 Stat. 3351, 3690; Pub. L. 103-66, title XIII, §13215(a), (b), Aug. 10, 1993, 107 Stat. 475, 476; Pub. L. 103-296, title III, §309(d), Aug. 15, 1994, 108 Stat. 1523; Pub. L. 104-188, title I, §§1704(t)(3), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1887, 1902; Pub. L. 105-277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681-908; Pub. L. 107-16, title IV, §431(c)(1), June 7, 2001, 115 Stat. 68; Pub. L. 108-357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

AMENDMENT OF SECTION

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1) and (d)(1)(A), (3), (4)(A), (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 207, 224, and 708 of the Act are classified to sections 407, 424a, and 909 of Title 42, respectively. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3), (4), 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. Section 3(a)(1), (f)(3) of the Act is classified to section 231b(a)(1), (f)(3) 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.

#### PRIOR PROVISIONS

A prior section 86 was renumbered section 87 of this title.

#### AMENDMENTS

2004—Subsec. (b)(2)(A). Pub. L. 108-357 inserted “199,” before “221”.

2001—Subsec. (b)(2)(A). Pub. L. 107-16, §§ 431(c)(1), 901, temporarily inserted “222,” after “221.” See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2)(A). Pub. L. 105-277 inserted “221,” after “137.”

1996—Subsec. (b)(2). Pub. L. 104-188, §1704(t)(3), substituted “means adjusted” for “means adusted” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 104-188, §1807(c)(2), inserted “137,” before “911”.

1994—Subsec. (d)(1). Pub. L. 103-296 struck out at end “For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.”

1993—Subsec. (a). Pub. L. 103-66, §13215(a), designated existing provisions as par. (1), inserted par. (1) heading, substituted “Except as provided in paragraph (2), gross” for “Gross”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (c). Pub. L. 103-66, §13215(b), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “For purposes of this section, the term ‘base amount’ means—

“(1) except as otherwise provided in this subsection, \$25,000,

“(2) \$32,000, in the case of a joint return, and

“(3) zero, in the case of a taxpayer who—

“(A) is married at the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

“(B) does not live apart from his spouse at all times during the taxable year.”

1988—Subsec. (b)(2)(A). Pub. L. 100-647, §6009(c)(1), inserted “135,” before “911”.

Subsec. (f)(4), (5). Pub. L. 100-647, §1001(e), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “section 221(b)(2) (defining earned income), and”.

1986—Subsec. (b)(2)(A). Pub. L. 99-514, §131(b)(2), substituted “sections” for “sections 221.”

Subsec. (c)(3)(A). Pub. L. 99-514, §1301(j)(8), substituted “section 7703” for “section 143”.

Subsec. (d)(4). Pub. L. 99-272, §13204(a), in amending par. (4) generally, designated existing provisions as introductory clause of par. (4), struck out “a monthly benefit under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974”, and added cls. (A) and (B).

Subsec. (d)(5). Pub. L. 99-272, §12111(b), added par. (5).

Subsec. (f)(1). Pub. L. 99-514, §1847(b)(2), substituted “section 22(c)(3)(A)” for “section 37(c)(3)(A)”.

1984—Subsec. (f)(1). Pub. L. 98-369, §2661(o)(1), added par. (1). Former par. (1) redesignated par. (2).

Pub. L. 98-369, §474(r)(2), substituted “section 32(c)(2)” for “section 43(c)(2)”.

Subsec. (f)(2)-(5). Pub. L. 98-369, §2661(o)(1), redesignated pars. (1) to (4) as (2) to (5), respectively.

1983—Subsec. (a). Pub. L. 98-21, §335(b)(2)(A), inserted “(notwithstanding section 207 of the Social Security Act)”.

Subsec. (d)(4). Pub. L. 98-76 inserted “3(f)(3),” after “3(a),”.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of

Pub. L. 108-357, set out as a note under section 56 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107-16, set out as a note under section 62 of this title.

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, §4003(j), Oct. 21, 1998, 112 Stat. 2681-910, provided that: “The amendments made by this section [amending this section and sections 135, 137, 163, 172, 219, 221, 264, 351, 368, 469, 954, 2001, 6311, 6404, and 9510 of this title and amending provisions set out as a note under section 7508A of this title] shall take effect as if included in the provisions of the 1997 Act [Pub. L. 105-34] to which they relate.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(2) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104-188, set out as an Effective Date note under section 23 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 309(e)(2) of Pub. L. 103-296 provided that: “The amendment made by subsection (d) [amending this section] shall apply with respect to benefits received after December 31, 1995, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 13215(d) of Pub. L. 103-66 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1993.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(e) 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.

Section 6009(d) of Pub. L. 100-647 provided that: “The amendments made by this section [enacting section 135 of this title, amending this section and sections 219 and 469 of this title, and renumbering former section 135 as section 136 of this title] shall apply to taxable years beginning after December 31, 1989.”

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 131(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311-1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1847(b)(2) 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.

Amendment by section 12111(b) of Pub. L. 99-272 applicable with respect to benefit checks issued for months ending after Apr. 7, 1986, see section 12111(c) of

Pub. L. 99-272, set out as a note under section 909 of Title 42, The Public Health and Welfare.

Section 13204(b) of Pub. L. 99-272 provided that: “The amendment made by subsection (a) [amending this section] shall apply to any monthly benefit for which the generally applicable payment date is after December 31, 1985.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for portions of lump-sum payments received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 227(b) of Pub. L. 98-76 set out as a note under section 72 of this title.

#### EFFECTIVE DATE

Section 121(g) of Pub. L. 98-21, 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 this section [enacting this section and section 6050F of this title, amending sections 85, 128, 861, 871, 1441, and 6103 of this title and section 3413 of Title 12, Banks and Banking, and enacting provisions set out as a note under section 401 of Title 42, The Public Health and Welfare] 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 this section shall not apply to any portion of a lump-sum payment of social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 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.

### § 87. Alcohol and biodiesel fuels credits

Gross income includes—

(1) the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a), and

(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).

(Added Pub. L. 96-223, title II, § 232(c)(1), Apr. 2, 1980, 94 Stat. 276, § 86; renumbered § 87, Pub. L. 98-21, title I, § 121(a), Apr. 20, 1983, 97 Stat. 80; amended Pub. L. 98-369, div. A, title IV, § 474(r)(3), July 18, 1984, 98 Stat. 839; Pub. L. 108-357, title III, § 302(c)(1)(A), Oct. 22, 2004, 118 Stat. 1465.)

#### AMENDMENTS

2004—Pub. L. 108-357 amended section catchline and text generally. Prior to amendment, text read as follows: “Gross income includes the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a).”

1984—Pub. L. 98-369 amended section generally, substituting “the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a)” for “an amount equal to the amount of the credit allowable to the taxpayer under section 44E for the taxable year (determined without regard to subsection (e) thereof)”.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108-357, set out as a note under section 38 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

#### EFFECTIVE DATE

Section applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96-223, set out as a note under section 40 of this title.

### § 88. Certain amounts with respect to nuclear decommissioning costs

In the case of any taxpayer who is required to include the amount of any nuclear decommissioning costs in the taxpayer's cost of service for ratemaking purposes, there shall be includable in the gross income of such taxpayer the amount so included for any taxable year.

(Added Pub. L. 98-369, div. A, title I, § 91(f)(1), July 18, 1984, 98 Stat. 607; amended Pub. L. 99-514, title XVIII, § 1807(a)(4)(E)(vii), Oct. 22, 1986, 100 Stat. 2813.)

#### AMENDMENTS

1986—Pub. L. 99-514 substituted “for ratemaking purposes” for “of ratemaking purposes”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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.

#### EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, see section 91(g)(5) of Pub. L. 98-369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 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.

**[§ 89. Repealed. Pub. L. 101-140, title II, § 202(a), Nov. 8, 1989, 103 Stat. 830]**

Section, added Pub. L. 99-514, title XI, §1151(a), Oct. 22, 1986, 100 Stat. 2494; amended Pub. L. 100-647, title I, §1011B(a)(1)-(9), (21), (28), (29), (34), title III, §3021(a)(1)(A), (B), (2)(A), (3)-(9), (11)-(13)(A), (b)(2)(B), (3), title VI, §6051(a), Nov. 10, 1988, 102 Stat. 3483-3485, 3487, 3488, 3625-3632, 3695, related to nondiscrimination rules regarding benefits provided under employee benefit plans.

**EFFECTIVE DATE OF REPEAL**

Section 202(c) of Pub. L. 101-140 provided that: "The amendments made by this section [repealing this section] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99-514, see section 1151(k) set out as a note under section 79 of this title]."

**NONENFORCEMENT OF SECTION FOR FISCAL YEAR 1990**

Pub. L. 101-136, title V, §528, Nov. 3, 1989, 103 Stat. 816, provided that: "No monies appropriated by this Act [see Tables for classification] may be used to implement or enforce section 1151 of the Tax Reform Act of 1986 or the amendments made by such section [section 1151 of Pub. L. 99-514, which enacted section 89 of this title, amended sections 79, 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 3121, 3306, 6039D, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 89 of this title]."

**TRANSITIONAL PROVISIONS**

Section 3021(c) of Pub. L. 100-647 provided for the first issue of valuation rules, the interim impact on former employees, the meeting of the written requirement for covered plans in connection with implementation of section 89 of the Code, and the issuance by Nov. 15, 1988, of rules necessary to carry out section 89, prior to repeal by Pub. L. 101-140, title II, §203(a)(7), Nov. 8, 1989, 103 Stat. 831.

**PART-TIME EMPLOYEE DEFINED FOR PURPOSES OF SUBSECTION (f)**

Section 6070 of Pub. L. 100-647 increased the number of employees who would be excluded from consideration under this section during plan years 1989 and 1990, in the case of a plan maintained by an employer which employs fewer than 10 employees on a normal working day during a plan year, prior to repeal by Pub. L. 101-140, title II, §203(a)(7), Nov. 8, 1989, 103 Stat. 831.

**§ 90. Illegal Federal irrigation subsidies**

**(a) General rule**

Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

**(b) Illegal Federal irrigation subsidy**

For purposes of this section—

**(1) In general**

The term "illegal Federal irrigation subsidy" means the excess (if any) of—

- (A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over
- (B) the amount paid for such water.

**(2) Federal irrigation water**

The term "Federal irrigation water" means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

**(c) Denial of deduction**

No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a).

(Added Pub. L. 100-203, title X, §10611(a), Dec. 22, 1987, 101 Stat. 1330-451.)

**REFERENCES IN TEXT**

Section 202 of the Reclamation Reform Act of 1982, referred to in subsec. (b)(2), is classified to section 390bb of Title 43, Public Lands.

**EFFECTIVE DATE**

Section 10611(c) of Pub. L. 100-203 provided that: "The amendments made by this section [enacting this section] shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act [Dec. 22, 1987]."

**PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME**

**Sec.**

- 101. Certain death payments.<sup>1</sup>
- 102. Gifts and inheritances.
- 103. Interest on State and local bonds.
- [103A. Repealed.]
- 104. Compensation for injuries or sickness.
- 105. Amounts received under accident and health plans.
- 106. Contributions by employer to accident and health plans.
- 107. Rental value of parsonages.
- 108. Income from discharge of indebtedness.
- 109. Improvements by lessee on lessor's property.
- 110. Qualified lessee construction allowances for short-term leases.
- 111. Recovery of tax benefit items.
- 112. Certain combat zone compensation of members of the Armed Forces.
- [113, 114. Repealed.]
- 115. Income of States, municipalities, etc.
- [116. Repealed.]
- 117. Qualified scholarships.
- 118. Contributions to the capital of a corporation.
- 119. Meals or lodging furnished for convenience of employer.<sup>1</sup>
- 120. Amounts received under qualified group legal services plans.
- 121. Exclusion of gain from sale of principal residence.
- 122. Certain reduced uniformed services retirement pay.
- 123. Amounts received under insurance contracts for certain living expenses.
- [124. Repealed.]
- 125. Cafeteria plans.
- 126. Certain cost-sharing payments.
- 127. Educational assistance programs.
- [128. Repealed.]
- 129. Dependent care assistance programs.<sup>2</sup>
- 130. Certain personal injury liability assignments.
- 131. Certain foster care payments.
- 132. Certain fringe benefits.
- [133. Repealed.]
- 134. Certain military benefits.
- 135. Income from United States savings bonds used to pay higher education tuition and fees.
- 136. Energy conservation subsidies provided by public utilities.
- 137. Adoption assistance programs.
- 138. Medicare Advantage MSA.
- 139. Disaster relief payments.

<sup>1</sup> So in original. Does not conform to section catchline.

<sup>2</sup> Editorially supplied. Section 129 added by Pub. L. 97-34 without corresponding amendment of part analysis.