receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986 [this title].

''(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

''(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

''(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

''(B) in the manner in which such law was administered before January 1, 1972.

''(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

''(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

''(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

''(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

''(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1979—

''(1) for purposes of chapter 1 of the Internal Revenue Code of 1986 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1980; and

''(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

''(e) SALARY REDUCTION REGULATIONS DEFINED.—For purpose of this section, the term 'salary reduction regulations' means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a) [subsec. (a) of this section], or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986).''

Pub. L. 95–615, § 210(b), Nov. 8, 1978, 92 Stat. 3109, provided that: ''Section 5 of this Act [amending this note] shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978 [see Short Title note set out under section 1 of this title].''

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in sections 25B, 45A, 219, 401, 402, 404, 408, 408A, 409, 414 to 416, 457 of this title for certain years were contained in the following:

2010—Internal Revenue Notice 2009–94.
2009—Internal Revenue Notice 2008–102.
2008—Internal Revenue Notice 2007–87.
2007—Internal Revenue Notice 2006–98.
2006—Internal Revenue Notice 2005–75.
2005—Internal Revenue Notice 2004–72.
2004—Internal Revenue Notice 2003–73.
2003—Internal Revenue Notice 2002–71.
2002—Internal Revenue Notice 2001–84.
2001—Internal Revenue Notice 2000–66.
2000—Internal Revenue Notice 99–55.
1999—Internal Revenue Notice 98–53.
1998—Internal Revenue Notice 97–58.
1997—Internal Revenue Notice 96–55.

§ 402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust

Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

(b) Taxability of beneficiary of nonexempt trust

(1) Contributions

Contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

(2) Distributions

The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

(3) Grantor trusts

A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

(4) Failure to meet requirements of section 410(b)

(A) Highly compensated employees

If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1) or (2) include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

(B) Failure to meet coverage tests

If a trust is not exempt from tax under section 501(a) for any taxable year solely be-

cause such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraphs (1) and (2) shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

(i) such taxable year, or

(ii) any preceding period for which service was creditable to such employee under the plan.

(C) Highly compensated employee

For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(c) Rules applicable to rollovers from exempt trusts

(1) Exclusion from income

If—

(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

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

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

(2) Maximum amount which may be rolled over

In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). The preceding sentence shall not apply to such distribution to the extent—

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).

(3) Transfer must be made within 60 days of receipt

(A) In general

Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

(B) Hardship exception

The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Eligible rollover distribution

For purposes of this subsection, the term ''eligible rollover distribution'' means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made—

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.

(5) Transfer treated as rollover contribution under section 408

For purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

(6) Sales of distributed property

For purposes of this subsection—

(A) Transfer of proceeds from sale of distributed property treated as transfer of distributed property

The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

(B) Proceeds attributable to increase in value

The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(C) Designation where amount of distribution exceeds rollover contribution

In any case where part or all of the distribution consists of property other than money—

(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(D) Nonrecognition of gain or loss

No gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

(7) Special rule for frozen deposits

(A) In general

The 60-day period described in paragraph (3) shall not—

(i) include any period during which the amount transferred to the employee is a frozen deposit, or

(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

(B) Frozen deposits

For purposes of this subparagraph, the term ''frozen deposit'' means any deposit which may not be withdrawn because of—

(i) the bankruptcy or insolvency of any financial institution, or

(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

(8) Definitions

For purposes of this subsection—

(A) Qualified trust

The term ''qualified trust'' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(B) Eligible retirement plan

The term ''eligible retirement plan'' means—

(i) an individual retirement account described in section 408(a),

(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(iii) a qualified trust,

(iv) an annuity plan described in section 403(a),

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

(9) Rollover where spouse receives distribution after death of employee

If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

(10) Separate accounting

Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

(11) Distributions to inherited individual retirement plan of nonspouse beneficiary

(A) In general

If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

(i) the transfer shall be treated as an eligible rollover distribution,

(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries

For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(d) Taxability of beneficiary of certain foreign situs trusts

For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

(e) Other rules applicable to exempt trusts

(1) Alternate payees

(A) Alternate payee treated as distributee

For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

(B) Rollovers

If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

(2) Distributions by United States to nonresident aliens

The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term ''basic pay'' shall have the meaning provided in section 8331(3) of title 5, United States Code.

(3) Cash or deferred arrangements

For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) or which is part of a salary reduction agreement under section 403(b) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

(4) Net unrealized appreciation

(A) Amounts attributable to employee contributions

For purposes of subsection (a) and section 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(*o*)(5)). This subparagraph shall not apply to a distribution to which subsection (c) applies.

(B) Amounts attributable to employer contributions

For purposes of subsection (a) and section 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph apply to such distribution.

(C) Determination of amounts and adjustments

For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

(D) Lump-sum distribution

For purposes of this paragraph—

(i) In general

The term ''lump-sum distribution'' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(I) on account of the employee's death,

(II) after the employee attains age 59½,

(III) on account of the employee's separation from service, or

(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)).

(ii) Aggregation of certain trusts and plans

For purposes of determining the balance to the credit of an employee under clause (i)—

(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all prof-

it-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

(iii) Community property laws

The provisions of this paragraph shall be applied without regard to community property laws.

(iv) Amounts subject to penalty

This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

(v) Balance to credit of employee not to include amounts payable under qualified domestic relations order

For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

(vi) Transfers to cost-of-living arrangement not treated as distribution

For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

(vii) Lump-sum distributions of alternate payees

If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

(E) Definitions relating to securities

For purposes of this paragraph—

(i) Securities

The term ''securities'' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(ii) Securities of the employer

The term ''securities of the employer corporation'' includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424) of the employer corporation.

[(5) Repealed. Pub. L. 104–188, title I, § 1401(b)(13), Aug. 20, 1996, 110 Stat. 1789]

(6) Direct trustee-to-trustee transfers

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

(f) Written explanation to recipients of distributions eligible for rollover treatment

(1) In general

The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient—

(A) of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B),

(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,

(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,

(D) if applicable, of the provisions of subsections (d) and (e) of this section, and

(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) Definitions

For purposes of this subsection—

(A) Eligible rollover distribution

The term ''eligible rollover distribution'' has the same meaning as when used in subsection (c) of this section, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16). Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.

(B) Eligible retirement plan

The term ''eligible retirement plan'' has the meaning given such term by subsection (c)(8)(B).

(g) Limitation on exclusion for elective deferrals

(1) In general

(A) Limitation

Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar

amount. The preceding sentence shall not apply to the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.

(B) Applicable dollar amount

For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

(C) Catch-up contributions

In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

(2) Distribution of excess deferrals

(A) In general

If any amount (hereinafter in this paragraph referred to as ''excess deferrals'') is included in the gross income of an individual under paragraph (1) (or would be included but for the last sentence thereof) for any taxable year—

(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and

(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount through the end of such taxable year).

The distribution described in clause (ii) may be made notwithstanding any other provision of law.

(B) Treatment of distribution under section 401(k)

Except to the extent provided under rules prescribed by the Secretary, notwithstanding the distribution of any portion of an excess deferral from a plan under subparagraph (A)(ii), such portion shall, for purposes of applying section 401(k)(3)(A)(ii), be treated as an employer contribution.

(C) Taxation of distribution

In the case of a distribution to which subparagraph (A) applies—

(i) except as provided in clause (ii), such distribution shall not be included in gross income, and

(ii) any income on the excess deferral shall, for purposes of this chapter, be treated as earned and received in the taxable year in which such income is distributed.

No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.

(D) Partial distributions

If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income.

(3) Elective deferrals

For purposes of this subsection, the term ''elective deferrals'' means, with respect to any taxable year, the sum of—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (e)(3) (determined without regard to this subsection),

(B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B) (determined without regard to this subsection),

(C) any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), and

(D) any elective employer contribution under section 408(p)(2)(A)(i).

An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations.

(4) Cost-of-living adjustment

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(5) Disregard of community property laws

This subsection shall be applied without regard to community property laws.

(6) Coordination with section 72

For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

(7) Special rule for certain organizations

(A) In general

In the case of a qualified employee of a qualified organization, with respect to em-

ployer contributions described in paragraph (3)(C) made by such organization, the limitation of paragraph (1) for any taxable year shall be increased by whichever of the following is the least:

(i) $3,000,

(ii) $15,000 reduced by the sum of—

(I) the amounts not included in gross income for prior taxable years by reason of this paragraph, plus

(II) the aggregate amount of designated Roth contributions (as defined in section 402A(c)) permitted for prior taxable years by reason of this paragraph, or

(iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary).

(B) Qualified organization

For purposes of this paragraph, the term ''qualified organization'' means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(C) Qualified employee

For purposes of this paragraph, the term ''qualified employee'' means any employee who has completed 15 years of service with the qualified organization.

(D) Years of service

For purposes of this paragraph, the term ''years of service'' has the meaning given such term by section 403(b).

(8) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) for purposes of this title.

(h) Special rules for simplified employee pensions

For purposes of this chapter—

(1) In general

Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k))—

(A) shall not be treated as distributed or made available to the employee or as contributions made by the employee, and

(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to the simplified employee pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

(2) Limitations on employer contributions

Contributions made by an employer to a simplified employee pension with respect to an employee for any year shall be treated as distributed or made available to such employee and as contributions made by the employee to the extent such contributions exceed the lesser of—

(A) 25 percent of the compensation (within the meaning of section 414(s)) from such employer includible in the employee's gross income for the year (determined without regard to the employer contributions to the simplified employee pension), or

(B) the limitation in effect under section 415(c)(1)(A), reduced in the case of any highly compensated employee (within the meaning of section 414(q)) by the amount taken into account with respect to such employee under section 408(k)(3)(D).

(3) Distributions

Any amount paid or distributed out of an individual retirement plan pursuant to a simplified employee pension shall be included in gross income by the payee or distributee, as the case may be, in accordance with the provisions of section 408(d).

(i) Treatment of self-employed individuals

For purposes of this section, except as otherwise provided in subparagraph (A) of subsection (d)(4),[1] the term ''employee'' includes a self-employed individual (as defined in section 401(c)(1)(B)) and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

(j) Effect of disposition of stock by plan on net unrealized appreciation

(1) In general

For purposes of subsection (e)(4), in the case of any transaction to which this subsection applies, the determination of net unrealized appreciation shall be made without regard to such transaction.

(2) Transaction to which subsection applies

This subsection shall apply to any transaction in which—

(A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or

(B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), except that this subpara-

[1] See References in Text note below.

graph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition.

(k) Treatment of simple retirement accounts

Rules similar to the rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a simple retirement account under section 408(p).

(*l*) Distributions from governmental plans for health and long-term care insurance

(1) In general

In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan maintained by the employer described in paragraph (4)(B) to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums for such taxable year.

(2) Limitation

The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $3,000.

(3) Distributions must otherwise be includible

(A) In general

An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

(B) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(4) Definitions

For purposes of this subsection—

(A) Eligible retirement plan

For purposes of paragraph (1), the term ''eligible retirement plan'' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

(B) Eligible retired public safety officer

The term ''eligible retired public safety officer'' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

(C) Public safety officer

The term ''public safety officer'' shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

(D) Qualified health insurance premiums

The term ''qualified health insurance premiums'' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents (as defined in section 152), by an accident or health plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

(5) Special rules

For purposes of this subsection—

(A) Direct payment to insurer required

Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

(B) Related plans treated as 1

All eligible retirement plans of an employer shall be treated as a single plan.

(6) Election described

(A) In general

For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

(B) Special rule

A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(7) Coordination with medical expense deduction

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(8) Coordination with deduction for health insurance costs of self-employed individuals

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(*l*).

(Aug. 16, 1954, ch. 736, 68A Stat. 135; Pub. L. 86–437, §§1, 2(a), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–792, §4(c), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §§221(c)(1), 232(e)(1)–(3), Feb. 26, 1964, 78 Stat. 75, 111; Pub. L. 91–172, title III, §321(b)(1), title V, §515(a)(1), Dec. 30, 1969, 83 Stat. 590, 643; Pub. L. 93–406, title II, §§2002(g)(5), 2005(a), (b)(1), (c)(1), (2), Sept. 2, 1974, 88 Stat. 968, 987, 990, 991: Pub. L. 94–267, §1(a), Apr. 15, 1976, 90 Stat. 365; Pub. L. 94–455, title XIV, §1402(b)(1)(C), (2), title XV, §1512(a), title XIX, §§1901(a)(57)(A)–(C)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1742, 1773, 1774, 1834; Pub. L. 95–30, title I, §102(b)(4), May 23, 1977, 91 Stat. 137; Pub. L. 95–458, §4(a), (c), Oct. 14, 1978, 92 Stat. 1257, 1259; Pub. L. 95–600, title I, §§101(d)(1), 135(b), 157(f)(1), (g)(1), (h)(1), Nov. 6, 1978, 92 Stat. 2770, 2787, 2806–2808; Pub. L. 96–222, title I, §101(a)(14)(C), (E)(i), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 96–608, §2(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title III, §§311(b)(2), (3)(A), (c), 314(c)(1), Aug. 13, 1981, 95 Stat. 280, 286; Pub. L. 97–448, title I, §§101(b), 103(c)(7), (8)(A), (12)(D), Jan. 12, 1983, 96 Stat. 2366, 2376, 2377; Pub. L. 98–369, div. A, title IV, §491(c)(2), (d)(9)–(11), title V, §522(a)(1), (b)–(d)(8), title VII, §713(c)(3), title X, §1001(b)(3), (e), July 18, 1984, 98 Stat. 848, 849, 868–870, 957, 1011, 1012; Pub. L. 98–397, title II, §§204(c)(1), (3), (4), 207(a), Aug. 23, 1984, 98 Stat. 1448, 1449; Pub. L. 99–272, title XI, §11012(c), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title I, §104(b)(5), title XI, §§1105(a), 1106(c)(2), 1108(b), 1112(c), 1121(c)(1), 1122(a), (b)(1)(A), (2), (e)(1), (2)(A), (g), title XVIII, §§1852(a)(5)(A), (b)(1)–(7), (c)(5), 1854(f)(2), 1875(c)(1)(A), 1898(a)(2), (3), (c)(1)(A), (7)(A)(i), (e), Oct. 22, 1986, 100 Stat. 2105, 2417, 2423, 2432, 2444, 2465, 2466, 2469, 2470, 2865–2867, 2881, 2894, 2942, 2943, 2951, 2954, 2955; Pub. L. 100–647, title I, §§1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), 1018(t)(8)(A), (C), (u)(1), (6), (7), title VI, §6068(a), Nov. 10, 1988, 102 Stat. 3457–3459, 3464, 3472–3474, 3476, 3589, 3590, 3703; Pub. L. 101–239, title VII, §7811(g)(2), (i)(13), Dec. 19, 1989, 103 Stat. 2409, 2411; Pub. L. 101–508, title XI, §11801(c)(9)(I), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 102–318, title V, §§521(a), (b)(9)–(11), 522(c)(1), July 3, 1992, 106 Stat. 300, 310, 311, 315; Pub. L. 103–465, title VII, §732(c), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1401(a)–(b)(2), (13), 1421(b)(3)(A), (9)(B), 1450(a)(2), 1704(t)(68), Aug. 20, 1996, 110 Stat. 1787–1789, 1796, 1798, 1814, 1891; Pub. L. 105–34, title XV, §1501(a), Aug. 5, 1997, 111 Stat. 1058; Pub. L. 105–206, title VI, §6005(c)(2)(A), July 22, 1998, 112 Stat. 800; Pub. L. 107–16, title VI, §§611(d)(1)–(3)(A), 617(b), (c), 632(a)(3)(G), 636(b)(1), 641(a)(2)(A), (B), (b)(2)–(d), (e)(4)–(6), 643(a), 644(a), 657(b), June 7, 2001, 115 Stat. 97, 98, 105, 114, 117, 119–123, 136; Pub. L. 107–147, title IV, §411(*l*)(3), (*o*)(1), (p)(6), (q)(2), Mar. 9, 2002, 116 Stat. 47, 48, 51; Pub. L. 109–135, title IV, §407(a), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 109–280, title VIII, §§822(a), 829(a)(1), 845(a), Aug. 17, 2006, 120 Stat. 998, 1001, 1013; Pub. L. 110–172, §8(a)(1), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–458, title I, §§108(f)(1)–(2)(B), (j), 109(b)(3), title II, §201(b), Dec. 23, 2008, 122 Stat. 5109–5111, 5117.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The civil service retirement laws, referred to in subsec. (e)(2), are classified generally to subchapter III (§8331 et seq.) of chapter 83 of Title 5, Government Organization and Employees.

Section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001), referred to in subsec. (g)(7)(B), means section 415(c)(4) of this title prior to its repeal by Pub. L. 107–16, title VI, §632(a)(3)(E), June 7, 2001, 115 Stat. 114.

Subsection (d), referred to in subsec. (i), was amended generally by Pub. L. 104–188, title I, §1401(a), Aug. 20, 1996, 110 Stat. 1787, and as so amended, no longer contains a par. (4).

AMENDMENTS

2008—Subsec. (c)(4). Pub. L. 110–458, §201(b), inserted concluding provisions.

Subsec. (c)(11)(A). Pub. L. 110–458, §108(f)(1)(A), inserted ''described in paragraph (8)(B)(iii)'' after ''eligible retirement plan'' in introductory provisions.

Subsec. (c)(11)(A)(i). Pub. L. 110–458, §108(f)(2)(B), struck out ''for purposes of this subsection'' after ''eligible rollover distribution''.

Subsec. (c)(11)(B). Pub. L. 110–458, §108(f)(1)(B), struck out ''trust'' before ''designated beneficiary''.

Subsec. (f)(2)(A). Pub. L. 110–458, §108(f)(2)(A), inserted at end ''Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.''

Subsec. (g)(2)(A)(ii). Pub. L. 110–458, §109(b)(3), inserted ''through the end of such taxable year'' after ''such amount''.

Subsec. (*l*)(1). Pub. L. 110–458, §108(j)(1)(A), inserted ''maintained by the employer described in paragraph (4)(B)'' after ''an eligible retirement plan'' and struck out ''of the employee, his spouse, or dependents (as defined in section 152)'' after ''qualified health insurance premiums''.

Subsec. (*l*)(3)(B). Pub. L. 110–458, §108(j)(2), substituted ''all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72''.

Subsec. (*l*)(4)(D). Pub. L. 110–458, §108(j)(1)(B), inserted ''(as defined in section 152)'' after ''dependents'' and substituted ''health plan'' for ''health insurance plan''.

Subsec. (*l*)(5)(A). Pub. L. 110–458, §108(j)(1)(C), substituted ''health plan'' for ''health insurance plan''.

2007—Subsec. (g)(7)(A)(ii)(II). Pub. L. 110–172 substituted ''permitted for prior taxable years by reason of this paragraph'' for ''for prior taxable years''. Amendment was executed to subsec. (g)(7)(A)(ii) as amended by Pub. L. 109–135, §407(a)(1), as the probable intent of Congress, notwithstanding Pub. L. 110–172, §8(b), which provided that the amendment take effect as if included in the provisions of Pub. L. 107–16 to which it relates. See 2006 Amendment note and Effective Date of 2007 Amendment note below.

2006—Subsec. (c)(2)(A). Pub. L. 109–280, §822(a), which directed the amendment of section 402(c)(2)(A) by substituting ''or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting'' for ''which is part of a plan which is

a defined contribution plan and which agrees to separately account'' and inserting ''(and earnings thereon)'' after ''so transferred'', without specifying the act to be amended, was executed to this section, which is section 402(c)(2)(A) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (c)(11). Pub. L. 109–280, § 829(a)(1), added par. (11).

Subsec. (*l*). Pub. L. 109–280, § 845(a), added subsec. (*l*).

2005—Subsec. (g)(1)(A). Pub. L. 109–135, § 407(a)(2), inserted ''to'' after ''shall not apply''.

Subsec. (g)(7)(A)(ii). Pub. L. 109–135, § 407(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''$15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or''.

2002—Subsec. (c)(2). Pub. L. 107–147, § 411(q)(2), inserted at end: ''In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).''

Subsec. (g)(1)(C). Pub. L. 107–147, § 411(*o*)(1), added subpar. (C).

Subsec. (g)(7)(B). Pub. L. 107–147, § 411(p)(6), substituted ''2001).'' for ''2001.''

Subsec. (h)(2)(A). Pub. L. 107–147, § 411(*l*)(3), substituted ''25 percent'' for ''15 percent''.

2001—Subsec. (c)(2). Pub. L. 107–16, § 643(a), inserted at end ''The preceding sentence shall not apply to such distribution to the extent—

''(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

''(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).''

Subsec. (c)(3). Pub. L. 107–16, § 644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.''

Subsec. (c)(4)(C). Pub. L. 107–16, § 636(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any hardship distribution described in section 401(k)(2)(B)(i)(IV).''

Subsec. (c)(8)(B). Pub. L. 107–16, § 617(c), inserted concluding provisions.

Subsec. (c)(8)(B)(v). Pub. L. 107–16, § 641(a)(2)(A), added cl. (v).

Subsec. (c)(8)(B)(vi). Pub. L. 107–16, § 641(b)(2), added cl. (vi).

Subsec. (c)(9). Pub. L. 107–16, § 641(d), struck out before period at end ''; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution''.

Subsec. (c)(10). Pub. L. 107–16, § 641(a)(2)(B), added par. (10).

Subsec. (f)(1). Pub. L. 107–16, § 641(e)(5), struck out ''from an eligible retirement plan'' after ''rollover distribution'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 107–16, § 657(b), inserted before comma at end ''and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B)''.

Pub. L. 107–16, § 641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(B). Pub. L. 107–16, § 641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(E). Pub. L. 107–16, § 641(c), added subpar. (E).

Subsec. (f)(2)(A). Pub. L. 107–16, § 641(e)(4), substituted '', paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)'' for ''or paragraph (4) of section 403(a)''.

Subsec. (g)(1). Pub. L. 107–16, § 611(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000.''

Subsec. (g)(1)(A). Pub. L. 107–16, title VI, § 617(b)(1), inserted at end ''The preceding sentence shall not apply the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.''

Subsec. (g)(2)(A). Pub. L. 107–16, title VI, § 617(b)(2), inserted ''(or would be included but for the last sentence thereof)'' after ''paragraph (1)''.

Subsec. (g)(4). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C).''

Subsec. (g)(5). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 107–16, § 611(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.''

Subsec. (g)(6). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (g)(7). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (8) as (7).

Subsec. (g)(7)(B). Pub. L. 107–16, § 632(a)(3)(G), inserted ''(as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001'' before period at end.

Subsec. (g)(8), (9). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (9) as (8). Former par. (8) redesignated (7).

1998—Subsec. (c)(4)(C). Pub. L. 105–206 added subpar. (C).

1997—Subsec. (g)(9). Pub. L. 105–34 added par. (9).

1996—Subsec. (c)(10). Pub. L. 104–188, § 1401(b)(2), struck out par. (10) which read as follows:

''(10) DENIAL OF AVERAGING FOR SUBSEQUENT DISTRIBUTIONS.—If paragraph (1) applies to any distribution paid to any employee, paragraphs (1) and (3) of subsection (d) shall not apply to any distribution (paid after such distribution) of the balance to the credit of the employee under the plan under which the preceding distribution was made (or under any other plan which, under subsection (d)(4)(C), would be aggregated with such plan).''

Subsec. (d). Pub. L. 104–188, § 1401(a), amended subsec. (d) generally, substituting provisions relating to taxability of beneficiary of certain foreign situs trusts for former provisions relating to tax on lump sum distributions.

Subsec. (e)(3). Pub. L. 104–188, § 1450(a)(2), inserted ''or which is part of a salary reduction agreement under section 403(b)'' after ''section 401(k)(2))''.

Subsec. (e)(4)(D). Pub. L. 104–188, § 1401(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph, the term 'lump sum distribution' has the meaning given such term by subsection (d)(4)(A) (without regard to subsection (d)(4)(F)).''

Subsec. (e)(5). Pub. L. 104–188, § 1401(b)(13), struck out par. (5) which read as follows:

''(5) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under sec-

tion 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).''

Subsec. (g)(3)(A). Pub. L. 104–188, §1704(t)(68), substituted ''subsection (e)(3)'' for ''subsection (a)(8)''.

Subsec. (g)(3)(D). Pub. L. 104–188, §1421(b)(9)(B), added subpar. (D).

Subsec. (k). Pub. L. 104–188, §1421(b)(3)(A), added subsec. (k).

1994—Subsec. (g)(5). Pub. L. 103–465 inserted before period at end ''; except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500''.

1992—Subsecs. (a) to (d). Pub. L. 102–318, §521(a), amended subsecs. (a) to (d) generally, substituting present provisions for former provisions which in subsec. (a) related to taxability of beneficiaries of exempt trusts, in subsec. (b) related to taxability of beneficiaries of nonexempt trusts, in subsec. (c) related to taxability of beneficiaries of certain foreign situs trusts, and subsec. (d) which had been previously repealed.

Subsec. (e). Pub. L. 102–318, §521, amended subsec. (e) generally, substituting provisions relating to other rules applicable to exempt trusts for provisions relating to tax on lump sum distributions.

Subsec. (e)(6). Pub. L. 102–318, §522(c)(1), added par. (6).

Subsec. (f). Pub. L. 102–318, §521(a), amended subsec. (f) generally, substituting present provisions for provisions requiring a different time when explanation was to be provided and a different content of explanation to be given and using different definitions for ''eligible rollover distribution'' and ''eligible retirement plan''.

Subsec. (g)(1). Pub. L. 102–318, §521(b)(9), substituted ''subsections (e)(3)'' for ''subsections (a)(8)''.

Subsec. (i). Pub. L. 102–318, §521(b)(10), substituted ''subsection (d)(4)'' for ''subsection (e)(4)''.

Subsec. (j)(1). Pub. L. 102–318, §521(b)(11), substituted ''(e)(4)'' for ''(a)(1) or (e)(4)(J)''.

1990—Subsec. (a)(3)(B). Pub. L. 101–508, §11801(c)(9)(I)(i), substituted ''section 424'' for ''section 425''.

Subsec. (a)(6)(B)(i). Pub. L. 101–508, §11801(c)(9)(I)(ii), substituted ''section 424(f)'' for ''section 425(f)''.

1989—Subsec. (e)(7). Pub. L. 101–239, §7811(i)(13), added par. (7).

Subsec. (g)(3). Pub. L. 101–239, §7811(g)(2), inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1011A(b)(8)(A), substituted ''paragraph (4)'' for ''paragraphs (2) and (4)''.

Subsec. (a)(4). Pub. L. 100–647, §1011A(b)(8)(B), struck out ''or (2)'' after ''under paragraph (1)''.

Subsec. (a)(5)(D)(i). Pub. L. 100–647, §1011A(b)(4)(C), inserted at end ''Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II).''

Pub. L. 100–647, §1011A(b)(4)(A), repealed amendment by Pub. L. 99–514, §1122(e)(1), which had amended cl. (i) generally, and provided that the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted. See 1986 Amendment note and Effective Date of 1988 Amendment note below.

Subsec. (a)(5)(D)(i)(I). Pub. L. 100–647, §1011A(b)(4)(B), inserted ''is payable as provided in clause (i), (iii), or (iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and'' after ''(I) such distribution''.

Subsec. (a)(5)(D)(iii). Pub. L. 100–647, §1011A(b)(4)(D), struck out ''10-year'' after ''Denial of'' in heading.

Subsec. (a)(5)(F). Pub. L. 100–647, §1011A(a)(1), substituted ''resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''described in subparagraph (A)''.

Subsec. (a)(6)(C). Pub. L. 100–647, §1011A(b)(8)(C), struck out ''paragraph (2) of subsection (a), and'' after ''paragraph (5)(A) applies,''.

Subsec. (a)(6)(E)(ii). Pub. L. 100–647, §1011A(b)(8)(D), substituted ''then paragraphs (1) and (3) of subsection (e) shall'' for ''then paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e), shall''.

Subsec. (a)(6)(G). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (a)(6)(H)(ii). Pub. L. 100–647, §1011A(b)(5), inserted at end ''A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence.''

Subsec. (a)(6)(I). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (b)(2)(A). Pub. L. 100–647, §1011(h)(4), added subpar. (A) and struck out former subpar. (A) which related to trust which is not exempt from tax under section 501(a) because plan fails to meet requirements of section 410(b).

Subsec. (b)(2)(B). Pub. L. 100–647, §1011(h)(4), added subpar. (B) and struck out former subpar. (B) which related to failure of plan to meet requirements of section 410(b) for more than 1 taxable year.

Subsec. (e)(1)(A). Pub. L. 100–647, §1011A(b)(8)(E), struck out ''ordinary income portion of a'' after ''subparagraph (B)) on the''.

Subsec. (e)(1)(B). Pub. L. 100–647, §1011A(b)(10), inserted at end ''For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof.''

Pub. L. 100–647, §1018(u)(1), made technical correction to directory language of Pub. L. 99–514, §104(b)(5). See 1986 Amendment note below.

Pub. L. 100–647, §1018(u)(6), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(B), see 1986 Amendment note below.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(7), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(C), see 1986 Amendment note below.

Subsec. (e)(4)(A). Pub. L. 100–647, §1011A(b)(8)(F), in concluding provisions, substituted ''A'' for ''Except for purposes of subsection (a)(2) and section 403(a)(2), a'', and struck out ''subsection (a)(2) of this section, and subsection (a)(2) of section 403,'' before ''the balance to''.

Subsec. (e)(4)(B)(i). Pub. L. 100–647, §1011A(b)(6), substituted ''employee'' for ''taxpayer''.

Subsec. (e)(4)(I). Pub. L. 100–647, §1011A(c)(9), struck out ''clause (ii) of'' after ''amounts described in''.

Subsec. (e)(4)(J). Pub. L. 100–647, §1011A(b)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(L). Pub. L. 100–647, §1011A(b)(8)(G), struck out subpar. (L) which related to election to treat pre-1974 participation as post-1973 participation.

Subsec. (e)(4)(M). Pub. L. 100–647, §1011A(b)(8)(H), struck out '', subsection (a)(2) of this section, and section 403(a)(2)'' after ''of this subsection''.

Subsec. (e)(4)(O). Pub. L. 100–647, §6068(a), added subpar. (O).

Subsec. (e)(5). Pub. L. 100–647, §1011A(b)(8)(I), struck out ''and paragraph (2) of subsection (a)'' after ''of this subsection''.

Subsec. (e)(6)(C). Pub. L. 100–647, §1011A(b)(8)(J), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

''(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

''(ii) is treated as long-term capital gain under subsection (a)(2) of this section or section 403(a)(2).''

Subsec. (f)(1). Pub. L. 100–647, §1018(t)(8)(C), substituted ''an eligible'' for ''a eligible''.

Subsec. (g). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (g)(2). Pub. L. 100–647, §1011(c)(2), substituted ''Distribution'' for ''Required distribution'' in heading.

Subsec. (g)(2)(C). Pub. L. 100–647, §1011(c)(1), struck out ''(and no tax shall be imposed under section 72(t))'' after ''in gross income'', in cl. (i), substituted ''such income is distributed'' for ''such excess deferral is made'' in cl. (ii), and inserted at end ''No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.''

Subsec. (g)(2)(D). Pub. L. 100–647, §1011(c)(3), added subpar. (D).

Subsec. (g)(3). Pub. L. 100–647, §1011(c)(4), substituted ''this subsection'' for ''this paragraph''.

Pub. L. 100–647, §1011(c)(11), inserted at end ''An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Subsec. (g)(8)(A)(iii). Pub. L. 100–647, §1011(c)(5)(A), inserted ''(determined in the manner prescribed by the Secretary)'' after ''prior taxable years''.

Subsec. (g)(8)(D). Pub. L. 100–647, §1011(c)(5)(B), added subpar. (D).

Subsec. (i). Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (j). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

1986—Subsec. (a)(2). Pub. L. 99–514, §1122(b)(1)(A), struck out par. (2) relating to capital gains treatment for portion of lump sum distribution.

Subsec. (a)(5)(D)(i). Pub. L. 99–514, §1122(e)(1), amended cl. (i) generally, to read as follows: ''Subparagraph (A) shall apply to a partial distribution only if the employee elects to have subparagraph (A) apply to such distribution and such distribution would be a lump sum distribution if subsection (e)(4)(A) were applied—

''(I) by substituting '50 percent of the balance to the credit of an employee' for 'the balance to the credit of an employee',

''(II) without regard to clause (ii) thereof, the second sentence thereof, and subparagraph (B) of subsection (e)(4).

Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of this clause.'' This amendment was repealed by Pub. L. 100–647, §1011A(b)(4)(A). See 1988 Amendment note above.

Pub. L. 99–514, §1852(b)(2), inserted at end ''For purposes of subclause (I), the balance to the credit of the employee shall not include any accumulated deductible employee contributions (within the meaning of section 72(*o*)(5)).''

Subsec. (a)(5)(D)(ii). Pub. L. 99–514, §1852(b)(5), substituted ''a trust or plan described in subclause (III) or (IV)'' for ''a plan described in subclause (IV) or (V)''.

Subsec. (a)(5)(D)(iii). Pub. L. 99–514, §1122(b)(2)(A), struck out ''and capital gains treatment'' in heading and amended text generally. Prior to amendment, cl. (iii) read as follows: ''If an election under clause (i) is made with respect to any partial distribution paid to any employee—

''(I) paragraph (2) of this subsection,

''(II) paragraphs (1) and (3) of subsection (e), and

''(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan).''

Subsec. (a)(5)(E)(v). Pub. L. 99–514, §1852(b)(1), substituted ''of all or any portion of'' for ''of any portion of''.

Subsec. (a)(5)(F). Pub. L. 99–514, §1121(c)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) heading read ''Special rules'' and text read as follows:

''(i) Transfer treated as rollover contribution under section 408

''For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A) to an eligible retirement plan described in subclause (I) or (II) of subparagraph (E)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

''(ii) 5-percent owners

''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if the employee is a 5-percent owner at the time such distribution is made. For purposes of the preceding sentence, the term '5-percent owner' means any individual who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5 plan years preceding the plan year in which the distribution is made.''

Pub. L. 99–514, §1852(b)(6), in cl. (i) substituted ''a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''a transfer described in subparagraph (A)''.

Pub. L. 99–514, §1875(c)(1)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii), key employees, read as follows: ''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms 'key employee' and 'top-heavy plan' have the same respective meanings as when used in section 416.''

Subsec. (a)(5)(G). Pub. L. 99–514, §1852(a)(5)(A), added subpar. (G).

Subsec. (a)(6)(D)(v). Pub. L. 99–514, §1852(b)(7), substituted ''(7)'' for ''(7)(B)''.

Subsec. (a)(6)(F). Pub. L. 99–514, §1898(c)(7)(A)(i), substituted ''paragraph (5)'' for ''paragraph (5)(A)''.

Subsec. (a)(6)(G). Pub. L. 99–514, §1898(a)(3), added subpar. (G) relating to treatment of potential future vesting.

Pub. L. 99–272 added subpar. (G) relating to payments from certain pension plan termination trusts.

Subsec. (a)(6)(H). Pub. L. 99–514, §1122(e)(2)(A), added subpar. (H).

Subsec. (a)(7). Pub. L. 99–514, §1852(b)(4), inserted ''; except that a trust or plan described in subclause (III) or (IV) of paragraph (5)(E)(iv) shall not be treated as an eligible retirement plan with respect to such distribution'' after ''the spouse were the employee''.

Subsec. (a)(9). Pub. L. 99–514, §1898(c)(1)(A), substituted ''any alternate payee who is the spouse or former spouse of the participant shall be treated'' for ''the alternate payee shall be treated''.

Subsec. (b). Pub. L. 99–514, §1112(c), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Pub. L. 99–514, §1852(c)(5), substituted ''section 72(e)(5)'' for ''section 72(e)(1)''.

Subsec. (e)(1)(B). Pub. L. 99–514, §1122(b)(2)(B), and Pub. L. 100–647, §1018(u)(6), redesignated subpar. (C) as (B), substituted ''Amount of tax'' for ''Initial separate tax'' in heading and ''The amount of tax imposed by subparagraph (A)'' for ''The initial separate tax'', and struck out former subpar. (B) which related to computation of tax on lump sum distributions.

Pub. L. 99–514, §104(b)(5), as amended by Pub. L. 100–647, §1018(u)(1), struck out ''the zero bracket amount applicable to such individual for the taxable year plus'' after ''amount equal to''.

Pub. L. 99–514, §1122(a)(2)(A), (B), substituted ''5'' for ''10'' and ''⅕'' for ''one-tenth''.

Subsec. (e)(1)(C) to (E). Pub. L. 99–514, §1122(b)(2)(B)(i), redesignated subpars. (C) to (E) as (B) to (D), respectively.

Subsec. (e)(3). Pub. L. 99–514, §1122(b)(2)(C), and Pub. L. 100-647, §1018(u)(7), substituted ''total taxable amount'' for ''ordinary income portion''.

Subsec. (e)(4)(B). Pub. L. 99–514, §1122(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.''

Subsec. (e)(4)(E). Pub. L. 99–514, §1122(b)(2)(D), struck out subpar. (E) defining ''ordinary income portion'' with respect to a lump sum distribution.

Subsec. (e)(4)(F). Pub. L. 99–514, §1852(b)(3)(B), struck out subpar. (F) defining ''employee''. See subsec. (g) of this section relating to treatment of self-employed individuals.

Subsec. (e)(4)(H). Pub. L. 99–514, §1122(b)(2)(E), struck out ''(but not for purposes of subsection (a)(2) or section 403(a)(2)(A))'' after ''For purposes of this subsection''.

Subsec. (e)(4)(J). Pub. L. 99–514, §1122(g), inserted at end ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(N). Pub. L. 99–514, §1106(c)(2), added subpar. (N).

Subsec. (e)(6). Pub. L. 99–514, §1898(a)(2), added par. (6).

Subsec. (f)(1). Pub. L. 99–514, §1898(e)(1), substituted ''eligible rollover distribution'' for ''qualifying rollover distribution''.

Subsec. (f)(2). Pub. L. 99–514, §1898(e)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this subsection, the terms 'qualifying rollover distribution' and 'eligible retirement plan' have the respective meanings given such terms by subsection (a)(5)(E).''

Subsec. (g). Pub. L. 99–514, §1854(f)(2), added subsec. (g) relating to effect of disposition of stock by plan on net unrealized appreciation.

Pub. L. 99–514, §1852(b)(3)(A), added subsec. (g) relating to treatment of self-employed individuals.

Pub. L. 99–514, §1105(a), added subsec. (g) relating to limitation on exclusion for elective deferrals.

Subsec. (h). Pub. L. 99–514, §1108(b), added subsec. (h).

1984—Subsec. (a)(2). Pub. L. 98–369, §1001(b)(3), substituted ''6 months'' for ''1 year''.

Subsec. (a)(5)(A)(i). Pub. L. 98–369, §522(a)(1), substituted ''any portion of the balance to the credit of an employee in a qualified trust is paid to him'' for ''the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution''.

Subsec. (a)(5)(B). Pub. L. 98–369, §522(d)(1)(A), (2), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and inserted ''In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A)).''

Subsec. (a)(5)(D). Pub. L. 98–369, §522(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(5)(D)(iv)(III)–(V). Pub. L. 98–369, §491(d)(9), struck out subcl. (III), which included a retirement bond described in section 409 within term ''eligible retirement plan'' and redesignated former subcls. (IV) and (V) and (III) and (IV), respectively.

Subsec. (a)(5)(E). Pub. L. 98–369, §522(b), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(E)(i). Pub. L. 98–369, §522(d)(1)(B), substituted ''qualified total distribution'' for ''qualifying rollover distribution'' in heading and text.

Subsec. (a)(5)(E)(ii)(II). Pub. L. 98–369, §522(d)(3), substituted ''gross income (determined without regard to this paragraph)'' for ''gross income''.

Subsec. (a)(5)(E)(v). Pub. L. 98–369, §522(d)(4), substituted provision dealing with partial distribution for provision dealing with rollover of partial distributions of deductible employee contributions permitted.

Subsec. (a)(5)(F). Pub. L. 98–369, §522(b), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 98–369, §522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, §491(d)(10), substituted ''or (II)'' for '', (II), or (III)''.

Subsec. (a)(5)(F)(ii). Pub. L. 98–369, §522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, §491(d)(11), substituted ''(III) or (IV)'' for ''(IV) and (V)''.

Pub. L. 98–369, §713(c)(3), substituted ''Key employees'' for ''Self-employed individuals and owner-employees'' in heading and ''attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan'' for ''attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan'' in text, and inserted sentence adopting the meaning of ''key employee'' and ''top-heavy plan'' used in section 416.

Subsec. (a)(6)(A), (B). Pub. L. 98–369, §522(d)(6), substituted ''paragraph (5)(E)(i)'' for ''paragraph (5)(D)(i)''.

Subsec. (a)(6)(D)(iii), (iv). Pub. L. 98–369, §522(d)(7), substituted ''employee contributions (or, in the case of a partial distribution, the amount not includible in gross income)'' for ''employee contributions''.

Subsec. (a)(6)(E)(i). Pub. L. 98–369, §522(d)(1)(C), (8), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and ''paragraph (5)(D) or (5)(E)(i)(II)'' for ''paragraph (5)(D)(i)(II)''.

Subsec. (a)(6)(F). Pub. L. 98–397, §204(c)(3), added subpar. (F).

Subsec. (a)(7). Pub. L. 98–369, §522(c), substituted provisions relating to rollover where spouse receives distributions after death of employee for provisions dealing with rollover where spouse receives lump-sum distribution at death of employee.

Subsec. (a)(9). Pub. L. 98–397, §204(c)(1), added par. (9).

Subsec. (e)(4)(L). Pub. L. 98–369, §1001(b)(3), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (e)(4)(M). Pub. L. 98–397, §204(c)(4), added subpar. (M).

Subsec. (e)(5). Pub. L. 98–369, §491(c)(2), added par. (5).

Subsec. (f). Pub. L. 98–397, §207(a), added subsec. (f).

1983—Subsec. (a)(5)(D)(v). Pub. L. 97–448, §103(c)(8)(A), added cl. (v).

Subsec. (e)(1)(C). Pub. L. 97–448, §101(b), substituted ''the zero bracket amount applicable to such an individual for the taxable year'' for ''$2,300''.

Subsec. (e)(4)(A). Pub. L. 97–448, §103(c)(7), substituted ''this subsection, subsection (a)(2) of this section, and subsection (a)(2) of section 403'' for ''this section and section 403'' in last sentence.

Subsec. (e)(4)(J). Pub. L. 97–448, §103(c)(12)(D), amended Pub. L. 97–34, §311(c)(2) [see 1981 Amendment note below], by substituting ''section 72(*o*)(5)'' for ''section 77(*o*)(5)'' in last sentence of subpar. (j).

1981—Subsec. (a)(1). Pub. L. 97–34, §311(c)(1), inserted ''(other than deductible employee contributions within the meaning of section 72(*o*)(5))''.

Pub. L. 97–34, § 314(c)(1), struck out ''or made available'' after ''distributed'' in three places.

Subsec. (a)(5). Pub. L. 97–34, § 311(b)(3)(A), inserted ''(other than accumulated deductible employee contributions within the meaning of section 72(*o*)(5))'' after ''contributions'' in subpar. (B) and added subcl. (III) in subpar. (D).

Subsec. (e)(4). Pub. L. 97–34, § 311(b)(2), (c)(2), added to subpar. (A) provision that for purposes of sections 402 and 403, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)), and added subpar. (J) provision making subpar. (J) inapplicable to distributions of accumulated deductible employee contributions (within the meaning of section 77(*o*)(5)). See 1983 Amendment note above.

1980—Subsec. (a)(6)(D)(iii). Pub. L. 96–222, § 101(a)(14)(E)(i), substituted ''may designate'' for ''many designate''.

Subsec. (a)(6)(E). Pub. L. 96–608 added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 96–222, § 101(a)(14)(C), substituted ''qualifying rollover distribution attributable to an employee is paid to the spouse of the employee after'' for ''lump-sum distribution from a qualified trust is paid to the spouse of the employee on account of''.

1978—Subsec. (a)(5). Pub. L. 95–458, § 4(a), among other changes, substituted provision permitting tax-free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5)(D)(i)(II). Pub. L. 95–600, § 157(h)(1), substituted ''subparagraphs (B) and (H) of subsection (e)(4)'' for ''subsection (e)(4)(B)''.

Subsec. (a)(6). Pub. L. 95–458, § 4(c), in provision preceding subpar. (A) struck out ''For purposes of paragraph (5)(A)(i)'', in subpar. (A) substituted ''For purposes of paragraph (5)(D)(i), a complete'' for ''A complete'', in subpar. (B) inserted ''For purposes of paragraph (5)(D)(i)—'' after ''assets.—'' in provision preceding cl. (i), and added subpar. (C).

Subsec. (a)(6)(D). Pub. L. 95–600, § 157(f)(1), added subpar. (D).

Subsec. (a)(7). Pub. L. 95–600, § 157(g)(1), added par. (7).

Subsec. (a)(8). Pub. L. 95–600, § 135(b), added par. (8).

Subsec. (e)(1)(C). Pub. L. 95–600, § 101(d)(1), substituted ''$2,300'' for ''$2,200''.

1977—Subsec. (e)(1)(C). Pub. L. 95–30 substituted ''amount equal to $2,200 plus one-tenth of the excess of'' for ''amount equal to one-tenth of the excess of'' in provisions preceding cl. (i).

1976—Subsec. (a)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1906(b)(13)(A), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(57)(A), substituted ''basic pay'' for ''basic salary'', ''civil service retirement laws'' for ''Civil Service Retirement Act (5 U.S.C. 2251)'', and ''section 8331(3) of title 5, United States Code'' for ''section 1(d) of such Act''.

Subsec. (a)(5). Pub. L. 94–267, § 1(a)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(5)(A). Pub. L. 94–267, § 1(a)(1), restructured provision by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(6). Pub. L. 94–267, § 1(a)(3), added par. (6).

Subsec. (a)(6)(A). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, § 1901(a)(57)(B), struck out subsec. (d) which related to certain trust agreements made before Oct. 21, 1942.

Subsec. (e)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(A). Pub. L. 94–455, § 1901(a)(57)(C)(i), substituted ''Except for purposes of subsection (a)(2) and section 403(a)(2)'' for ''For purposes of this subparagraph''.

Subsec. (e)(4)(B), (J). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(L). Pub. L. 94–455, § 1402(b)(2), substituted ''1 year'' for ''9 months''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1512(a), added subsec. (e)(4)(L) to be applicable to distributions and payments after Dec. 31, 1975, in taxable years beginning after Dec. 31, 1975, and provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1974—Subsec. (a)(2). Pub. L. 93–406, § 2005(b)(1), substituted provisions covering capital gains treatment of portions of lump sum distributions determined through the application of a fraction formula susceptible of producing a phaseout of capital gains treatment for provisions covering capital gains treatment of portions of lump sum distributions determined on a fixed formula.

Subsec. (a)(3)(C). Pub. L. 93–406, § 2005(c)(1), struck out subsec. (a)(3)(C) which defined ''total distribution payable''.

Subsec. (a)(5). Pub. L. 93–406, §§ 2002(g)(5), 2005(c)(2), substituted provisions covering rollover amounts for provisions covering limitation on capital gains treatment.

Subsec. (e). Pub. L. 93–406, § 2005(a), substituted provisions covering tax on lump sum distributions for provisions covering plan termination distributions made after Dec. 31, 1953, and before Jan. 1, 1955.

1969—Subsec. (a)(5). Pub. L. 91–172, § 515(a)(1), added par. (5).

Subsec. (b). Pub. L. 91–172, § 321(b)(1), substituted provision for inclusion of contributions made by an employer to a nonexempt trust in the ''gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section'' for prior provision for inclusion in the ''gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made'', and provided that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(1) (relating to amount not received as annuities) and that a beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subch. J (relating to grantors and others treated as substantial owners).

1964—Subsec. (a)(1). Pub. L. 88–272, § 232(e)(1), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

Subsec. (a)(3)(B). Pub. L. 88–272, § 221(c)(1), substituted ''subsections (e) and (f) of section 425'' for ''section 421(d)(2) and (3)''.

Subsecs. (b), (d). Pub. L. 88–272, § 232(e)(2), (3), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2). Pub. L. 87–792 inserted sentence providing that this paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

1960—Subsec. (a)(1). Pub. L. 86–437, § 2(a), substituted ''paragraphs (2) and (4)'' for ''paragraph (2)''.

Subsec. (a)(4). Pub. L. 86–437, § 1, added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 108(f)(2)(C), Dec. 23, 2008, 122 Stat. 5109, provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to plan years beginning after December 31, 2009.''

Amendment by sections 108(f)(1)–(2)(B), (j) and 109(b)(3) of Pub. L. 110–458 effective as if included in the

provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by section 201(b) of Pub. L. 110–458 applicable to calendar years beginning after December 31, 2008, with provisions relating to pension plan or contract amendments, see section 201(c) of Pub. L. 110–458, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §8(b), Dec. 29, 2007, 121 Stat. 2484, provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §822(b), Aug. 17, 2006, 120 Stat. 998, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title VIII, §829(b), Aug. 17, 2006, 120 Stat. 1002, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2006.''

Pub. L. 109–280, title VIII, §845(c), Aug. 17, 2006, 120 Stat. 1015, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions in taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §407(c), Dec. 21, 2005, 119 Stat. 2635, provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(1)–(3)(A) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §617(f), June 7, 2001, 115 Stat. 106, provided that: ''The amendments made by this section [enacting section 402A of this title and amending this section and sections 408A, 6047, and 6051 of this title] shall apply to taxable years beginning after December 31, 2005.''

Amendment by section 632(a)(3)(G) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §636(b)(2), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, §641(f), June 7, 2001, 115 Stat. 121, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 72, 219, 401, 403, 408, 415, 457, 3401, 3405, and 4973 of this title] shall apply to distributions after December 31, 2001.

''(2) REASONABLE NOTICE.—No penalty shall be imposed on a plan for the failure to provide the information required by the amendment made by subsection (c) [amending this section] with respect to any distribution made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor rollover notice after the date of the enactment of this Act [June 7, 2001], if the administrator of such plan makes a reasonable attempt to comply with such requirement.

''(3) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note below] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.''

Amendment by section 643(a) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, §644(c), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to distributions after December 31, 2001.''

Amendment by section 657(b) of Pub. L. 107–16 applicable to distributions made after Mar. 28, 2005, see section 657(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6005(c)(2)(C), July 22, 1998, 112 Stat. 800, provided that: ''The amendments made by this paragraph [amending this section and section 403 of this title] shall apply to distributions after December 31, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1501(c)(1) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1401(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 401, 406, 407, 691, 871, 877, and 4980A of this title] shall apply to taxable years beginning after December 31, 1999.

''(2) RETENTION OF CERTAIN TRANSITION RULES.—The amendments made by this section shall not apply to any distribution for which the taxpayer is eligible to elect the benefits of section 1122(h)(3) or (5) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out below]. Notwithstanding the preceding sentence, individuals who elect such benefits after December 31, 1999, shall not be eligible for 5-year averaging under section 402(d) of the Internal Revenue Code of 1986 (as in effect immediately before such amendments).''

Amendment by section 1421(b)(3)(A), (9)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1450(a)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1450(a)(3) of Pub. L. 104–188, set out in a Modifications of Subsection (b) of This Section note under section 403 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 521(e) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 72, 219, 401, 403, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3405, 4973, 4980A, and 7701 of this title] shall apply to distributions after December 31, 1992.

''(2) SPECIAL RULE FOR PARTIAL DISTRIBUTIONS.—For purposes of section 402(a)(5)(D)(i)(II) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section), a distribution before January 1, 1993, which is made before or at the same time as a series of periodic payments shall not be treated as one of such series if it is not substantially equal in amount to other payments in such series.''

Amendment by section 522(c)(1) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7811(i)(13) of Pub. L. 101–239 provided that the amendment made by that section is effective with respect to taxable years ending after Dec. 19, 1989 (or, at the election of the taxpayer, beginning after Dec. 31, 1986).

Amendment by section 7811(g)(2) of 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 1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), and 1018(t)(8)(A), (C), (u)(1), (6), (7) 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 6068(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1984.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 104(b)(5) 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.

Section 1105(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(c)(8), (9), Nov. 10, 1988, 102 Stat. 3458, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) DEFERRALS UNDER COLLECTIVE BARGAINING AGREEMENTS.—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 amendment made by subsection (a) shall not apply to contributions made pursuant to such an agreement for taxable years beginning before the earlier of—

''(A) the date on which such agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1989.

Such contributions shall be taken into account for purposes of applying the amendment made by this section to other plans.

''(3) DISTRIBUTIONS MADE BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow the plan to make any distribution described in section 402(g)(2)(A)(ii) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note under section 401 of this title] shall be treated as made in accordance with the provisions of such plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 402(g)(2)(A)(ii) of such Code.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

''(4) SPECIAL RULE FOR TAXABLE YEARS OF PARTNERSHIPS WHICH INCLUDE JANUARY 1, 1987.—In the case of the taxable year of any partnership which begins before January 1, 1987, and ends after January 1, 1987, elective deferrals (within the meaning of section 402(g)(3) of the Internal Revenue Code of 1986) made on behalf of a partner for such taxable year shall, for purposes of section 402(g)(3) of such Code, be treated as having been made ratably during such taxable year.

''(5) CASH OR DEFERRED ARRANGEMENTS.—The amendments made by this section [amending this section and section 6051 of this title] shall not apply to employer contributions made during 1987 and attributable to services performed during 1986 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of such arrangement as in effect on August 16, 1986—

''(A) the employee makes an election with respect to such contribution before January 1, 1987, and

''(B) the employer identifies the amount of such contribution before January 1, 1987.

''(6) REPORTING REQUIREMENTS.—The amendments made by subsection (b) [amending section 6051 of this title] shall apply to calendar years beginning after December 31, 1986.''

Amendment by section 1106(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1106(i) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(b) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1121(c)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1122(h) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(b)(11)–(15), Nov. 10, 1988, 102 Stat. 3474, 3475, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 72, 403, and 408 of this title] shall apply to amounts distributed after December 31, 1986, in taxable years ending after such date.

''(2) SUBSECTION (c).—

''(A) SUBSECTION (c)(1).—The amendment made by subsection (c)(1) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after July 1, 1986.

''(B) SUBSECTION (c)(2).—The amendment made by subsection (c)(2) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after December 31, 1986, except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986.

''(C) SPECIAL RULE FOR AMOUNTS NOT RECEIVED AS ANNUITIES.—In the case of any plan not described in section 72(e)(8)(D) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)), the amendments made by subsection (c)(3) [amending section 72 of this title] shall apply to amounts received after July 1, 1986.

''(3) SPECIAL RULE FOR INDIVIDUALS WHO ATTAINED AGE 50 BEFORE JANUARY 1, 1986.—

''(A) IN GENERAL.—In the case of a lump sum distribution to which this paragraph applies—

''(i) the existing capital gains provisions shall continue to apply, and

''(ii) the requirement of subparagraph (B) of section 402(e)(4) of the Internal Revenue Code of 1986 (as amended by subsection (a)) that the distribution be received after attaining age 59½ shall not apply.

''(B) COMPUTATION OF TAX.—If subparagraph (A) applies to any lump sum distribution of any taxpayer for any taxable year, the tax imposed by section 1 of the Internal Revenue Code of 1986 on such taxpayer for such taxable year shall be equal to the sum of—

''(i) the tax imposed by such section 1 on the taxable income of the taxpayer (reduced by the portion of such lump sum distribution to which clause (ii) applies), plus

''(ii) 20 percent of the portion of such lump sum distribution to which the existing capital gains provisions continue to apply by reason of this paragraph.

''(C) LUMP SUM DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any lump sum distribution if—

''(i) such lump sum distribution is received by an employee who has attained age 50 before January 1, 1986 or by an individual, estate, or trust with respect to such an employee, and

''(ii) the taxpayer makes an election under this paragraph.

Not more than 1 election may be made under this paragraph with respect to an employee. An election under this subparagraph shall be treated as an election under section 402(e)(4)(B) of such Code for purposes of such Code.

''(4) 5-YEAR PHASE-OUT OF CAPITAL GAINS TREATMENT.—

''(A) Notwithstanding the amendment made by subsection (b) [amending this section and section 403 of this title], if the taxpayer elects the application of this paragraph with respect to any distribution after December 31, 1986, and before January 1, 1992, the phase-out percentage of the amount which would have been treated, without regard to this subparagraph, as long-term capital gain under the existing capital gains provisions shall be treated as long-term capital gain.

''(B) For purposes of this paragraph—

''In the case of distributions during calendar year:	**The phase-out percentage is:**
1987	100
1988	95
1989	75
1990	50
1991	25.

''(C) No more than 1 election may be made under this paragraph with respect to an employee. An election under this paragraph shall be treated as an election under section 402(e)(4)(B) of the Internal Revenue Code of 1986 for purposes of such Code.

''(5) ELECTION OF 10-YEAR AVERAGING.—An employee who has attained age 50 before January 1, 1986, and elects the application of paragraph (3) or section 402(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act) may elect to have such section applied by substituting '10 times' for '5 times' and '1/10' for '1/5' in subparagraph (B) thereof. For purposes of the preceding sentence, section 402(e)(1) of such Code shall be applied by using the rate of tax in effect under section 1 of the Internal Revenue Code of 1954 for taxable years beginning during 1986 and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years. This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph.

''(6) EXISTING CAPITAL GAIN PROVISIONS.—For purposes of paragraphs (3) and (4), the term 'existing capital gains provisions' means the provisions of paragraph (2) of section 402(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) and paragraph (2) of section 403(a) of such Code (as so in effect).

''(7) SUBSECTION (d).—The amendments made by subsection (d) [amending section 403 of this title] shall apply to taxable years beginning after December 31, 1985.

''(8) FROZEN DEPOSITS.—The amendments made by subsection (e)(2) [amending this section and section 408 of this title] shall apply to amounts transferred to an employee before, on, or after the date of the enactment of this Act [Oct. 22, 1986], except that in the case of an amount transferred on or before such date, the 60-day period referred to in section 402(a)(5)(C) of the Internal Revenue Code of 1986 shall not expire before the 60th day after the date of the enactment of this Act.

''(9) SPECIAL RULE FOR STATE PLANS.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

''(A) without regard to the phrase 'before separation from service' in paragraph (8)(D), and

''(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date.''

Amendment by section 1852(a)(5)(A), (b)(1)–(7), (c)(5) 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 1854(f)(4)(C) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(c)(6)(C), Nov. 10, 1988, 102 Stat. 3458, provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to any transaction occurring after December 31, 1984, except that in the case of any transaction occurring before the date of the enactment of this Act [Oct. 22, 1986], the period under which proceeds are required to be invested under section 402(j) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)) shall not end before the earlier of 1 year after the date of such transaction or 180 days after the date of the enactment of this Act.''

Section 1875(c)(1)(B) of Pub. L. 99–514 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]. Such amendments shall apply also to distributions after 1983 and on or before the date of the enactment of this Act to individuals who are not 5-percent owners (as defined in section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by this paragraph)).''

Amendment by section 1898(a)(2), (3), (c)(7)(A)(i), (e) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1898(c)(1)(A) of Pub. L. 99–514 applicable to payments made after Oct. 22, 1986, see section 1898(c)(1)(C) of Pub. L. 99–514, set out as a note under section 72 of this title.

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 204 of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 207 of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(9)–(11) 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.

Section 491(f)(2) of Pub. L. 98–369 provided that: ''The amendment made by subsection (c) [amending this section and section 405 of this title] shall apply to redemptions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Section 522(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1852(b)(9), Oct. 22, 1986, 100 Stat. 2867, provided that: ''The amendments made by this section [amending this section and sections 403, 408, and 409 of this title] shall apply to distributions made after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

Section 713(c)(4) of Pub. L. 98–369, as added by Pub. L. 99–514, title XVIII, § 1875(c)(2), Oct. 22, 1986, 100 Stat. 2894, provided that: ''The amendment made by paragraph (3) [amending this section] shall apply to distributions after July 18, 1984.''

Amendment by section 1001(b)(3) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 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

Amendment by section 311(b)(2), (3)(A), (c) of Pub. L. 97–34, applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 314(c)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2(b) of Pub. L. 96–608, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to payments made in taxable years beginning after December 31, 1978.

''(2) TRANSITIONAL RULE.—In the case of any payment made before January 1, 1982, in a taxable year beginning after December 31, 1978, which is treated as a qualifying rollover distribution (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) by reason of the amendment made by subsection (a), the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1981.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(d) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

Amendment by section 135(b) of Pub. L. 95–600 applicable to plan years beginning after December 31, 1979, see section 135(c)(1) of Pub. L. 95–600, set out as a note under section 401 of this title.

Section 157(h)(3)(A) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(14)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this subsection [amending this section and section 408 of this title] shall apply to payments made in taxable years beginning after December 31, 1977.''

Section 157(f)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to qualifying rollover distributions (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) completed after December 31, 1978, in taxable years ending after such date.''

Section 157(g)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 403 and 408 of this title] shall apply to lump-sum distributions completed after December 31, 1978, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT; CERTAIN ROLLOVERS VALIDATED

Section 4(d) of Pub. L. 95–458, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 403 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

''(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

''(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before the date of the enactment of this Act, [Oct. 14, 1978], and

''(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1512(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to distributions and payments made after December 31, 1975, in taxable years beginning after such date.''

Section 1901(a)(57)(C)(ii) of Pub. L. 94–455 provided that: ''The amendment made by clause (i) [amending this section] shall apply with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4,

1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2002(i)(3) of Pub. L. 93–406, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (g)(5) and (6) [amending this section and section 403 of this title] shall apply on and after the date of enactment of this Act [Sept. 2, 1974] with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code.''

Section 2005(d) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section and sections 46, 50A, 56, 62, 72, 101, 122, 403, 405, 406, 407, 871, 877, 901, 1304, and 1348 of this title] shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(1) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Section 515(d) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 72, 403, 405, 406, 407 and 1304 of this title] shall apply to taxable years ending after December 31, 1969.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 221(c)(1) of Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

Amendment by section 232(e)(1)–(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

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.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3 of Pub. L. 86–437 provided that: ''The amendments made by this Act [amending this section and section 871 of this title] shall apply only with respect to taxable years beginning after December 31, 1959.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 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.

CLARIFICATION OF DISQUALIFICATION RULES RELATING TO ACCEPTANCE OF ROLLOVER CONTRIBUTIONS

Section 1509 of Pub. L. 105–34 provided that: ''The Secretary of the Treasury or his delegate shall clarify that, under the Internal Revenue Service regulations protecting pension plans from disqualification by reason of the receipt of invalid rollover contributions under section 402(c) of the Internal Revenue Code of 1986, in order for the administrator of the plan receiving any such contribution to reasonably conclude that the contribution is a valid rollover contribution it is not necessary for the distributing plan to have a determination letter with respect to its status as a qualified plan under section 401 of such Code.''

MODEL EXPLANATION

Section 521(d) of Pub. L. 102–318 provided that: ''The Secretary of the Treasury or his delegate shall develop a model explanation which a plan administrator may provide to a recipient in order to meet the requirements of section 402(f) of the Internal Revenue Code of 1986.''

INCORPORATION BY REFERENCE OF SUBSECTION (g) LIMITATIONS

Section 1011(c)(10) of Pub. L. 100–647 provided that: ''Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 402(g) of the Internal Revenue Code of 1986.''

APPLICABILITY OF SUBSECTION (a)(5)(F)(ii)

Section 1011A(a)(5) of Pub. L. 100–647 provided that: ''Section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 shall not apply to distributions after October 22, 1986, and before the 1st taxable year beginning after 1986 which are attributable to benefits which accrued before January 1, 1985.''

APPLICABILITY OF SUBSECTION (a)(5)(D)(i)(II)

Section 1011A(b)(4)(E) of Pub. L. 100–647 provided that: ''Section 402(a)(5)(D)(i)(II) of the 1986 Code (as in effect after the amendment made by subparagraph (A)) shall not apply to distributions after December 31, 1986, and before March 31, 1988.''

ELECTION TO TREAT CERTAIN LUMP SUM DISTRIBUTIONS RECEIVED DURING 1987 AS RECEIVED DURING 1986

Section 1124 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(d), Nov. 10, 1988, 102 Stat. 3476, provided that:

''(a) IN GENERAL.—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986.

''(b) SPECIAL RULE FOR TERMINATED PLAN.—In the case of an individual, estate, or trust who receives with respect to an employee a distribution from a terminated plan which was maintained by a corporation organized under the laws of the State of Nevada, the principal place of business of which is Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986, the individual, estate, or trust may treat a lump sum distribution received from such plan before June 30, 1987, as if it were received in 1986.

''(c) LUMP SUM DISTRIBUTION.—For purposes of this section, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such 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.

TREATMENT OF CERTAIN DISTRIBUTIONS FROM QUALIFIED TERMINATED PLAN

Section 551 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code [of] 1986 [formerly I.R.C. 1954], if—

''(1) a distribution was made from a qualified terminated plan to an employee on December 16, 1976, and on January 6, 1977, such employee transferred all of the property received in such distribution to an individual retirement account (within the meaning of section 408(a) of such Code) established for the benefit of such employee, and

''(2) the remaining balance to the credit of such employee in such qualified terminated plan was distributed to such employee on January 21, 1977, and all the property received by such employee in such distribution was transferred by such employee to such individual retirement account on January 21, 1977,

then such distributions shall be treated as qualifying rollover distributions (within the meaning of section 402(a)(5) of such Code) and shall not be includible in the gross income of such employee for the taxable year in which paid.

''(b) QUALIFIED TERMINATED PLAN.—For purposes of this section, the term 'qualified terminated plan' means a pension plan—

''(1) with respect to which a notice of sufficiency was issued by the Pension Benefit Guaranty Corporation on December 2, 1976, and

''(2) which was terminated by corporate action on February 20, 1976.

''(c) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Section 157(h)(3)(B) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(14)(A), (D), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 which is described in section 402(a)(5)(A) or 403(a)(4)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendments made by this subsection [amending sections 402 and 408 of this title], the applicable period specified in section 402(a)(5)(C) of such Code (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B) of such code) shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULES RELATING TO PERIOD FOR ROLLOVER CONTRIBUTION

Section 1(d) of Pub. L. 94–267, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—

''(A) PERIOD FOR ROLLOVER CONTRIBUTION.—In the case of a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] or section 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to distributions of the balance to the credit of the employee) which is contributed by an employee after the date of the enactment of this Act [Apr. 15, 1976] to a trust, plan, account, annuity, or bond described in section 402(a)(5)(B) or 403(a)(4)(B) of such Code, the applicable period specified in section 402(a)(5)(B) or 403(a)(4)(B) of such Code (relating to rollover distributions to another plan or retirement account) shall not expire before December 31, 1976.

''(B) TIME OF CONTRIBUTION.—

(i) GENERAL RULE.—If the initial portion of a payment the applicable period for which is determined under subparagraph (A) is contributed before December 31, 1976, by an individual to a trust, plan, account, annuity, or bond described in subparagraph (A) and the remaining portion of such payment is contributed by such individual to such a trust, plan, account, annuity, or bond not later than 30 days after the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 of the Internal Revenue Code of 1986 with respect to the contribution, then, for purposes of subparagraph (A) and sections 402(a)(5) and 403(a)(4) of such Code, at the election of the individual (made in accordance with regulations prescribed by the Secretary or his delegate), such remaining portion shall be considered to have been contributed on the date the initial portion of the payment was contributed. For purposes of this subparagraph, the initial portion of a payment is the amount by which such payment exceeds the amount of the tax imposed on such payment by chapter 1 of such Code (determined without regard to this subparagraph). [chapter 1 of this title]

''(ii) REGULATIONS.—For purposes of this subparagraph, the tax imposed on a payment by chapter 1 of the Internal Revenue Code of 1986, and the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 with respect to a contribution, shall be determined under regulations prescribed by the Secretary of the Treasury or his delegate.

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

''(i) the period provided by the Internal Revenue Code of 1986 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Sec-

retary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

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

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

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

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

(a) General rule

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

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

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

(b) Qualified Roth contribution program

For purposes of this section—

(1) In general

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

(2) Separate accounting required

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

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

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

(c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

(1) Designated Roth contribution

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

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

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

(2) Designation limits

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

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

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

(3) Rollover contributions

(A) In general

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

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

(ii) a Roth IRA of such individual.

(B) Coordination with limit

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

(d) Distribution rules

For purposes of this title—

(1) Exclusion

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

(2) Qualified distribution

For purposes of this subsection—

(A) In general

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

(B) Distributions within nonexclusion period

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

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