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

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

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

(3) Treatment of distributions of certain excess deferrals

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

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

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

(4) Aggregation rules

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

(e) Other definitions

For purposes of this section—

(1) Applicable retirement plan

The term ''applicable retirement plan'' means—

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

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

(2) Elective deferral

The term ''elective deferral'' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).

(Added Pub. L. 107–16, title VI, § 617(a), June 7, 2001, 115 Stat. 103.)

EFFECTIVE DATE

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

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

(1) Distributee taxable under section 72

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

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

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

(3) Self-employed individuals

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

(4) Rollover amounts

(A) General rule

If—

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

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

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

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

(B) Certain rules made applicable

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

(5) Direct trustee-to-trustee transfer

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

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

(1) General rule

If—

(A) an annuity contract is purchased—

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

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

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

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

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

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and additions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

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

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

(3) Includible compensation

For purposes of this subsection, the term ''includible compensation'' means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes—

(A) any elective deferral (as defined in section 402(g)(3)), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(4) Years of service

In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract

If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

[(6) Repealed. Pub. L. 107–147, title IV, §411(p)(2), Mar. 9, 2002, 116 Stat. 50]

(7) Custodial accounts for regulated investment company stock

(A) Amounts paid treated as contributions

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before the employee dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), encounters financial hardship.

(B) Account treated as plan

For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company

For purposes of this paragraph, the term ''regulated investment company'' means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) Rollover amounts

(A) General rule

If—

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

(ii) the employee transfers any portion of the property he receives in such dis-

tribution to an eligible retirement plan described in section 402(c)(8)(B), and

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

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

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

(9) Retirement income accounts provided by churches, etc.

(A) Amounts paid treated as contributions

For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account

For purposes of this paragraph, the term ''retirement income account'' means a defined contribution program established or maintained by a church, or a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) Distribution requirements

Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). 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 the transfer.

(11) Requirement that distributions not begin before age 59½, severance from employment, death, or disability

This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)),

(B) in the case of hardship, or

(C) for distributions to which section 72(t)(2)(G) applies.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12) Nondiscrimination requirements

(A) In general

For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-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. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

(B) Church

For purposes of paragraph (1)(D), the term ''church'' has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) State and local governmental plans

For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

(13) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(14) Death benefits under USERRA-qualified active military service

This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations

Premiums paid by an employer for an annuity contract which is not subject to subsection (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 such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

(Aug. 16, 1954, ch. 736, 68A Stat. 137; Pub. L. 85–866, title I, §23(a)–(c), Sept. 2, 1958, 72 Stat. 1620–1622; Pub. L. 87–370, §3(a), Oct. 4, 1961, 75 Stat. 801; Pub. L. 87–792, §4(d), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §232(e)(4)–(6), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, §321(b)(2), title V, §515(a)(2), Dec. 30, 1969, 83 Stat. 591, 644; Pub. L. 93–406, title II, §§1022(e), 2002(g)(6), 2004(c)(4), 2005(b)(2), Sept. 2, 1974, 88 Stat. 940, 969, 986, 991; Pub. L. 94–267, §1(b), Apr. 15, 1976, 90 Stat. 366; Pub. L. 94–455, title XIV, §1402(b)(1)(D), (2), title XV, §1504(a), title XIX, §§1901(a)(58), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1738, 1774, 1794, 1834; Pub. L. 95–458, §4(b), Oct. 14, 1978, 92 Stat. 1259; Pub. L. 95–600, title I, §§154(a), 156(a), (b), 157(g)(2), Nov. 6, 1978, 92 Stat. 2801, 2802, 2808; Pub. L. 96–222, title I, §101(a)(12), (13)(C), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(b)(3)(B), Aug. 13, 1981, 95 Stat. 280; Pub. L. 97–248, title II, §251(a), (b), (c)(3), Sept. 3, 1982, 96 Stat. 529–531; Pub. L. 97–448, title I, §103(c)(8)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–21, title I, §122(c)(4), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title IV, §491(d)(12), title V, §§521(c), 522(a)(2), (3), (d)(9)–(11), title X, §1001(b)(4), (e), July 18, 1984, 98 Stat. 849, 867, 869–871, 1011, 1012; Pub. L. 99–514, title XI, §§1120(a), (b), 1122(b)(1)(B), (d), 1123(c), title XVIII, §1852(a)(3)(A), (B), (5)(B), (b)(10), Oct. 22, 1986, 100 Stat. 2463, 2466, 2469, 2474, 2865, 2867; Pub. L. 100–647, title I, §1011(c)(7)(B), (12), (m)(1), (2), title VI, §6052(a)(1), Nov. 10, 1988, 102 Stat. 3458, 3459, 3471, 3696; Pub. L. 101–508, title XI, §11701(k), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 102–318, title V, §§521(b)(12), (13), 522(a)(3), (c)(2), (3), July 3, 1992, 106 Stat. 311, 314, 315; Pub. L. 104–188, title I, §§1450(c)(1), 1704(t)(69), Aug. 20, 1996, 110 Stat. 1815, 1891; Pub. L. 105–34, title XV, §§1504(a)(1), 1505(c), title XVI, §1601(d)(6)(B), Aug. 5, 1997, 111 Stat. 1063, 1064, 1090; Pub. L. 105–206, title VI, §6005(c)(2)(B), July 22, 1998, 112 Stat. 800; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§632(a)(2), 641(b)(1), (e)(7), 642(b)(1), 646(a)(2), 647(a), June 7, 2001, 115 Stat. 113, 120, 121, 126, 127; Pub. L. 107–147, title IV, §411(p)(1)–(3), Mar. 9, 2002, 116 Stat. 49, 50; Pub. L. 108–311, title IV, §§404(e), 408(a)(11), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–135, title IV, §412(w), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title VIII, §§827(b)(2), (3), 829(a)(2), (3), 845(b)(1), (2), Aug. 17, 2006, 120 Stat. 1000, 1002, 1015; Pub. L. 110–245, title I, §104(c)(2), June 17, 2008, 122 Stat. 1627.)

AMENDMENTS

2008—Subsec. (b)(14). Pub. L. 110–245 added par. (14).

2006—Subsec. (a)(2). Pub. L. 109–280, §845(b)(1), added par. (2).

Subsec. (a)(4)(B). Pub. L. 109–280, §829(a)(2), inserted ''and (11)'' after ''(7)''.

Subsec. (b)(2). Pub. L. 109–280, §845(b)(2), added par. (2).

Subsec. (b)(7)(A)(ii). Pub. L. 109–280, §827(b)(2), inserted ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

Subsec. (b)(8)(B). Pub. L. 109–280, §829(a)(3), substituted '', (9), and (11)'' for ''and (9)''.

Subsec. (b)(11)(C). Pub. L. 109–280, §827(b)(3), added subpar. (C).

2005—Subsec. (b)(9)(B). Pub. L. 109–135 inserted ''or'' before ''a convention''.

2004—Subsec. (a)(4)(B). Pub. L. 108–311, §404(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).''

Subsec. (b)(7)(A)(ii). Pub. L. 108–311, §408(a)(11), substituted ''3121(a)(5)(D)'' for ''3121(a)(1)(D)''.

2002—Subsec. (b)(1). Pub. L. 107–147, §411(p)(1), inserted concluding provisions and struck out former concluding provisions which read as follows: ''then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.''

Subsec. (b)(3). Pub. L. 107–147, §411(p)(3), in first sentence, inserted '', and which precedes the taxable year by no more than five years'' before period at end and, in second sentence, struck out ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' after ''this subsection applies''.

Subsec. (b)(6). Pub. L. 107–147, § 411(p)(2), struck out heading and text of par. (6). Text read as follows: ''For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.''

2001—Subsec. (b)(1). Pub. L. 107–16, § 642(b)(1), substituted ''section 408(d)(3)(A)(ii)'' for ''section 408(d)(3)(A)(iii)'' in concluding provisions.

Pub. L. 107–16, § 632(a)(2)(A), substituted ''the applicable limit under section 415'' for ''the exclusion allowance for such taxable year'' in concluding provisions.

Subsec. (b)(2). Pub. L. 107–16, § 632(a)(2)(B), struck out par. (2), which described exclusion allowance for purposes of subsec. (b) providing general criteria, determination under section 415 rules, number of years of service for duly ordained, commissioned, or licensed ministers or lay employees, and alternative exclusion allowance for such ministers or lay employees.

Subsec. (b)(3). Pub. L. 107–16, § 632(a)(2)(C), inserted ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' before period at end of second sentence.

Subsec. (b)(7)(A)(ii). Pub. L. 107–16, § 646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(8)(A)(ii). Pub. L. 107–16, § 641(b)(1), substituted ''such distribution to an eligible retirement plan described in section 402(c)(8)(B), and'' for ''such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and''.

Subsec. (b)(8)(B). Pub. L. 107–16, § 641(e)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A).''

Subsec. (b)(11). Pub. L. 107–16, § 646(a)(2)(B), substituted ''severance from employment'' for ''separation from service'' in heading.

Subsec. (b)(11)(A). Pub. L. 107–16, § 646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(13). Pub. L. 107–16, § 647(a), added par. (13).

2000—Subsec. (b)(3)(B). Pub. L. 106–554 substituted ''section 125, 132(f)(4), or'' for ''section 125 or''.

1998—Subsec. (b)(8)(B). Pub. L. 105–206 inserted ''(including paragraph (4)(C) thereof)'' after ''section 402(c)''.

1997—Subsec. (b)(1)(A)(iii). Pub. L. 105–34, § 1601(d)(6)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 105–34, § 1504(a)(1), inserted at end ''Such term includes—'' and subpars. (A) and (B).

Subsec. (b)(12)(C). Pub. L. 105–34, § 1505(c), added subpar. (C).

1996—Subsec. (b)(1)(E). Pub. L. 104–188, § 1450(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),''.

Subsec. (b)(10). Pub. L. 104–188, § 1704(t)(69), substituted ''a direct'' for ''an direct'' in last sentence.

1992—Subsec. (a)(4)(A)(i). Pub. L. 102–318, § 521(b)(12)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (a)(4)(B). Pub. L. 102–318, § 521(b)(12)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).''

Subsec. (a)(5). Pub. L. 102–318, § 522(c)(2), added par. (5).

Subsec. (b)(8)(A)(i). Pub. L. 102–318, § 521(b)(13)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (b)(8)(B) to (D). Pub. L. 102–318, § 521(b)(13)(B), added subpar. (B) and struck out former subpars. (B) to (D), which related to special rules for partial distributions, applicability of certain similar rules, and eligibility for rollover treatment of required distributions.

Subsec. (b)(10). Pub. L. 102–318, § 522(a)(3), (c)(3), substituted ''sections 401(a)(9) and 401(a)(31)'' for ''section 401(a)(9)'' and inserted at end ''Any amount transferred in an direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.''

1990—Subsec. (b)(12)(A). Pub. L. 101–508 inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in second sentence.

1988—Subsec. (b)(1)(D). Pub. L. 100–647, § 1011(m)(1)(B), substituted ''paragraph (12)'' for ''paragraph (10)''.

Subsec. (b)(1)(E). Pub. L. 100–647, § 1011(c)(7)(B), added subpar. (E).

Subsec. (b)(10). Pub. L. 100–647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12). Pub. L. 100–647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12)(A). Pub. L. 100–647, § 1011(m)(2), inserted ''(17),'' after ''paragraphs (4), (5),'' and '', section 401(m),'' after ''of section 401(a)'' in cl. (i).

Pub. L. 100–647, § 1011(c)(12), inserted after cl. (ii) ''For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-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.''

Pub. L. 100–647, § 6052(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded.''

1986—Subsec. (a)(1). Pub. L. 99–514, § 1122(d)(1), substituted ''Distributee taxable under section 72'' for ''General rule'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).''

Subsec. (a)(2). Pub. L. 99–514, § 1122(b)(1)(B), struck out par. (2) which read as follows:

''(A) General rule

''If—

''(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

''(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

''(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribu-

tion shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

''(B) Cross reference

''For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).''

Subsec. (a)(4)(B). Pub. L. 99–514, §1852(a)(5)(B)(i), substituted ''through (G)'' for ''through (F)''.

Subsec. (b)(1). Pub. L. 99–514, §1122(d)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)''.

Subsec. (b)(1)(D). Pub. L. 99–514, §1120(a), added subpar. (D).

Subsec. (b)(7)(A)(ii). Pub. L. 99–514, §1123(c)(2), inserted ''in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)),'' after ''section 72(m)(7)), or''.

Subsec. (b)(7)(D). Pub. L. 99–514, §1852(a)(3)(B), struck out subpar. (D) ''Distribution requirements'' which read as follows: ''For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract.''

Subsec. (b)(8)(C). Pub. L. 99–514, §1852(b)(10), inserted ''and'' before ''(F)(i)''.

Subsec. (b)(8)(D). Pub. L. 99–514, §1852(a)(5)(B)(ii), added subpar. (D).

Subsec. (b)(10). Pub. L. 99–514, §1120(b), added par. (10) relating to nondiscrimination requirements.

Pub. L. 99–514, §1852(a)(3)(A), added par. (10) relating to distribution requirements.

Subsec. (b)(11). Pub. L. 99–514, §1123(c)(1), added par. (11).

Subsec. (c). Pub. L. 99–514, §1122(d)(3), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities).''

1984—Subsec. (a)(2)(A). Pub. L. 98–369, §1001(b)(4), 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. (a)(4)(A)(i). Pub. L. 98–369, §522(a)(2), substituted ''any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,'' for ''the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.''

Subsec. (a)(4)(B). Pub. L. 98–369, §522(d)(9), substituted ''(B) through (F)'' for ''(B) through (E)''.

Subsec. (b)(1). Pub. L. 98–369, §491(d)(12), struck out ''or 409(b)(3)(C)'' after ''408(d)(3)(A)(iii)''.

Subsec. (b)(7)(D). Pub. L. 98–369, §521(c), added subpar. (D).

Subsec. (b)(8)(A)(i). Pub. L. 98–369, §522(a)(3), substituted ''any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him'' for ''the balance to the credit of an employee is paid to him in a qualifying distribution''.

Subsec. (b)(8)(B). Pub. L. 98–369, §522(d)(10), substituted provisions relating to special rules for partial distributions for provisions relating to definition of qualifying distributions.

Subsec. (b)(8)(C). Pub. L. 98–369, §522(d)(11), substituted ''(F)(i)'' for ''(D)(v), and (E)(i)''.

1983—Subsec. (b)(3). Pub. L. 98–21 substituted ''section 911'' for ''sections 105(d) and 911''.

Subsec. (b)(8)(C). Pub. L. 97–448 substituted ''subparagraphs (B), (C), (D)(v), and (E)(i) of section 402(a)(5)'' for ''subparagraphs (B), (C), and (E)(i) of section 402(a)(5)''.

1982—Subsec. (b)(2)(B). Pub. L. 97–248, §251(a)(1), (c)(3), substituted ''home health service agencies, and certain churches, etc.'' for ''and home health service agencies'', and ''(under section 415 without regard to section 415(c)(8))'' for ''(under section 415)''.

Subsec. (b)(2)(C), (D). Pub. L. 97–248, §251(a)(2), added subpars. (C) and (D).

Subsec. (b)(9). Pub. L. 97–248, §251(b), added par. (9).

1981—Subsec. (b)(8)(B)(i). Pub. L. 97–34 inserted '', or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(*o*)(5))'' after ''subsection (a)''.

1980—Subsec. (b). Pub. L. 96–222 substituted in par. (1) ''409(b)(3)(C)'' for ''409(d)(3)(C)'', and in par. (7)(A) ''which satisfies'' for ''which satisfied''.

1978—Subsec. (a)(4). Pub. L. 95–600, §157(g)(2), in subpar. (B) substituted ''paragraphs (6) and (7)'' for ''paragraph (6)''.

Pub. L. 95–458, 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). Pub. L. 95–458 struck out par. (5) which related to special rules concerning time of termination of a profit-sharing plan and the treatment of the sale of a corporate subsidiary or assets as payment or distribution on account of termination of a plan of which an annuity trust was a part.

Subsec. (b)(1). Pub. L. 95–600, §156(b), inserted provision relating to application of rules of this subsection to amounts contributed by an employer for a taxable year.

Subsec. (b)(7)(A). Pub. L. 95–600, §154(a), struck out ''the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account'' after ''contract for his employee if'', and added cls. (i) and (ii).

Subsec. (b)(8). Pub. L. 95–600, §156(a), added par. (8).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b) (1)(D), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (a)(4). Pub. L. 94–455, §1901(a)(58), reenacted provisions following subpar. (C) without substantive change.

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

Subsec. (a)(4)(A). Pub. L. 94–267, §1(b)(1), restructured provisions by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Pub. L. 94–267, §1(b)(3), added par. (5).

Subsec. (b)(1)(A)(ii). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))''.

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

Subsec. (b)(7)(C). Pub. L. 94–455, §1504(a), struck out '', and which issues only redeemable stock'' after ''regulated investment company within the meaning of section 851(a)''.

1974—Subsec. (a)(2). Pub. L. 93–406, §2005(b)(2), substituted ''a lump sum distribution (as defined in section 4002(e)(4)(A)) is paid to the recipient'' for ''the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee'' as cl. (iii) of subpar. (A), substituted ''so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For pur-

poses of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph'' for ''then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1)'' following cl. (iii) of subpar. (A), substituted provisions setting out a cross reference to section 402(e) for provisions defining ''total amounts'' as subpar. (B), and struck out subpar. (C) setting out limitations on capital gains treatment.

Subsec. (a)(4). Pub. L. 93–406, § 2002(g)(6), added par. (4).

Subsec. (b)(2). Pub. L. 93–406, § 2004(c)(4), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 93–406, § 1022(e), added par. (7).

1969—Subsec. (a)(2)(C). Pub. L. 91–172, § 515(a)(2), added subpar. (C).

Subsec. (c). Pub. L. 91–172, § 321(b)(2), consolidated provisions of subsec. (c) providing for taxability of beneficiary under a nonqualified annuity, the employees gross income to include amount contributed by employer for annuity contract in the year in which amount is contributed, the amount to be included as provided in section 72 of this title and of subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, the gross income to include amount contributed by employer after Dec. 31, 1957, in the year of change from forfeitable to nonforfeitable rights, the new provisions including premiums paid by an employer in accordance with section 83, except that value of the contract shall be substituted for fair market value of the property for purposes of applying such section 83, such provision not to be applicable to that portion of premiums paid which is excluded from gross income under subsec. (b) of this section.

Subsec. (d). Pub. L. 91–172, § 321(b)(2), struck out subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, gross income of the employee to include (amount contributed by employer after Dec. 31, 1957), in year of change from forfeitable to nonforfeitable rights. See subsec. (c) of this section.

1964—Subsecs. (a)(1), (b)(1), (c). Pub. L. 88–272, § 232(e)(4)–(6), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2)(A). Pub. L. 87–792, § 4(d)(1), (2), substituted ''described in paragraph (1)'' for ''which meets the requirements of section 401(a)(3), (4), (5), and (6)'' in cl. (i), and inserted sentence at end thereof providing that this subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

Subsec. (a)(3). Pub. L. 87–792, § 4(d)(3), added par. (3).

1961—Subsec. (b). Pub. L. 87–370, § 3(a)(3), inserted ''or public school'' in heading.

Subsec. (b)(1)(A). Pub. L. 87–370, § 3(a)(1), included annuity contracts purchased for an employee, other than one described in clause (i) of this subpar., who performs services for an educational institution, as defined in section 151(e)(4) of this title, by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of either.

Subsec. (b)(3). Pub. L. 87–370, § (3)(a)(2), substituted ''the employer described in paragraph (1)(A)'' for ''the employer described in section 501(c)(3) and exempt from tax under section 501(a)''.

1958—Subsec. (a)(1). Pub. L. 85–866, § 23(b), substituted ''which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section),'' for ''with respect to which the employer's contribution is deductible under section 404(a)(2), or if an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),''.

Subsecs. (b) to (d). Pub. L. 85–866, § 23(a), added subsec. (b), redesignated former subsec. (b) as (c), and added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 827(b)(2), (3) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Amendment by section 829(a)(2), (3) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(1), (2) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(e) of Pub. L. 108–311 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 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

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 632(a)(2) 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.

Amendment by section 641(b)(1), (e)(7) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Amendment by section 642(b)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 642(c) of Pub. L. 107–16, set out as a note under section 408 of this title.

Amendment by section 646(a)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, § 647(c), June 7, 2001, 115 Stat. 127, provided that: ''The amendments made by this section [amending this section and section 457 of this title] shall apply to trustee-to-trustee transfers after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997,

Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6005 of Pub. L. 105–206 applicable to distributions after Dec. 31, 1998, see section 6005(c)(2)(C) of Pub. L. 105–206, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1504(a)(2) of Pub. L. 105–34 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1505(c) of Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(6)(B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1450(c)(2) of Pub. L. 104–188 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1995, except a contract shall not be required to meet any change in any requirement by reason of such amendment before the 90th day after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(12), (13) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Amendment by section 522(a)(3), (c)(2), (3) 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 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(B) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Amendment by section 1011(c)(12), (m)(1), (2) 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 6052(a)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment made by section 1120(b) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1120(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(m)(3), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

''(2) 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 amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) January 1, 1991, or

''(B) the later of—

''(i) January 1, 1989, or

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

Amendment by section 1122(b)(1)(B), (d) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, but only with respect to distributions from contracts described in subsec. (b) of this section which are attributable to assets other than assets held as of the close of the last year beginning before Jan. 1, 1989, with certain exceptions and transition rule, see section 1123(e) of Pub. L. 99–514, as amended, set out as a note under section 72 of this title.

Section 1852(a)(3)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section] shall apply to benefits accruing after December 31, 1986, in taxable years ending after such date.''

Amendment by section 1852(a)(5)(B), (b)(10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(12) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

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

Amendment by section 522 of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 1001(b)(4) 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 AMENDMENTS

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

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 1982 AMENDMENT

Section 251(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 415 of this title, and enacting a provision set out as a note below] shall apply to taxable years beginning after December 31, 1981.

''(2) RETIREMENT INCOME ACCOUNTS.—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1974.

''(3) SECTION 415 AMENDMENTS.—The amendments made by subsection (c) [amending section 415 of this title] shall apply to years beginning after December 31, 1981.

''(4) CORRECTION PERIOD.—The amendment made by subsection (d) [enacting provisions set out below] shall take effect on July 1, 1982.

''(5) SPECIAL RULE FOR EXISTING DEFINED BENEFIT ARRANGEMENTS.—Any defined benefit arrangement which is established by a church or a convention or association of churches (including an organization described in section 414(e)(3)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and which is in effect on the date of the enactment of this Act [Sept. 3, 1982] shall not be treated as failing to meet the requirements of section 403(b)(2) of such Code merely because it is a defined benefit arrangement.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1980 AMENDMENT

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 AMENDMENTS

Section 154(b) of Pub. L. 95–600 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Section 156(d) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(13)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this section [amending this section and sections 219, 220, 408, 409, 2039, and 4973] shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after such date.''

Amendment by section 157(g)(2) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by Pub. L. 95–458 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 4(d) of Pub. L. 95–458, set out as a note under section 402 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 1504(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(58), (b)(8)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

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 1022(e) of Pub. L. 93–406 provided that the amendment made by that section is effective Jan. 1, 1974.

Amendment by section 2002(g)(6) of Pub. L. 93–406 applicable on and after Sept. 2, 1974, with respect to contributions to an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a), see section 2002(i)(3) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2004(c)(4) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 2005(b)(2) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(2) 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.

Amendment by section 515(a)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

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

EFFECTIVE DATE OF 1962 AMENDMENT

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 1961 AMENDMENT

Section 3(b) of Pub. L. 87–370 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATES OF 1958 AMENDMENT

Section 23(g) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 101 of this title] shall apply with respect to taxable years beginning after December 31, 1957. The amendments made by subsection (e) [amending section 2039 of this title] shall apply with respect to estates of decedents dying after December 31, 1957. The amendments made by subsection (f) [amending section 2517 of this title] shall apply with respect to calendar years after 1957.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1120 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

ELECTION TO MODIFY SECTION 403(b) EXCLUSION ALLOWANCE TO CONFORM TO SECTION 415 MODIFICATION

Pub. L. 107–16, title VI, § 632(b)(3), June 7, 2001, 115 Stat. 115, provided that: ''In the case of taxable years beginning after December 31, 1999, and before January 1, 2002, a plan may disregard the requirement in the

regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance.''

MODIFICATIONS OF SUBSECTION (b) OF THIS SECTION

Section 1601(d)(4) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, §6016(a)(2), July 22, 1998, 112 Stat. 822, provided that:

''(A) Paragraphs (7)(A)(ii) and (11) of section 403(b) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act [Pub. L. 104–188, set out below] to the extent that such distribution is not includible in income by reason of—

''(i) in the case of distributions before January 1, 1998, section 403(b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act [Pub. L. 104–188, set out below]), and

''(ii) in the case of distributions on and after such date, such section 403(b)(10).

''(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below].''

Section 1450(a), (b) of Pub. L. 104–188 provided that:

''(a) MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED.—

''(1) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

''(2) CONSTRUCTIVE RECEIPT.—[Amended section 402 of this title.]

''(3) EFFECTIVE DATE.—This subsection shall apply to taxable years beginning after December 31, 1995.

''(b) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—

''(1) IN GENERAL.—In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

''(2) ROLLOVERS.—Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code.''

SAMPLING TO DETERMINE WHETHER PLAN MEETS SUBSECTION (b)(12) REQUIREMENTS

Section 6052(b) of Pub. L. 100–647 provided that: ''In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

''(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

''(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.''

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.

CORRECTION PERIOD FOR CHURCH PLANS

Section 251(d) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be treated as not meeting the requirements of section 401 or 403 of such Code if—

''(1) by reason of any change in any law, regulation, ruling, or otherwise such plan is required to be amended to meet such requirements, and

''(2) such plan is so amended at the next earliest church convention or such other time as the Secretary of the Treasury or his delegate may prescribe.''

TRANSITIONAL RULE FOR MAKING SECTION 403(b)(8) ROLLOVER IN THE CASE OF PAYMENTS DURING 1978

Section 101(a)(13)(B) of Pub. L. 96–222, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 in a qualifying distribution described in section 403(b)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1980.''

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

Applicable period specified in section 402(a)(5)(C) of this title shall not expire before close of Dec. 31, 1980 in case of any payment described in subsec. (a)(4)(A) of this section or section 402(a)(5)(A) of this title, see section 157(h)(3)(B) of Pub. L. 95–600, set out as a note under section 402 of this title.

§404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the fol-