be excludable from gross income in the taxable year in which received. See paragraph (d) (2) and (3) of § 1.72–4. To the extent that the payments received under the contract during the taxable year exceed the total amount thus considered to be received as an annuity during such year, they shall be considered to be amounts not received as an annuity and shall be included in the gross income of the recipient. See section 72(e) and paragraph (b)(2) of § 1.72–11.

(ii) For purposes of subdivision (i) of this subparagraph, the number of periodic payments anticipated during the time payments are to be made shall be determined by multiplying the number of payments to be made each year (*a*) by the number of years payments are to be made, or (*b*) if payments are to be made for a life or lives, by the multiple found by the use of the appropriate tables contained in § 1.72–9, as adjusted in accordance with the table in paragraph (a)(2) of § 1.72–5.

(iii) For an example of the computation to be made in accordance with this subparagraph and a special election which may be made in a taxable year subsequent to a taxable year in which the total payments received under a contract described in this subparagraph are less than the total of the amounts excludable from gross income in such year under subdivision (i) of this subparagraph, see paragraph (d)(3) of § 1.72–4.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6497, 25 FR 10019, Oct. 20, 1960; T.D. 6885, 31 FR 7798, June 2, 1966]

### § 1.72–3 Excludable amounts not income.

In general, amounts received under contracts described in paragraph (a)(1) of § 1.72–2 are not to be included in the income of the recipient to the extent that such amounts are excludable from gross income as the result of the application of section 72 and the regulations thereunder.

### § 1.72–4 Exclusion ratio.

(a) *General rule.* (1)(i) To determine the proportionate part of the total amount received each year as an annuity which is excludable from the gross income of a recipient in the taxable year of receipt (other than amounts received under (*a*) certain employee annuities described in section 72(d) and § 1.72–13, or (*b*) certain annuities described in section 72(o) and § 1.122–1), an exclusion ratio is to be determined for each contract. In general, this ratio is determined by dividing the investment in the contract as found under § 1.72–6 by the expected return under such contract as found under § 1.72–5. Where a single consideration is given for a particular contract which provides for two or more annuity elements, an exclusion ratio shall be determined for the contract as a whole by dividing the investment in such contract by the aggregate of the expected returns under all the annuity elements provided thereunder. However, where the provisions of paragraph (b)(3) of § 1.72–2 apply to payments received under such a contract, see paragraph (b)(3) of § 1.72–6. In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the exclusion ratio for purposes of this paragraph (a) is determined in accordance with § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(i).

(ii) The exclusion ratio for the particular contract is then applied to the total amount received as an annuity during the taxable year by each recipient. See, however, paragraph (e)(3) of § 1.72–5. Any excess of the total amount received as an annuity during the taxable year over the amount determined by the application of the exclusion ratio to such total amount shall be included in the gross income of the recipient for the taxable year of receipt.

(2) The principles of subparagraph (1) may be illustrated by the following example:

*Example.* Taxpayer A purchased an annuity contract providing for payments of $100 per month for a consideration of $12,650. Assuming that the expected return under this contract is $16,000 the exclusion ratio to be used by A is $12,650÷16,000; or 79.1 percent (79.06 rounded to the nearest tenth). If 12 such monthly payments are received by A during his taxable year, the total amount he may exclude from his gross income in such year is $949.20 ($1,200×79.1 percent).The balance of $250.80 ($1,200 less $949.20) is the amount to be included in gross income. If A instead received only five such payments during the

year, he should exclude $395.50 (500×79.1 percent) of the total amounts received.

For examples of the computation of the exclusion ratio in cases where two annuity elements are acquired for a single consideration, see paragraph (b)(1) of § 1.72–6.

(3) The exclusion ratio shall be applied only to amounts received as an annuity within the meaning of that term under paragraph (b) (2) and (3) of § 1.72–2. Where the periodic payments increase in amount after the annuity starting date in a manner not provided by the terms of the contract at such date, the portion of such payments representing the increase is not an amount received as an annuity. For the treatment of amounts not received as an annuity, see section 72(e) and § 1.72–11. For special rules where paragraph (b)(3) of § 1.72–2 applies to amounts received, see paragraph (d)(3) of this section.

(4) After an exclusion ratio has been determined for a particular contract, it shall be applied to any amounts received as an annuity thereunder unless or until one of the following occurs:

(i) The contract is assigned or transferred for a valuable consideration (see section 72(g) and paragraph (a) of § 1.72–10);

(ii) The contract matures or is surrendered, redeemed, or discharged in accordance with the provisions of paragraph (c) or (d) of § 1.72–11;

(iii) The contract is exchanged (or is considered to have been exchanged) in a manner described in paragraph (e) of § 1.72–11.

(b) *Annuity starting date.* (1) Except as provided in subparagraph (2) of this paragraph, the annuity starting date is the first day of the first period for which an amount is received as an annuity, except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954. The first day of the first period for which an amount is received as an annuity shall be whichever of the following is the later:

(i) The date upon which the obligations under the contract became fixed, or

(ii) The first day of the period (year, half-year, quarter, month, or otherwise, depending on whether payments are to be made annually, semiannually, quarterly, monthly, or otherwise) which ends on the date of the first annuity payment.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the annuity starting date shall be determined in accordance with whichever of the following provisions is appropriate:

(i) In the case of a joint and survivor annuity contract described in section 72(i) and paragraph (b)(3) of § 1.72–5, the annuity starting date is January 1, 1954, or the first day of the first period for which an amount is received as an annuity by the surviving annuitant, whichever is the later;

(ii) In the case of the transfer of an annuity contract for a valuable consideration, as described in section 72(g) and paragraph (a) of § 1.72–10, the annuity starting date shall be January 1, 1954, or the first day of the first period for which the transferee received an amount as an annuity, whichever is the later;

(iii) If the provisions of paragraph (e) of § 1.72–11 apply to an exchange of one contract for another, or to a transaction deemed to be such an exchange, the annuity starting date of the contract received (or deemed received) in exchange shall be January 1, 1954, or the first day of the first period for which an amount is received as an annuity under such contract, whichever is the later; and

(iv) In the case of an employee who has retired from work because of personal injuries or sickness, and who is receiving amounts under a plan that is a wage continuation plan under section 105(d) and § 1.105–4, the annuity starting date shall be the date the employee reaches mandatory retirement age, as defined in § 1.105–4(a)(3)(i)(B). (See also §§ 1.72–15 and 1.105–6 for transitional and other special rules.)

(c) *Fiscal year taxpayers.* Fiscal year taxpayers receiving amounts as annuities in a taxable year to which the Internal Revenue Code of 1954 applies shall determine the annuity starting date in accordance with section 72(c)(4) and this section. The annuity starting date for fiscal year taxpayers receiving amounts as an annuity in a taxable year to which the Internal Revenue Code of 1939 applies shall be January 1,

1954, except where the first day of the first period for which an amount is received by such a taxpayer as an annuity is subsequent thereto and before the end of a fiscal year to which the Internal Revenue Code of 1939 applied. In such case, the latter date shall be the annuity starting date. In all cases where a fiscal year taxpayer received an amount as an annuity in a taxable year to which the Internal Revenue Code of 1939 applied and subsequent to the annuity starting date determined in accordance with the provisions of this paragraph, such amount shall be disregarded for the purposes of section 72 and the regulations thereunder.

(d) *Exceptions to the general rule.* (1) Where the provisions of section 72 would otherwise require an exclusion ratio to be determined, but the investment in the contract (determined under §1.72–6) is an amount of zero or less, no exclusion ratio shall be determined and all amounts received under such a contract shall be includible in the gross income of the recipient for the purposes of section 72.

(2) Where the investment in the contract is equal to or greater than the total expected return under such contract found under §1.72–5, the exclusion ratio shall be considered to be 100 percent and all amounts received as an annuity under such contract shall be excludable from the recipient's gross income. See, for example, paragraph (f)(1) of §1.72–5. In the case of a contract to which §1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(2) is applied in the manner prescribed in §1.72–6(d) and, in particular, §1.72–6(d)(5)(ii).

(3)(i) If a contract provides for payments to be made to a taxpayer in the manner described in paragraph (b)(3) of §1.72–2, the investment in the contract shall be considered to be equal to the expected return under such contract and the resulting exclusion ratio (100%) shall be applied to all amounts received as an annuity under such contract. For any taxable year, payments received under such a contract shall be considered to be amounts received as an annuity only to the extent that they do not exceed the portion of the investment in the contract which is properly allocable to that year and hence excludable from gross income as a return of premiums or other consideration paid for the contract. The portion of the investment in the contract which is properly allocable to any taxable year shall be determined by dividing the investment in the contract (adjusted for any refund feature in the manner described in paragraph (d) of §1.72–7) by the applicable multiple (whether for a term certain, life, or lives) which would otherwise be used in determining the expected return for such a contract under §1.72–5. The multiple shall be adjusted in accordance with the provisions of the table in paragraph (a)(2) of §1.72–5, if any adjustment is necessary, before making the above computation. If payments are to be made more frequently than annually and the number of payments to be made in the taxable year in which the annuity begins are less than the number of payments to be made each year thereafter, the amounts considered received as an annuity (as otherwise determined under this subdivision) shall not exceed, for such taxable year (including a short taxable year), an amount which bears the same ratio to the portion of the investment in the contract considered allocable to each taxable year as the number of payments to be made in the first year bears to the number of payments to be made in each succeeding year. Thus, if payments are to be made monthly, only seven payments will be made in the first taxable year, and the portion of the investment in the contract allocable to a full year of payments is $600, the amounts considered received as an annuity in the first taxable year cannot exceed $350 ($600×7/12). See subdivision (iii) of this subparagraph for an example illustrating the determination of the portion of the investment in the contract allocable to one taxable year of the taxpayer.

(ii) If subdivision (i) of this subparagraph applies to amounts received by a taxpayer and the total amount of payments he receives in a taxable year is less than the total amount excludable for such year under subdivision (i) of this subparagraph, the taxpayer may elect, in a succeeding taxable year in

which he receives another payment, to redetermine the amounts to be received as an annuity during the current and succeeding taxable years. This shall be computed in accordance with the provisions of subdivision (i) of this subparagraph except that:

(*a*) The difference between the portion of the investment in the contract allocable to a taxable year, as found in accordance with subdivision (i) of this subparagraph, and the total payments actually received in the taxable year prior to the election shall be divided by the applicable life expectancy of the annuitant (or annuitants), found in accordance with the appropriate table in § 1.72–9 (and adjusted in accordance with paragraph (a)(2) of § 1.72–5), or by the remaining term of a term certain annuity, computed as of the first day of the first period for which an amount is received as an annuity in the taxable year of the election; and

(*b*) The amount determined under (*a*) of this subdivision shall be added to the portion of the investment in the contract allocable to each taxable year (as otherwise found). To the extent that the total periodic payments received under the contract in the taxable year of the election or any succeeding taxable year does not equal this total sum, such payments shall be excludable from the gross income of the recipient. To the extent such payments exceed the sum so found, they shall be fully includible in the recipient's gross income. See subdivision (iii) of this subparagraph for an example illustrating the redetermination of amounts to be received as an annuity and subdivision (iv) of this subparagraph for the method of making the election provided by this subdivision.

(iii) The application of the principles of paragraph (d)(3) (i) and (ii) of this section may be illustrated by the following example:

*Example.* Taxpayer A, a 64 year old male, files his return on a calendar year basis and has a life expectancy of 15.6 years on June 30, 1954, the annuity starting date of a contract to which § 1.72–2(b)(3) applies and which he purchased for $20,000. The contract provides for variable annual payments for his life. He receives a payment of $1,000 on June 30, 1955, but receives no other payment until June 30, 1957. He excludes the $1,000 payment from his gross income for the year 1955 since this amount is less than $1,324.50, the amount determined by dividing his investment in the contract ($20,000) by his life expectancy adjusted for annual payments, 15.1 (15.6 − 0.5), as of the original annuity starting date. Taxpayer A may elect, in his return for the taxable year 1957, to redetermine amounts to be received as an annuity under his contract as of June 30, 1956. For the purpose of determining the extent to which amounts received in 1957 or thereafter shall be considered amounts received as an annuity (to which a 100 percent exclusion ratio shall apply) he shall add $118.63 to the $1,324.50 originally determined to be receivable as an annuity under the contract, making a total of $1,443.13. This is determined by dividing the difference between what was excludable in 1955 and 1956, $2,649 (2×$1,324.50) and what he actually received in those years ($1,000) by his life expectancy adjusted for annual payments, 13.9 (14.4 − 0.5), as of his age at his nearest birthday (66) on the first day of the first period for which he received an amount as an annuity in the taxable year of election (June 30, 1956). The result, $1,443.13, is excludable in that year and each year thereafter as an amount received as an annuity to which the 100% exclusion ratio applies. It will be noted that in this example the taxpayer received amounts less than the excludable amounts in two successive years and deferred making his election until the third year, and thus was able to accumulate the portion of the investment in the contract allocable to each taxable year to the extent he failed to receive such portion in both years. Assuming that he received $1,500 in the taxable year of his election, he would include $56.87 in his gross income and exclude $1,443.13 therefrom for that year.

(iv) If the taxpayer chooses to make the election described in subdivision (ii) of this subparagraph, he shall file with his return a statement that he elects to make a redetermination of the amounts excludable from gross income under his annuity contract in accordance with the provisions of paragraph (d)(3) of § 1.72–4. This statement shall also contain the following information:

(*a*) The original annuity starting date and his age on that date,

(*b*) The date of the first day of the first period for which he received an amount in the current taxable year,

(*c*) The investment in the contract originally determined (as adjusted for any refund feature), and

(*d*) The aggregate of all amounts received under the contract between the date indicated in (*a*) of this subdivision

and the day after the date indicated in (*b*) of this subdivision to the extent such amounts were excludable from gross income.

He shall include in gross income any amounts received during the taxable year for which the return is made in accordance with the redetermination made under this subparagraph.

(v) In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(3) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(iii). This application may be illustrated by the following example:

*Example*. B, a male calendar year taxpayer, purchases a contract which provides for variable annual payments for life and to which § 1.72–2(b)(3) applies. The annuity starting date of the contract is June 30, 1990, when B is 64 years old. B receives a payment of $1,000 on June 30, 1991, but receives no other payment until June 30, 1993. B's total investment in the contract is $25,000. B's pre-July 1986 investment in the contract is $12,000. If B makes the election described in § 1.72–6(d)(6), separate computations are required to determine the amounts received as an annuity and excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. In the separate computations, B first determines the applicable portions of the total payment received which are allocable to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The portion of the payment received allocable to the pre-July 1986 investment in the contract is $480 ($12,000/$25,000 × $1,000). The portion of the payment received allocable to the post-June 1986 investment in the contract is $520 ($13,000/$25,000 × $1,000).

Second, B determines the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract allocable to the taxable year by dividing the pre-July 1986 and post-June 1986 investments in the contract by the applicable life expectancy multiple. The life expectancy multiple applicable to pre-July 1986 investment in the contract is B's life expectancy as of the original annuity starting date adjusted for annual payments and is determined under Table I of § 1.72–9 [15.1 (15.6 − 0.5)]. The life expectancy multiple applicable to post-June 1986 investment in the contract is determined under Table V of § 1.72–9 (20.3 (20.8–0.5)). Thus, the pre-July 1986 investment in the contract allocable to each taxable year is $794.70 ($12,000÷15.1), and the post-June 1986 investment in the contract so allocable is $640.39 ($13,000÷20.3). Because the applicable portions of the total payment received in 1991 under the contract ($480 allocable to the pre-July 1986 investment in the contract and $520 allocable to the post-June 1986 investment in the contract) are treated as amounts received as an annuity and are excludable from gross income to the extent they do not exceed the portion of the corresponding investment in the contract allocable to 1991 ($794.70 pre-July 1986 investment in the contract and $640.39 post-June 1986 investment in the contract), the entire amount of each applicable portion of the total payment is excludable from gross income. B may elect, in the return filed for taxable year 1993, to redetermine amounts to be received as an annuity under the contract as of June 30, 1992. The extent to which the amounts received in 1993 or thereafter shall be considered amounts received as an annuity is determined as follows:

| | |
|---|---|
| Pre-July 1986 investment in the contract allocable to taxable years 1991 and 1992 ($794.70 × 2) | $1,589.40 |
| Less: Portion of total payments allocable to pre-July 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992 | 480.00 |
| | 1,109.40 |
| Divided by: Life expectancy multiple applicable to pre-July 1986 investment in the contract for B, age 66 (14.4—0.5) | 13.9 |
| | 79.81 |
| Plus: Amount originally determined with respect to pre-July 1986 investment in the contract | 794.70 |
| Pre-July 1986 amount | 874.51 |
| Post-June 1986 investment in the contract allocable to taxable years 1991 and 1992 ($640.39 × 2) | $1,280.78 |
| Less: Portion of total payments allocable to post-June 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992 | 520.00 |
| | 760.78 |
| Divided by: Life expectancy multiple applicable to post-June 1986 investment in the contract for B, age 66 (19.2 − 0.5) | 18.7 |
| | 40.68 |
| Plus: Amount originally determined with respect to post-June 1986 investment in the contract | 640.39 |
| Post-June 1986 amount | 681.07 |

(vi) The method of making an election to perform the separate computations illustrated in paragraph (d)(3)(v) of this section is described in § 1.72–6(d)(6).

(e) *Exclusion ratio in the case of two or more annuity elements acquired for a single consideration*. (1)(i) Where two or

more annuity elements are provided under a contract described in paragraph (a)(2) of §1.72–2, an exclusion ratio shall be determined for the contract as a whole and applied to all amounts received as an annuity under any of the annuity elements. To obtain this ratio, the investment in the contract determined in accordance with §1.72–6 shall be divided by the aggregate of the expected returns found with respect to each of the annuity elements in accordance with §1.72–5. For this purpose, it is immaterial that payments under one or more of the annuity elements involved have not commenced at the time when an amount is first received as an annuity under one or more of the other annuity elements.

(ii) The exclusion ratio found under subdivision (i) of this subparagraph does not apply to:

(*a*) An annuity element payable to a surviving annuitant under a joint and survivor annuity contract to which section 72(i) and paragraphs (b)(3) and (e)(3) of §1.72–5 apply, or to

(*b*) A contract under which one or more of the constituent annuity elements provides for payments described in paragraph (b)(3) of §1.72–2.

For rules with respect to a contract providing for annuity elements described in (*b*) of this subdivision, see subparagraph (2) of this paragraph.

(2) If one or more of the annuity elements under a contract described in paragraph (a)(2) of §1.72–2 provides for payments to which paragraph (b)(3) of §1.72–2 applies:

(i) With respect to the annuity elements to which paragraph (b)(3) of §1.72–2 does not apply, an exclusion ratio shall be determined by dividing the portion of the investment in the entire contract which is properly allocable to all such elements (in the manner provided in paragraph (b)(3)(ii) of §1.72–6) by the aggregate of the expected returns thereunder and such ratio shall be applied in the manner described in subdivision (i) of subparagraph (1); and

(ii) With respect to the annuity elements to which paragraph (b)(3) of §1.72–2 does apply, the investment in the entire contract shall be reduced by the portion thereof found in subdivision (i) of this subparagraph and the resulting amount shall be used to determine the extent to which the aggregate of the payments received during the taxable year under all such elements is excludable from gross income. The amount so excludable shall be allocated to each recipient under such elements in the same ratio that the total of payments he receives each year bears to the total of the payments received by all such recipients during the year. The exclusion ratio with respect to the amounts so allocated shall be 100 percent. See paragraph (f)(2) of §1.72–5 and paragraph (b)(3) of §1.72–6.

(iii) In the case of a contract to which §1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (e) is applied in the manner prescribed in §1.72–6(d) and, in particular, §1.72–6(d)(5)(iv).

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7352, 40 FR 16663, Apr. 14, 1975; T.D. 8115, 51 FR 45691, Dec. 19, 1986; 52 FR 10223, Mar. 31, 1987]

### § 1.72–5 Expected return.

(a) *Expected return for but one life.* (1) If a contract to which section 72 applies provides that one annuitant is to receive a fixed monthly income for life, the expected return is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table I or V (whichever is applicable) of §1.72–9 under the age (as of the annuity starting date) and, if applicable, sex of the measuring life (usually the annuitant's). Thus, where a male purchases a contract before July 1, 1986, providing for an immediate annuity of $100 per month for his life and, as of the annuity starting date (in this case the date of purchase), the annuitant's age at his nearest birthday is 66, the expected return is computed as follows:

| | |
|---|---|
| Monthly payment of $100×12 months equals annual payment of | $1,200 |
| Multiple shown in Table I, male, age 66 | 14.4 |
| Expected return (1,200×14.4) | 17,280 |

If, however, the taxpayer had purchased the contract after June 30, 1986, the expected return would be $23,040, determined by multiplying 19.2 (multiple shown in Table V, age 66) by $1,200.