

(C) Qualified employer plan. -- The term "qualified employer plan" has the meaning given to such term by subsection (p)(3)(A)(i).

(D) Government plan. -- The term "government plan" has the meaning given such term by subsection (p)(3)(B).

(6) Ordering rules. -- Unless the plan specifies otherwise, any distribution from such plan shall not be treated as being made from the accumulated deductible employee contributions until all other amounts to the credit of the employee have been distributed.

(p) Loans treated as distributions. -- For purposes of this section --

(1) Treatment as distributions. --

(A) Loans. -- If during any taxable year a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan, such amount shall be treated as having been received by such individual as a distribution under such plan.

(B) Assignments or pledges. -- If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

(2) Exception for certain loans. --

(A) General rule. -- Paragraph (1) shall not apply to any loan to the extent that such loan (when added to the outstanding balance of all other loans from such plan whether made on, before or after August 13, 1982), does not exceed the lesser of --

(i) \$50,000, reduced by the excess (if any) of --

(I) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over

(II) the outstanding balance of loans from the plan on the date on which such loan was made, or

(ii) the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) \$10,000.

For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (o)(5)(B)).

(B) Requirement that loan be repayable within 5 year.--

(i) In general. -- Subparagraph (A) shall not apply to any loan unless such loan, by its terms, is required to be repaid within 5 years.

(ii) Exception for home loans. -- Clause (i) shall not apply to any loan used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as the principal residence of the participant.

(C) Requirement of level amortization. -- Except as provided in regulations, this paragraph shall not apply to any loan unless substantially level amortization of such loan (with payments not less frequently than quarterly) is required over the term of the loan.

(D) Related employers and related plans. -- For purposes of this paragraph --

(i) the rules of subsections (b), (c), and (m) of section 414 shall apply, and

(ii) all plans of an employer (determined after the application of such subsections) shall be treated as 1 plan.

(3) Denial of interest deductions in certain cases. --

(A) In general. -- No deduction otherwise allowable under this chapter shall be allowed under this chapter for any interest paid or accrued on any loan to which paragraph (1) does not apply by reason of paragraph (2) during the period described in subparagraph (B).

(B) Period to which subparagraph (A) applies. -- For purposes of subparagraph (A), the period described in this subparagraph is the period --

(i) on or after the 1st day on which the individual to whom the loan is made is a key employee (as defined in section 416(i)), or

(ii) such loan is secured by amounts attributable to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3).

(4) Qualified employer plan, etc. -- For purposes of this subsection --

(A) Qualified employer plan. --

(i) In general. -- The term "qualified employer plan" means --

(I) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(II) an annuity plan described in section 403(a), and

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

(ii) Special rules. -- The term "qualified employer plan" --

(I) shall include any plan which was (or was determined to be) a qualified employer plan or a government plan, but

(II) shall not include a plan described in subsection (e)(7).

(B) Government plan. -- The term "government plan" means any plan whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.

(5) Special rules for loans, etc., from certain contracts. -- For purposes of this subsection, any amount received as a loan under a contract purchased under a qualified employer plan (and any assignment or pledge with respect to such a contract) shall be treated as a loan under such employer plan.

(q) 10-percent penalty for premature distributions from annuity contracts. --

(1) Imposition of penalty. -- If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includable in gross income.

(2) Subsection not to apply to certain distributions. -- Paragraph (1) shall not apply to any distribution --

(A) made on or after the date on which the taxpayer attains age 59 1/2

(B) made on or after the death of the holder (or, where the holder is not an individual, the death of the primary annuitant (as defined in subsection (s)(6)(B)),

(C) attributable to the taxpayer's becoming disabled within the meaning of subsection (m)(7),

(D) which is a part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his designated beneficiary,

(E) from a plan, contract, account, trust, or annuity described in subsection (e)(5)(D),

(F) allocable to investment in the contract before August 14, 1982, or

(G) under a qualified funding asset (within the meaning of section 130(d), but without regard to whether there is a qualified assignment),

(H) to which subsection (t) applies (without regard to paragraph (2) thereof),

(I) under an immediate annuity contract (within the meaning of section 72(u)(4)), or

(J) which is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and which is held by the employer until such time as the employee separates

form service.

(3) Change in substantially equal payments. -- If --

(A) paragraph (1) does not apply to a distribution by reason of paragraph (2)(D), and

(B) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability) --

(i) before the close of the 5-year period beginning on the date of the first payment and after the taxpayer attains age 59 1/2, or

(ii) before the taxpayer attains age 59 1/2,

the taxpayer's tax for the 1st taxable year in which such modifications occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(D)) would have been imposed, plus interest for the deferral period (within the meaning of subsection (t)(4)(B)).

(r) Certain railroad retirement benefits treated as received under employer plans. --

(1) In general. -- Notwithstanding any other provision of law, any benefit provided under the Railroad Retirement Act of 1974 (other than a tier 1 railroad retirement benefit) shall be treated for purposes of this title as a benefit provided under an employer plan which meets the requirements of section 401(a).

(2) Tier 2 taxes treated as contributions. --

(A) In general. -- For purposes of paragraph (1) --

(i) the tier 2 portion of the tax imposed by section 3201 (relating to tax on employees) shall be treated as an employee contribution,

(ii) the tier 2 portion of the tax imposed by section 3211 (relating to tax on employee representatives) shall be treated as an employee contribution, and

(iii) the tier 2 portion of the tax imposed by section 3221 (relating to tax on employers) shall be treated as an employer contribution.

(B) Tier 2 portion. -- For purposes of subparagraph (A) --

(i) After 1984. -- With respect to compensation paid after 1984, the tier 2 portion shall be the taxes imposed by sections 3201(b), 3211(a)(2), and 3221(b).

(ii) After September 30, 1981, and before 1985. -- With respect to compensation paid before 1985 for services rendered after September 30, 1981, the tier 2 portion shall be --

(I) so much of the tax imposed by section 3201 as is determined at the 2 percent rate, and

(II) so much of the taxes imposed by sections 3211 and 3221 as is determined at the 11.75 percent rate.

With respect to compensation paid for services rendered after December 31, 1983 and before 1985, subclause (I) shall be applied by substituting "2.75 percent" for "2 percent", and subclause (II) shall be applied by substituting "12.75 percent" for "11.75 percent".

(iii) Before October 1, 1981. -- With respect to compensation paid for services rendered during any period before October 1, 1981, the tier 2 portion shall be the excess (if any) of --

(I) the tax imposed for such period by section 3201, 3211, or 3221, as the case may be (other than any tax imposed with respect to man-hours), over

(II) the tax which would have been imposed by such section for such period had the rates of the comparable taxes imposed by chapter 21 for such period applied under such section.

(C) Contributions not allocable to supplemental annuity or windfall benefits. -- For purposes of paragraph (1), no amount treated as an employee contribution under this paragraph shall be allocated to --

(i) any supplemental annuity paid under section 2(b) of the Railroad Retirement Act of 1974, or

(ii) any benefit paid under section 3(h), 4(e), or 4(h) of such Act.

(3) Tier 1 Railroad Retirement Benefit. -- For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" has the meaning given such term by section 86(d)(4).

(s) Required distributions where holder dies before entire interest is distributed. --

(1) In general. -- A contract shall not be treated as an annuity contract for purposes of this title unless it provides that --

(A) if any holder of such contract dies on or after the annuity starting date and before the entire interest in such contract has been distributed, the retaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used as of the date of his death, and

(B) if any holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within 5 years after the death of such holder.

(2) Exception for certain amounts payable over life of beneficiary. -- If --

(A) any portion of the holder's interest is payable to (or for the benefit of) a designated beneficiary,

(B) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(C) such distributions begin not later than 1 year after the date of the holder's death or such later date as the Secretary may by regulations prescribe,

then for purposes of paragraph (1), the portion referred to in subparagraph (A) shall be treated as distributed on the day on which such distributions begin.

(3) Special rule where surviving spouse beneficiary. -- If the designated beneficiary referred to in paragraph (2)(A) is the surviving spouse of the holder of the contract, paragraphs (1) and (2) shall be applied by treating such spouse as the holder of such contract.

(4) Designated beneficiary. -- For purposes of this subsection, the term "designated beneficiary" means any individual designated a beneficiary by the holder of the contract.

(5) Exception for certain annuity contracts. -- This subsection shall not apply to any annuity contract --

(A) which is provided --

(i) under a plan described in section 401(a) which includes a trust exempt from tax under section 501, or

(ii) under a plan described in section 403(a),

(B) which is described in section 403(b),

(C) which is an individual retirement annuity or provided under an individual retirement account or annuity, or

(D) which is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment).

(6) Special rule where holder is corporation or other non-individual. --

(A) In general. -- For purposes of this subsection, if the holder of the contract is not an individual, the primary annuitant shall be treated as the holder of the contract.

(B) Primary annuitant. -- For purposes of subparagraph (A), the term "primary annuitant" means the individual, the events in the life of whom are of primary importance in affecting the timing or amount of the payout under the contract.

(7) Treatment of changes in primary annuitant where holder of contract is not an individual. -- For purposes of this subsection, in the case of a holder of an annuity contract which is not an individual, if there is a change in a primary annuitant (as defined in paragraph (6)(B)), such change shall be treated as the death of the holder.

(t) 10-percent additional tax on early distributions from qualified retirement plans. --

(1) Imposition of additional tax. -- If any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includable in gross income.

(2) Subsection not to apply to certain distributions. -- Except as provided in paragraphs (3) and (4), paragraph (1) shall not apply to any of the following distributions:

(A) In general. -- Distributions which are --

(i) made on or after the date on which the employee attains age 59 1/2,

(ii) made to a beneficiary (or to the estate of the employee) on or after the death of the employee,

(iii) attributable to the employee's being disabled within the meaning of subsection (m)(7),

(iv) part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his designated beneficiary,

(v) made to an employee after separation for service after attainment of age 55, or

(vi) dividends paid with respect to stock of a corporation which are described in section 404(k).

(B) Medical expenses. -- Distributions made to the employee (other than distributions described in subparagraph (A) or (C)) to the extent such distributions do not exceed the amount allowable as a deduction under section 213 to the employee for amounts paid during the taxable year for medical care (determined without regard to whether the employee itemizes deductions for such taxable year).

(C) Payments to alternate payees pursuant to qualified domestic relations order. -- Any distribution to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)(1)).

(3) Limitations. --

(A) Certain exceptions not to apply to individual retirement plans. -- Subparagraphs (A)(v), (B) and (C) of paragraph (2) shall not apply to distributions from an individual retirement plan.

(B) Periodic payments under qualified plans must begin after separation. -- Paragraph (2)(A)(iv) shall not apply to any amount paid from a trust described in section 401(a) which is exempt for tax under section 501(a) or from a contract described in section 72(e)(5)(D)(ii) unless the series of payments begins after the employee separates from service.

(4) Change in substantially equal payments. --

(A) In general. -- If --

(i) paragraph (1) does not apply to a distribution by reason for paragraph (2)(A)(iv), and

(ii) the series of payment under such paragraph are subsequently modified (other than by reason of death or disability) --

(I) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59 1/2, or

(II) before the employee attains age 59 1/2,

the taxpayer's tax of the 1st taxable year in which such modifications occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(A)(iv)) would have been imposed, plus interest for the deferral period.

(B) Deferral period. -- For purposes of this paragraph, the term "deferral period" means the period beginning with the taxable year in which (without regard to paragraph (2)(A)(iv)) the distribution would have been includable in gross income and ending with the taxable year in

which the modification described in subparagraph (A) occurs.

(5) Employee. -- For purposes of this subsection, the term "employee" includes any participant, in the case of an individual retirement plan, the individual for whose benefit such plan was established.

(u) Treatment of annuity contracts not held by natural persons. --

(1) In general -- If any annuity contract is held by a person who is not a natural person --

(A) such contract shall not be treated as an annuity contract for purposes of this subtitle (other than subchapter L), and

(B) the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the owner during such taxable year.

For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account.

(2) Income on the contract. --

(A) In general. -- For purposes of paragraph (1), the term "income on the contract" means, with respect to any taxable year of the policyholder, the excess of --

(i) the sum of the net surrender value of the contract as of the close of the taxable year plus all distributions under the contract received during the taxable year or any prior taxable year, reduced by

(ii) the sum of the amount of net premiums under the contract of the taxable year and prior taxable years and amounts includable in gross income for prior taxable years with respect to such contract under this subsection.

Where necessary to prevent the avoidance of this subsection, the Secretary may substitute "fair market value of the contract" for "net surrender value of the contract" each place it appears in the preceding sentence.

(B) Net premiums. -- For purposes of this paragraph, the term "net premiums" means the amount of premiums paid under the contract reduced by any policyholder dividends.

(3) Exceptions. -- This subsection shall not apply to any annuity contract which --

(A) is acquired by the estate of a decedent by reason of the death of the decedent,

(B) is held under a plan described in section 401(a) or 403(a), under a program described in section 403(b), or under an individual retirement plan,

(C) is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment),

(D) is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and which is held by the employer until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary, or

(E) is an immediate annuity.

(4) Immediate annuity. -- For purposes of this subsection, the term "immediate annuity" means an annuity --

(A) which is purchased with a single premium or annuity consideration,

(B) the annuity starting date (as defined in subsection (c)(4)) of which commences no later than 1 year from the date of the purchase of the annuity, and

(C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period.

(v) 10-percent additional tax for taxable distributions from modified endowment contracts. --

(1) Imposition of additional tax. -- If any taxpayer receives any amount under a modified endowment contract (as defined in section 7702(A)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10

percent of the portion of such amount which is includable in gross income.

(2) Subsection not to apply to certain distributions. -- Paragraph (1) shall not apply to any distributions --

(A) made on or after the date on which the taxpayer attains age 59 1/2,

(B) which is attributable to the taxpayer's becoming disabled (within the meaning of subsection (m)(7)), or

(C) which is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary.

### 73. Services of child

(a) Treatment of amounts received. -- Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child.

(b) Treatment of expenditures. -- All expenditures by the parent or the child attributable to amounts which are includable in the gross income of the child (and not of the parent) solely by reason of subsection (a) shall be treated as paid or incurred by the child.

(c) Parent defined. -- For purposes of this section, the term "parent" includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect of the child.

### 74. Prizes and awards

(a) General rule. -- Except as otherwise provided in this section or in section 117 (relating to qualified scholarships) gross income includes amounts received as prizes and awards.

(b) Exception for certain prizes and awards transferred to charities. -- Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if --

(1) the recipient was selected without any action on his part to enter the contest or proceeding;

(2) the recipient is not required to render substantial future services as condition to receiving the prize or award; and

(3) the prize or award is transferred by the payer to a governmental unit or organization described in paragraph (1) or (2) of section 170(c) pursuant to a designation made by the recipient.

(c) Exception for certain employee achievement awards.--

(1) In general. -- Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) Excess deduction award. -- If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of --

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

(3) treatment of tax-exempt employers. -- In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

#### 75. Dealers in tax-exempt securities

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

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

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

Notwithstanding the provisions of paragraph (1), no reduction to the cost of securities sold during the taxable year shall be made in respect of any obligation described in subsection (b)(1)(A)(ii) which is held by the taxpayer at the close of the taxable year; but in the taxable year in which any such obligation is sold or otherwise disposed of, if such obligation is a municipal bond (as defined in subsection (b)(1)), the cost of securities sold during such year shall be reduced by an amount equal to the adjustment described in paragraph (2), without regard to the fact that the taxpayer values his inventories on any basis other than cost.

(b) Definitions. -- For purposes of subsection (a) --

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

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

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

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

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

(ii) in the case of any other disposition, its fair market value at the time of such disposition, is higher than its adjusted basis (computed without regard to this section and section 1016(a)(6)).

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

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

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

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

77. Commodity credit loans

(a) Election to include loans in income. -- Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

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

79. Group-term life insurance purchased for employees

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

(1) the cost of \$50,000 of such insurance, and

(2) the amount (if any) paid by the employee toward the purchase of such insurance.

(b) Exceptions. -- Subsection (a) shall not apply to --

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

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

(A) the employer is directly or indirectly the beneficiary, or

(B) a person described in section 170(c) is the sole beneficiary,

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

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

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

(d) Nondiscrimination requirements. --

(1) In general. -- In the case of a discriminatory group-term life insurance plan --

(A) subsection (a)(1) shall not apply with respect to any key employee, and

(B) the cost of group-term life insurance on the life of any key employee shall be the greater of

--

(i) such cost determined without regard to subsection (c), or

(ii) such cost determined with regard to subsection (c).

(2) Discriminatory group-term life insurance plan. -- For purposes of this subsection, the term "discriminatory group-term life insurance plan" means any plan of an employer for providing group-term life insurance unless --

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

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

(3) Nondiscriminatory eligibility classification. --

(A) In general. -- A plan does not meet requirements of subparagraph (A) of paragraph (2) unless --

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

(B) Exclusion of certain employees. -- For purposes of subparagraph (A), there may be excluded from consideration --

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

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

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

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

(7) Exemption for church plans. --

(A) In general. -- This subsection shall not apply to a church plan maintained for church employees.

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

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

(ii) the term "church employee" shall not include an employee of --

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

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

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

(8) Treatment of former employees. -- To the extent provided in regulations, this subsection shall

be applied separately with respect to former employees.

(e) Employee includes former employee. -- For purposes of this section the term "employee" includes a former employee.

#### 80. Restoration of value of certain securities

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

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

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

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

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

(c) character of income. -- For purposes of this subtitle --

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

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

(d) Treatment under foreign expropriation loss recovery provision. -- This section shall not apply to any recovery of a foreign expropriation loss to which section 1351 applies.

#### 82. Reimbursement for expenses of moving

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

#### 83. Property transferred in connection with performance of services

(a) General rule. -- If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed the excess of --

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

(2) the amount (if any) paid for such property, shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are

transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.

(b) Election to include in gross income in year of transfer. --

(1) In general. -- Any person who performs services in connection with which property is transferred to any person may elect to include in his gross income, for the taxable year in which such property is transferred, the excess of --

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

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

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

(2) Election. -- An election under paragraph (1) with respect to any transfer of property shall be made in such manner as the Secretary prescribes and shall be made not later than 30 days after the date of such transfer. Such election may not be revoked except with the consent of the Secretary.

(c) Special rules. -- For purposes of this section --

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

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

(3) Sales which may give rise to suit under section 16(b) of the Securities Exchange Act of 1934. -- So long as the sale of property at a profit could subject a person to suit under section 16(b) of the Securities Exchange Act of 1934, such person's rights in such property are --

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

(B) not transferable.

(d) Certain restrictions which will never lapse. --

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

(2) Cancellation. -- If, in the case of property subject to a restriction which by its terms will never lapse, the restriction is canceled, then, unless the taxpayer establishes --

(A) that such cancellation was not compensatory, and

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

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

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

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

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

- (e) Applicability of section. -- This section shall not apply to --
- (1) a transaction to which section 421 applies,
  - (2) a transfer to or from a trust described in section 401(a) or a transfer under an annuity plan which meets the requirements of section 404(a)(2),
  - (3) the transfer of an option without a readily ascertainable fair market value,
  - (4) the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant, or
  - (5) group-term life insurance to which section 79 applies.
- (f) Holding period. -- In determining the period for which the taxpayer has held property to which subsection (a) applies, the shall be included only the period beginning at the first time his rights in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier.
- (G) Certain exchanges. -- If property to which subsection (a) applies is exchanged for property subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject, and if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applied to such exchange, or if such exchange was pursuant to the exercise of a conversion privilege --
- (1) such exchange shall be disregarded for purposes of subsection (a), and
  - (2) the property received shall be treated as property to which subsection (a) applies.
- (h) Deduction by employer. -- In the case of a transfer of property to which this section applies or a cancellation of a restriction described in subsection (d), there shall be allowed as a deduction under section 162, to the person for whom were performed the services in connection with which such property was transferred, an amount equal to the amount included under subsection (a), (b), or (d)(2) in the gross income of the person who performed such services. Such deduction shall be allowed for the taxable year of such person in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed such services.

#### 85. Unemployment Compensation

- (a) General rule. -- In the case of an individual, gross income includes unemployment compensation.
- (b) Unemployment compensation defined. -- For purposes of this section, the term "unemployment compensation" means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

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

- (a) In general. -- Gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of --
- (1) one-half of the social security benefits received during the taxable year, or
  - (2) one-half of the excess described in subsection (b)(1).
- (b) Taxpayers to whom subsection (a) applies. --
- (1) In general. -- A taxpayer is described in this subsection if --
    - (A) the sum of --
      - (i) the modified adjusted gross income of the taxpayer for the taxable year, plus
      - (ii) one-half of the social security benefits received during the taxable year, exceeds
    - (B) the base amount.
  - (2) Modified adjusted gross income. -- For purposes of this subsection, the term "modified

adjusted gross income" means adjusted gross income --

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

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

(c) Base amount. -- For purposes of this section, the term "base amount" means --

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

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

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

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

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

(d) Social security benefit. --

(1) In general. -- For purposes of this section, the term "social security benefit" means any amount received by the taxpayer by reason of entitlement to --

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

(B) a tier 1 railroad retirement benefit.

For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.

(2) Adjustment for repayments during year. --

(A) In general. -- For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

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

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

(4) Tier 1 railroad retirement benefit. -- For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" means --

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

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

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

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

(1) Limitation. -- If --

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

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

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result solely from taking into account such portion in the taxable years to which it is attributable.

(2) Special rules. --

(A) Year to which benefit attributable. -- For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date of such benefit occurred during such taxable year.

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

(f) Treatment as pension or annuity for certain purposes. --

For purposes of --

(1) section 32(c)(3)(A) (defining earned income),

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

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

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