

the redemption includible in his gross income for the taxable year. Except in the case of the credits allowable under sections 31, 39, or 42, no credit can be used to offset the tax described in the preceding sentence.

(2) *Limitations.* Paragraph (d)(1) of this section shall not apply if—

(i) During the taxable year of the registered owner in which a retirement bond is redeemed, the registered owner becomes disabled within the meaning of section 72(m)(7), or

(ii) A retirement bond is tendered for redemption in accordance with paragraph (b)(2)(i) of this section.

[T.D. 7714, 45 FR 52799, Aug. 8, 1980]

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[T.D. 9321, 72 FR 19276, Apr. 17, 2007]

§ 1.409A-1 Definitions and covered plans.

(a) *Nonqualified deferred compensation plan*—(1) *In general.* Except as otherwise provided in this paragraph (a), the term *nonqualified deferred compensation plan* means any plan (within the meaning of paragraph (c) of this section) that provides for the deferral of compensation (within the meaning of paragraph (b) of this section). Whether a plan provides for the deferral of compensation generally is determined at the time the service provider obtains a legally binding right to the compensation under the plan, and is not affected by any retroactive change to the plan to characterize the right as one that does not provide for the deferral of compensation. For example, amounts deferred under a nonqualified deferred compensation plan do not become an excluded death benefit if the plan is amended so that the amounts are payable only upon the death of the service provider. If a principal purpose of a plan is to achieve a result with respect to a deferral of compensation that is inconsistent with the purposes of section 409A, the Commissioner may treat the plan as a nonqualified deferred compensation plan for purposes of section 409A and the regulations thereunder.

(2) *Qualified employer plans.* The term *nonqualified deferred compensation plan* does not include a qualified employer plan. The term *qualified employer plan* means any of the following plans:

- (i) Any plan described in section 401(a) and a trust exempt from tax under section 501(a) or that is described in section 402(d).
- (ii) Any annuity plan described in section 403(a).
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