

109TH CONGRESS
1ST SESSION

S. 381

To amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. SMITH (for himself, Mr. CONRAD, Ms. SNOWE, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Retirement Security
5 for Life Act of 2005”.

1 **SEC. 2. EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.**

2 (a) LIFETIME ANNUITY PAYMENTS UNDER ANNUITY
3 CONTRACTS.—Section 72(b) of the Internal Revenue Code
4 of 1986 (relating to exclusion ratio) is amended by adding
5 at the end the following new paragraph:

6 “(5) EXCLUSION FOR LIFETIME ANNUITY PAY-
7 MENTS.—

8 “(A) IN GENERAL.—In the case of lifetime
9 annuity payments received under one or more
10 annuity contracts in any taxable year, gross in-
11 come shall not include 50 percent of the portion
12 of lifetime annuity payments otherwise includ-
13 ible (without regard to this paragraph) in gross
14 income under this section. For purposes of the
15 preceding sentence, the amount excludible from
16 gross income in any taxable year shall not ex-
17 ceed \$20,000.

18 “(B) COST-OF-LIVING ADJUSTMENT.—In
19 the case of taxable years beginning after De-
20 cember 31, 2006, the \$20,000 amount in sub-
21 paragraph (A) shall be increased by an amount
22 equal to—

23 “(i) such dollar amount, multiplied by

24 “(ii) the cost-of-living adjustment de-
25 termined under section 1(f)(3) for the cal-
26 endar year in which the taxable year be-

1 gins, determined by substituting ‘calendar
2 year 2005’ for ‘calendar year 1992’ in sub-
3 paragraph (B) thereof.

4 If any amount as increased under the preceding
5 sentence is not a multiple of \$500, such amount
6 shall be rounded to the next lower multiple of
7 \$500.

8 “(C) APPLICATION OF PARAGRAPH.—Sub-
9 paragraph (A) shall not apply to—

10 “(i) any amount received under an eli-
11 gible deferred compensation plan (as de-
12 fined in section 457(b)) or under a quali-
13 fied retirement plan (as defined in section
14 4974(c)),

15 “(ii) any amount paid under an annu-
16 ity contract that is received by the bene-
17 ficiary under the contract—

18 “(I) after the death of the annu-
19 itant in the case of payments de-
20 scribed in subsection (c)(5)(A)(ii)(III),
21 unless the beneficiary is the surviving
22 spouse of the annuitant, or

23 “(II) after the death of the annu-
24 itant and joint annuitant in the case
25 of payments described in subsection

1 (c)(5)(A)(ii)(IV), unless the bene-
 2 ficiary is the surviving spouse of the
 3 last to die of the annuitant and the
 4 joint annuitant, or

5 “(iii) any annuity contract that is a
 6 qualified funding asset (as defined in sec-
 7 tion 130(d)), but without regard to wheth-
 8 er there is a qualified assignment.

9 “(D) INVESTMENT IN THE CONTRACT.—
 10 For purposes of this section, the investment in
 11 the contract shall be determined without regard
 12 to this paragraph.”.

13 (b) DEFINITIONS.—Subsection (c) of section 72 of
 14 the Internal Revenue Code of 1986 is amended by adding
 15 at the end the following new paragraph:

16 “(5) LIFETIME ANNUITY PAYMENT.—

17 “(A) IN GENERAL.—For purposes of sub-
 18 section (b)(5), the term ‘lifetime annuity pay-
 19 ment’ means any amount received as an annu-
 20 ity under any portion of an annuity contract,
 21 but only if—

22 “(i) the only person (or persons in the
 23 case of payments described in subclause
 24 (II) or (IV) of clause (ii)) legally entitled
 25 (by operation of the contract, a trust, or

1 other legally enforceable means) to receive
2 such amount during the life of the annu-
3 itant or joint annuitant is such annuitant
4 or joint annuitant, and

5 “(ii) such amount is part of a series
6 of substantially equal periodic payments
7 made not less frequently than annually
8 over—

9 “(I) the life of the annuitant,

10 “(II) the lives of the annuitant
11 and a joint annuitant, but only if the
12 annuitant is the spouse of the joint
13 annuitant as of the annuity starting
14 date or the difference in age between
15 the annuitant and joint annuitant is
16 15 years or less,

17 “(III) the life of the annuitant
18 with a minimum period of payments
19 or with a minimum amount that must
20 be paid in any event, or

21 “(IV) the lives of the annuitant
22 and a joint annuitant with a minimum
23 period of payments or with a min-
24 imum amount that must be paid in
25 any event, but only if the annuitant is

1 the spouse of the joint annuitant as of
2 the annuity starting date or the dif-
3 ference in age between the annuitant
4 and joint annuitant is 15 years or
5 less.

6 “(iii) EXCEPTIONS.—For purposes of
7 clause (ii), annuity payments shall not fail
8 to be treated as part of a series of substan-
9 tially equal periodic payments—

10 “(I) because the amount of the
11 periodic payments may vary in accord-
12 ance with investment experience, re-
13 allocations among investment options,
14 actuarial gains or losses, cost of living
15 indices, a constant percentage applied
16 not less frequently than annually, or
17 similar fluctuating criteria,

18 “(II) due to the existence of, or
19 modification of the duration of, a pro-
20 vision in the contract permitting a
21 lump sum withdrawal after the annu-
22 ity starting date, or

23 “(III) because the period between
24 each such payment is lengthened or
25 shortened, but only if at all times

1 such period is no longer than one cal-
2 endar year.

3 “(B) ANNUITY CONTRACT.—For purposes
4 of subparagraph (A) and subsections (b)(5) and
5 (w), the term ‘annuity contract’ means a com-
6 mercial annuity (as defined by section
7 3405(e)(6)), other than an endowment or life
8 insurance contract.

9 “(C) MINIMUM PERIOD OF PAYMENTS.—
10 For purposes of subparagraph (A), the term
11 ‘minimum period of payments’ means a guaran-
12 teed term of payments that does not exceed the
13 greater of 10 years or—

14 “(i) the life expectancy of the annu-
15 itant as of the annuity starting date, in the
16 case of lifetime annuity payments de-
17 scribed in subparagraph (A)(ii)(III), or

18 “(ii) the life expectancy of the annu-
19 itant and joint annuitant as of the annuity
20 starting date, in the case of lifetime annu-
21 ity payments described in subparagraph
22 (A)(ii)(IV).

23 For purposes of this subparagraph, life expect-
24 ancy shall be computed with reference to the ta-
25 bles prescribed by the Secretary under para-

1 graph (3). For purposes of subsection
 2 (w)(1)(C)(ii), the permissible minimum period
 3 of payments shall be determined as of the annu-
 4 ity starting date and reduced by one for each
 5 subsequent year.

6 “(D) MINIMUM AMOUNT THAT MUST BE
 7 PAID IN ANY EVENT.—For purposes of subpara-
 8 graph (A), the term ‘minimum amount that
 9 must be paid in any event’ means an amount
 10 payable to the designated beneficiary under an
 11 annuity contract that is in the nature of a re-
 12 fund and does not exceed the greater of the
 13 amount applied to produce the lifetime annuity
 14 payments under the contract or the amount, if
 15 any, available for withdrawal under the contract
 16 on the date of death.”.

17 (c) RECAPTURE TAX FOR LIFETIME ANNUITY PAY-
 18 MENTS.—Section 72 of the Internal Revenue Code of
 19 1986 is amended by redesignating subsection (x) as sub-
 20 section (y) and by inserting after subsection (x) the fol-
 21 lowing new subsection:

22 “(x) RECAPTURE TAX FOR MODIFICATIONS TO OR
 23 REDUCTIONS IN LIFETIME ANNUITY PAYMENTS.—

24 “(1) IN GENERAL.—If any amount received
 25 under an annuity contract is excluded from income

1 by reason of subsection (b)(5) (relating to lifetime
2 annuity payments), and—

3 “(A) the series of payments under such
4 contract is subsequently modified so any future
5 payments are not lifetime annuity payments,

6 “(B) after the date of receipt of the first
7 lifetime annuity payment under the contract an
8 annuitant receives a lump sum and thereafter is
9 to receive annuity payments in a reduced
10 amount under the contract, or

11 “(C) after the date of receipt of the first
12 lifetime annuity payment under the contract the
13 dollar amount of any subsequent annuity pay-
14 ment is reduced and a lump sum is not paid in
15 connection with the reduction, unless such re-
16 duction is—

17 “(i) due to an event described in sub-
18 section (c)(5)(A)(iii), or

19 “(ii) due to the addition of, or in-
20 crease in, a minimum period of payments
21 within the meaning of subsection (c)(5)(C)
22 or a minimum amount that must be paid
23 in any event (within the meaning of sub-
24 section (c)(5)(D)), then gross income for
25 the first taxable year in which such modi-

1 fication or reduction occurs shall be in-
2 creased by the recapture amount.

3 “(2) RECAPTURE AMOUNT.—

4 “(A) IN GENERAL.—For purposes of this
5 subsection, the recapture amount shall be the
6 amount, determined under rules prescribed by
7 the Secretary, equal to the amount that (but for
8 subsection (b)(5)) would have been includible in
9 the taxpayer’s gross income if the modification
10 or reduction described in paragraph (1) had
11 been in effect at all times, plus interest for the
12 deferral period at the underpayment rate estab-
13 lished by section 6621.

14 “(B) DEFERRAL PERIOD.—For purposes
15 of this subsection, the term ‘deferral period’
16 means the period beginning with the taxable
17 year in which (without regard to subsection
18 (b)(5)) the payment would have been includible
19 in gross income and ending with the taxable
20 year in which the modification described in
21 paragraph (1) occurs.

22 “(3) EXCEPTIONS TO RECAPTURE TAX.—Para-
23 graph (1) shall not apply in the case of any modi-
24 fication or reduction that occurs because an annu-
25 itant—

1 “(A) dies or becomes disabled (within the
2 meaning of subsection (m)(7)),

3 “(B) becomes a chronically ill individual
4 within the meaning of section 7702B(c)(2), or

5 “(C) encounters hardship.”.

6 (d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE
7 DEATH BENEFITS.—

8 (1) IN GENERAL.—Section 101(d) of the Inter-
9 nal Revenue Code of 1986 (relating to payment of
10 life insurance proceeds at a date later than death)
11 is amended by adding at the end the following new
12 paragraph:

13 “(4) EXCLUSION FOR LIFETIME ANNUITY PAY-
14 MENTS.—

15 “(A) IN GENERAL.—In the case of
16 amounts to which this subsection applies, gross
17 income shall not include the lesser of—

18 “(i) 50 percent of the portion of life-
19 time annuity payments otherwise includible
20 in gross income under this section (deter-
21 mined without regard to this paragraph),
22 or

23 “(ii) the amount in effect under sec-
24 tion 72(b)(5).

1 “(B) RULES OF SECTION 72(b)(5) TO
2 APPLY.—For purposes of this paragraph, rules
3 similar to the rules of section 72(b)(5) and sec-
4 tion 72(x) shall apply, substituting the term
5 ‘beneficiary of the life insurance contract’ for
6 the term ‘annuitant’ wherever it appears, and
7 substituting the term ‘life insurance contract’
8 for the term ‘annuity contract’ wherever it ap-
9 pears.”.

10 (2) CONFORMING AMENDMENT.—Section
11 101(d)(1) of such Code is amended by inserting “or
12 paragraph (4)” after “to the extent not excluded by
13 the preceding sentence”.

14 (e) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 this section shall apply to amounts received in cal-
17 endar years beginning after the date of the enact-
18 ment of this Act.

19 (2) SPECIAL RULE FOR EXISTING CON-
20 TRACTS.—In the case of a contract in force on the
21 date of the enactment of this Act that does not sat-
22 isfy the requirements of section 72(c)(5)(A) of the
23 Internal Revenue Code of 1986 (as added by this
24 section), or requirements similar to such section
25 72(c)(5)(A) in the case of a life insurance contract),

1 any modification to such contract (including a
2 change in ownership) or to the payments thereunder
3 that is made to satisfy the requirements of such sec-
4 tion (or similar requirements) shall not result in the
5 recognition of any gain or loss, any amount being in-
6 cluded in gross income, or any addition to tax that
7 otherwise might result from such modification, but
8 only if the modification is completed prior to the
9 date that is 2 years after the date of the enactment
10 of this Act.

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