

111TH CONGRESS
1ST SESSION

S. 1297

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

JUNE 18, 2009

Mr. CONRAD (for himself and Mr. ROBERTS) 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 2009”.

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 is amended by adding at the end the following
5 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, 2010, 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 2009’ 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,

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, or

3 “(IV) because, in the case of an
4 annuity payable over the life of an an-
5 nuitant and a joint annuitant, the
6 amounts paid to the surviving annu-
7 itant after the death of the first annu-
8 itant are less than the amounts pay-
9 able during the joint lives of the two
10 annuitants.

11 “(B) ANNUITY CONTRACT.—For purposes
12 of subparagraph (A) and subsections (b)(5) and
13 (x), the term ‘annuity contract’ means a com-
14 mercial annuity (as defined by section
15 3405(e)(6)), other than an endowment or life
16 insurance contract.

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

22 “(i) the life expectancy of the annu-
23 itant as of the annuity starting date, in the
24 case of lifetime annuity payments de-
25 scribed in subparagraph (A)(ii)(III), or

1 “(ii) the life expectancy of the annu-
2 itant and joint annuitant as of the annuity
3 starting date, in the case of lifetime annu-
4 ity payments described in subparagraph
5 (A)(ii)(IV).

6 For purposes of this subparagraph, life expect-
7 ancy shall be computed with reference to the ta-
8 bles prescribed by the Secretary under para-
9 graph (3). For purposes of subsection
10 (x)(1)(C)(ii), the permissible minimum period of
11 payments shall be determined as of the annuity
12 starting date and reduced by one for each sub-
13 sequent year.

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

1 (c) RECAPTURE TAX FOR LIFETIME ANNUITY PAY-
2 MENTS.—Section 72 of the Internal Revenue Code of
3 1986 is amended by redesignating subsection (x) as sub-
4 section (y) and by inserting after subsection (w) the fol-
5 lowing new subsection:

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

8 “(1) IN GENERAL.—If any amount received
9 under an annuity contract is excluded from income
10 by reason of subsection (b)(5), and—

11 “(A) the series of payments under such
12 contract is subsequently modified so that any
13 future payments are not lifetime annuity pay-
14 ments,

15 “(B) after the date of receipt of the first
16 lifetime annuity payment under the contract an
17 annuitant receives a lump sum and thereafter is
18 to receive annuity payments in a reduced
19 amount under the contract, or

20 “(C) after the date of receipt of the first
21 lifetime annuity payment under the contract the
22 dollar amount of any subsequent annuity pay-
23 ment is reduced and a lump sum is not paid in
24 connection with the reduction, unless such re-
25 duction is—

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

3 “(ii) due to the addition of, or in-
4 crease in, a minimum period of payments
5 within the meaning of subsection (c)(5)(C)
6 or a minimum amount that must be paid
7 in any event (within the meaning of sub-
8 section (c)(5)(D)),

9 then gross income for the first taxable year in
10 which such modification or reduction occurs
11 shall be increased by the recapture amount.

12 “(2) RECAPTURE AMOUNT.—

13 “(A) IN GENERAL.—For purposes of this
14 subsection, the recapture amount shall be the
15 amount, determined under rules prescribed by
16 the Secretary, equal to the sum of—

17 “(i) the excess of—

18 “(I) the amount that was ex-
19 cluded from the taxpayer’s gross in-
20 come under subsection (b)(5) for all
21 taxable years prior to the modification
22 or reduction described in paragraph
23 (1), over

24 “(II) the amount that would have
25 been excludible under such subsection

1 for such taxable years had such modi-
 2 fications or reductions been in effect
 3 at all times, plus

4 “(ii) interest for the deferral period at
 5 the underpayment rate established by sec-
 6 tion 6621.

7 “(B) DEFERRAL PERIOD.—For purposes
 8 of this subsection, the term ‘deferral period’
 9 means the period beginning with the taxable
 10 year in which (without regard to subsection
 11 (b)(5)) the payment would have been includible
 12 in gross income and ending with the taxable
 13 year in which the modification described in
 14 paragraph (1) occurs.

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

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

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

23 “(C) encounters hardship.”.

24 (d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE
 25 DEATH BENEFITS.—

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

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

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

11 “(i) 50 percent of the portion of life-
12 time annuity payments otherwise includible
13 in gross income under this section (deter-
14 mined without regard to this paragraph),
15 or

16 “(ii) the amount determined under
17 section 72(b)(5).

18 “(B) RULES OF SECTION 72(b)(5) TO
19 APPLY.—For purposes of this paragraph, rules
20 similar to the rules of section 72(b)(5) and sec-
21 tion 72(x) shall apply, substituting the term
22 ‘beneficiary of the life insurance contract’ for
23 the term ‘annuitant’ wherever it appears, and
24 substituting the term ‘life insurance contract’

1 for the term ‘annuity contract’ wherever it ap-
2 pears.”.

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

7 (e) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply to amounts received in cal-
10 endar years beginning after the date of the enact-
11 ment of this Act.

12 (2) SPECIAL RULE FOR EXISTING CON-
13 TRACTS.—In the case of a contract in force on the
14 date of the enactment of this Act that does not sat-
15 isfy the requirements of section 72(c)(5)(A) of the
16 Internal Revenue Code of 1986 (as added by this
17 section), or requirements similar to such section in
18 the case of a life insurance contract, any modifica-
19 tion to such contract (including a change in owner-
20 ship) or to the payments thereunder that is made to
21 satisfy the requirements of such section (or similar
22 requirements) shall not result in the recognition of
23 any gain or loss, any amount being included in gross
24 income, or any addition to tax that otherwise might
25 result from such modification, but only if the modi-

- 1 fication is completed prior to the date that is 2 years
- 2 after the date of the enactment of this Act.

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