

“(c) **EXCLUDABLE RESTITUTION PAYMENT.**—For purposes of this section, the term ‘excludable restitution payment’ means any payment or distribution to an individual (or the individual’s heirs or estate) which—

“(1) is payable by reason of the individual’s status as an eligible individual, including any amount payable by any foreign country, the United States of America, or any other foreign or domestic entity, or a fund established by any such country or entity, any amount payable as a result of a final resolution of a legal action, and any amount payable under a law providing for payments or restitution of property;

“(2) constitutes the direct or indirect return of, or compensation or reparation for, assets stolen or hidden from, or otherwise lost to, the individual before, during, or immediately after World War II by reason of the individual’s status as an eligible individual, including any proceeds of insurance under policies issued on eligible individuals by European insurance companies immediately before and during World War II; or

“(3) consists of interest which is payable as part of any payment or distribution described in paragraph (1) or (2).

“(d) **EXCLUDABLE INTEREST.**—For purposes of this section, the term ‘excludable interest’ means any interest earned by—

“(1) escrow accounts or settlement funds established pursuant to the settlement of the action entitled ‘In re: Holocaust Victim Assets Litigation,’ (E.D.N.Y.) C.A. No. 96-4849,

“(2) funds to benefit eligible individuals or their heirs created by the International Commission on Holocaust Insurance Claims as a result of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation ‘Remembrance, Responsibility, and Future,’ dated July 17, 2000, or

“(3) similar funds subject to the administration of the United States courts created to provide excludable restitution payments to eligible individuals (or eligible individuals’ heirs or estates).

“(e) **EFFECTIVE DATE.**—

“(1) **IN GENERAL.**—This section shall apply to any amount received on or after January 1, 2000.

“(2) **NO INFERENCE.**—Nothing in this Act [see Tables for classification] shall be construed to create any inference with respect to the proper tax treatment of any amount received before January 1, 2000.”

§ 101. Certain death benefits

(a) Proceeds of life insurance contracts payable by reason of death

(1) General rule

Except as otherwise provided in paragraphs (2) and (3), subsection (d), subsection (f), and subsection (j), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

(2) Transfer for valuable consideration

In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (1) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee. The preceding sentence shall not apply in the case of such a transfer—

(A) if such contract or interest therein has a basis for determining gain or loss in the

hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor, or

(B) if such transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

The term “other amounts” in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).

(3) Exception to valuable consideration rules for commercial transfers

(A) In general

The second sentence of paragraph (2) shall not apply in the case of a transfer of a life insurance contract, or any interest therein, which is a reportable policy sale.

(B) Reportable policy sale

For purposes of this paragraph, the term “reportable policy sale” means the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured apart from the acquirer’s interest in such life insurance contract. For purposes of the preceding sentence, the term “indirectly” applies to the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract.

[(b) Repealed. Pub. L. 104-188, title I, § 1402(a), Aug. 20, 1996, 110 Stat. 1789]

(c) Interest

If any amount excluded from gross income by subsection (a) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(d) Payment of life insurance proceeds at a date later than death

(1) General rule

The amounts held by an insurer with respect to any beneficiary shall be prorated (in accordance with such regulations as may be prescribed by the Secretary) over the period or periods with respect to which such payments are to be made. There shall be excluded from the gross income of such beneficiary in the taxable year received any amount determined by such proration. Gross income includes, to the extent not excluded by the preceding sentence, amounts received under agreements to which this subsection applies.

(2) Amount held by an insurer

An amount held by an insurer with respect to any beneficiary shall mean an amount to which subsection (a) applies which is—

(A) held by any insurer under an agreement provided for in the life insurance contract, whether as an option or otherwise, to pay such amount on a date or dates later than the death of the insured, and

(B) equal to the value of such agreement to such beneficiary

(i) as of the date of death of the insured (as if any option exercised under the life insurance contract were exercised at such time), and

(ii) as discounted on the basis of the interest rate used by the insurer in calculating payments under the agreement and mortality tables prescribed by the Secretary.

(3) Application of subsection

This subsection shall not apply to any amount to which subsection (c) is applicable.

[(e) Repealed. Pub. L. 98-369, div. A, title IV, § 421(b)(2), July 18, 1984, 98 Stat. 794]

(f) Proceeds of flexible premium contracts issued before January 1, 1985 payable by reason of death

(1) In general

Any amount paid by reason of the death of the insured under a flexible premium life insurance contract issued before January 1, 1985 shall be excluded from gross income only if—

(A) under such contract—

(i) the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time, and

(ii) any amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) is not at any time less than the applicable percentage of the cash value of such contract at such time, or

(B) by the terms of such contract, the cash value of such contract may not at any time exceed the net single premium with respect to the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at such time.

(2) Guideline premium limitation

For purposes of this subsection—

(A) Guideline premium limitation

The term “guideline premium limitation” means, as of any date, the greater of—

(i) the guideline single premium, or
(ii) the sum of the guideline level premiums to such date.

(B) Guideline single premium

The term “guideline single premium” means the premium at issue with respect to future benefits under the contract (without regard to any qualified additional benefit), and with respect to any charges for qualified additional benefits, at the time of a determination under subparagraph (A) or (E) and which is based on—

(i) the mortality and other charges guaranteed under the contract, and
(ii) interest at the greater of an annual effective rate of 6 percent or the minimum rate or rates guaranteed upon issue of the contract.

(C) Guideline level premium

The term “guideline level premium” means the level annual amount, payable

over the longest period permitted under the contract (but ending not less than 20 years from date of issue or not later than age 95, if earlier), computed on the same basis as the guideline single premium, except that subparagraph (B)(ii) shall be applied by substituting “4 percent” for “6 percent”.

(D) Computational rules

In computing the guideline single premium or guideline level premium under subparagraph (B) or (C)—

(i) the excess of the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) over the cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(ii) the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95, and

(iii) the amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at any time under the contract.

(E) Adjustments

The guideline single premium and guideline level premium shall be adjusted in the event of a change in the future benefits or any qualified additional benefit under the contract which was not reflected in any guideline single premiums or guideline level premium previously determined.

(3) Other definitions and special rules

For purposes of this subsection—

(A) Flexible premium life insurance contract

The terms “flexible premium life insurance contract” and “contract” mean a life insurance contract (including any qualified additional benefits) which provides for the payment of one or more premiums which are not fixed by the insurer as to both timing and amount. Such terms do not include that portion of any contract which is treated under State law as providing any annuity benefits other than as a settlement option.

(B) Premiums paid

The term “premiums paid” means the premiums paid under the contract less any amounts (other than amounts includible in gross income) to which section 72(e) applies. If, in order to comply with the requirements of paragraph (1)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year—

(i) the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year, and

(ii) notwithstanding the provisions of section 72(e), the amount of any interest so returned shall be includible in the gross income of the recipient.

(C) Applicable percentage

The term “applicable percentage” means—

(i) 140 percent in the case of an insured with an attained age at the beginning of the contract year of 40 or less, and

(ii) in the case of an insured with an attained age of more than 40 as of the beginning of the contract year, 140 percent reduced (but not below 105 percent) by one percent for each year in excess of 40.

(D) Cash value

The cash value of any contract shall be determined without regard to any deduction for any surrender charge or policy loan.

(E) Qualified additional benefits

The term “qualified additional benefits” means any—

- (i) guaranteed insurability,
- (ii) accidental death benefit,
- (iii) family term coverage, or
- (iv) waiver of premium.

(F) Premium payments not disqualifying contract

The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of paragraph (1)(A)(i) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract without cash value on or before the end of the contract year.

(G) Net single premium

In computing the net single premium under paragraph (1)(B)—

(i) the mortality basis shall be that guaranteed under the contract (determined by reference to the most recent mortality table allowed under all State laws on the date of issuance),

(ii) interest shall be based on the greater of—

(I) an annual effective rate of 4 percent (3 percent for contracts issued before July 1, 1983), or

(II) the minimum rate or rates guaranteed upon issue of the contract, and

(iii) the computational rules of paragraph (2)(D) shall apply, except that the maturity date referred to in clause (ii) thereof shall not be earlier than age 95.

(H) Correction of errors

If the taxpayer establishes to the satisfaction of the Secretary that—

(i) the requirements described in paragraph (1) for any contract year was not satisfied due to reasonable error, and

(ii) reasonable steps are being taken to remedy the error,

the Secretary may waive the failure to satisfy such requirements.

(I) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(g) Treatment of certain accelerated death benefits**(1) In general**

For purposes of this section, the following amounts shall be treated as an amount paid by reason of the death of an insured:

(A) Any amount received under a life insurance contract on the life of an insured who is a terminally ill individual.

(B) Any amount received under a life insurance contract on the life of an insured who is a chronically ill individual.

(2) Treatment of viatical settlements**(A) In general**

If any portion of the death benefit under a life insurance contract on the life of an insured described in paragraph (1) is sold or assigned to a viatical settlement provider, the amount paid for the sale or assignment of such portion shall be treated as an amount paid under the life insurance contract by reason of the death of such insured.

(B) Viatical settlement provider**(i) In general**

The term “viatical settlement provider” means any person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds described in paragraph (1) if—

(I) such person is licensed for such purposes (with respect to insureds described in the same subparagraph of paragraph (1) as the insured) in the State in which the insured resides, or

(II) in the case of an insured who resides in a State not requiring the licensing of such persons for such purposes with respect to such insured, such person meets the requirements of clause (ii) or (iii), whichever applies to such insured.

(ii) Terminally ill insureds

A person meets the requirements of this clause with respect to an insured who is a terminally ill individual if such person—

(I) meets the requirements of sections 8 and 9 of the Viatical Settlements Model Act of the National Association of Insurance Commissioners, and

(II) meets the requirements of the Model Regulations of the National Association of Insurance Commissioners (relating to standards for evaluation of reasonable payments) in determining amounts paid by such person in connection with such purchases or assignments.

(iii) Chronically ill insureds

A person meets the requirements of this clause with respect to an insured who is a chronically ill individual if such person—

(I) meets requirements similar to the requirements referred to in clause (ii)(I), and

(II) meets the standards (if any) of the National Association of Insurance Commissioners for evaluating the reasonableness of amounts paid by such person

in connection with such purchases or assignments with respect to chronically ill individuals.

(3) Special rules for chronically ill insureds

In the case of an insured who is a chronically ill individual—

(A) In general

Paragraphs (1) and (2) shall not apply to any payment received for any period unless—

(i) such payment is for costs incurred by the payee (not compensated for by insurance or otherwise) for qualified long-term care services provided for the insured for such period, and

(ii) the terms of the contract giving rise to such payment satisfy—

(I) the requirements of section 7702B(b)(1)(B), and

(II) the requirements (if any) applicable under subparagraph (B).

For purposes of the preceding sentence, the rule of section 7702B(b)(2)(B) shall apply.

(B) Other requirements

The requirements applicable under this subparagraph are—

(i) those requirements of section 7702B(g) and section 4980C which the Secretary specifies as applying to such a purchase, assignment, or other arrangement,

(ii) standards adopted by the National Association of Insurance Commissioners which specifically apply to chronically ill individuals (and, if such standards are adopted, the analogous requirements specified under clause (i) shall cease to apply), and

(iii) standards adopted by the State in which the policyholder resides (and if such standards are adopted, the analogous requirements specified under clause (i) and (subject to section 4980C(f)) standards under clause (ii), shall cease to apply).

(C) Per diem payments

A payment shall not fail to be described in subparagraph (A) by reason of being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payment relates.

(D) Limitation on exclusion for periodic payments

For limitation on amount of periodic payments which are treated as described in paragraph (1), see section 7702B(d).

(4) Definitions

For purposes of this subsection—

(A) Terminally ill individual

The term “terminally ill individual” means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification.

(B) Chronically ill individual

The term “chronically ill individual” has the meaning given such term by section

7702B(c)(2); except that such term shall not include a terminally ill individual.

(C) Qualified long-term care services

The term “qualified long-term care services” has the meaning given such term by section 7702B(c).

(D) Physician

The term “physician” has the meaning given to such term by section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)(1)).

(5) Exception for business-related policies

This subsection shall not apply in the case of any amount paid to any taxpayer other than the insured if such taxpayer has an insurable interest with respect to the life of the insured by reason of the insured being a director, officer, or employee of the taxpayer or by reason of the insured being financially interested in any trade or business carried on by the taxpayer.

(h) Survivor benefits attributable to service by a public safety officer who is killed in the line of duty

(1) In general

Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968, as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013) killed in the line of duty—

(A) if such annuity is provided, under a governmental plan which meets the requirements of section 401(a), to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

(B) to the extent such annuity is attributable to such officer’s service as a public safety officer.

(2) Exceptions

Paragraph (1) shall not apply with respect to the death of any public safety officer if, as determined in accordance with the provisions of the Omnibus Crime Control and Safe Streets Act of 1968—

(A) the death was caused by the intentional misconduct of the officer or by such officer’s intention to bring about such officer’s death;

(B) the officer was voluntarily intoxicated (as defined in section 1204 of such Act) at the time of death;

(C) the officer was performing such officer’s duties in a grossly negligent manner at the time of death; or

(D) the payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(i) Certain employee death benefits payable by reason of death of certain terrorist victims or astronauts

(1) In general

Gross income does not include amounts (whether in a single sum or otherwise) paid by

an employer by reason of the death of an employee who is a specified terrorist victim (as defined in section 692(d)(4)).

(2) Limitation

(A) In general

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to amounts which would have been payable after death if the individual had died other than as a specified terrorist victim (as so defined).

(B) Exception

Subparagraph (A) shall not apply to incidental death benefits paid from a plan described in section 401(a) and exempt from tax under section 501(a).

(3) Treatment of self-employed individuals

For purposes of paragraph (1), the term “employee” includes a self-employed individual (as defined in section 401(c)(1)).

(4) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty.

(j) Treatment of certain employer-owned life insurance contracts

(1) General rule

In the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder by reason of paragraph (1) of subsection (a) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract.

(2) Exceptions

In the case of an employer-owned life insurance contract with respect to which the notice and consent requirements of paragraph (4) are met, paragraph (1) shall not apply to any of the following:

(A) Exceptions based on insured’s status

Any amount received by reason of the death of an insured who, with respect to an applicable policyholder—

(i) was an employee at any time during the 12-month period before the insured’s death, or

(ii) is, at the time the contract is issued—

(I) a director,

(II) a highly compensated employee within the meaning of section 414(q) (without regard to paragraph (1)(B)(ii) thereof), or

(III) a highly compensated individual within the meaning of section 105(h)(5), except that “35 percent” shall be substituted for “25 percent” in subparagraph (C) thereof.

(B) Exception for amounts paid to insured’s heirs

Any amount received by reason of the death of an insured to the extent—

(i) the amount is paid to a member of the family (within the meaning of section

267(c)(4)) of the insured, any individual who is the designated beneficiary of the insured under the contract (other than the applicable policyholder), a trust established for the benefit of any such member of the family or designated beneficiary, or the estate of the insured, or

(ii) the amount is used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described in clause (i).

(3) Employer-owned life insurance contract

(A) In general

For purposes of this subsection, the term “employer-owned life insurance contract” means a life insurance contract which—

(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under the contract, and

(ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

For purposes of the preceding sentence, if coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

(B) Applicable policyholder

For purposes of this subsection—

(i) In general

The term “applicable policyholder” means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

(ii) Related persons

The term “applicable policyholder” includes any person which—

(I) bears a relationship to the person described in clause (i) which is specified in section 267(b) or 707(b)(1), or

(II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).

(4) Notice and consent requirements

The notice and consent requirements of this paragraph are met if, before the issuance of the contract, the employee—

(A) is notified in writing that the applicable policyholder intends to insure the employee’s life and the maximum face amount for which the employee could be insured at the time the contract was issued,

(B) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and

(C) is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

(5) Definitions

For purposes of this subsection—

(A) Employee

The term “employee” includes an officer, director, and highly compensated employee (within the meaning of section 414(q)).

(B) Insured

The term “insured” means, with respect to an employer-owned life insurance contract, an individual covered by the contract who is a United States citizen or resident. In the case of a contract covering the joint lives of 2 individuals, references to an insured include both of the individuals.

(Aug. 16, 1954, ch. 736, 68A Stat. 26; Pub. L. 85-866, title I, §23(d), Sept. 2, 1958, 72 Stat. 1622; Pub. L. 87-792, §7(c), Oct. 10, 1962, 76 Stat. 829; Pub. L. 89-365, §1(c), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91-172, title I, §101(j)(1), Dec. 30, 1969, 83 Stat. 526; Pub. L. 93-406, title II, §§2005(c)(15), 2007(b)(3), Sept. 2, 1974, 88 Stat. 992, 994; Pub. L. 94-455, title XIX, §§1901(a)(16), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97-248, title II, §§239, 266(a), (b), Sept. 3, 1982, 96 Stat. 514, 547, 550; Pub. L. 98-369, div. A, title II, §221(b)(2), title IV, §421(b)(2), title VII, §713(e), July 18, 1984, 98 Stat. 772, 794, 958; Pub. L. 99-514, title X, §1001(a)-(c), Oct. 22, 1986, 100 Stat. 2387; Pub. L. 104-188, title I, §1402(a), (b)(1), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104-191, title III, §331(a), Aug. 21, 1996, 110 Stat. 2067; Pub. L. 105-34, title X, §1084(b)(2), title XV, §1528(a), Aug. 5, 1997, 111 Stat. 952, 1074; Pub. L. 107-134, title I, §102(a), Jan. 23, 2002, 115 Stat. 2429; Pub. L. 108-121, title I, §110(b)(1), (2), Nov. 11, 2003, 117 Stat. 1342; Pub. L. 109-280, title VIII, §863(a), (c)(1), Aug. 17, 2006, 120 Stat. 1021, 1024; Pub. L. 112-239, div. A, title X, §1086(b)(3)(B), Jan. 2, 2013, 126 Stat. 1968; Pub. L. 115-97, title I, §13522(a), (b), Dec. 22, 2017, 131 Stat. 2151, 2152.)

Editorial Notes

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (h), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197. Section 1204 of the Act is classified to section 10284 of Title 34, Crime Control and Law Enforcement. Section 1204 of the Act, as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013, means section 1204 prior to its amendment by Pub. L. 112-239, div. A, title X, §1086(b)(1)(E), Jan. 2, 2013, 126 Stat. 1967. For complete classification of this Act to the Code, see Short Title of 1968 Act note set out under section 10101 of Title 34 and Tables.

CODIFICATION

Another section 1084(b) of Pub. L. 105-34 amended sections 805, 807, 812, and 832 of this title.

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-97, §13522(b), substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Subsec. (a)(3). Pub. L. 115-97, §13522(a), added par. (3).

2013—Subsec. (h)(1). Pub. L. 112-239 inserted “, as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013” after “1968” in introductory provisions.

2006—Subsec. (a)(1). Pub. L. 109-280, §863(c)(1), substituted “subsection (f), and subsection (j)” for “and subsection (f)”.

Subsec. (j). Pub. L. 109-280, §863(a), added subsec. (j).
2003—Subsec. (i). Pub. L. 108-121, §110(b)(2), inserted “or astronauts” after “victims” in heading.

Subsec. (i)(4). Pub. L. 108-121, §110(b)(1), added par. (4).

2002—Subsec. (i). Pub. L. 107-134 added subsec. (i).

1997—Subsec. (a)(2). Pub. L. 105-34, §1084(b)(2), inserted at end “The term ‘other amounts’ in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).”

Subsec. (h). Pub. L. 105-34, §1528(a), added subsec. (h).

1996—Subsec. (b). Pub. L. 104-188, §1402(a), struck out subsec. (b) which related to employees’ death benefits.

Subsec. (c). Pub. L. 104-188, §1402(b)(1), substituted “subsection (a)” for “subsection (a) or (b)”.

Subsec. (g). Pub. L. 104-191 added subsec. (g).

1986—Subsec. (d)(1). Pub. L. 99-514, §1001(a), amended second sentence generally, which prior to amendment read as follows: “There shall be excluded from the gross income of such beneficiary in the taxable year received—

“(A) any amount determined by such proration, and

“(B) in the case of the surviving spouse of the insured, that portion of the excess of the amounts received under one or more agreements specified in paragraph (2)(A) (whether or not payment of any part of such amounts is guaranteed by the insurer) over the amount determined in subparagraph (A) of this paragraph which is not greater than \$1,000 with respect to any insured.”

Subsec. (d)(2)(B). Pub. L. 99-514, §1001(c)(2), substituted “equal” for “is equal” in introductory provisions.

Subsec. (d)(2)(B)(ii). Pub. L. 99-514, §1001(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “as discounted on the basis of the interest rate and mortality tables used by the insurer in calculating payments under the agreement.”

Subsec. (d)(3), (4). Pub. L. 99-514, §1001(c)(1), redesignated par. (4) as (3), and struck out former par. (3), “Surviving spouse”, which read as follows: “For purposes of this subsection, the term ‘surviving spouse’ means the spouse of the insured as of the date of death, including a spouse legally separated but not under a decree of absolute divorce.”

1984—Subsec. (b)(3)(B). Pub. L. 98-369, §713(e), amended subpar. (B) generally, substituting “certain distributions” for “certain lump sum distributions” in heading, substituting “amount paid or distributed” for “lump sum distribution described in the second sentence of paragraph (2)(B)” in introductory text and adding cls. (i) and (ii).

Subsec. (e). Pub. L. 98-369, §421(b)(2), repealed subsec. (e) relating to payments of alimony or of income of an estate or trust in case of divorce, etc.

Subsec. (f). Pub. L. 98-369, §221(b)(2)(B), inserted “issued before January 1, 1985” in heading.

Subsec. (f)(1). Pub. L. 98-369, §221(b)(2)(A), inserted “issued before January 1, 1985” in introductory text.

1982—Subsec. (a)(1). Pub. L. 97-248, §266(b), substituted “, subsection (d), and subsection (f)” for “and in subsection (d)”.

Subsec. (b)(3). Pub. L. 97-248, §239, amended par. (3) generally, substituting “Treatment of self-employed individuals” for “Self-employed individual not considered an employee” in heading, designating existing provisions as subparagraph (A) and, as so designated, adding heading and exception for subpar. (B), and adding subparagraph (B).

Subsec. (f). Pub. L. 97-248, §266(a), added subsec. (f).

1976—Subsec. (d)(1). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f). Pub. L. 94-455, §1901(a)(16), struck out subsec. (f) relating to effective date of section.

1974—Subsec. (b)(2)(B). Pub. L. 93-406, §2005(c)(15), substituted “a lump sum distribution (as defined in section 402(e)(4))” for “total distributions payable (as de-

defined in section 402(a)(3) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death".

Subsec. (b)(2)(D). Pub. L. 93-406, §2007(b)(3), substituted "if the member or former member of the uniformed services by reason of whose death such annuity is payable" for "if the individual who made the election under such chapter".

1969—Subsec. (b)(2)(B)(iii). Pub. L. 91-172 substituted references to section 170(b)(1)(A) (ii) and (vi), and to religious organizations, for references to section 503(b)(1), (2), or (3).

1966—Subsec. (b)(2)(D). Pub. L. 89-365 provided that par. (1) shall not apply in the case of an annuity under chapter 73 of title 10 if the individual who made the election under that chapter died after attaining retirement age.

1962—Subsec. (b)(2)(B)(ii). Pub. L. 87-792, §7(c)(1), substituted "described in section 403(a)" for "which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a)".

Subsec. (b)(3). Pub. L. 87-792, §7(c)(2), added par. (3).

1958—Subsec. (b)(2)(B). Pub. L. 85-866 substituted "This subparagraph shall not apply to total distributions payable (as defined in section 402(a)(3) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—" for "(other than total distributions payable, as defined in section 402(a)(3), which are paid to distributee, by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a), or under an annuity contract under a plan which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a), within one taxable year of the distributee by reason of the employee's death)", and added cls. (i), (ii), and (iii).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §13522(c), Dec. 22, 2017, 131 Stat. 2152, provided that: "The amendments made by this section [amending this section] shall apply to transfers after December 31, 2017."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-239 effective Jan. 2, 2013, and applicable to matters pending on Jan. 2, 2013, or filed or accruing after that date, with certain exceptions, see section 1086(d) of Pub. L. 112-239, set out as a note under section 10251 of Title 34, Crime Control and Law Enforcement.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title VIII, §863(d), Aug. 17, 2006, 120 Stat. 1024, provided that: "The amendments made by this section [enacting section 6039I of this title and amending this section] shall apply to life insurance contracts issued after the date of the enactment of this Act [Aug. 17, 2006], except for a contract issued after such date pursuant to an exchange described in section 1035 of the Internal Revenue Code of 1986 for a contract issued on or prior to that date. For purposes of the preceding sentence, any material increase in the death benefit or other material change shall cause the contract to be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of such Code), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-121, title I, §110(b)(3), Nov. 11, 2003, 117 Stat. 1342, provided that: "The amendments made by this subsection [amending this section] shall apply to amounts paid after December 31, 2002, with respect to deaths occurring after such date."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-134, title I, §102(b), Jan. 23, 2002, 115 Stat. 2429, provided that:

"(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to taxable years ending before, on, or after September 11, 2001.

"(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1084(d), Aug. 5, 1997, 111 Stat. 955, as amended by Pub. L. 105-206, title VI, §6010(o)(3)(B), July 22, 1998, 112 Stat. 816, provided that: "The amendments made by this section [amending this section and sections 264, 265, 805, 807, 812, and 832 of this title] shall apply to contracts issued after June 8, 1997, in taxable years ending after such date. For purposes of the preceding sentence, any material increase in the death benefit or other material change in the contract shall be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of the Internal Revenue Code of 1986), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives. For purposes of this subsection, an increase in the death benefit under a policy or contract issued in connection with a lapse described in section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191, set out as a note under section 264 of this title] shall not be treated as a new contract."

Pub. L. 105-34, title XV, §1528(b), Aug. 5, 1997, 111 Stat. 1075, as amended by Pub. L. 107-15, §2, June 5, 2001, 115 Stat. 37, provided that: "The amendments made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date, and to amounts received in taxable years beginning after December 31, 2001, with respect to individuals dying on or before December 31, 1996."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-191, title III, §331(b), Aug. 21, 1996, 110 Stat. 2069, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1996."

Pub. L. 104-188, title I, §1402(c), Aug. 20, 1996, 110 Stat. 1790, provided that: "The amendments made by this section [amending this section and sections 406, 407, and 7701 of this title] shall apply with respect to decedents dying after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title X, §1001(d), Oct. 22, 1986, 100 Stat. 2387, provided that: "The amendments made by this section [amending this section] shall apply to amounts received with respect to deaths occurring after the date of the enactment of this section [Oct. 22, 1986] in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 221(b)(2) of Pub. L. 98-369 effective Jan. 1, 1984, see section 221(d)(4) of Pub. L. 98-369, set out as an Effective Date note under section 7702 of this title.

Amendment by section 421(b)(2) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and

Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §266(c)(1), Sept. 3, 1982, 96 Stat. 550, as amended by Pub. L. 98-369, div. A, title II, §221(b)(1), July 18, 1984, 98 Stat. 772, provided that: "The amendments made by this section [amending this section] shall apply to contracts entered into before January 1, 1985."

Amendment by section 239 of Pub. L. 97-248 applicable to decedents dying after Dec. 31, 1983, see section 241(b) of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title. Such amendment is applicable, in the case of amounts received under the plan of an S corporation, with respect to decedents dying after Dec. 31, 1982, notwithstanding section 241(b) of Pub. L. 97-248, see section 6(b)(2) of Pub. L. 97-354, Oct. 19, 1982, 96 Stat. 1697, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(16) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94-455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(15) of Pub. L. 93-406 applicable only with respect to distributions and payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

Amendment by section 2007(b)(3) of Pub. L. 93-406 applicable to taxable years ending on or after Sept. 21, 1972, with respect to individuals dying on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93-406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-365 applicable with respect to individuals making an election under chapter 73 of Title 10 who died after Dec. 31, 1965, see section 1(d) of Pub. L. 89-365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1957, see section 23(g) of Pub. L. 85-866, set out as a note under section 403 of this title.

**PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1998**

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

**FLEXIBLE PREMIUM CONTRACTS ISSUED DURING 1984
WHICH MEET REQUIREMENTS OF SECTION 7702 TREATED AS MEETING REQUIREMENTS OF SECTION 101(f)**

Flexible premium contracts issued during 1984 which meet requirements of section 7702 of this title treated

as meeting requirements of subsec. (f) of this section, see section 221(b)(3) of Pub. L. 98-369, as added by Pub. L. 99-514, set out as a note under section 7702 of this title.

**SPECIAL RULES FOR CONTRACTS ENTERED INTO BEFORE
JANUARY 1, 1983**

Pub. L. 97-248, title II, §266(c)(2), (3), Sept. 3, 1982, 96 Stat. 550, as amended by Pub. L. 97-448, title III, §306(a)(13), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(2) SPECIAL RULE FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983.—Any contract entered into before January 1, 1983, which meets the requirements of section 101(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the date which is 1 year after the date of the enactment of this Act [Sept. 3, 1982] shall be treated as meeting the requirements of such section for any period before the date on which such contract meets such requirements. Any death benefits paid under a flexible premium life insurance contract (within the meaning of section 101(f)(3)(A) of such Code) before the date which is 1 year after such date of enactment [Sept. 3, 1982] shall be excluded from gross income.

"(3) SPECIAL RULE FOR CERTAIN CONTRACTS.—Any contract entered into before January 1, 1983, shall be treated as meeting the requirements of subparagraph (A) of section 101(f)(1) of such Code if such contract would meet such requirements if section 101(f)(2)(C) of such Code were applied by substituting '3 percent' for '4 percent'."

§ 102. Gifts and inheritances

(a) General rule

Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

(b) Income

Subsection (a) shall not exclude from gross income—

(1) the income from any property referred to in subsection (a); or

(2) where the gift, bequest, devise, or inheritance is of income from property, the amount of such income.

Where, under the terms of the gift, bequest, devise, or inheritance, the payment, crediting, or distribution thereof is to be made at intervals, then, to the extent that it is paid or credited or to be distributed out of income from property, it shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property. Any amount included in the gross income of a beneficiary under subchapter J shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property.

(c) Employee gifts

(1) In general

Subsection (a) shall not exclude from gross income any amount transferred by or for an employer to, or for the benefit of, an employee.

(2) Cross references

For provisions excluding certain employee achievement awards from gross income, see section 74(c).

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 28; Pub. L. 99-514, title I, §122(b), Oct. 22, 1986, 100 Stat. 2110.)