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Internal Revenue Code Section 72(t)(H)(ii)

Annuities; certain proceeds of endowment and life insurance contracts

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(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 includible 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 59½,

(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 from service after attainment of age 55,

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

(vii) made on account of a levy under section 6331 on the qualified retirement plan, or

(viii) payments under a phased retirement annuity under section 8366a(a)(5) or 8412a(a)(5) of title 5, United States Code, or a composite retirement annuity under section 8366a(a)(1) or 8412a(a)(1) of such title.

(B) Medical expenses. Distributions made to the employee (other than distributions described in subparagraph (A) , (C) , or (D)) 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 orders. Any distribution to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)(1)).

(D) Distributions to unemployed individuals for health insurance premiums.

(i) In general. Distributions from an individual retirement plan to an individual after separation from employment-

(I) if such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation,

(II) if such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year, and

(III) to the extent such distributions do not exceed the amount paid during the taxable year for insurance described in section 213(d)(1)(D) with respect to the individual and the individual's spouse and dependents (as defined in section 152 , determined without regard to subsections (b)(1) , (b)(2) , and (d)(1)(B) thereof).

(ii) Distributions after reemployment. Clause (i) shall not apply to any distribution made after the individual has been employed for at least 60 days after the separation from employment to which clause (i) applies.

(iii) Self-employed individuals. To the extent provided in regulations, a self-employed individual shall be treated as meeting the requirements of clause (i)(I) if, under Federal or State law, the individual would have received unemployment compensation but for the fact the individual was self-employed.

(E) Distributions from individual retirement plans for higher education expenses. Distributions to an individual from an individual retirement plan to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year. Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A) , (C) , or (D) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B) .

(F) Distributions from certain plans for first home purchases. Distributions to an individual from an individual retirement plan which are qualified first-time

homebuyer distributions (as defined in paragraph (8)). Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A) , (C) , (D) , or (E) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B) .

(G) Distributions from retirement plans to individuals called to active duty.

(i) In general. Any qualified reservist distribution.

(ii) Amount distributed may be repaid. Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

(iii) Qualified reservist distribution. For purposes of this subparagraph, the term "qualified reservist distribution" means any distribution to an individual if-

(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii) ,

(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

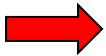
(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

(iv) Application of subparagraph. This subparagraph applies to individuals ordered or called to active duty after September 11, 2001. In no event shall the 2-year period referred to in clause (ii) end on or before the date which is 2 years after the date of the enactment of this subparagraph.

(H) Distributions from retirement plans in case of birth of child or adoption.

(i) In general. Any qualified birth or adoption distribution.

(ii) Limitation. The aggregate amount which may be treated as qualified birth or adoption distributions by any individual with respect to any birth or adoption shall not exceed \$5,000.



(iii) Qualified birth or adoption distribution. For purposes of this subparagraph-

(I) In general. The term "qualified birth or adoption distribution" means any distribution from an applicable eligible retirement plan to an individual if made during the 1-year period beginning on the date on which a child of the individual is born or on which the legal adoption by the individual of an eligible adoptee is finalized.

(II) Eligible adoptee. The term "eligible adoptee" means any individual (other than a child of the taxpayer's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.

(iv) Treatment of plan distributions.

(I) In general. If a distribution to an individual would (without regard to clause (ii)) be a qualified birth or adoption distribution, a plan shall not be treated as failing to meet any requirement of this title merely because the plan treats the distribution as a qualified birth or adoption distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds \$5,000.

(II) Controlled group. For purposes of subclause (I) , the term "controlled group" means any group treated as a single employer under subsection (b) , (c) , (m) , or (o) of section 414 .

(v) Amount distributed may be repaid.

(I) In general. Any individual who receives a qualified birth or adoption distribution may make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an applicable eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c) , 403(a)(4) , 403(b)(8) , 408(d)(3) , or 457(e)(16) , as the case may be.

(II) Limitation on contributions to applicable eligible retirement plans other than IRAs. The aggregate amount of contributions made by an individual under subclause (I) to any applicable eligible retirement plan which is not an individual retirement plan shall not exceed the aggregate amount of qualified birth or adoption distributions which are made from such plan to such individual. Subclause (I) shall not apply to contributions to any applicable eligible retirement plan which is not an individual retirement plan unless the individual is eligible to make contributions (other than those described in subclause (I)) to such applicable eligible retirement plan.

(III) Treatment of repayments of distributions from applicable eligible retirement plans other than IRAs. If a contribution is made under subclause (I) with respect to a qualified birth or adoption distribution from an applicable eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received such distribution in an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to the applicable eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(IV) Treatment of repayments for distributions from IRAs. If a contribution is made under subclause (I) with respect to a qualified birth or adoption distribution from an individual retirement plan, then, to the extent of the amount of the contribution, such distribution shall be treated as a distribution described in section 408(d)(3) and as having been transferred to the applicable eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(vi) Definition and special rules. For purposes of this subparagraph-

(I) Applicable eligible retirement plan. The term "applicable eligible retirement plan" means an eligible retirement plan (as defined in section 402(c)(8)(B)) other than a defined benefit plan.

(II) Exemption of distributions from trustee to trustee transfer and withholding rules. For purposes of sections 401(a)(31) , 402(f) , and 3405 , a qualified birth or adoption distribution shall not be treated as an eligible rollover distribution.

(III) Taxpayer must include TIN. A distribution shall not be treated as a qualified birth or adoption distribution with respect to any child or eligible adoptee unless the taxpayer includes the name, age, and TIN of such child or eligible adoptee on the taxpayer's return of tax for the taxable year.

(IV) Distributions treated as meeting plan distribution requirements. Any qualified birth or adoption distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i) , 403(b)(7)(A)(ii) , 403(b)(11) , and 457(d)(1)(A) .

(3) Limitations.

(A) Certain exceptions not to apply to individual retirement plans. Subparagraphs (A)(v) 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 from 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 of paragraph (2)(A)(iv) , and

(ii) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability or a distribution to which paragraph (10) applies)-

(I) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59½, or

(II) before the employee attains age 59½,

the taxpayer's tax for the 1st taxable year in which such modification 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 includible 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, and in the case of an individual retirement plan, the individual for whose benefit such plan was established.

(6) Special rules for simple retirement accounts.

In the case of any amount received from a simple retirement account (within the meaning of section 408(p)) during the 2-year period beginning on the date such individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under section 408(p)(2) , paragraph (1) shall be applied by substituting "25 percent" for "10 percent".

(7) Qualified higher education expenses.

For purposes of paragraph (2)(E) -

(A) In general. The term "qualified higher education expenses" means qualified higher education expenses (as defined in section 529(e)(3)) for education furnished to-

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any child (as defined in section 152(f)(1)) or grandchild of the taxpayer or the taxpayer's spouse,

at an eligible educational institution (as defined in section 529(e)(5)).

(B) Coordination with other benefits. The amount of qualified higher education expenses for any taxable year shall be reduced as provided in section 25A(g)(2) .

(8) Qualified first-time homebuyer distributions.

For purposes of paragraph (2)(F) -

(A) In general. The term "qualified first-time homebuyer distribution" means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 120th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual, the spouse of such individual, or any child, grandchild, or ancestor of such individual or the individual's spouse.

(B) Lifetime dollar limitation. The aggregate amount of payments or distributions received by an individual which may be treated as qualified first-time homebuyer distributions for any taxable year shall not exceed the excess (if any) of-

(i) \$10,000, over

(ii) the aggregate amounts treated as qualified first-time homebuyer distributions with respect to such individual for all prior taxable years.

(C) Qualified acquisition costs. For purposes of this paragraph , the term "qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

(D) First-time homebuyer; other definitions. For purposes of this paragraph -

(i) First-time homebuyer. The term "first-time homebuyer" means any individual if-

(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

(II) subsection (h) or (k) of section 1034 (as in effect on the day before the date of the enactment of this paragraph) did not suspend the running of any period of time specified in section 1034 (as so in effect) with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A) .

(ii) Principal residence. The term "principal residence" has the same meaning as when used in section 121 .

(iii) Date of acquisition. The term "date of acquisition" means the date-

(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

(II) on which construction or reconstruction of such a principal residence is commenced.

(E) Special rule where delay in acquisition. If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting "120th day" for "60th day" in such section), except that-

(i) section 408(d)(3)(B) shall not be applied to such contribution, and

(ii) such amount shall not be taken into account in determining whether section 408(d)(3)(B) applies to any other amount.

(9) Special rule for rollovers to section 457 plans.

For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).

(10) Distributions to qualified public safety employees in governmental plans.

(A) In general. In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414(d)), paragraph (2)(A)(v) shall be applied by substituting "age 50" for "age 55".

(B) Qualified public safety employee. For purposes of this paragraph, the term "qualified public safety employee" means-

(i) any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision, or

(ii) any Federal law enforcement officer described in section 8331(20) or 8401(17) of title 5, United States Code, any Federal customs and border protection officer described in section 8331(31) or 8401(36) of such title, any Federal firefighter described in section 8331(21) or 8401(14) of such title, any air traffic controller described in 8331(30) or 8401(35) of such title, any nuclear materials courier described in section 8331(27) or 8401(33) of such title, any member of the United States Capitol Police, any member of the Supreme Court Police, or any diplomatic security special agent of the Department of State.

