

## Internal Revenue Code

### Sec. 403. Taxation Of Employee Annuities

#### 403(a) Taxability Of Beneficiary Under A Qualified Annuity Plan

##### 403(a)(1) Distributee Taxable Under Section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

403(a)(2) [(2) Repealed. Pub. L. 99-514, title XI, 1122(b)(1)(B), Oct. 22, 1986, 100 Stat. 2466]

##### 403(a)(3) Self-employed Individuals

For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

##### 403(a)(4) Rollover Amounts

###### 403(a)(4)(A) General Rule

If--

403(a)(4)(A)(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), 1

403(a)(4)(A)(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

403(a)(4)(A)(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

###### 403(a)(4)(B) Certain Rules Made Applicable

Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A). 2

##### 403(a)(5) Direct Trustee-to-trustee Transfer. --

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer. 3

#### 403(b) Taxability Of Beneficiary Under Annuity Purchased By Section 501(c)(3)

Organization Or Public School

##### 403(b)(1) General Rule

If--

**403(b)(1)(A) an annuity contract is purchased--**

403(b)(1)(A)(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

403(b)(1)(A)(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1) (A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

403(b)(1)(A)(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer.

403(b)(1)(B) such annuity contract is not subject to subsection (a),

403(b)(1)(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

403(b)(1)(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

403(b)(1)(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and additions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

**[Editor's Note: Pub. L. 107-16, Sec. 632(a)(2)(B), struck par. (2), below, effective for years beginning after Dec. 31, 2001.]**

## **403(b)(2) Exclusion Allowance**

403(b)(2)(A) In General

For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of--

403(b)(2)(A)(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

403(b)(2)(A)(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

403(b)(2)(B) Election To Have Allowance Determined Under Section 415 Rules

In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, home health service agencies, and certain churches, etc.) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415 without regard to section 415(c)(8)) by his employer under a plan described in section 403(a) if the

annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.

403(b)(2)(C) Number Of Years Of Service For Duly Ordained, Commissioned, Or Licensed Ministers Or Lay Employees

For purposes of this subsection and section 415(c)(4)(A)--

403(b)(2)(C)(i) all years of service by--

403(b)(2)(C)(i)(I) a duly ordained, commissioned, or licensed minister of a church, or

403(b)(2)(C)(i)(II) a lay person, as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

403(b)(2)(C)(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer. For purposes of the preceding sentence, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

403(b)(2)(D) Alternative Exclusion Allowance

403(b)(2)(D)(i) In General

In the case of any individual described in subparagraph (C), the amount determined under subparagraph (A) shall not be less than the lesser of--

403(b)(2)(D)(i)(I) \$3,000, or

403(b)(2)(D)(i)(II) the includible compensation of such individual.

403(b)(2)(D)(ii) Subparagraph Not To Apply To Individuals With Adjusted Gross Income Over \$17,000

This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to any community property laws) exceeds \$17,000.

403(b)(2)(D)(iii) Special Rule For Foreign Missionaries

In the case of an individual described in subparagraph (C)(i) performing services outside the United States, there shall be included as includible compensation for any year under clause (i)(II) any amount contributed during such year by a church (or convention or association of churches) for an annuity contract with respect to such individual.

[Editor's Note: Sec. 403(b)(3), below, after amendment by Pub. L. 107-16, Sec.

632(a)(2)(C), and Pub. L. 107-147, Sec. 411(p)(3), is effective for years beginning after Dec. 31, 2001.]

### **403(b)(3) Includible Compensation**

For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes--

403(b)(3)(A) any elective deferral (as defined in section 402(g)(3)), and

403(b)(3)(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

[Editor's Note: Sec. 403(b)(3), below, before amendment by Pub. L. 107-16, Sec. 632(a)(2)(C), and Pub. L. 107-147, Sec. 411(p)(3), is effective for years beginning before Jan. 1, 2002.]

#### **403(b)(3) Includible Compensation**

For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes--

403(b)(3)(A) any elective deferral (as defined in section 402(g)(3)), and

403(b)(3)(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

#### **403(b)(4) Years Of Service**

In determining the number of years of service for purposes of this subsection, there shall be included--

403(b)(4)(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

403(b)(4)(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

#### **403(b)(5) Application To More Than One Annuity Contract**

If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

#### **403(b)(6) [struck By Pub. L. 107-147, Sec. 411(p)(2).]**

#### **403(b)(7) Custodial Accounts For Regulated Investment Company Stock**

##### **403(b)(7)(A) Amounts Paid Treated As Contributions**

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if--

403(b)(7)(A)(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

403(b)(7)(A)(ii) under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59-1/2, has a severance

from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)), encounters financial hardship.

#### 403(b)(7)(B) Account Treated As Plan

For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

#### 403(b)(7)(C) Regulated Investment Company

For purposes of this paragraph, the term "regulated investment company" means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

### **403(b)(8) Rollover Amounts**

#### 403(b)(8)(A) General Rule

If--

403(b)(8)(A)(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), 4

403(b)(8)(A)(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

403(b)(8)(A)(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

#### 403(b)(8)(B) Certain Rules Made Applicable.--

The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

### **403(b)(9) Retirement Income Accounts Provided By Churches, Etc.**

#### 403(b)(9)(A) Amounts Paid Treated As Contributions

For purposes of this title--

403(b)(9)(A)(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

403(b)(9)(A)(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

#### 403(b)(9)(B) Retirement Income Account

For purposes of this paragraph, the term "retirement income account" means a defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

#### **403(b)(10) Distribution Requirements**

Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of section 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer. 7

#### **403(b)(11) Requirement That Distributions Not Begin Before Age 59-1/2, Severance From Employment, Death, Or Disability**

This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only--  
403(b)(11)(A) when the employee attains age 59-1/2, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)), or  
403(b)(11)(B) in the case of hardship. Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

#### **403(b)(12) Nondiscrimination Requirements**

403(b)(12)(A) In General

For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if--

403(b)(12)(A)(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

403(b)(12)(A)(ii) all employees of the organization may elect to have the employer make contributions of more than \$200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

403(b)(12)(B) Church

For purposes of paragraph (1)(D), the term "church" has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

403(b)(12)(C) State And Local Governmental Plans.--

For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

**403(b)(13) Trustee-to-trustee Transfers To Purchase Permissive Service Credit.--**

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is--

403(b)(13)(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

403(b)(13)(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

**403(c) Taxability Of Beneficiary Under Nonqualified Annuities Or Under Annuities Purchased By Exempt Organizations**

Premiums paid by an employer for an annuity contract which is not subject to subsection (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

(Aug. 16, 1954, ch. 736, 68A Stat. 137; Sept. 2, 1958, Pub. L. 85-866, title I, Sec. 23(a)-(c), 72 Stat. 1620-1622; Oct. 4, 1961, Pub. L. 87-370, Sec. 3(a), 75 Stat. 801; Oct. 10, 1962, Pub. L. 87-792, Sec. 4(d), 76 Stat. 825; Feb. 26, 1964, Pub. L. 88-272, title II, Sec. 232(e)(4)-(6), 78 Stat. 111; Dec. 30, 1969, Pub. L. 91-172, title III, Sec. 321(b)(2), title V, Sec. 515(a)(2), 83 Stat. 591, 644; Sept. 2, 1974, Pub. L. 93-406, title II, Sec. 1022(e), 2002(g)(6), 2004(c)(4), 2005(b)(2), 88 Stat. 940, 969, 986, 991; Apr. 15, 1976, Pub. L. 94-267, Sec. 1(b), 90 Stat. 366; Oct. 4, 1976, Pub. L. 94-455, title XIV, Sec.

1402(b)(1)(D), (2), title XV, Sec. 1504(a), title XIX, Sec. 1901(a)(58), (b)(8)(A), 1906(b)(13)(A), 90 Stat. 1731, 1732, 1738, 1774, 1794, 1834; Oct. 14, 1978, Pub. L. 95-458, Sec. 4(b), 92 Stat. 1259; Nov. 6, 1978, Pub. L. 95-600, title I, Sec. 154(a), 156(a), (b), 157(g)(2), 92 Stat. 2801, 2802, 2808; Apr. 1, 1980, Pub. L. 96-222, title I, Sec. 101(a)(12), (13)(C), 94 Stat. 204; Aug. 13, 1981, Pub. L. 97-34, title III, Sec. 311(b)(3)(B), 95 Stat. 280; Sept. 3, 1982, Pub. L. 97-248, title II, Sec. 251(a), (b), (c)(3), 96 Stat. 529-531; Jan. 12, 1983, Pub. L. 97-448, title I, Sec. 103(c)(8)(B), 96 Stat. 2377; Apr. 20, 1983, Pub. L. 98-21, title I, Sec. 122(c)(4), 97 Stat. 87; July 18, 1984, Pub. L. 98-369, div. A, title IV, Sec. 491(d)(12), title V, Sec. 521(c), 522(a)(2), (3), (d)(9)-(11), title X, Sec. 1001(b)(4), 98 Stat. 849, 867, 869-871, 1011; Oct. 22, 1986, Pub. L. 99-514,

title XI, Sec. 1120(a), (b), 1122(b)(1)(B), (d), 1123(c), title XVIII, Sec. 1852(a)(3)(A), (B), (5)(B), (b)(10), 100 Stat. 2463, 2466, 2469, 2474, 2865, 2867; Nov. 10, 1988, Pub. L. 100-647, title I, Sec. 1011(c)(7)(B), (12), (m)(1), (2), title VI, Sec. 6052(a)(1), 102 Stat. 3458, 3459, 3471, 3696; Nov. 5, 1990, Pub. L. 101-508, title XI, Sec. 11701(k), 104 Stat. 1388-513; Aug. 20, 1996, Pub. L. 104-188, title I, Sec. 1450, 1704(t)(69), 110 Stat. 1755; Pub. L. 105-34, title XV, XVI, Sec. 1504, 1505(c), 1601(d)(4)(A), 1601(d)(6)(B), Aug. 5, 1997, 111 Stat 788; Pub. L. 105-206, title VI, Sec. 6005(c)(2)(B), July 22, 1998, 112 Stat 685; Pub. L. 106-554, Sec. 314, Dec. 21, 2000, 114 Stat. 2763; Pub. L. 107-16, Sec. 632, 641, 642, 646, 647, June 7, 2001, 115 Stat. 38; Pub. L. 107-147, Sec. 411, Mar. 9, 2002, 116 Stat. 21.)