SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

402(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST. —Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

402(b) TAXABILITY OF BENEFICIARY OF NONEXEMPT TRUST. —

402(b)(1) CONTRIBUTIONS. —Contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(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 the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

402(b)(2) DISTRIBUTIONS. —The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

402(b)(3) GRANTOR TRUSTS. —A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

402(b)(4) FAILURE TO MEET REQUIREMENTS OF SECTION 410(b). —

402(b)(4)(A) HIGHLY COMPENSATED EMPLOYEES. —If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1) or (2) include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

402(b)(4)(B) FAILURE TO MEET COVERAGE TESTS. —If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraphs (1) and (2) shall not apply by reason of such failure to any employee who was not a highly compensated employee during —

402(b)(4)(B)(i) such taxable year, or

402(b)(4)(B)(ii) any preceding period for which service was creditable to such employee under the plan.

402(b)(4)(C) HIGHLY COMPENSATED EMPLOYEE. —For purposes of this paragraph, the term `highly compensated employee' has the meaning given such term by section 414(q).

402(c) RULES APPLICABLE TO ROLLOVERS FROM EXEMPT TRUSTS. —

402(c)(1) EXCLUSION FROM INCOME. —If —

402(c)(1)(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

402(c)(1)(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

402(c)(1)(C) 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.

402(c)(2) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER. —In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). The preceding sentence shall not apply to such distribution to the extent —

402(c)(2)(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

402(c)(2)(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).

402(c)(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT. —

402(c)(3)(A) IN GENERAL. —Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

402(c)(3)(B) HARDSHIP EXCEPTION. —The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

402(c)(4) ELIGIBLE ROLLOVER DISTRIBUTION. —For purposes of this subsection, the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include —

402(c)(4)(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made —

402(c)(4)(A)(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

402(c)(4)(A)(ii) for a specified period of 10 years or more,

402(c)(4)(B) any distribution to the extent such distribution is required under section 401(a)(9), and

402(c)(4)(C) any distribution which is made upon hardship of the employee.

402(c)(5) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408. —For purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

402(c)(6) SALES OF DISTRIBUTED PROPERTY. —For purposes of this subsection —

402(c)(6)(A) TRANSFER OF PROCEEDS FROM SALE OF DISTRIBUTED PROPERTY TREATED AS TRANSFER OF DISTRIBUTED PROPERTY. —The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

402(c)(6)(B) PROCEEDS ATTRIBUTABLE TO INCREASE IN VALUE. —The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

402(c)(6)(C) DESIGNATION WHERE AMOUNT OF DISTRIBUTION EXCEEDS ROLLOVER CONTRIBUTION. —In any case where part or all of the distribution consists of property other than money —

402(c)(6)(C)(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

402(c)(6)(C)(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such law for designation, once made, shall be irrevocable.

402(c)(6)(D) NONRECOGNITION OF GAIN OR LOSS. —No gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

402(c)(7) SPECIAL RULE FOR FROZEN DEPOSITS. —

402(c)(7)(A) IN GENERAL. —The 60-day period described in paragraph (3) shall not —

402(c)(7)(A)(i) include any period during which the amount transferred to the employee is a frozen deposit, or

402(c)(7)(A)(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

402(c)(7)(B) FROZEN DEPOSITS. —For purposes of this subparagraph, the term "frozen deposit" means any deposit which may not be withdrawn because of —

402(c)(7)(B)(i) the bankruptcy or insolvency of any financial institution, or

402(c)(7)(B)(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

402(c)(8) DEFINITIONS. —For purposes of this subsection —

402(c)(8)(A) QUALIFIED TRUST. —The term "qualified trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

402(c)(8)(B) ELIGIBLE RETIREMENT PLAN. —The term "eligible retirement plan" means —

402(c)(8)(B)(i) an individual retirement account described in section 408(a),

402(c)(8)(B)(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

402(c)(8)(B)(iii) a qualified trust,

402(c)(8)(B)(iv) an annuity plan described in section 403(a),

402(c)(8)(B)(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

402(c)(8)(B)(vi) an annuity contract described in section 403(b).

402(c)(8)(B) ELIGIBLE RETIREMENT PLAN. —The term "eligible retirement plan" means —

402(c)(8)(B)(i) an individual retirement account described in section 408(a),

402(c)(8)(B)(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

402(c)(8)(B)(iii) a qualified trust,

402(c)(8)(B)(iv) an annuity plan described in section 403(a),

402(c)(8)(B)(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

402(c)(8)(B)(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

402(c)(9) ROLLOVER WHERE SPOUSE RECEIVES DISTRIBUTION AFTER DEATH OF EMPLOYEE. —If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

402(c)(10) SEPARATE ACCOUNTING. —Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

402(d) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS. —For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

402(e) OTHER RULES APPLICABLE TO EXEMPT TRUSTS. —

402(e)(1) ALTERNATE PAYEES. —

402(e)(1)(A) ALTERNATE PAYEE TREATED AS DISTRIBUTEE. —For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

402(e)(1)(B) ROLLOVERS. —If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

402(e)(2) DISTRIBUTIONS BY UNITED STATES TO NONRESIDENT ALIENS. —The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as —

402(e)(2)(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

402(e)(2)(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term "basic pay" shall have the meaning provided in section 8331(3) of title 5, United States Code.

402(e)(3) CASH OR DEFERRED ARRANGEMENTS. —For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) or which is part of a salary reduction agreement under section 403(b) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

402(e)(4) NET UNREALIZED APPRECIATION. —

402(e)(4)(A) AMOUNTS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS. —For purposes of subsection (a) and section 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(o)(5)). This subparagraph shall not apply to a distribution to which subsection (c) applies.

402(e)(4)(B) AMOUNTS ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS. —For purposes of subsection (a) and section 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph apply to such distribution.

402(e)(4)(C) DETERMINATION OF AMOUNTS AND ADJUSTMENTS. —For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

402(e)(4)(D) LUMP-SUM DISTRIBUTION. —For purposes of this paragraph —

402(e)(4)(D)(i) IN GENERAL. —The term "lump sum distribution" means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient —

402(e)(4)(D)(i)(I) on account of the employee's death,

402(e)(4)(D)(i)(II) after the employee attains age $59\frac{1}{2}$,

402(e)(4)(D)(i)(III) on account of the employee's separation from service, or

402(e)(4)(D)(i)(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

402(e)(4)(D)(ii) AGGREGATION OF CERTAIN TRUSTS AND PLANS. —For purposes of determining the balance to the credit of an employee under clause (i) —

402(e)(4)(D)(ii)(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

402(e)(4)(D)(ii)(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

402(e)(4)(D)(iii) COMMUNITY PROPERTY LAWS. —The provisions of this paragraph shall be applied without regard to community property laws.

402(e)(4)(D)(iv) AMOUNTS SUBJECT TO PENALTY. —This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

402(e)(4)(D)(v) BALANCE TO CREDIT OF EMPLOYEE NOT TO INCLUDE AMOUNTS PAYABLE UNDER QUALIFIED DOMESTIC RELATIONS ORDER. —For purposes of this paragraph, the balance to the credit of an employee shall not

include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

402(e)(4)(D)(vi) TRANFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION. —For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

402(e)(4)(D)(vii) LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES. —If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

402(e)(4)(E) DEFINITIONS RELATING TO SECURITIES. —For purposes of this paragraph —

402(e)(4)(E)(i) SECURITIES. —The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

402(e)(4)(E)(ii) SECURITIES OF THE EMPLOYER. —The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424) of the employer corporation.

402(e)(5) [Stricken.]

402(e)(6) DIRECT TRUSTEE-TO-TRUSTEE TRANSFERS. —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.

402(f) WRITTEN EXPLANATION TO RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT. —

402(f)(1) IN GENERAL. —The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient —

402(f)(1)(A) of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan,

402(f)(1)(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,

402(f)(1)(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,

402(f)(1)(D) if applicable, of the provisions of subsections (d) and (e) of this section, and

402(f)(1)(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

402(f)(1) IN GENERAL. —The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient —

402(f)(1)(A) of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B),

402(f)(1)(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,

402(f)(1)(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,

402(f)(1)(D) if applicable, of the provisions of subsections (d) and (e) of this section, and

402(f)(1)(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

402(f)(2) DEFINITIONS. —For purposes of this subsection —

402(f)(2)(A) ELIGIBLE ROLLOVER DISTRIBUTION. —The term "eligible rollover distribution" has the same meaning as when used in subsection (c) of this section, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16).

402(f)(2)(B) ELIGIBLE RETIREMENT PLAN. —The term "eligible retirement plan" has the meaning given such term by subsection (c)(8)(B).

402(g) LIMITATION ON EXCLUSION FOR ELECTIVE DEFERRALS. —

402(g)(1) IN GENERAL. —

402(g)(1)(A) LIMITATION. —Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount.

402(g)(1)(B) APPLICABLE DOLLAR AMOUNT. —For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	*The applicable dollar amount:*
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

402(g)(1)(C) CATCH-UP CONTRIBUTIONS. —In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

402(g)(1) IN GENERAL. —

402(g)(1)(A) LIMITATION. —Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount. The preceding sentence shall not apply [to] the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.

402(g)(1)(B) APPLICABLE DOLLAR AMOUNT. —For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	*The applicable dollar amount:*
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

402(g)(1)(C) CATCH-UP CONTRIBUTIONS. —In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

402(g)(2) DISTRIBUTION OF EXCESS DEFERRALS. —

402(g)(2)(A) IN GENERAL. —If any amount (hereinafter in this paragraph referred to as "excess deferrals") is included in the gross income of an individual under paragraph (1) for any taxable year —

402(g)(2)(A)(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals

among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and

402(g)(2)(A)(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount).

The distribution described in clause (ii) may be made notwithstanding any other provision of law.

402(g)(2)(A) IN GENERAL. —If any amount (hereinafter in this paragraph referred to as "excess deferrals") is included in the gross income of an individual under paragraph (1) (or would be included but for the last sentence thereof) for any taxable year —

402(g)(2)(A)(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and

402(g)(2)(A)(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount).

The distribution described in clause (ii) may be made notwithstanding any other provision of law.

402(g)(2)(B) TREATMENT OF DISTRIBUTION UNDER SECTION 401(k). —Except to the extent provided under rules prescribed by the Secretary, notwithstanding the distribution of any portion of an excess deferral from a plan under subparagraph (A)(ii), such portion shall, for purposes of applying section 401(k)(3)(A)(ii), be treated as an employer contribution.

402(g)(2)(C) TAXATION OF DISTRIBUTION. —In the case of a distribution to which subparagraph (A) applies —

402(g)(2)(C)(i) except as provided in clause (ii), such distribution shall not be included in gross income, and

402(g)(2)(C)(ii) any income on the excess deferral shall, for purposes of this chapter, be treated as earned and received in the taxable year in which such income is distributed.

No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.

402(g)(2)(D) PARTIAL DISTRIBUTIONS. —If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income.

402(g)(3) ELECTIVE DEFERRALS. —For purposes of this subsection, the term "elective deferrals" means, with respect to any taxable year, the sum of —

402(g)(3)(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (e)(3) (determined without regard to this subsection),

402(g)(3)(B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B) (determined without regard to this subsection),

402(g)(3)(C) any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), and

402(g)(3)(D) any elective employer contribution under section 408(p)(2)(A)(i).

An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-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.

402(g)(4) COST-OF-LIVING ADJUSTMENT. —In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

402(g)(5) DISREGARD OF COMMUNITY PROPERTY LAWS. —This subsection shall be applied without regard to community property laws.

402(g)(6) COORDINATION WITH SECTION 72. —For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

402(g)(7) SPECIAL RULE FOR CERTAIN ORGANIZATIONS. —

402(g)(7)(A) IN GENERAL. —In the case of a qualified employee of a qualified organization, with respect to employer contributions described in paragraph (3)(C) made by such organization, the limitation of paragraph (1) for any taxable year shall be increased by whichever of the following is the least:

402(g)(7)(A)(i) $3,000,

402(g)(7)(A)(ii) $15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or

402(g)(7)(A)(iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary).

402(g)(7)(B) QUALIFIED ORGANIZATION. —For purposes of this paragraph, the term "qualified organization" means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

402(g)(7)(C) QUALIFIED EMPLOYEE. —For purposes of this paragraph, the term "qualified employee" means any employee who has completed 15 years of service with the qualified organization.

402(g)(7)(D) YEARS OF SERVICE. —For purposes of this paragraph, the term "years of service" has the meaning given such term by section 403(b).

402(g)(8) MATCHING CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS NOT TREATED AS ELECTIVE EMPLOYER CONTRIBUTIONS. —Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) for purposes of this title.

402(h) SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS. —For purposes of this chapter —

402(h)(1) IN GENERAL. —Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k)) —

402(h)(1)(A) shall not be treated as distributed or made available to the employee or as contributions made by the employee, and

402(h)(1)(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to the simplified employer pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

402(h)(2) LIMITATIONS ON EMPLOYER CONTRIBUTIONS. —Contributions made by an employer to a simplified employee pension with respect to an employee for any year shall be treated as distributed or made available to such employee and as contributions made by the employee to the extent such contributions exceed the lesser of —

402(h)(2)(A) 25 percent of the compensation (within the meaning of section 414(s)) from such employer includible in the employee's gross income for the year (determined without regard to the employer contributions to the simplified employee pension), or

402(h)(2)(B) the limitation in effect under section 415(c)(1)(A), reduced in the case of any highly compensated employee (within the meaning of section 414(q)) by the amount taken into account with respect to such employee under section 408(k)(3)(D).

402(h)(3) DISTRIBUTIONS. —Any amount paid or distributed out of an individual retirement plan pursuant to a simplified employee pension shall be included in gross income by the payee or distributee, as the case may be, in accordance with the provisions of section 408(d).

402(i) TREATMENT OF SELF-EMPLOYED INDIVIDUALS. —For purposes of this section, except as otherwise provided in subparagraph (A) of subsection (d)(4), the term "employee" includes a self-employed individual (as defined in section 401(c)(1)(B)) and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

402(j) EFFECT OF DISPOSITION OF STOCK BY PLAN ON NET UNREALIZED APPRECIATION. —

402(j)(1) IN GENERAL. —For purposes of subsection (e)(4), in the case of any transaction to which this subsection applies, the determination of net unrealized appreciation shall be made without regard to such transaction.

402(j)(2) TRANSACTION TO WHICH SUBSECTION APPLIES. —This subsection shall apply to any transaction in which —

402(j)(2)(A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or

402(j)(2)(B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), except that this subparagraph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition.

402(k) TREATMENT OF SIMPLE RETIREMENT ACCOUNTS. —Rules similar to the rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a simple retirement account under section 408(p).