

**Selected Sections**

# **Pension and Employee Benefit Statutes and Regulations**

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**David A. Pratt**

**2015 Edition**

 **FOUNDATION  
PRESS**

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# PENSION AND EMPLOYEE BENEFIT STATUTES AND REGULATIONS

## SELECTED SECTIONS

2015 EDITION

*by*

DAVID A. PRATT

Professor of Law  
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 FOUNDATION  
PRESS

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*To my wife, Shantye Harville, with all my love*

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## INTERNAL REVENUE CODE OF 1986

### § 25B. Elective deferrals and IRA contributions by certain individuals.

(a) **Allowance of credit**—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the applicable percentage of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed \$2,000.

(b) **Applicable percentage**—For purposes of this section—

(1) **Joint returns**—In the case of a joint return, the applicable percentage is—

(A) if the adjusted gross income of the taxpayer is not over \$30,000, 50 percent,

(B) if the adjusted gross income of the taxpayer is over \$30,000 but not over \$32,500, 20 percent,

(C) if the adjusted gross income of the taxpayer is over \$32,500 but not over \$50,000, 10 percent, and

(D) if the adjusted gross income of the taxpayer is over \$50,000, zero percent.

(2) **Other returns**—In the case of—

(A) a head of household, the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 75 percent of such dollar amount, and

(B) any taxpayer not described in paragraph (1) or subparagraph (A), the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 50 percent of such dollar amount.

(3) **Inflation adjustment**—In the case of any taxable year beginning in a calendar year after 2006, each of the dollar amounts in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2005" for "calendar year 1992" in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$500.

(c) **Eligible individual**—For purposes of this section—

(1) **In general**—The term "eligible individual" means any individual if such individual has attained the age of 18 as of the close of the taxable year.

(2) **Dependents and full-time students not eligible**—The term "eligible individual" shall not include—

(A) any individual with respect to whom a deduction under section 151 is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins, and

(B) any individual who is a student (as defined in section 152(f)(2)).

(d) **Qualified retirement savings contributions**—For purposes of this section—

(1) **In general**—The term "qualified retirement savings contributions" means, with respect to any taxable year, the sum of—

(A) the amount of the qualified retirement contributions (as defined in section 219(e)) made by the eligible individual,

(B) the amount of—

(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

(ii) any elective deferral of compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

(C) the amount of voluntary employee contributions by such individual to any qualified retirement plan (as defined in section 4974(c)).

(2) **Reduction for certain distributions**—

(A) **In general**—The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made. The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

(B) **Testing period**—For purposes of subparagraph (A), the testing period, with respect to a taxable year, is the period which includes—

(i) such taxable year,

(ii) the 2 preceding taxable years, and

(iii) the period after such taxable year and before the due date (including extensions) for filing the return of tax for such taxable year.

(C) **Excepted distributions**—There shall not be taken into account under subparagraph (A)—

(i) any distribution referred to in section 72(p), 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and

(ii) any distribution to which section 408A(d)(3) applies.

(D) **Treatment of distributions received by spouse of individual**—For purposes of determining distributions received by an individual under subparagraph (A) for any taxable year, any distribution received by the spouse of such individual shall be treated as received by such individual if such individual and spouse file a joint return for such taxable year and for the taxable year during which the spouse receives the distribution.

(e) **Adjusted gross income**—For purposes of this section, adjusted gross income shall be determined without regard to sections 911, 931, and 933.

**(f) Investment in the contract**—Notwithstanding any other provision of law, a qualified retirement savings contribution shall not fail to be included in determining the investment in the contract for purposes of section 72 by reason of the credit under this section.

**§ 45E. Small employer pension plan startup costs.**

**(a) General rule**—For purposes of section 38, in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

**(b) Dollar limitation**—The amount of the credit determined under this section for any taxable year shall not exceed—

(1) \$500 for the first credit year and each of the 2 taxable years immediately following the first credit year, and

(2) zero for any other taxable year.

**(c) Eligible employer**—For purposes of this section—

**(1) In general**—The term "eligible employer" has the meaning given such term by section 408(p)(2)(C)(i).

**(2) Requirement for new qualified employer plans**—Such term shall not include an employer if, during the 3-taxable year period immediately preceding the 1st taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

**(d) Other definitions**—For purposes of this section—

**(1) Qualified startup costs**—

**(A) In general**—The term "qualified startup costs" means any ordinary and necessary expenses of an eligible employer which are paid or incurred in connection with—

(i) the establishment or administration of an eligible employer plan, or

(ii) the retirement-related education of employees with respect to such plan.

**(B) Plan must have at least 1 participant**—Such term shall not include any expense in connection with a plan that does not have at least 1 employee eligible to participate who is not a highly compensated employee.

**(2) Eligible employer plan**—The term "eligible employer plan" means a qualified employer plan within the meaning of section 4972(d).

**(3) First credit year**—The term "first credit year" means—

**(A)** the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective, or

**(B)** at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A).

**(e) Special rules**—For purposes of this section—

**(1) Aggregation rules**—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

**(2) Disallowance of deduction**—No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).

**(3) Election not to claim credit**—This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

## **§ 72. Annuities; certain proceeds of endowment and life insurance contracts.**

**(a) General rule for annuities**—(a) General rules for annuities.

**(1) Income inclusion.** Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

**(2) Partial annuitization.** If any amount is received as an annuity for a period of 10 years or more or during one or more lives under any portion of an annuity, endowment, or life insurance contract—

**(A)** such portion shall be treated as a separate contract for purposes of this section,

**(B)** for purposes of applying subsections (b), (c), and (e), the investment in the contract shall be allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity, and

**(C)** a separate annuity starting date under subsection (c)(4) shall be determined with respect to each portion of the contract from which amounts are received as an annuity.

**(b) Exclusion ratio**—

**(1) In general**—Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date).

**(2) Exclusion limited to investment**—The portion of any amount received as an annuity which is excluded from gross income under paragraph (1) shall not exceed the unrecovered investment in the contract immediately before the receipt of such amount.

**(3) Deduction where annuity payments cease before entire investment recovered**—

**(A) In general**—If—

**(i)** after the annuity starting date, payments as an annuity under the contract cease by reason of the death of an annuitant, and

**(ii)** as of the date of such cessation, there is unrecovered investment in the contract,

the amount of such unrecovered investment (in excess of any amount specified in subsection (e)(5) which was not included in gross income) shall be allowed as a deduction to the annuitant for his last taxable year.



**(B) Payments to other persons**—In the case of any contract which provides for payments meeting the requirements of subparagraphs (B) and (C) of subsection (c)(2), the deduction under subparagraph (A) shall be allowed to the person entitled to such payments for the taxable year in which such payments are received.

**(C) Net operating loss deductions provided**—For purposes of section 172, a deduction allowed under this paragraph shall be treated as if it were attributable to a trade or business of the taxpayer.

**(4) Unrecovered investment**—For purposes of this subsection, the unrecovered investment in the contract as of any date is—

**(A)** the investment in the contract (determined without regard to subsection (c)(2)) as of the annuity starting date, reduced by

**(B)** the aggregate amount received under the contract on or after such annuity starting date and before the date as of which the determination is being made, to the extent such amount was excludable from gross income under this subtitle.

**(c) Definitions—**

**(1) Investment in the contract**—For purposes of subsection (b), the investment in the contract as of the annuity starting date is—

**(A)** the aggregate amount of premiums or other consideration paid for the contract, minus

**(B)** the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

**(2) Adjustment in investment where there is refund feature**—If—

**(A)** the expected return under the contract depends in whole or in part on the life expectancy of one or more individuals;

**(B)** the contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and

**(C)** such payments are in the nature of a refund of the consideration paid,

then the value (computed without discount for interest) of such payments on the annuity starting date shall be subtracted from the amount determined under paragraph (1). Such value shall be computed in accordance with actuarial tables prescribed by the Secretary. For purposes of this paragraph and of subsection (e)(2)(A), the term "refund of the consideration paid" includes amounts payable after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain, but (if part of the consideration was contributed by an employer) does not include that part of any payment to a beneficiary (or to the estate of the annuitant) which is not attributable to the consideration paid by the employee for the contract as determined under paragraph (1)(A).

**(3) Expected return**—For purposes of subsection (b), the expected return under the contract shall be determined as follows:

**(A) Life expectancy**—If the expected return under the contract, for the period on and after the annuity starting date, depends in whole or in part on the life expectancy of one or more individuals, the expected return shall be computed with reference to actuarial tables prescribed by the Secretary.