

SUBTITLE A. INCOME TAXES
CHAPTER 1. NORMAL TAXES AND SURTAXES
SUBCHAPTER D. DEFERRED COMPENSATION, ETC.
PART I. PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.
SUBPART A. GENERAL RULES.

IRC Sec. 402

Sec. 402. Taxability of beneficiary of employees' trust [Caution: See prospective amendment notes below.].

(g) Limitation on exclusion for elective deferrals.

(1) In general.

(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.

(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.

(C) Catch-up contributions. In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v) [[26 USCS § 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) [[26 USCS § 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) [[26 USCS § 414\(v\)](#)]).

(2) Distribution of excess deferrals.

(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--

(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

(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.

(B) Treatment of distribution under section 401(k) [[26 USCS § 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) [[26 USCS § 401\(k\)\(3\)\(A\)\(ii\)](#)], be treated as an employer contribution.

(C) Taxation of distribution. In the case of a distribution to which subparagraph (A) applies--

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

(ii) any income on the excess deferral shall, for purposes of this chapter [[26 USCS §§ 1](#) et seq.], 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) [[26 USCS § 72\(t\)](#)] on any distribution described in the preceding sentence.

(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.

(3) Elective deferrals. For purposes of this subsection, the term "elective deferrals" means, with respect to any taxable year, the sum of--

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) [[26 USCS § 401\(k\)](#)]) to the extent not includible in gross income for the taxable year under subsection (e)(3) (determined without regard to this subsection),

(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),

(C) any employer contribution to purchase an annuity contract under section 403(b) [[26 USCS § 403\(b\)](#)] under a salary reduction agreement (within the meaning of section 3121(a)(5)(D) [[26 USCS § 3121\(a\)\(5\)\(D\)](#)]), and

(D) any elective employer contribution under section 408(p)(2)(A)(i) [[26 USCS § 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.

(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) [[26 USCS § 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.

(5) Disregard of community property laws. This subsection shall be applied without regard to community property laws.

(6) Coordination with section 72. For purposes of applying section 72 [26 USCS § 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.

(7) Special rule for certain organizations.

(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:

(i) \$ 3,000,

(ii) \$ 15,000 reduced by the sum of--

(I) the amounts not included in gross income for prior taxable years by reason of this paragraph, plus

(II) the aggregate amount of designated Roth contributions (as defined in section 402A(c) [26 USCS § 402A(c)]) for prior taxable years, or"

(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).

(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) [26 USCS § 414(e)(3)(B)(ii)] (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 [enacted June 7, 2001]). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) [26 USCS § 415(c)(4)].

(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.

(D) Years of service. For purposes of this paragraph, the term "years of service" has the meaning given such term by section 403(b) [26 USCS § 403(b)].

(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) [26 USCS § 401(k)(3)(D)(ii)], any matching contribution described in section 401(m)(4)(A) [26 USCS § 401(m)(4)(A)] which is made on behalf of a self-employed individual (as defined in section 401(c) [26 USCS § 401(c)]) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) [26 USCS § 401(k)]) for purposes of this title.