

IRC 72(q)

(q)

10-percent penalty for premature distributions from annuity contracts

(1)

Imposition of penalty

If any taxpayer receives any amount under an annuity contract, 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
Paragraph 1 shall not apply to any distribution -

(A)

made on or after the date on which the taxpayer attains age 59 1/2,

(B)

made on or after the death of the holder (or, where the holder is not an individual, the death of the primary annuitant (as defined in subsection (s)(6)(B))),

(C)

attributable to the taxpayer's becoming disabled within the meaning of subsection (m)(7),

(D)

which is a part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his designated beneficiary,

(E)

from a plan, contract, account, trust, or annuity described in subsection (e)(5)(D),

(F)

allocable to investment in the contract before August 14, 1982, or (FOOTNOTE 2) (FOOTNOTE 2) So in original. The word "or" probably should not appear.

(G)

under a qualified funding asset (within the meaning of section [130\(d\)](#), but without regard to whether there is a qualified assignment),

(H)

to which subsection (t) applies (without regard to paragraph (2) thereof),

(I)

under an immediate annuity contract (within the meaning of section [72\(u\)\(4\)](#)), or

(J)

which is purchased by an employer upon the termination of a plan described in section [401\(a\)](#) or [403\(a\)](#) and which is held by the employer until such time as the employee separates from service.

(3)

Change in substantially equal payments

If -

(A)

paragraph (1) does not apply to a distribution by reason of paragraph (2)(D), and

(B)

the series of payments under such paragraph are subsequently modified (other than by reason of death or disability) -

(i)

before the close of the 5-year period beginning on the date of the first payment and after the taxpayer attains age 59 1/2, or

(ii)

before the taxpayer attains age 59 1/2, 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)(D)) would have been imposed, plus interest for the deferral period (within the meaning of subsection (t)(4)(B)).

