



Joint Committee on Taxation  
February 2, 2004  
JCX-8-04

**DESCRIPTION OF ADDITIONAL CHAIRMAN'S MODIFICATIONS TO THE  
"NATIONAL EMPLOYEE SAVINGS AND TRUST EQUITY  
GUARANTEE ACT OF 2003" AS MARKED UP SEPTEMBER 17, 2003,  
SCHEDULED FOR MARKUP BY  
THE SENATE COMMITTEE ON FINANCE  
ON FEBRUARY 2, 2004**

**I. MODIFICATIONS TO THE CHAIRMAN'S MODIFICATION RELATING TO  
THE TAX TREATMENT OF COMPANY-OWNED LIFE INSURANCE ("COLI")**

The proposal adds a provision related to the notice requirement under the COLI provision in the Chairman's Modification. The proposal requires that to satisfy the notice requirement, employers must include the maximum face amount at the time of issue of the life insurance contract that the employer might take out on the life of the employee.

**II. MODIFICATIONS TO THE BILL AS MARKED UP  
RELATING TO PENSIONS**

**A. Information to Assist Pension Plan Participants**

**1. Employer-provided qualified retirement planning services**

The proposal permitting employers to offer employees a choice between cash compensation and eligible qualified retirement planning services is effective for taxable years beginning after December 31, 2004, and before January 1, 2010.

**B. Other Provisions Relating to Pensions**

**1. Updating deduction rules for combination of plans**

The proposal providing (1) that the overall limit on employer deductions for contributions to combinations of defined benefit and defined contribution plans applies to contributions to one or more defined contribution plans only to the extent that such contributions exceed six percent of compensation otherwise paid or accrued during the taxable year to the beneficiaries under the plans and (2) that for purposes of determining the excise tax on nondeductible contributions, matching contributions to a defined contribution plan that are nondeductible solely because of the overall deduction limit are disregarded, is effective for contributions for taxable years beginning after December 31, 2004.

## **2. Rollover of after-tax amounts**

The proposal allowing after-tax contributions to be rolled over from a qualified retirement plan to another qualified retirement plan (either a defined contribution or a defined benefit plan) or tax-sheltered annuity as long as the rollover is a direct rollover, and the plan to which the rollover is made separately accounts for after-tax contributions (and earnings thereon) is effective for taxable years beginning after December 31, 2004.

## **3. Rollovers by nonspouse beneficiaries**

The proposal providing that benefits of a beneficiary other than a surviving spouse may be transferred directly to an IRA is effective for distributions made after December 31, 2004.

## **4. Faster vesting of employer nonelective contributions**

The proposal applying the present-law vesting schedule for matching contributions to all employer contributions to defined contribution plans is effective for contributions (including allocations of forfeitures) for plan years beginning after December 31, 2004, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement. The proposal does not apply to any employee until the employee has an hour of service after the effective date. In applying the new vesting schedule, service before the effective date is taken into account.

## **5. Direct rollovers from retirement plans to Roth IRAs**

The proposal allowing distributions from tax-qualified retirement plans, tax-sheltered annuities, and governmental 457 plans to be rolled over directly from such plan into a Roth IRA, subject to the present law rules that apply to rollovers from a traditional IRA into a Roth IRA, is effective for distributions made after December 31, 2004.

## **6. SIMPLE plan distribution rules**

The proposal eliminating the 25-percent early withdrawal tax on withdrawals of SIMPLE IRA contributions during the two-year period beginning on the date the employee first participated in the SIMPLE IRA is effective for plan years beginning after December 31, 2004.

## **7. SIMPLE plan portability**

The proposal allowing rollovers from any type of tax-favored retirement plan to a SIMPLE IRA and from a SIMPLE IRA to any type of tax-favored retirement plan is effective for plan years beginning after December 31, 2004.

## **8. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to state and local government plans**

The proposal exempting governmental plans from the nondiscrimination and minimum participation rules and treating all governmental plans as meeting the participation and nondiscrimination requirements applicable to a qualified cash or deferred arrangement is effective for plan years beginning after December 31, 2004.

## **9. Notice and consent period regarding distributions**

The proposal requiring a qualified retirement plan to provide required distribution notices no less than 30 days and no more than 180 days before the date distribution commences applies to years beginning after December 31, 2004.

## **10. Pension plan reporting simplification**

The proposal which directs the Secretary of the Treasury and the Secretary of Labor to modify the annual return filing requirements with respect to plans that satisfy the eligibility requirements for Form 5500-EZ is effective for plan years beginning on or after January 1, 2004.

## **11. Reduced PBGC premiums for small and new plans**

The proposal providing for a reduction of the flat-rate Pension Benefit Guaranty Corporation (“PBGC”) premium for new plans of small employers and the variable-rate PBGC premium for new plans applies to plans first effective after December 31, 2004. The reduction of the variable-rate PBGC premium for small plans applies to plan years beginning after December 31, 2004.

## **12. Rules for substantial owner benefits in terminated plans**

The proposal providing that a 60-month phase-in for guaranteed PBGC benefits applies to a substantial owner with less than 50 percent ownership interest and a 10-year phase-in period (depending on the number of years the plan has been in effect) is effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC, after December 31, 2004.

## **13. Multiemployer plan explanation notice**

The proposal requiring the administrator of a multiemployer plan to provide participants with an annual funding notice and a special solvency notice applies to plan years beginning after December 31, 2005.

## **14. Additional IRA catch-up contributions for certain individuals**

The proposal permitting eligible individuals to make additional contributions to an IRA up to \$1,500 per year in tax years 2004 through 2005, and \$3,000 in tax years 2006 through 2008 is effective for taxable years beginning after December 31, 2003, and before January 1, 2009.

## **15. Permit qualified transfers of excess pension assets to retiree health accounts by multiemployer plan**

The proposal allowing the qualified transfers of excess defined benefit plan assets to be made by a defined benefit plan described in section 404(c) (or a continuation or spin-off thereof that primarily covers employees in the building and construction industry) is effective for transfers made in taxable years beginning after December 31, 2004.

## **C. Provisions Relating to Executives and Stock Options**

### **1. Taxation of nonqualified deferred compensation**

The proposal providing that all amounts deferred under a nonqualified deferred compensation plan are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are satisfied, is effective for amounts deferred in taxable years beginning after December 31, 2004.

### **2. Denial of deferral of certain stock option and restricted stock gains**

The proposal providing that gains attributable to stock options (including exercises of stock options), vesting of restricted stock, and other employer security based compensation cannot be deferred by electing to receive a future payment in lieu of such amounts is effective after December 31, 2004.

## **D. Women's Pension Protection Provisions**

### **1. Modifications of joint and survivor annuity requirements**

The proposal revising the QJSA requirements to require that, at the election of the participant, benefits will be paid in the form of a "qualified joint and 3/4 survivor annuity" (an annuity for the life of the participant, with a survivor annuity for the life of the spouse which is not less than 75 percent of the amount of the annuity payable during the joint lives of the participant and his or her spouse) is generally effective for plan years beginning after December 31, 2004, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement.

## **E. Other Provisions**

### **1. Exclusion for education benefits provided by employers to children of employees**

The exclusion for education benefits provided by employers to children of employees is modified by providing that it is effective for taxable years beginning after December 31, 2004, and does not apply to years beginning after December 31, 2005.

### **2. Exclusion from gross income for amounts paid under National Health Service Corps Loan Repayment Program**

The proposal excluding from gross income loan repayments provided under the National Health Service Corps Loan Repayment Program is effective with respect to amounts received in taxable years beginning after December 31, 2004.

### **3. Temporary exclusion for group legal services benefits**

The proposal restoring the exclusion for employer-provided group legal services, providing that the amount of the exclusion is not limited, and providing tax exempt status for

organizations which provide qualified group legal services applies to taxable years beginning after December 31, 2004, and before January 1, 2006.

### **III. PROVISIONS DELETED FROM THE BILL AS MARKED UP**

The following items are deleted from the bill as marked up:

- (1) Consolidation of life and nonlife insurance companies; and
- (2) Repeal of reduction of deductions for mutual life insurance companies and of policyholder surplus accounts of life insurance companies.

### **IV. PROVISION ADDED TO THE BILL AS MARKED UP**

#### **A. Reporting of Taxable Mergers and Acquisitions**

##### **Present Law**

Under section 6045 and the regulations thereunder, brokers (defined to include stock transfer agents) are required to make information returns and to provide corresponding payee statements as to sales made on behalf of their customers, subject to the penalty provisions of sections 6721-6724. Under the regulations issued under section 6045, this requirement generally does not apply with respect to taxable transactions other than exchanges for cash (e.g., stock inversion transactions taxable to shareholders by reason of section 367(a)).

##### **Description of Proposal**

Under the proposal, if gain or loss is recognized in whole or in part by shareholders of a corporation by reason of a second corporation's acquisition of the stock or assets of the first corporation, then the acquiring corporation (or the acquired corporation, if so prescribed by the Treasury Secretary) is required to make a return containing:

- (1) A description of the transaction;
- (2) The name and address of each shareholder of the acquired corporation that recognizes gain as a result of the transaction (or would recognize gain, if there was a built-in gain on the shareholder's shares);
- (3) The amount of money and the value of stock or other consideration paid to each shareholder described above; and
- (4) Such other information as the Treasury Secretary may prescribe.

Alternatively, a stock transfer agent who records transfers of stock in such transaction may make the return described above in lieu of the second corporation.

In addition, every person required to make a return described above is required to furnish to each shareholder (or the shareholder's nominee<sup>1</sup>) whose name is required to be set forth in such return a written statement showing:

- (1) The name, address, and phone number of the information contact of the person required to make such return;
- (2) The information required to be shown on that return; and
- (3) Such other information as the Treasury Secretary may prescribe.

This written statement is required to be furnished to the shareholder on or before January 31 of the year following the calendar year during which the transaction occurred.

The present-law penalties for failure to comply with information reporting requirements are extended to failures to comply with the requirements set forth under the proposal.

#### **Effective Date**

The proposal is effective for acquisitions after the date of enactment.

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<sup>1</sup> In the case of a nominee, the nominee must furnish the information to the shareholder in the manner prescribed by the Secretary of the Treasury.