Billionaires Income Tax
Senator Ron Wyden
November 30, 2023

SECTION-BY-SECTION SUMMARY

SEC. 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS

This bill may be cited as the "Billionaires Income Tax Act".

SEC. 2. PURPOSE

The purpose of this bill is to require billionaires to pay taxes annually by eliminating the ability of high income and high net worth taxpayers to use tax planning strategies such as "buy, borrow, die" to defer paying taxes indefinitely, specifically by:

- Requiring high income and high net worth taxpayers to pay tax on the income they earn on an annual basis, just like working people do on their income from wages, through mark-to-market taxation
- Shutting down the ability of the ultra-wealthy to buy and hold appreciating assets and borrow against those assets to support their lavish lifestyles, all completely tax-free.
- Closing loopholes in the tax code that allow high income and high net worth taxpayers to shield their income from taxation, including the loophole that allows ultra-wealthy taxpayers to transfer untaxed appreciated assets to their heirs at death and such heirs to sell such assets completely tax-free.

TITLE I—ELIMINATION OF DEFERRAL FOR APPLICABLE TAXPAYERS

SEC. 101. ELIMINATION OF DEFERRAL OF TAX.

Creates a new part IV in subchapter E of chapter 1 of the Internal Revenue Code, effective for taxable years beginning after December 31, 2023:

PART IV—ELIMINATION OF DEFERRAL FOR APPLICABLE TAXPAYERS

Subpart A—General Provisions

Sec. 490. Elimination of deferral of tax for applicable taxpayers.

If there is a taxable event with respect to any tradable covered asset of any applicable taxpayer (as defined in section 495) during the taxable year, gain or loss shall be recognized as provided in section 491.

If there is an applicable transfer (as defined in section 498) of any nontradable covered asset by any applicable taxpayer during the taxable year, the tax imposed on any gain shall be increased as provided in section 492 with respect to any gain from any such transfer.

Special rules for gain and loss on tradable covered assets and nontradable covered assets held through applicable entities are provided in section 493. Rules for gifts, bequests, and transfers in trust by an applicable taxpayer or applicable taxpayer-held entity are provided in section 494.

Sec. 491. Treatment of tradable covered assets.

Tradable covered assets[1] held by applicable taxpayers will be marked to market annually. This means that a taxable event occurs at the close of each taxable year that an applicable taxpayer holds a tradable covered asset, and gain or loss will be taken into account in the taxable year in which the taxable event occurs as though the tradable covered asset had been sold for its fair market value. In addition to these annual taxable events, certain disregarded nonrecognition events (described in section 498) are also considered taxable events that require gain or loss to be recognized. The taxpayer's basis for an asset will be adjusted appropriately for any gain or loss realized as a result of a taxable event.

Any capital gain or capital loss related to a tradable covered asset will be treated as long-term capital gain or long-term capital loss, respectively, regardless of holding period, unless a provision elsewhere in the tax code stipulates that such gain or loss should be treated as gain or loss from the sale of an asset which is not a capital asset or ordinary income regardless of holding period.

Sec. 492. Deferral recapture amount on applicable transfers of nontradable covered assets.

In the case of an applicable transfer of a nontradable covered asset[2] that results in gain, the tax imposed on that gain shall be increased by the deferral recapture amount, an amount akin to interest charged on deferred tax.

To calculate the deferral recapture amount, the realized gain is allocated pro rata to each day of the asset's holding period. Any gain allocated to years before the taxpayer became an applicable taxpayer is then reallocated to the first year the taxpayer was an applicable taxpayer. For each tax year to which gain is allocated, a deemed tax amount (the amount of tax that would have been due for that year had the gain allocated to that year been taxed at the highest rate of tax in effect in the year of the applicable transfer) is determined. The deemed tax amount also includes any deferred net investment income tax. Interest is then deemed to have been assessed on the deemed tax amount at a rate equal to the short-term applicable federal rate plus one percentage point, beginning on the date the tax return would have been due for that year and ending on the date of the applicable transfer. The deemed interest amounts for each year are then aggregated to determine the total deferral recapture amount. The total tax due upon sale of an asset, including any deferral recapture amount, may not exceed 49 percent.

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[1] Tradable assets are generally assets with a readily ascertainable value that are actively traded, like stocks. The definition of "tradable covered asset" is in section 497.

[2] Any asset that is not considered a tradable asset is generally considered a nontradable asset. Nontradable assets include things like real estate or business interests. The definition of "nontradable covered asset" is in section 497.

If a taxpayer has a net capital loss but still owes any deferral recapture amount, the taxpayer can use the loss to reduce their deferral recapture amount by the credit equivalent of the loss. The credit equivalent is the highest rate of tax on capital gains multiplied by the net capital loss (roughly the "tax value" of the net capital loss). Appropriate adjustments are made to the amount of net capital loss which may be carried to the succeeding tax year to account for any net capital loss used to reduce a deferral recapture amount.

Stock of a privately-held C corporation is subject to an "excess dividend" rule. An excess dividend is the amount of a dividend which does not exceed its ratable portion of "total excess dividends," if any. The total excess dividends is the total dividends with respect to such stock for the tax year over 125 percent of the average amount of dividends issued over the previous three years. To the extent a distribution by a privately-held C corporation is treated as an excess dividend, the amount of the excess dividend is treated as gain from the sale of a nontradable covered asset and the tax imposed will be increased by the deferral recapture amount based on the holding period of the stock on which the dividend was issued.

A capital gain dividend received by an applicable taxpayer from a privately-held real estate investment trust (REIT) is treated as gain from the sale of a nontradable covered asset and the tax imposed will be increased by the deferral recapture amount. REITs are responsible for including a written notice for a capital gain dividend. The deferral recapture amount will be based on the shorter of: the applicable taxpayer's holding period of the REIT or the REIT's holding period of the asset that generated the capital gain dividend.

Sec.493. Special rules for application of non-deferral rules to certain pass-through entities.

In general and except as otherwise provided, any ownership interest in an applicable entity which is a tradable covered asset or a nontradable covered asset shall be treated in the same manner as any other such tradable or nontradable asset. An applicable entity is defined as any partnership, S corporation, or other pass-through entity specified by the Secretary.

An applicable taxpayer must notify each applicable entity in which the taxpayer is a significant owner of such taxpayer's ownership interest in such entity. An applicable taxpayer is a significant owner of an applicable entity if: (1) the applicable taxpayer is a 5 percent owner holding a nontradable interest in the applicable entity or (2) the value of the applicable taxpayer's nontradable interest in such entity is at least $50 million. An applicable entity that receives a notice and owns an interest in a second applicable entity must notify such second applicable entity in which the applicable taxpayer is a significant owner by reason of ownership through the first applicable entity of such applicable taxpayer's indirect ownership. An applicable entity receiving a notice is required to provide the necessary information to the applicable taxpayer to comply with this section.

In the case of an applicable entity in which an applicable taxpayer is a significant owner, such taxpayer shall take into account: (i) such taxpayer's share of mark-to-market gain or loss from tradable covered assets held directly or indirectly by such entity, and (ii) such taxpayer's share of gain or loss from certain disregarded nonrecognition transactions of such entity.

In the case of an applicable entity in which an applicable taxpayer is a significant owner in the first year the taxpayer is an applicable taxpayer, such taxpayer shall take into account such taxpayer's share of the applicable entity's adjusted applicable built-in gain or loss. An applicable entity's adjusted applicable built-in gain or loss is the gain or loss on all tradable covered assets, which is calculated by treating the assets as though the assets were sold at fair market value on the last day of the applicable entity's tax year. If an applicable taxpayer makes an election under section 496 to pay the taxpayer's applicable built-in gain or loss in installments over 5 years, such taxpayer shall provide notice of such election to the applicable entity. In addition, if the applicable taxpayer makes an election under section 496(a)(3) to treat a nontradable interest in an applicable entity as a tradable covered asset for purposes of section 496(a)(1), electing to take into account built-in gain of the interest, the applicable taxpayer shall provide notice of the election to the applicable entity.

Under rules provided by the Secretary, an applicable taxpayer's share of adjusted basis in the applicable entity's asset(s) and the applicable taxpayer's basis in the applicable entity shall be appropriately adjusted to reflect gain or loss taken into account.

If an applicable taxpayer takes into account gain from an applicable transfer by an applicable entity in which the applicable taxpayer is a significant owner, the tax imposed is increased by the deferral recapture amount. The deferral recapture amount will be calculated using the shorter of: the applicable taxpayer's holding period of the applicable entity or the applicable entity's holding period of the asset that generated the gain.

An applicable entity may elect to treat all owners as applicable taxpayers with respect to any gain or loss from tradable covered assets. Such election shall be irrevocable without consent of the Secretary.

The Secretary shall provide rules to carry out this section, including to prevent the shifting of deferral recapture amounts between taxpayers holding interests in an applicable entity, for simplified reporting methods for applicable entities, for the determination of the share of amounts required to be reported for each taxpayer holding an interest in such applicable entity, and any other rules necessary to prevent avoidance of or to simplify the administration of this part.

Sec.494 Treatment of gifts, bequests, and transfers in trust.

Gifts, bequests, and transfers in trust by an applicable taxpayer are generally treated as an applicable transfer, requiring recognition of gain or loss. Similar to existing related-party loss rules in the Code, if the applicable taxpayer transfers property by gift or in trust at a loss, such loss is disallowed and the transferred property takes fair market value basis. If the transferee later disposes of the property at a gain, the gain is reduced to the extent that the loss was disallowed in the hands of the applicable taxpayer.

Certain exceptions apply to this realization rule, including for transfers to a U.S. spouse, surviving spouse, or a former spouse incident to divorce. In addition transfers to or for the benefit of a charity or other specified trusts are exempt from realization. In the case of a charitable transfer in a split interest trust (such as a charitable remainder trust), special rules apply to determine the non-taxable charitable portion.

Under section 671 *et seq.* special rules apply to so-called grantor trusts, over which the person who created the trust (the grantor) retains certain rights with respect to the property in the trust. Income and loss of a grantor trust are generally taken into account by the grantor on his or her individual tax return. Transfers of nontradable covered assets by an applicable taxpayer into a grantor trust are treated as an applicable transfer (except transfers to a wholly-revocable grantor trust). In addition, certain deemed distribution events will cause a grantor trust to recognize gain or loss. For these purposes, deemed distributions include: (1) when the owner ceases to be treated as the owner of the property held in a grantor trust for income tax purposes, (2) when the property is distributed (except in the case of a distribution from a wholly revocable grantor trust to the grantor, the grantor's spouse, or in satisfaction of a legally-enforceable obligation of such person), (3) when the property would no longer be included in the grantor's estate for estate tax purposes, and (4) when the owner dies.

In general, for transfers where gain or loss is recognized (including transfers involving a disallowed loss) the transferee takes fair market value basis in the property. For transfers not subject to realization (such as spousal transfers) the transferee takes carryover basis, increased to the extent any gain is recognized.

Subpart B—Definitions and Rules Relating to Applicable Taxpayers

Sec.495. Applicable taxpayer defined.

An applicable taxpayer is an individual who meets either the income test or the asset test for each of the three immediately preceding taxable years. A taxpayer meets the income test if they have applicable adjusted gross income exceeding $100,000,000 (for joint and single filers). A taxpayer meets the asset test if the aggregate applicable value of all covered assets held by the taxpayer at the end of the year exceeds $1,000,000,000 (for joint and single filers). To be considered an applicable taxpayer, a taxpayer need only exceed one of the thresholds in a given year for that year to be counted towards the three-year requirement, and the taxpayer need not meet the same threshold in each of the three years.

A taxpayer who is treated as an applicable taxpayer will continue to be treated as such until the taxpayer's income and assets drop below one-half of the income and asset thresholds for three consecutive taxable years, at which point the taxpayer may elect not to be treated as an applicable taxpayer. There are special rules allowing taxpayers to end their applicable taxpayer status in certain cases after divorce or separation.

If a single taxpayer marries an applicable taxpayer, both spouses are applicable taxpayers moving forward. For taxpayers who are married filing separately, the income and asset thresholds are halved, and if one spouse is an applicable taxpayer, then the other spouse is also considered an applicable taxpayer. The Secretary has authority to prescribe regulations for waiving the special rules for taxpayers who are married filing separately in cases where equitable relief is appropriate, and for cases where filing status changes between years.

Trusts (other than grantor trusts) are treated as applicable taxpayers if such trust has at least $10,000,000 in income or $100,000,000 in assets for three consecutive years. For these purposes, income is determined before application of the trust's income distribution deduction. Charitable trusts and certain other specified trusts are exempt from applicable taxpayer treatment.

In the case of a grantor trust, property held in the trust will be treated as if it was owned directly by the grantor for purposes of determining applicable taxpayer status of the individual. In the case of a grantor trust owned by someone other than the grantor, property held in the trust will also be treated as an asset owned by the deemed owner of the trust for the purpose of the asset test used to determine the applicable taxpayer status of the deemed owner. In addition, under current grantor trust rules, income and loss of the grantor trust is taken into account by the owner on his or her individual tax return. For grantor trusts owned by an applicable taxpayer, property held in the trust is subject to anti-deferral accounting rules, consistent with the general application of the grantor trust rules.

The estate of an individual who was an applicable taxpayer in the year of death, or for any taxable year during the three-taxable year period preceding the taxable year of the taxpayer's death, is an applicable taxpayer.

The applicable taxpayer status of a nonresident alien or expatriate is determined by applying the income and asset tests with a threshold of $50,000,000 for the income test and $500,000,000 for the asset test. Only income effectively connected with the conduct of trades or businesses in the United States will be counted for the income test, and only assets which produce that income will be counted for the asset test.

Special rules apply for applicable taxpayers expatriating from the United States. Any expatriating person who met either the income test using a $50,000,000 income threshold or the asset test using a $500,000,000 asset threshold at any point during the 5 years prior to expatriation will be considered an applicable taxpayer for this purpose. These expatriating taxpayers will be considered applicable taxpayers for the 10-year period after expatriation.

Sec.496. Special rules for taxpayers entering or changing status as applicable taxpayers.

In the first year that a taxpayer becomes an applicable taxpayer, they may elect to pay their net first-year tax liability in 5 equal installments over 5 years. The net first-year tax liability includes tax due as a result of the taxpayer's first taxable event (i.e., the first time tradable covered assets are marked-to-market).

The taxpayer may also elect to include gain from nontradable assets in their net first-year tax liability by declaring a value of their choosing for each nontradable covered asset. A taxpayer may not recognize a loss on an asset by valuing it below its adjusted basis. The value assigned to a nontradable covered asset need not reflect its fair market value, and no formal valuation is required for taxpayers to use this election. However, the value chosen must be greater than or equal to the taxpayer's adjusted basis. By electing to include tax on built-in gain from nontradable covered assets in their net first-year tax liability, a taxpayer may reduce the total amount of gain subject to a deferral recapture amount upon sale of the asset.

If an applicable taxpayer ceases to be an applicable taxpayer, then becomes an applicable taxpayer again, they may not declare a value and pay tax on gain from nontradable covered assets the second time they become an applicable taxpayer, nor will they be able to elect to pay tax over 5 years.

If an applicable taxpayer holds a nontradable interest in an applicable entity, the applicable taxpayer shall take into account the taxpayer's share of adjusted applicable built-in gain or loss from tradable covered assets of the applicable entity as provided in Section 493. If an applicable taxpayer elects to include built-in gain from a nontradable interest in an applicable entity in the taxpayer's net built-in tax liability, such taxpayer shall notify the applicable entity of such election and include the amount of gain recognized. Under rules prescribed by the Secretary, the applicable entity will appropriately adjust the partner's share of basis in partnership assets to account for such gain recognition.

An applicable taxpayer who becomes an applicable taxpayer in the first year this proposal is enacted may designate up to $1 billion of tradable stock in a single C corporation as a nontradable asset rather than a tradable asset.

Subpart C—Other Definitions and Rules

Sec. 497. Terms and rules relating to covered assets.

A covered asset is defined as any asset other than any interest of the taxpayer in an applicable savings plan[3] or accrued benefits under a defined benefit plan, certain life insurance or annuity contracts, or any cash or cash equivalent. However, the aggregate value of an applicable taxpayer's interests in all applicable savings plans, certain life insurance and annuity contracts, and cash or cash equivalent holdings are considered covered assets when determining whether the taxpayer meets the asset test (i.e., the way any gain or income associated with such assets is

[3] Applicable savings plan is defined in section 498 and includes (1) a defined contribution plan to which section 401(a) or 403(a) applies, (2) an annuity contract under section 403(b), (3) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), (4) an individual retirement plan (5) an Archer MSA (within the meaning of section 220(d)), (6) a qualified tuition program (as defined in section 529(b), (7) an ABLE account (as defined in section 529A(e)(6)), (8) a Coverdell education savings account (as defined in section 530), or (9) a health savings account (within the meaning of section 223(d)).

taxed is not affected by this part, but the value of these assets is considered in determining whether a taxpayer is an applicable taxpayer).

A tradable covered asset is defined as any covered asset if interests in such asset are traded on an established securities market, are readily tradable on a secondary market, or available on an online or electronic platform that regularly matches, or facilitates the matching of, buyers and sellers of such assets. Any derivative with respect to an underlying investment that is a tradable covered asset is also a tradable covered asset. The Secretary is granted authority to declare an asset is a tradable covered asset if there is a reasonable basis to determine the asset's fair market value annually. Any covered asset that is not a tradable covered asset is considered a nontradable covered asset.

For the purpose of determining whether a taxpayer meets the asset test, the value of a tradable covered asset is its fair market value. The value of a nontradable covered asset is the greatest of the asset's original cost basis, its adjusted basis, the value determined as of the date of the most recent event establishing value (an amount determined for a partnership interest under this rule shall not be less than an applicable taxpayer's book capital account under section 704 of the Internal Revenue Code), and the value included in an applicable financial statement (as defined in this section). The Secretary shall prescribe rules for determining an applicable taxpayer's share of the value of an applicable entity reported on an applicable financial statement. The aggregate applicable value of all covered assets is reduced by the aggregate outstanding debt and liabilities of the taxpayer.

Sec. 498. Other definitions; coordination with title.

An applicable transfer is defined as any sale, exchange, disposition, or other transfer that results in recognized gain or loss outside of the ordinary course of a trade or business and any disregarded nonrecognition event.

Disregarded nonrecognition events (events that will require applicable taxpayers to recognize gain when it would not otherwise be required) include any exchange to which sections 351 or 1031 applies, transfers of built-in gain or loss property by C corporations as identified by the Secretary, and any other transaction the Secretary determines necessary to treat as a disregarded nonrecognition event in order to prevent avoidance.

A conversion or exchange of a nontradable covered asset for a tradable covered asset will be considered an applicable transfer, and a deferral recapture amount will be assessed on any gain realized. A conversion of a tradable covered asset to a nontradable covered asset will be considered a taxable event.

The Secretary is granted regulatory authority to prevent avoidance and coordinate provisions of this part with other provisions of the tax code that require taxpayers to take income into account in the absence of a payment or other distribution.

SEC. 102. CARRYBACK OF CAPITAL LOSSES ATTRIBUTABLE TO MARK-TO-MARKET RULES.

If an applicable taxpayer has a marked-to-market capital loss (i.e., loss realized due to a taxable event under section 491) in excess of total capital gain for a tax year, the taxpayer may elect to carry back the loss to a year within three preceding taxable years to offset marked-to-market gain (i.e., gain realized due to a taxable event under section 491), provided that such marked-to-market gain exceeds total capital loss for such preceding year.

TITLE II—APPLICATION OF OTHER PROVISIONS TO APPLICABLE TAXPAYERS AND ENTITIES

Subtitle A—Individuals

SEC. 201. APPLICABLE TAXPAYERS NOT ELGIBLE FOR ADJUSTED GROSS INCOME LIMITATION ON NET INVESTMENT INCOME TAX

All net investment income of applicable taxpayers will be subject to the net investment income tax under section 1411.

SEC. 202. TREATMENT OF COVERED EXPATRIATES

Expatriating taxpayers treated as applicable taxpayers (under the rules of section 495) are required to mark all of their assets to market upon expatriation, and are not allowed the deferral election allowed to other taxpayers under section 877A. In addition, section 877 will apply to these taxpayers for the 10-year period after expatriation, and all of their assets will be marked to market again at the end of the 10-year period.

Subtitle B—Rules for Applicable Entities and Trusts

SEC. 211. TREATMENT OF LIKE-KIND EXCHANGES BY APPLICABLE ENTITIES.

Section 1031 (like-kind exchanges) shall not apply to an exchange by an applicable entity if the applicable entity has received a notice that an applicable taxpayer is a significant owner of such entity.

SEC. 212. TREATMENT OF TRANSFERS BY APPLICABLE ENTITIES IN EXCHANGE FOR STOCK.

Section 351(a) shall not apply to an exchange by an applicable entity if the applicable entity has received a notice that an applicable taxpayer is a 20 percent owner of such applicable entity.

SEC. 213. SPECIAL RULES FOR APPLICABLE TRUSTS.

Under general tax principles, non-grantor trusts are taxed as individuals, with certain modifications. In the case of an applicable trust, anti-deferral accounting rules apply in a manner similar to that of applicable taxpayers. Certain modifications to trust taxation will apply to applicable trusts, including a requirement that property transferred to a beneficiary in-kind will be subject to realization and that loans from an applicable trust to a beneficiary or related party are treated as a distribution.

In order to prevent indefinite deferral of gains in a dynasty trust, the proposal requires that an applicable trust treat property as sold as of the last day of the taxable year ending 90 years after the latest of (1) January 1, 1940, (2) the date such trust was established, or (3) the last date on which such property was subject to realization.

Foreign nongrantor trusts are not subject to U.S. tax, and are instead subject to so-called "throwback rules" which ensure that distributions to a U.S. beneficiary are not taxed at a rate less than they would have been taxed at the trust level. An interest charge also applies under these throwback rules to disincentivize deferral of accrued income in a foreign trust. If a foreign trust fails to report the information necessary for a U.S. beneficiary to calculate his or her income tax liability, an additional tax penalty applies to the distributions of a foreign trust.

In the case of a foreign trust that would be an applicable trust if it were subject to U.S. taxing jurisdiction, such trust must treat all covered assets as nontradable and calculate a tentative deferral recapture charge upon disposition. U.S. beneficiaries receiving distributions from such foreign trust will be required to take into account any deferral recapture charge related to the distribution. If the information necessary to calculate the tax imposed on the U.S. beneficiary is not provided, distributions from the foreign trust will be subject to an additional tax calculated with an increased interest charge.

Subtitle C—Treatment of Deferred Compensation and Life Insurance and Annuity Contracts

SEC. __221. ELIMINATION OF DEFERRAL OF TAX ON CERTAIN COMPENSATION

Special rules related to deferred compensation would apply to applicable taxpayers. These rules are similar to the rules that apply to nontradable assets. Under these rules, a deferral recapture amount would be assessed with respect to deferred compensation, subject to a 10 percent cap on the recapture amount. The deferral recapture amount is only assessed if the deferred compensation is otherwise includible in taxable income under current law tax rules.

The deferral recapture amount is calculated by determining the amount of compounded interest a taxpayer would owe as if the taxpayer had both included the deferred compensation ratably in income during the deferral period for the compensation and had not paid income taxes on such compensation. A special rule applies in the case of a deferral period that begins prior to the taxable year in which a taxpayer first becomes an applicable taxpayer (the "first applicable year"). Under this rule, any deferred compensation that would otherwise be allocable to the period before the first applicable year is instead allocated to the first applicable year.

Deferred compensation for purposes of this provision would include nonqualified deferred compensation (which generally is subject to the rules of section 409A) and the transfer of property in connection with the performance of services (which generally is subject to the rules of section 83). The transfer of a profits interest in a partnership would not be subject to this provision.

Under the proposal, a 10 percent additional tax would be applied to severance pay that is includible in the income of an applicable taxpayer during a calendar year.

This provision would be effective for deferred compensation and severance pay that is includible in income for taxable years beginning after December 31, 2023.

The provision also includes new reporting requirements that apply to persons that pay applicable deferred compensation and severance pay in excess of $5 million (indexed) in calendar years beginning after December 31, 2023.

SEC 222. RULES RELATING TO CERTAIN LIFE INSURANCE AND ANNUITY CONTRACTS OF APPLICABLE TAXPAYERS.

Special rules apply to insurance and annuity contracts held by an applicable taxpayer. Under these special rules, “applicable amounts” received on or after the annuity starting date are included in gross income (per the inclusion rule of section 72(e)(2)(A)). The income recovery rule in section 72(e)(2)(B) applies to applicable amounts received before the annuity starting date.

An applicable amount is generally defined as any amount received under an applicable private placement life insurance or annuity (PPLIA) contract. Applicable amount also includes refunds, surrenders, redemptions, and maturities with respect to a PPLIA contract; and also includes loans, pledges, and assignments for both PPLIA contracts and any other life insurance and annuity contract for which the holder is an applicable taxpayer (to prevent such taxpayers from evading the larger billionaire’s income tax such as by borrowing against their insurance and annuity contracts). Applicable amount excludes amounts received under pre-1982 contracts and tax-preferred savings vehicles such as those for retirement, qualified tuition programs, and Coverdell savings accounts.

A PPLIA contract is an insurance or annuity contract with respect to which the owner is required for purposes of obtaining a registration exemption under securities laws to make a representation that the owner has a specified minimum amount of income or assets, has completed a specified level of education, or holds a specific license or credential. An applicable PPLIA contract is a PPLIA contract held by an applicable taxpayer.

Distributions from an applicable PPLIA contract are subject to the 10 percent additional tax in section 72(v) to align such distributions with the treatment for modified endowment contracts.

Additionally, the exclusion from gross income under section 101 is not available for amounts received as death benefits under an applicable PPLIA contract. However, the Secretary is required to issue regulations to exclude from gross income any amounts that were previously taxed.

Insurers and reinsurers are required to report the name, address, taxpayer identification number (TIN), and applicable amount for each person (i.e., an applicable taxpayer) who receives an applicable amount during the year with respect to any life insurance or annuity contract issued or reinsured. Penalties under section 6724 apply for insurers and reinsurers who fail to comply with the reporting requirement.

Subtitle D—Repeal of Special Treatment for Certain Investments

SEC. 231. TREATMENT OF EXCLUSION FOR CERTAIN SMALL BUSINESS STOCK.

For applicable taxpayers, section 1202(a) (partial exclusion for gain from certain small business stock) shall not apply to any gain from the sale of qualified small business stock acquired after November 30, 2023.

SEC. 232. MODIFICATIONS FOR INVESTMENTS IN QUALIFIED OPPORTUNITY FUNDS.

This section applies new rules for investments in qualified opportunity funds by applicable taxpayers. For applicable taxpayers, this section ends new investments in qualified opportunity funds beginning on November 30, 2023, and limits the step-up in basis allowed for investments in qualified opportunity funds that are held for at least 10 years to the lesser of the fair market value at the date that such investment has been held for 10 years (or, if later, the date that the taxpayer first became an applicable taxpayer), or the fair market value at the time of sale or exchange.