by the taxpayer during the taxable year, whether payable to the taxpayer, a trust, State government, or other entity, and even though the taxpayer may not control the investment or current expenditure of the amount and the amount may not be paid to the taxpayer at the time decommissioning costs are incurred. However, decommissioning costs payable to a taxpayer holding a qualified leasehold interest (as described in paragraph (b)(2)(ii) of §1.468A–1) are included in the gross income of such taxpayer, and not in the gross income of the lessor.

(b) *Examples.* The following examples illustrate the application of the principles of paragraph (a) of this section:

Example (1). X corporation, an accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X, is authorized by the public utility commission of State A to collect nuclear decommissioning costs from ratepayers residing in State A. With respect to the sale of electric energy, X includes in income amounts that have been billed to customers as well as estimated unbilled amounts that relate to energy provided by X after the previous billing but before the end of the taxable year (''accrued unbilled amounts''). The decommissioning costs are included in the monthly bills provided by X to its ratepayers and the entire amount billed is remitted directly to X. Under paragraph (a) of this section, the decommissioning costs must be included in the gross income of X in the same manner as amounts charged for electric energy (*i.e.,* by including in income decommissioning costs that relate to amounts billed as well as decommissioning costs that relate to accrued unbilled amounts). The same rule would apply if the decommissioning costs charged to ratepayers were separately billed and the amounts billed were remitted to State A to be held in trust for the purpose of decommissioning the nuclear power plant owned by X. In that case, X must include in gross income decommissioning costs that relate to amounts billed as well as decommissioning costs that relate to accrued unbilled amounts.

Example (2). Assume the same facts as in Example (1), except that X and M, a municipality located in State A, have entered into a life-of-unit contract pursuant to which (i) M is entitled to 20 percent of the electric energy generated by the nuclear power plant owned by X, and (ii) M is obligated to pay 20 percent of the plant operating costs, including decommissioning costs, incurred by X. Under paragraph (a) of this section, the decommissioning costs that relate to electric energy consumed or distributed by M during any taxable year must be included in the gross income of X for such taxable year. The result contained in this example would be the same if M was a State or an agency or instrumentality of a State or a political subdivision thereof.

(c) *Cross reference.* For special rules relating to the deduction for amounts paid to a nuclear decommissioning fund, see §1.468A–1 through §1.468A–5, 1.468A–7, 1.468A–8.

(d) *Effective date.* (1) Section 88 and this section apply to nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer on or after July 18, 1984, and with respect to taxable years ending on or after such date.

(2) If the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer before July 18, 1984, was includible in gross income in a different manner than amounts charged for electric energy, such amount must be included in gross income for the taxable year in which includible in gross income under the method of accounting of the taxpayer that was in effect when such amount was charged to customers.

[T.D. 8184, 53 FR 6804, Mar. 3, 1988]

ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

§1.101–1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

(a)(1) *In general.* Section 101(a)(1) states the general rule that the proceeds of life insurance policies, if paid by reason of the death of the insured, are excluded from the gross income of the recipient. Death benefit payments having the characteristics of life insurance proceeds payable by reason of death under contracts, such as workmen's compensation insurance contracts, endowment contracts, or accident and health insurance contracts, are covered by this provision. For provisions relating to death benefits paid by or on behalf of employers, see section 101(b) and §1.101–2. The exclusion from gross income allowed by section 101(a) applies whether payment is made to the estate of the insured or to any beneficiary (individual, corporation, or partnership) and whether it is made directly or in trust. The extent to which this exclusion applies in cases where life insurance policies have been transferred for a valuable consideration is stated in section 101(a)(2) and in paragraph (b) of this section. In cases where the proceeds of a life insurance policy, payable by reason of the death of the insured, are paid other than in a single sum at the time of such death, the amounts to be excluded from gross income may be affected by the provisions of section 101 (c) (relating to amounts held under agreements to pay interest) or section 101(d) (relating to amounts payable at a date later than death). See §§ 1.101–3 and 1.101–4. However, neither section 101(c) nor section 101(d) applies to a single sum payment which does not exceed the amount payable at the time of death even though such amount is actually paid at a date later than death.

(2) *Cross references.* For rules governing the taxability of insurance proceeds constituting benefits payable on the death of an employee—

(i) Under pension, profit-sharing, or stock bonus plans described in section 401(a) and exempt from tax under section 501(a), or under annuity plans described in section 403(a), see section 72 (m)(3) and paragraph (c) of § 1.72–16;

(ii) Under annuity contracts to which paragraph (a) or (b) of § 1.403(b)–1 applies, see paragraph (c)(3) of § 1.403(b)–1; or

(iii) Under eligible State deferred compensation plans described in section 457(b), see paragraph (c) of § 1.457–1.

For the definition of a life insurance company, see section 801.

(b) *Transfers of life insurance policies.* (1) In the case of a transfer, by assignment or otherwise, of a life insurance policy or any interest therein for a valuable consideration, the amount of the proceeds attributable to such policy or interest which is excludable from the transferee's gross income is generally limited to the sum of (i) the actual value of the consideration for such transfer, and (ii) the premiums and other amounts subsequently paid by the transferee (see section 101(a)(2) and example (1) of subparagraph (5) of this paragraph). However, this limitation on the amount excludable from the transferee's gross income does not apply (except in certain special cases involving a series of transfers), where the basis of the policy or interest transferred, for the purpose of determining gain or loss with respect to the transferee, is determinable, in whole or in part, by reference to the basis of such policy or interest in the hands of the transferor (see section 101(a)(2)(A) and examples (2) and (4) of subparagraph (5) of this paragraph). Neither does the limitation apply where the policy or interest therein is transferred to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer (see section 101(a)(2)(B)). For rules relating to gratuitous transfers, see subparagraph (2) of this paragraph. For special rules with respect to certain cases where a series of transfers is involved, see subparagraph (3) of this paragraph.

(2) In the case of a gratuitous transfer, by assignment or otherwise, of a life insurance policy or any interest therein, as a general rule the amount of the proceeds attributable to such policy or interest which is excludable from the transferee's gross income under section 101(a) is limited to the sum of (i) the amount which would have been excludable by the transferor (in accordance with this section) if no such transfer had taken place, and (ii) any premiums and other amounts subsequently paid by the transferee. See example (6) of subparagraph (5) of this paragraph. However, where the gratuitous transfer in question is made by or to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer, the entire amount of the proceeds attributable to the policy or interest transferred shall be excludable from the transferee's gross income (see section 101(a)(2)(B) and example (7) of subparagraph (5) of this paragraph).

(3) In the case of a series of transfers, if the last transfer of a life insurance policy or an interest therein is for a valuable consideration—

(i) The general rule is that the final transferee shall exclude from gross income, with respect to the proceeds of such policy or interest therein, only the sum of—

(a) The actual value of the consideration paid by him, and

(b) The premiums and other amounts subsequently paid by him;

(ii) If the final transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer, the final transferee shall exclude the entire amount of the proceeds from gross income;

(iii) Except where subdivision (ii) of this subparagraph applies, if the basis of the policy or interest transferred, for the purpose of determining gain or loss with respect to the final transferee, is determinable, in whole or in part, by reference to the basis of such policy or interest therein in the hands of the transferor, the amount of the proceeds which is excludable by the final transferee is limited to the sum of—

(a) The amount which would have been excludable by his transferor if no such transfer had taken place, and

(b) Any premiums and other amounts subsequently paid by the final transferee himself.

(4) For the purposes of section 101(a)(2) and subparagraphs (1) and (3) of this paragraph, a ''transfer for a valuable consideration'' is any absolute transfer for value of a right to receive all or a part of the proceeds of a life insurance policy. Thus, the creation, for value, of an enforceable contractual right to receive all or a part of the proceeds of a policy may constitute a transfer for a valuable consideration of the policy or an interest therein. On the other hand, the pledging or assignment of a policy as collateral security is not a transfer for a valuable consideration of such policy or an interest therein, and section 101 is inapplicable to any amounts received by the pledgee or assignee.

(5) The application of this paragraph may be illustrated by the following examples:

Example (1). A pays premiums of $500 for an insurance policy in the face amount of $1,000 upon the life of B, and subsequently transfers the policy to C for $600. C receives the proceeds of $1,000 upon the death of B. The amount which C can exclude from his gross income is limited to $600 plus any premiums paid by C subsequent to the transfer.

Example (2). The X Corporation purchases for a single premium of $500 an insurance policy in the face amount of $1,000 upon the life of A, one of its employees, naming the X Corporation as beneficiary. The X Corporation transfers the policy to the Y Corporation in a tax-free reorganization (the policy having a basis for determining gain or loss in the hands of the Y Corporation determined by reference to its basis in the hands of the X Corporation). The Y Corporation receives the proceeds of $1,000 upon the death of A. The entire $1,000 is to be excluded from the gross income of the Y Corporation.

Example (3). The facts are the same as in example (2) except that, prior to the death of A, the Y Corporation transfers the policy to the Z Corporation for $600. The Z Corporation receives the proceeds of $1,000 upon the death of A. The amount which the Z Corporation can exclude from its gross income is limited to $600 plus any premiums paid by the Z Corporation subsequent to the transfer of the policy to it.

Example (4). The facts are the same as in example (3) except that, prior to the death of A, the Z Corporation transfers the policy to the M Corporation in a tax-free reorganization (the policy having a basis for determining gain or loss in the hands of the M Corporation determined by reference to its basis in the hands of the Z Corporation). The M Corporation receives the proceeds of $1,000 upon the death of A. The amount which the M Corporation can exclude from its gross income is limited to $600 plus any premiums paid by the Z Corporation and the M Corporation subsequent to the transfer of the policy to the Z Corporation.

Example (5). The facts are the same as in example (3) except that, prior to the death of A, the Z Corporation transfers the policy to the N Corporation, in which A is a shareholder. The N Corporation receives the proceeds of $1,000 upon the death of A. The entire $1,000 is to be excluded from the gross income of the N Corporation.

Example (6). A pays premiums of $500 for an insurance policy in the face amount of $1,000 upon his own life, and subsequently transfers the policy to his wife B for $600. B later transfers the policy without consideration to C, who is the son of A and B. C receives the proceeds of $1,000 upon the death of A. The amount which C can exclude from his gross income is limited to $600 plus any premiums paid by B and C subsequent to the transfer of the policy to B.

Example (7). The facts are the same as in example (6) except that, prior to the death of

A, C transfers the policy without consideration to A, the insured. A's estate receives the proceeds of $1,000 upon the death of A. The entire $1,000 is to be excluded from the gross income of A's estate.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6783, 29 FR 18356, Dec. 24, 1964; T.D. 7836, 47 FR 42337, Sept. 27, 1982]

§ 1.101–2 Employees' death benefits.

(a) *In general.* (1) Section 101(b) states the general rule that amounts up to $5,000 which are paid to the beneficiaries or the estate of an employee, or former employee, by or on behalf of an employer and by reason of the death of the employee shall be excluded from the gross income of the recipient. This exclusion from gross income applies whether payment is made to the estate of the employee or to any beneficiary (individual, corporation, or partnership), whether it is made directly or in trust, and whether or not it is made pursuant to a contractual obligation of the employer. The exclusion applies whether payment is made in a single sum or otherwise, subject to the provisions of section 101 (c), relating to amounts held under an agreement to pay interest thereon (see § 1.101–3). The exclusion from gross income also applies to any amount not actually paid which is otherwise taxable to a beneficiary of an employee because it was made available as a distribution from an employee's trust.

(2) The exclusion does not apply to amounts constituting income payable to the employee during his life as compensation for his services, such as bonuses or payments for unused leave or uncollected salary, nor to certain other amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (see section 101(b)(2)(B) and paragraph (d) of this section). Further, the exclusion does not apply to amounts received as an annuity under a joint and survivor annuity obligation where the employee was the primary annuitant and the annuity starting date occurred before the death of the employee (see section 101 (b)(2)(C) and paragraph (e)(1)(ii) of this section). In the case of amounts received by a beneficiary as an annuity (but not as a survivor under a joint and survivor annuity with respect to which the employee was the primary annuitant), the exclusion is applied indirectly by means of the provisions of section 72 and the regulations thereunder (see section 101(b)(2)(D) and paragraph (e)(1) (iii) and (iv) of this section). Thus, for example, the exclusion applies to amounts which are received by a survivor of an employee retired on disability under the provisions of the Civil Service retirement law (5 U.S.C. 8301 or any former corresponding provisions of law) or the Retired Serviceman's Family Protection Plan or Survivor Benefit Plan (10 U.S.C. 1431 et seq.), provided such employee dies before attaining mandatory retirement age (as defined in § 1.105–4 (a)(3)(i)(B)).

(3) The total amount excludable with respect to any employee may not exceed $5,000, regardless of the number of employers or the number of beneficiaries. For allocation of the exclusion among beneficiaries, see paragraph (c) of this section. For rules governing the taxability of benefits payable on the death of an employee under pension, profitsharing, or stock bonus plans described in section 401(a) and exempt under section 501(a), under annuity plans described in section 403(a), or under annuity contracts to which paragraph (a) or (b) of § 1.403(b)–1 applies, see sections 72(m)(3), 402(a), and 403 and the regulations thereunder.

(b) *Payments under certain employee benefit plans*—(1) *In general.* Where a payment is made by reason of the death of an employee by an employer-provided welfare fund or a trust, including a stock bonus, pension, or profitsharing trust described in section 401 (a), or by an insurance company (if such payment does not constitute ''life insurance'' within the purview of section 101(a), the payment shall be considered to have been made by or on behalf of the employer to the extent that it exceeds amounts contributed by, or deemed contributed by, the deceased employee.

(2) *Cross references.* For provisions governing the taxability of distributions payable on the death of an employee participant—