

87TH CONGRESS
1ST SESSION

H. R. 6910

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 1961

Mr. FOGARTY introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To encourage the establishment of voluntary pension plans by self-employed individuals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Self-Employed Indi-
4 viduals Tax Retirement Act of 1961".

5 SEC. 2. QUALIFICATION OF PLANS.

6 Section 401 of the Internal Revenue Code of 1954
7 (relating to qualified pension, profit-sharing, and stock
8 bonus plans) is amended—

9 (1) by adding at the end of paragraph (5) of
10 subsection (a) the following new sentence: "For pur-
11 poses of this paragraph and subsection (d) (5), the total

1 compensation of an individual who is a self-employed
2 individual (as defined in subsection (c) (2)) is such
3 individual's self-employment earnings (as defined in sub-
4 section (c) (3)) and the basic or regular rate of com-
5 pensation of such an individual shall be determined,
6 under regulations prescribed by the Secretary or his
7 delegate, with respect to that portion of his self-employ-
8 ment earnings which bears the same ratio to his self-
9 employment earnings as the basic or regular compen-
10 sation of the employees (other than self-employed
11 individuals) under the plan bears to the total compensa-
12 tion of such employees.”;

13 (2) by adding at the end of subsection (a) the fol-
14 lowing new paragraphs:

15 “(7) A trust shall not constitute a qualified trust
16 under this section unless the plan of which such trust
17 is a part provides that, upon its termination or upon com-
18 plete discontinuance of contributions under the plan, the
19 rights of all employees to benefits accrued to the date
20 of such termination or discontinuance, to the extent then
21 funded, or the amounts credited to the employees' ac-
22 counts, are nonforfeitable. This paragraph shall not
23 apply to benefits or contributions which, under provi-
24 sions of the plan adopted pursuant to regulations pre-
25 scribed by the Secretary or his delegate to preclude the

1 discrimination prohibited by paragraph (4), may not
2 be used for designated employees in the event of early
3 termination of the plan.

4 “(8) A trust shall not constitute a qualified trust
5 under this section unless, under the plan of which such
6 trust is a part, the entire interest of each employee—

7 “(A) either will be distributed to him not later
8 than his taxable year in which he attains the age of
9 $70\frac{1}{2}$ years, or, in the case of an employee other than
10 an owner-employee (as defined in subsection (c)
11 (4)), in which he retires, whichever is the later,
12 or

13 “(B) will be distributed, commencing not later
14 than such taxable year, (i) in accordance with
15 regulations prescribed by the Secretary or his dele-
16 gate, over the life of such employee or over the lives
17 of such employee and his spouse, or (ii) in accord-
18 ance with such regulations, over the life expectancy
19 of such employee or over the life expectancy of such
20 employee and his spouse.

21 “(9) A trust forming part of a pension plan shall
22 not constitute a qualified trust under this section unless
23 the plan provides that forfeitures must not be applied
24 to increase the benefits any employee would otherwise
25 receive under the plan.

1 “(10) If—

2 “(A) (i) on one day in each quarter in the
3 taxable year of the plan, an employer has more
4 than 3 employees, or

5 “(ii) this paragraph applied at any prior time
6 in respect of such plan, and

7 “(B) the plan provides for current or future
8 contributions for any owner-employee,

9 then the trust shall be a qualified trust under this
10 section only if each employee having a period of em-
11 ployment of 3 years or more is included under the
12 plan. For purposes of the preceding sentence, (i)
13 the term ‘employee’ does not include any employee
14 whose customary employment is for not more than 20
15 hours in any one week or is for not more than 5 months
16 in any calendar year, nor does such term include an
17 owner-employee, and (ii) in the case of a partner who
18 is not an owner-employee, the period of time during
19 which he has been such a partner shall be included in
20 his period of employment.

21 “(11) If paragraph (10) does not apply, then the
22 determination as to whether a trust is a qualified trust
23 under this subsection shall be made—

24 “(A) in the case of a plan which provides con-
25 tributions or benefits for employees who are not

1 owner-employees, without reference to any portion
2 of such plan which provides contributions or bene-
3 fits for owner-employees, and

4 “(B) in the case of a plan which provides con-
5 tributions or benefits for owner-employees, without
6 reference to any portion of such plan which provides
7 contributions or benefits for employees who are not
8 owner-employees.

9 “(12) A trust forming part of a plan which pro-
10 vides contributions or benefits for employees some or
11 all of whom are owner-employees (as defined in sub-
12 section (c) (4)) shall constitute a qualified trust under
13 this section only if the requirements in subsection (d)
14 are also met.”; and

15 (3) by redesignating subsection (c) as subsection
16 (h) and inserting after subsection (b) the following
17 new subsections:

18 “(c) DEFINITIONS AND RULES RELATING TO SELF-
19 EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—For
20 purposes of this section—

21 “(1) EMPLOYEE.—The term ‘employee’ includes,
22 for any taxable year, a self-employed individual.

23 “(2) SELF-EMPLOYED INDIVIDUAL.—The term
24 ‘self-employed individual’ means an individual who has
25 self-employment earnings (as defined in paragraph
26 (3)) for the taxable year.

1 “(3) SELF-EMPLOYMENT EARNINGS.—The term
2 ‘self-employment earnings’ means net earnings from self-
3 employment (as defined in section 1402 (a)) deter-
4 mined—

5 “(A) without regard to paragraphs (4) and
6 (5) of section 1402 (c),

7 “(B) in the case of any individual who is
8 treated as an employee under section 3121 (d)
9 (3) (A), (C), or (D), without regard to para-
10 graph (2) of section 1402 (c), and

11 “(C) without regard to items which are not
12 included in gross income for purposes of this chapter,
13 and the deductions properly allocable to or charge-
14 able against such items.

15 “(4) OWNER-EMPLOYEE.—The term ‘owner-em-
16 ployee’ means a self-employed individual who—

17 “(A) derives self-employment earnings from
18 a trade or business carried on by him, or

19 “(B) in the case of a partnership, is a partner
20 who owns more than 10 percent of either the capital
21 interest or the profits interest in such partnership.

22 “(5) EMPLOYER.—In the case of a trade or busi-
23 ness carried on by a self-employed individual, such indi-
24 vidual shall be treated as his own employer. A partner-

1 ship shall be treated as the employer of each partner
2 who is an employee within the meaning of paragraph
3 (1).

4 “(d) ADDITIONAL REQUIREMENTS FOR QUALIFICA-
5 TION OF TRUSTS AND PLANS BENEFITING OWNER-EM-
6 PLOYEES.—A trust forming part of a pension or profit-sharing
7 plan which provides contributions or benefits for employees
8 some or all of whom are owner-employees shall constitute a
9 qualified trust under this section only if, in addition to meet-
10 ing the requirements of subsection (a), the following re-
11 quirements of this subsection are met by the trust and by
12 the plan of which such trust is a part:

13 “(1) In the case of a trust which is created on or
14 after the date of the enactment of this subsection, or
15 which was created before such date but is not exempt
16 from tax under section 501 (a) as an organization de-
17 scribed in subsection (a) on the day before such date,
18 the trustee is a bank, but a person (including the em-
19 ployer) other than a bank may be granted, under the
20 trust instrument, the power to control the investment
21 of the trust funds either by directing investments (in-
22 cluding reinvestments, disposals, and exchanges) or by
23 disapproving proposed investments (including reinvest-
24 ments, disposals, and exchanges). This paragraph shall
25 not apply to a trust created or organized outside the

1 United States before the date of the enactment of this
2 subsection if, under section 402 (c), it is treated as
3 exempt from taxation under section 501 (a) on the day
4 before such date. For purposes of this paragraph, the
5 term 'bank' means—

6 “(A) a bank as defined in section 581,

7 “(B) a corporation which under the laws of
8 the State of its incorporation is subject to super-
9 vision and examination by the commissioner of
10 banking or other officer of such State in charge
11 of the administration of the banking laws of such
12 State, and

13 (C) in the case of a trust created or organ-
14 ized outside the United States, a bank or trust
15 company, wherever incorporated, exercising fidu-
16 ciary powers and subject to supervision and exam-
17 ination by governmental authority.

18 “(2) Under the plan, no benefits may be paid to
19 any owner-employee before he attains the age of $59\frac{1}{2}$
20 years, except in the case of his becoming disabled
21 (within the meaning of section 213 (g) (3)).

22 “(3) If subsection (a) (10) applies, the employees'
23 rights to or derived from the contributions under the
24 plan are nonforfeitable at the time the contributions are
25 paid to or under the plan.

1 “(4) In the case of a profit-sharing plan, the
2 plan provides a definite formula for determining the
3 contributions to be made to the trust by the employer
4 on behalf of employees (other than owner-employees.

5 “(5) If subsection (a) (10) applies, the plan does
6 not permit the ratio of contributions by the employer
7 for any owner-employee to such owner-employee’s com-
8 pensation to exceed the ratio of contributions by the
9 employer for any employee (other than an owner-
10 employee) to his compensation. For purposes of this
11 paragraph—

12 “(A) The term ‘compensation’ means total
13 compensation, or basic or regular rate of compensa-
14 tion, whichever may be specified in the plan.

15 “(B) If—

16 “(i) of the contributions deductible under
17 section 404, not more than one-third is deduct-
18 ible by reason of contributions by the employer
19 for owner-employees, and

20 “(ii) taxes paid by the owner-employee
21 under chapter 2 (relating to tax on self-employ-
22 ment income), and the taxes which would be
23 payable under such chapter 2 by the owner-
24 employee but for paragraphs (4) and (5) of

1 section 1402 (c), are taken into account as
2 contributions by the employer for such owner-
3 employee,

4 then taxes paid under section 3111 (relating to tax
5 on employers) with respect to an employee may be
6 taken into account as contributions by the employer
7 for such employee under the plan.

8 “(6) The plan does not permit—

9 “(A) contributions to be made by the em-
10 ployer for any owner-employee in excess of the
11 amounts which may be deducted under section 404
12 for the taxable year;

13 “(B) in the case of a plan (or, if subsection
14 (a) (11) applies, the portion thereof) which pro-
15 vides contributions or benefits only for owner-
16 employees, contributions by or for any owner-
17 employee in excess of the amounts which may be
18 deducted under section 404 for the taxable year;
19 and

20 “(C) if a distribution under the plan is made
21 to any employee and if any portion of such dis-
22 tribution is an amount described in section 72 (m)
23 (5) (A) (i) (whether or not section 72 (m) (5)
24 applies to such amount), contributions to be made

1 on behalf of such employee for the 5 taxable years
2 succeeding the taxable year in which such distribu-
3 tion is made.

4 “(7) Under the plan, if an owner-employee dies
5 before his entire interest has been distributed to him,
6 or if distribution has been commenced in accordance
7 with subsection (a) (8) (B) to his surviving spouse
8 and such surviving spouse dies before his entire inter-
9 est has been distributed to her, his entire interest (or
10 the remaining part of such interest if distribution thereof
11 has commenced) will, within 5 years after his death
12 (or the death of his surviving spouse), be distributed, or
13 applied to the purchase of an immediate annuity for
14 his beneficiary or beneficiaries (or the beneficiary or
15 beneficiaries of his surviving spouse) which will be
16 payable for the life of such beneficiary or beneficiaries
17 (or for a term certain not extending beyond the life
18 expectancy of such beneficiary or beneficiaries) and
19 which will be immediately distributed to such beneficiary
20 or beneficiaries.

21 “(8) Under the plan—

22 “(A) any contribution which is an excess con-
23 tribution (as defined in subsection (e) (1)), to-
24 gether with the income attributable to such excess

1 contribution, is (unless subsection (e) (2) (E) ap-
2 plies) to be repaid to the owner-employee by or for
3 whom such excess contribution is made;

4 “(B) if for any taxable year the plan does not,
5 by reason of subsection (e) (2) (A), meet (for
6 purposes of section 404) the requirements of this
7 subsection with respect to an owner-employee, the
8 income for the taxable year attributable to the inter-
9 est of such owner-employee under the plan is to be
10 paid to such owner-employee; and

11 “(C) the entire interest of an owner-employee
12 is to be repaid to him when required by the pro-
13 visions of subsection (e) (2) (E).

14 “(9) (A) If the plan provides contributions or
15 benefits for an owner-employee who controls, or for two
16 or more owner-employees who together control, the
17 trade or business with respect to which the plan is
18 established, and who also control as an owner-employee
19 or as owner-employees one or more other trades or
20 businesses, such plan and the plans (if any) established
21 with respect to such other trades or businesses constitute
22 a plan which meets the requirements of paragraphs (3)
23 and (4), and paragraph (10) or (11) (as the case

1 may be), of subsection (a) with respect to the em-
2 ployees of all such trades or businesses (including the
3 trade or business with respect to which the plan in-
4 tended to qualify under this section is established).

5 “(B) For purposes of subparagraph (A), an
6 owner-employee, or two or more owner-employees, shall
7 be considered to control a trade or business if such
8 owner-employee, or such two or more owner-employees
9 together—

10 “(i) own the entire interest in an unincorpo-
11 rated trade or business, or

12 “(ii) in the case of a partnership, own more
13 than 50 percent of either the capital interest or the
14 profits interest in such partnership.

15 For purposes of the preceding sentence, an owner-
16 employee, or two or more owner-employees, shall be
17 treated as owning any interest in a partnership which is
18 owned, directly or indirectly, by a partnership which
19 such owner-employee, or such two or more owner-em-
20 ployees, are considered to control within the meaning of
21 the preceding sentence.

22 “(10) Under the plan, contributions by or for any
23 owner-employee may be made only with respect to the

1 self-employment earnings of such owner-employee de-
2 rived from the trade or business with respect to which
3 such plan is established.

4 “(e) EXCESS CONTRIBUTIONS ON BEHALF OF OWNER-
5 EMPLOYEES.—

6 “(1) EXCESS CONTRIBUTION DEFINED.—For pur-
7 poses of this section, the term ‘excess contribution’
8 means—

9 “(A) if, in the taxable year, contributions are
10 made under the plan (or, if subsection (a) (11)
11 applies, under the portion of the plan) only by or
12 for owner-employees, the amount of any contribu-
13 tion made by or for any owner-employee which
14 (without regard to this subsection) is not deductible
15 under section 404 for the taxable year; or

16 “(B) if subparagraph (A) does not apply—

17 “(i) the amount of any contribution made
18 by the employer for any owner-employee which
19 (without regard to this subsection) is not de-
20 ductible under section 404 for the taxable year;

21 “(ii) the amount of any contribution made
22 by any owner-employee (as an employee) at
23 a rate which exceeds the rate of contributions
24 permitted to be made by employees other than
25 owner-employees; and

1 “(iii) the amount of any contribution made
2 under the plan by any owner-employee (as an
3 employee) which exceeds the lesser of \$2,500
4 or 10 percent of the self-employment earnings
5 for such taxable year derived by such owner-
6 employee from the trade or business (or trades
7 and businesses) with respect to which the plan
8 is established; and

9 “(C) the amount of any contribution made by
10 or for an owner-employee in any taxable year for
11 which, under paragraph (2) (A) or (E), the plan
12 does not (for purposes of section 404) meet the
13 requirements of subsection (d) with respect to such
14 owner-employee.

15 For purposes of this subsection, the amount of any
16 contribution which is allocable (determined in accord-
17 ance with regulations prescribed by the Secretary or
18 his delegate) to the purchase of life, accident, health,
19 or other insurance shall not be taken into account.

20 “(2) EFFECT OF EXCESS CONTRIBUTION.—

21 “(A) IN GENERAL.—If an excess contribution
22 (other than an excess contribution to which sub-
23 paragraph (E) applies) is made by or for an
24 owner-employee in any taxable year, the plan with
25 respect to which such excess contribution is made

1 shall, except as provided in subparagraphs (C) and
2 (D), be considered, for purposes of section 404,
3 as not meeting the requirements of subsection (d)
4 with respect to such owner-employee for the taxable
5 year and for all succeeding taxable years.

6 “(B) INCLUSION OF AMOUNTS IN GROSS IN-
7 COME OF OWNER-EMPLOYEES.—For any taxable
8 year for which any plan does not meet the require-
9 ments of subsection (d) with respect to an owner-
10 employee by reason of subparagraph (A), the gross
11 income of such owner-employee shall, for purposes
12 of this chapter, include the amount of income for
13 such taxable year attributable to the interest of such
14 owner-employee under such plan.

15 “(C) REPAYMENT WITHIN PRESCRIBED PE-
16 RIOD.—Subparagraph (A) shall not apply to an
17 excess contribution with respect to any taxable year,
18 if, on or before the close of the 6-month period be-
19 ginning on the day on which the Secretary or his
20 delegate sends notice (by certified or registered
21 mail) to the person to whom such excess contribu-
22 tion was paid of the amount of such excess contri-
23 bution, the amount of such excess contribution, and
24 the income attributable thereto, is repaid to the
25 owner-employee by or for whom such excess con-

1 tribution was made. If the excess contribution is
2 an excess contribution as defined in paragraph (1)
3 (A) or (B) (i), or is an excess contribution as
4 defined in paragraph (1) (C) with respect to which
5 a deduction has been claimed under section 404,
6 the notice required by the preceding sentence shall
7 not be mailed prior to the time that the amount of
8 the tax under this chapter of such owner-employee
9 for the taxable year in which such excess contribu-
10 tion was made has been finally determined.

11 “(D) REPAYMENT AFTER PRESCRIBED PE-
12 RIOD.—If an excess contribution, together with the
13 income attributable thereto, is not repaid within the
14 6-month period referred to in subparagraph (C),
15 subparagraph (A) shall not apply to an excess con-
16 tribution with respect to any taxable year beginning
17 with the taxable year in which the person to whom
18 such excess contribution was paid repays the amount
19 of such excess contribution to the owner-employee
20 by or for whom such excess contribution was made,
21 and pays to such owner-employee the amount of
22 income attributable to the interest of such owner-
23 employee which, under subparagraph (B), has been
24 included in the gross income of such owner-em-
25 ployee for any prior taxable year.

1 “(E) SPECIAL RULE IF EXCESS CONTRIBU-
2 TION WAS WILLFULLY MADE.—If an excess con-
3 tribution made by or for an owner-employee is
4 determined to have been willfully made, then—

5 “(i) subparagraphs (A), (B), (C), and
6 (D) shall not apply with respect to such ex-
7 cess contribution;

8 “(ii) there shall be distributed to the
9 owner-employee by or for whom such excess
10 contribution was willfully made his entire inter-
11 est in all plans with respect to which he is an
12 owner-employee; and

13 “(iii) no plan shall, for purposes of sec-
14 tion 404, be considered as meeting the require-
15 ments of subsection (d) with respect to such
16 owner-employee for the taxable year in which it
17 is determined that such excess contribution was
18 willfully made and for the 5 taxable years
19 following such taxable year.

20 “(F) STATUTE OF LIMITATIONS.—In any
21 case in which subparagraph (A) applies, the period
22 for assessing any deficiency arising by reason of—

23 “(i) the disallowance of any deduction
24 under section 404 on account of a plan
25 not meeting the requirements of subsection (d)

1 with respect to the owner-employee by or for
2 whom an excess contribution was made, or

3 “(ii) the inclusion, under subparagraph
4 (B), in gross income of such owner-
5 employee of income attributable to the interest
6 of such owner-employee under a plan,
7 for the taxable year in which such excess contribu-
8 tion was made or for any succeeding taxable year
9 shall not expire prior to one year after the close of
10 the 6-month period referred to in subpara-
11 graph (C).

12 “(f) CERTAIN CUSTODIAL ACCOUNTS.—

13 “(1) TREATMENT AS QUALIFIED TRUST.—For
14 purposes of this title, a custodial account shall be treated
15 as a qualified trust under this section, if—

16 “(A) such custodial account would, except
17 for the fact that it is not a trust, constitute a quali-
18 fied trust under this section;

19 “(B) the custodian is a bank (as defined in
20 section 581);

21 “(C) the investment of the contributions to
22 such account, and of the earnings attributable there-
23 to, is to be made solely in regulated investment
24 company stock with respect to which an employee
25 is the beneficial owner; and

1 “(D) the shareholder of record of any such
2 stock is the custodian or its nominee.

3 “(2) DEFINITION.—For purposes of paragraph
4 (1), the term ‘regulated investment company’ means
5 a domestic corporation which—

6 “(A) is a regulated investment company within
7 the meaning of section 851 (a), and

8 “(B) issues only redeemable stock.

9 “(g) FACE-AMOUNT CERTIFICATES TREATED AS AN-
10 NUITIES.—For purposes of this section and sections 402,
11 403, and 404, the term ‘annuity’ includes a face-amount
12 certificate, as defined in section 2 (a) (15) of the Investment
13 Company Act of 1940 (15 U.S.C., sec. 80a-2).”

14 **SEC. 3. DEDUCTIBILITY OF CONTRIBUTIONS TO PLANS.**

15 (a) INCLUSION OF SELF-EMPLOYED INDIVIDUALS.—
16 Section 404 (a) of the Internal Revenue Code of 1954 (re-
17 lating to the deductibility of contributions to pension, an-
18 nuity, profit-sharing, or stock bonus plans or plans of de-
19 ferred compensation) is amended—

20 (1) by striking out “section 401 (a) (3), (4),
21 (5), and (6),” in paragraph (2) and inserting in lieu
22 thereof “section 401 (a) (other than paragraphs (1),
23 (2), and (12)) and, in the case of a plan described in
24 paragraph (9) of this subsection, which meets the re-

1 requirements of section 401 (d) (other than paragraphs
2 (1), (3), and (4))”; and

3 (2) by adding after paragraph (7) the following
4 new paragraphs:

5 “(8) SELF-EMPLOYED INDIVIDUALS.—In the case
6 of a plan included in paragraph (1), (2), or (3)
7 which provides contributions or benefits for self-
8 employed individuals within the meaning of section
9 401 (c) (2), for purposes of this section—

10 “(A) the term ‘employee’ includes a self-
11 employed individual within the meaning of section
12 401 (c) (2), and the employer of such individual is
13 the person treated as his employer under section
14 401 (c) (5);

15 “(B) the term ‘self-employment earnings’ has
16 the meaning assigned to it by section 401 (c) (3);

17 “(C) the contributions to such plan by or for
18 a self-employed individual shall be considered to
19 satisfy the conditions of section 162 or 212 to the
20 extent that such contributions do not exceed the
21 self-employment earnings of such individual derived
22 from the trade or business with respect to which
23 such plan is established, and to the extent that such
24 contributions are not allocable (determined in

1 accordance with regulations prescribed by the Sec-
2 retary or his delegate) to the purchase of life,
3 accident, health, or other insurance; and

4 “(D) any reference to compensation shall, in
5 the case of a self-employed individual, be con-
6 sidered to be a reference to the self-employment
7 earnings of such individual derived from the trade
8 or business with respect to which the plan is
9 established.

10 “(9) PLANS BENEFITING OWNER-EMPLOYEES.—
11 In the case of a plan included in paragraph (1), (2),
12 or (3) which provides contributions or benefits for em-
13 ployees some or all of whom are owner-employees—

14 “(A) the limitations provided by paragraphs
15 (1), (2), (3), and (7) on the amounts deductible
16 for any taxable year shall be computed, with respect
17 to contributions on behalf of employees (other than
18 owner-employees), as if such employees were the
19 only employees for whom contributions and benefits
20 are provided under the plan;

21 “(B) the limitations provided by paragraphs
22 (1), (2), (3), and (7) on the amounts deductible
23 for any taxable year shall be computed, with respect
24 to contributions on behalf of owner-employees—

25 “(i) as if such owner-employees were the

1 only employees for whom contributions and
2 benefits are provided under the plan, and

3 “(ii) without regard to paragraph (1)
4 (D), the second and third sentences of para-
5 graph (3), and the second sentence of para-
6 graph (7); and

7 “(C) the amounts deductible under paragraphs
8 (1), (2), (3), and (7), with respect to contribu-
9 tions on behalf of any owner-employee, shall not
10 exceed the applicable limitation provided in sub-
11 section (e).

12 For purposes of this paragraph and subsections (e) and
13 (f), the term ‘owner-employee’ has the meaning as-
14 signed to it by section 401 (c) (4).”

15 (b) LIMITATIONS ON DEDUCTIONS FOR CONTRIBU-
16 TIONS ON BEHALF OF OWNER-EMPLOYEES.—Section 404
17 of the Internal Revenue Code of 1954 (relating to the de-
18 ductibility of contributions to pension, annuity, profit-shar-
19 ing, or stock bonus plans or plans of deferred compensation)
20 is amended by adding after subsection (d) the following new
21 subsections:

22 “(e) SPECIAL LIMITATIONS FOR OWNER-EM-
23 PLOYEES.—

24 “(1) IN GENERAL.—In the case of a plan included
25 in subsection (a) (1), (2), or (3) which provides con-

1 tributions or benefits for employees some or all of whom
2 are owner-employees, the amounts deductible under
3 subsection (a) in any taxable year with respect to con-
4 tributions on behalf of any owner-employee shall not ex-
5 ceed whichever of the following amounts is the greater:

6 “ (A) \$2,500, or 10 percent of the self-em-
7 ployment earnings derived by such owner-employee
8 from the trade or business with respect to which the
9 plan is established, whichever is the lesser; or

10 “ (B) if section 401 (a) (10) applies, the maxi-
11 mum amount of contributions permitted on behalf of
12 such owner-employee on the application of section
13 401 (d) (5).

14 “ (2) CONTRIBUTIONS MADE UNDER MORE THAN
15 ONE PLAN.—

16 “ (A) OVERALL LIMITATION.—In any taxable
17 year in which amounts are deductible with respect
18 to two or more plans (whether established with re-
19 spect to the same trade or business or different trades
20 or businesses) on behalf of an individual who is an
21 owner-employee with respect to such plans, the ag-
22 gregate amount deductible for such taxable year
23 under such plans with respect to contributions on
24 behalf of such owner-employee shall not exceed
25 whichever of the following amounts is the greater:

1 " (i) \$2,500, or

2 " (ii) the sum of the amounts so con-
3 tributed under all such plans to the extent that,
4 with respect to each such plan, the amount
5 contributed does not exceed the amount de-
6 scribed in paragraph (1) (B).

7 " (B) ALLOCATION OF AMOUNTS DEDUCTI-
8 BLE.—In any case in which the amounts deductible
9 under subsection (a) (with the application of the
10 limitations of this subsection) with respect to contri-
11 butions made by or for an owner-employee under
12 two or more plans are, by reason of subparagraph
13 (A), less than the amounts deductible under such
14 subsection determined without regard to such sub-
15 paragraph, the amount deductible under subsection
16 (a) with respect to such contributions under each
17 such plan shall be determined in accordance with
18 regulations prescribed by the Secretary or his
19 delegate.

20 " (3) CONTRIBUTIONS ALLOCABLE TO INSURANCE
21 PROTECTION.—For purposes of this subsection, contribu-
22 tions which are allocable (determined under regulations
23 prescribed by the Secretary or his delegate) to the pur-

1 chase of life, accident, health, or other insurance shall not
2 be taken into account.

3 “(f) CERTAIN LOAN REPAYMENTS CONSIDERED AS
4 CONTRIBUTIONS.—For purposes of this section, any amount
5 paid, directly or indirectly, by an owner-employee in re-
6 payment of any loan which under section 72 (m) (4) (B)
7 was treated as an amount received under a contract pur-
8 chased by a trust described in section 401 (a) which is ex-
9 empt from tax under section 501 (a) or purchased as a part
10 of a plan described in section 403 (a) shall be treated as a
11 contribution to which this section applies on behalf of such
12 owner-employee to such trust or to or under such plan.”

13 **SEC. 4. TAXABILITY OF DISTRIBUTIONS.**

14 (a) EMPLOYEES' ANNUITIES.—Section 72 (d) (2) of
15 the Internal Revenue Code of 1954 (relating to employees'
16 annuities) is amended to read as follows:

17 “(2) SPECIAL RULES FOR APPLICATION OF PARA-
18 GRAPH (1).—For purposes of paragraph (1) —

19 “(A) if the employee died before any amount
20 was received as an annuity under the contract, the
21 words ‘receivable by the employee’ shall be read as
22 ‘receivable by a beneficiary of the employee’; and

23 “(B) any contribution made with respect to
24 the contract while an individual is a self-employed
25 individual within the meaning of section 401 (c) (2)

1 which is not allowed as a deduction under section
2 404 shall be treated as consideration for the contract
3 contributed by the employee.”

4 (b) SPECIAL RULES RELATING TO SELF-EMPLOYED
5 INDIVIDUALS AND OWNER-EMPLOYEES.—Section 72 of the
6 Internal Revenue Code of 1954 (relating to annuities, etc.)
7 is amended by redesignating subsection (m) as subsection
8 (o) and by inserting after subsection (l) the following new
9 subsections:

10 “(m) SPECIAL RULES APPLICABLE TO EMPLOYEE
11 ANNUITIES AND DISTRIBUTIONS UNDER EMPLOYEE
12 PLANS.—

13 “(1) CERTAIN AMOUNTS RECEIVED BEFORE AN-
14 NNUITY STARTING DATE.—Any amounts received under
15 an annuity, endowment, or life insurance contract before
16 the annuity starting date which are not received as an
17 annuity (within the meaning of subsection (e) (2))
18 shall be included in the recipient’s gross income for the
19 taxable year in which received to the extent that—

20 “(A) such amounts, plus all amounts thereto-
21 fore received under the contract and includible in
22 gross income under this paragraph, do not exceed

23 “(B) the aggregate premiums or other con-
24 sideration paid for the contract while the employee
25 was an owner-employee (as defined in section

1 401 (c) (4)) which were allowed as deductions
2 under section 404 for the taxable year and all prior
3 taxable years (not including any portion of such
4 premiums or other consideration properly allocable,
5 as determined under regulations prescribed by the
6 Secretary or his delegate, to the cost of life, ac-
7 cident, health, or other insurance).

8 Any such amounts so received which are not in-
9 cludible in gross income under this paragraph shall be
10 subject to the provisions of subsection (e).

11 “(2) COMPUTATION OF CONSIDERATION PAID BY
12 THE EMPLOYEE.—In computing—

13 “(A) the aggregate amount of premiums or
14 other consideration paid for the contract for pur-
15 poses of subsection (c) (1) (A) (relating to the
16 investment in the contract),

17 “(B) the consideration for the contract con-
18 tributed by the employee for purposes of subsection
19 (d) (1) (relating to employee’s contributions re-
20 coverable in 3 years), and

21 “(C) the aggregate premiums or other consid-
22 eration paid for purposes of subsection (e) (1) (B)
23 (relating to certain amounts not received as an
24 annuity),

25 any amount allowed as a deduction with respect to the

1 contract under section 404 which was paid while the in-
2 dividual was a self-employed individual within the mean-
3 ing of section 401 (c) (2) shall be treated as considera-
4 tion contributed by the employer, and there shall not be
5 taken into account any portion of the premiums or other
6 consideration for the contract paid while the individual
7 was an owner-employee which is properly allocable (as
8 determined under regulations prescribed by the Secre-
9 tary or his delegate) to the cost of life, accident, health,
10 or other insurance.

11 “(3) LIFE INSURANCE CONTRACTS.—

12 “(A) This paragraph shall apply to any life
13 insurance contract—

14 “(i) purchased as a part of a plan de-
15 scribed in section 403 (a), or

16 “(ii) purchased by a trust described in sec-
17 tion 401 (a) which is exempt from tax under
18 section 501 (a) if the proceeds of such contract
19 are payable directly or indirectly to a partici-
20 pant in such trust or to a beneficiary of such
21 participant.

22 “(B) Any contributions to a plan described in
23 subparagraph (A) (i) or a trust described in sub-
24 paragraph (A) (ii) which is allowed as a deduction

1 under section 404, and any income of a trust de-
2 scribed in subparagraph (A) (ii), which is deter-
3 mined in accordance with regulations prescribed by
4 the Secretary or his delegate to have been applied to
5 purchase the life insurance protection under a con-
6 tract described in subparagraph (A), is includible
7 in the gross income of the participant for the taxable
8 year when so applied.

9 “(C) In the case of the death of an individual
10 insured under a contract described in subparagraph
11 (A), an amount equal to the cash surrender value of
12 the contract immediately before the death of the in-
13 sured shall be treated as a payment under such plan
14 or a distribution by such trust, and the excess of the
15 amount payable by reason of the death of the in-
16 sured over such cash surrender value shall not be
17 includible in gross income under this section and
18 shall be treated as provided in section 101.

19 “(4) AMOUNTS CONSTRUCTIVELY RECEIVED.—

20 “(A) ASSIGNMENTS OR PLEDGES.—If during
21 any taxable year an owner-employee assigns (or
22 agrees to assign) or pledges (or agrees to pledge)
23 any portion of his interest in a trust described in sec-
24 tion 401 (a) which is exempt from tax under section
25 501 (a) or any portion of the value of a contract

1 purchased as part of a plan described in section
2 403 (a), such portion shall be treated as having been
3 received by such owner-employee as a distribution
4 from such trust or as an amount received under the
5 contract.

6 “(B) LOANS ON CONTRACTS.—If during any
7 taxable year, an owner-employee receives, directly
8 or indirectly, any amount from any insurance com-
9 pany as a loan under a contract purchased by a trust
10 described in section 401 (a) which is exempt from
11 tax under section 501 (a) or purchased as part of
12 a plan described in section 403 (a), and issued by
13 such insurance company, such amount shall be
14 treated as an amount received under the contract.

15 “(5) PENALTIES APPLICABLE TO CERTAIN
16 AMOUNTS RECEIVED BY OWNER-EMPLOYEES.—

17 “(A) This paragraph shall apply—

18 “(i) to amounts (other than any amount
19 received by an individual in his capacity as a
20 policyholder of an annuity, endowment, or life
21 insurance contract which is in the nature of a
22 dividend or similar distribution) which are re-
23 ceived from a qualified trust described in section
24 401 (a) or under a plan described in section 403
25 (a) and which are received by an individual,

1 who is, or has been, an owner-employee, before
2 such individual attains the age of 59½ years,
3 for any reason other than the individual's be-
4 coming disabled (within the meaning of section
5 213 (g) (3)), but only to the extent that such
6 amounts are attributable to contributions paid
7 on behalf of such individual (whether or not
8 paid by him) while he was an owner-employee,
9 “ (ii) to amounts which are received from a
10 qualified trust described in section 401 (a) or
11 under a plan described in section 403 (a) at any
12 time by an individual who is, or has been, an
13 owner-employee, or by the successor of such in-
14 dividual, but only to the extent that such
15 amounts are determined, under regulations pre-
16 scribed by the Secretary or his delegate, to
17 exceed the benefits provided for such individual
18 under the plan formula, and
19 “ (iii) to amounts which are received, by
20 reason of the distribution under the provisions
21 of section 401 (e) (2) (E), by an individual
22 who is, or has been, an owner-employee of his
23 entire interest in all qualified trusts described in
24 section 401 (a) and in all plans described in
25 section 403 (a).

1 “(B) (i) If the aggregate of the amounts to
2 which this paragraph applies received by any person
3 in his taxable year equals or exceeds \$2,500, the
4 increase in his tax for the taxable year in which
5 such amounts are received shall not be less than
6 110 percent of the aggregate increase in taxes, for
7 the taxable year and the 4 immediately preceding
8 taxable years, which would have resulted if such
9 amounts had been included in such person’s gross
10 income ratably over such taxable years.

11 “(ii) If deductions have been allowed under
12 section 404 for contributions paid on behalf of the
13 individual while he is an owner-employee for a num-
14 ber of prior taxable years less than 4, clause (i)
15 shall be applied by taking into account a number of
16 taxable years immediately preceding the taxable
17 year in which the amount was so received equal to
18 such lesser number.

19 “(C) If subparagraph (B) does not apply to a
20 person for the taxable year, the increase in tax of
21 such person for the taxable year attributable to the
22 amounts to which this paragraph applies shall be
23 110 percent of such increase (computed without
24 regard to this subparagraph).

25 “(D) Subparagraphs (A) (i) and (ii) of

1 this paragraph shall not apply to any amount to
2 which section 402 (a) (2) or 403 (a) (2) applies.

3 “(E) For special rules for computation of tax-
4 able income for taxable years to which this para-
5 graph applies, see subsection (n) (3).

6 “(6) OWNER-EMPLOYEE DEFINED.—For purposes
7 of this subsection, the term ‘owner-employee’ has the
8 meaning assigned to it by section 401 (c) (4).

9 “(n) TREATMENT OF CERTAIN DISTRIBUTIONS WITH
10 RESPECT TO CONTRIBUTIONS BY SELF-EMPLOYED INDI-
11 VIDUALS.—

12 “(1) APPLICATION OF SUBSECTION.—

13 “(A) DISTRIBUTIONS BY EMPLOYEES’
14 TRUST.—Subject to the provisions of subparagraph
15 (C), this subsection shall apply to amounts distrib-
16 uted to a distributee, in the case of an employees’
17 trust described in section 401 (a) which is exempt
18 from tax under section 501 (a), if the total distribu-
19 tions payable to the distributee with respect to an
20 employee are paid to the distributee within one tax-
21 able year of the distributee—

22 “(i) on account of the employee’s death,

23 “(ii) after the employee has attained the
24 age of 59½ years, or

25 “(iii) after the employee has become dis-

1 abled (within the meaning of section 213 (g)
2 (3)).

3 “(B) ANNUITY PLANS.—Subject to the pro-
4 visions of subparagraph (C), this paragraph shall
5 apply to amounts paid to a payee, in the case of an
6 annuity plan described in section 403 (a), if the
7 total amounts payable to the payee with respect
8 to an employee are paid to the payee within one
9 taxable year of the payee—

10 “(i) on account of the employee’s death,

11 “(ii) after the employee has attained the
12 age of 59½ years, or

13 “(iii) after the employee has become dis-
14 abled (within the meaning of section 213 (g)
15 (3)).

16 “(C) LIMITATIONS AND EXCEPTIONS.—This
17 subsection shall apply—

18 “(i) only with respect to so much of any
19 distribution or payment to which (without re-
20 gard to this subparagraph) subparagraph (A)
21 or (B) applies as is attributable to contribu-
22 tions made by or for a self-employed indi-
23 vidual within the meaning of section 401 (c)
24 (2), and

25 “(ii) if the recipient is the individual

1 by or for whom such contributions were made,
2 only if contributions which were allowed as a
3 deduction under section 404 have been made by
4 or for such individual while he was a self-
5 employed individual within the meaning of
6 section 401 (c) (2) for 5 or more taxable
7 years prior to the taxable year in which the
8 total distributions payable or total amounts
9 payable, as the case may be, are paid.

10 This subsection shall not apply to amounts described
11 in clauses (ii) and (iii) of subparagraph (A) of
12 subsection (m) (5) (but, in the case of amounts
13 described in clause (ii) of such subparagraph, only
14 to the extent that subsection (m) (5) applies to
15 such amounts).

16 “(2) LIMITATION OF TAX.—In any case to which
17 this subsection applies, the tax attributable to the
18 amounts to which this subsection applies for the taxable
19 year in which such amounts are received shall not be
20 greater than 5 times the increase in tax which would
21 result from the inclusion in gross income of the recipient
22 of 20 percent of so much of the amount so received as
23 is includible in gross income.

24 “(3) DETERMINATION OF TAXABLE INCOME.—
25 Notwithstanding section 63 (relating to definition of

1 taxable income), for purposes only of computing the tax
2 under this chapter attributable to amounts to which this
3 subsection or subsection (m) (5) applies and which are
4 includible in gross income, the taxable income of the
5 recipient for the taxable year of receipt (and for any
6 other taxable year involved in the computation under
7 subsection (m) (5) shall be treated as being not less
8 than the amount by which—

9 “(A) the aggregate of such amounts so includ-
10 ible in gross income, exceeds

11 “(B) the amount of the deductions allowed for
12 such taxable year under section 151 (relating to
13 deductions for personal exemptions).

14 In any case in which the preceding sentence results in an
15 increase in taxable income for any taxable year, the
16 resulting increase in the taxes imposed by section 1 or 3
17 for such taxable year shall not be reduced by any credit
18 under part IV of subchapter A (other than section 31
19 thereof) which, but for this sentence, would be
20 allowable.”

21 (c) CAPITAL GAINS TREATMENT OF CERTAIN EM-
22 PLOYEES' TRUSTS DISTRIBUTIONS.—Section 402 (a) of the
23 Internal Revenue Code of 1954 (relating to capital gains
24 treatment for certain distributions) is amended by adding at
25 the end of paragraph (2) the following new sentence: “This

1 paragraph shall not apply to distributions paid to any dis-
2 tributee to the extent such distributions are attributable to
3 contributions made by or for an individual while he was a
4 self-employed individual within the meaning of section
5 401 (c) (2).”

6 (d) CAPITAL GAINS TREATMENT OF CERTAIN EM-
7 PLOYEES’ ANNUITY PAYMENTS.—Section 403 (a) of the
8 Internal Revenue Code of 1954 (relating to taxability of a
9 beneficiary under a qualified annuity plan) is amended—

10 (1) by striking out in paragraph (2) (A) (i)
11 “which meets the requirements of section 401 (a) (3),
12 (4), (5), and (6)” and inserting in lieu thereof “de-
13 scribed in paragraph (1)”;

14 (2) by adding at the end of paragraph (2) (A)
15 the following new sentence: “This subparagraph shall
16 not apply to amounts paid to any payee to the extent
17 such amounts are attributable to contributions made
18 by or for an individual while he was a self-employed
19 individual within the meaning of section 401 (c) (2).”;

20 and

21 (3) by adding after paragraph (2) the following
22 new paragraph:

23 “(3) SELF-EMPLOYED INDIVIDUALS.—For pur-
24 poses of this subsection, the term ‘employee’ includes an
25 individual who is a self-employed individual within

1 the meaning of section 401 (c) (2), and the employer of
2 such individual is the person treated as his employer
3 under section 401 (c) (5).”

4 **SEC. 5. PLANS FOR PURCHASE OF UNITED STATES**
5 **BONDS.**

6 (a) **QUALIFIED BOND PURCHASE PLANS.**—Part I
7 of subchapter D of chapter 1 of the Internal Revenue Code
8 of 1954 (relating to deferred compensation, etc.) is amended
9 by adding at the end thereof the following new section:

10 **“SEC. 405. QUALIFIED BOND PURCHASE PLANS.**

11 **“(a) REQUIREMENTS FOR QUALIFICATIONS.**—A plan
12 of an employer for the purchase for and distribution to his
13 employees or their beneficiaries of United States bonds de-
14 scribed in subsection (b) shall constitute a qualified bond
15 purchase plan under this section if—

16 **“(1)** the plan meets the requirements of section
17 401 (a) (other than paragraphs (1), (2), and (12))
18 and, if applicable, the requirements of section 401 (d)
19 (other than paragraphs (1), (6) (B), and (8)); and

20 **“(2)** contributions under the plan are used solely
21 to purchase for employees or their beneficiaries United
22 States bonds described in subsection (b).

23 **“(b) BONDS TO WHICH APPLICABLE.**—

24 **“(1) CHARACTERISTICS OF BONDS.**—This section
25 shall apply only to a bond issued under the Second

1 Liberty Bond Act, as amended, which by its terms, or by
2 regulations prescribed by the Secretary under such Act—

3 “(A) provides for payment of interest, or in-
4 vestment yield, only upon redemption;

5 “(B) may be purchased only in the name of an
6 individual;

7 “(c) ceases to bear interest, or provide invest-
8 ment yield, not later than 5 years after the death
9 of the individual in whose name it is purchased;

10 “(D) may be redeemed before the death of the
11 individual in whose name it is purchased only if
12 such individual—

13 “(i) has attained the age of $59\frac{1}{2}$ years, or

14 “(ii) has become disabled (within the
15 meaning of section 213 (g) (3)); and

16 “(E) is nontransferable.

17 “(2) MUST BE PURCHASED IN NAME OF EM-
18 PLOYEE.—This section shall apply to a bond described
19 in paragraph (1) only if it is purchased in the name of
20 the employee.

21 “(c) DEDUCTION FOR CONTRIBUTIONS TO BOND PUR-
22 CHASE PLANS.—Contributions paid by an employer to or
23 under a qualified bond purchase plan shall be deductible in
24 an amount determined under section 404 (a) in the same
25 manner and to the same extent as if such contributions were

1 made to a trust described in section 401 (a) which is exempt
2 from tax under section 501 (a) .

3 “(d) TAXABILITY OF BENEFICIARY OF QUALIFIED
4 BOND PURCHASE PLAN.—

5 “(1) GROSS INCOME NOT TO INCLUDE BONDS AT
6 TIME OF DISTRIBUTION.—For purposes of this chapter,
7 in the case of a distributee of a bond described in sub-
8 section (b) under a qualified bond purchase plan, or
9 from a trust described in section 401 (a) which is exempt
10 from tax under section 501 (a), gross income does
11 not include any amount attributable to the receipt of such
12 bond. Upon redemption of such bond, the proceeds
13 shall be subject to taxation under this chapter, but the
14 provisions of section 72 (relating to annuities, etc.)
15 and section 1232 (relating to bonds and other evidences
16 of indebtedness) shall not apply.

17 “(2) BASIS.—The basis of any bond received by a
18 distributee under a qualified bond purchase plan—

19 “(A) if such bond is distributed to an em-
20 ployee, or with respect to an employee, who at the
21 time of purchase of the bond, was not a self-
22 employed individual within the meaning of section
23 401 (c) (2), shall be the amount of the contribu-
24 tions by the employee which were used to purchase
25 the bond, and

1 “(B) if such bond is distributed to an in-
2 dividual, or with respect to an individual, who, at
3 the time of purchase of the bond, was a self-
4 employed individual within the meaning of section
5 401 (c) (2), shall be the amount of the contribu-
6 tions used to purchase the bond which were made by
7 or for such individual and were not allowed as a
8 deduction under subsection (c).

9 The basis of any bond described in subsection (b)
10 received by a distributee from a trust described in sec-
11 tion 401 (a) which is exempt from tax under section
12 501 (a) shall be determined under regulations prescribed
13 by the Secretary or his delegate.

14 “(e) CAPITAL GAINS TREATMENT NOT TO APPLY
15 TO BONDS DISTRIBUTED BY TRUSTS.—Section 402 (a) (2)
16 shall not apply to any bond described in subsection (b)
17 distributed to any distributee and, for purposes of applying
18 such section, any such bond distributed to any distributee
19 and any such bond to the credit of any employee shall not be
20 taken into account.

21 “(f) EMPLOYEE DEFINED.—For purposes of this sec-
22 tion, the term ‘employee’ includes an individual who is a
23 self-employed individual within the meaning of section 401
24 (c) (2), and the employer of such individual shall be the
25 person treated as his employer under section 401 (c) (5).

1 “(g) PROOF OF PURCHASE.—At the time of purchase
2 of any bond to which this section applies, proof of such pur-
3 chase shall be furnished in such form as will enable the
4 purchaser, and the employee in whose name such bond is
5 purchased, to comply with the provisions of this section.

6 “(h) REGULATIONS.—The Secretary or his delegate
7 shall prescribe such regulations as may be necessary to carry
8 out the provisions of this section.”

9 (b) CLERICAL AMENDMENT.—The table of sections for
10 such part is amended by adding at the end thereof the follow-
11 ing new item:

“Sec. 405. Qualified bond purchase plans.”

12 **SEC. 6. PROHIBITED TRANSACTIONS.**

13 Section 503 of the Internal Revenue Code of 1954 (re-
14 lating to prohibited transactions) is amended by adding at
15 the end thereof the following new subsection:

16 “(j) TRUSTS BENEFITING CERTAIN OWNER-EM-
17 PLOYEES.—

18 “(1) PROHIBITED TRANSACTIONS.—In the case of
19 a trust described in section 401 (a) which is part of a
20 plan providing contributions or benefits for employees
21 some or all of whom are owner-employees (as defined in
22 section 401 (c) (4)) who control (within the meaning
23 of section 401 (d) (9) (B)), the trade or business with

1 respect to which the plan is established, the term 'pro-
2 hibited transaction' also means any transaction in which
3 such trust, directly or indirectly—

4 “ (A) lends any part of the corpus or income of
5 the trust to;

6 “ (B) pays any compensation for personal serv-
7 ices rendered to the trust to;

8 “ (C) makes any part of its services available
9 on a preferential basis to; or

10 “ (D) acquires for the trust any property from,
11 or sells any property to;

12 any person described in subsection (c) or to any such
13 owner-employee, a member of the family (as defined in
14 section 267 (c) (4)) of any such owner-employee, or a
15 corporation controlled by any such owner-employee
16 through the ownership, directly or indirectly, of 50 per-
17 cent or more of the total combined voting power of all
18 classes of stock entitled to vote or 50 percent or more of
19 the total value of shares of all classes of stock of the cor-
20 poration.

21 “ (2) SPECIAL RULE FOR LOANS.—For purposes
22 of the application of paragraph (1) (A), the following
23 rules shall apply with respect to a loan made before the
24 date of the enactment of this subsection which would be

1 a prohibited transaction if made in a taxable year be-
2 ginning after December 31, 1961:

3 “(A) If any part of the loan is repayable prior
4 to December 31, 1964, the renewal of such part of
5 the loan for a period not extending beyond December
6 31, 1964, on the same terms, shall not be considered
7 a prohibited transaction.

8 “(B) If the loan is repayable on demand, the
9 continuation of the loan beyond December 31, 1964,
10 shall be considered a prohibited transaction.”

11 **SEC. 7. OTHER SPECIAL RULES, TECHNICAL CHANGES,**
12 **AND ADMINISTRATIVE PROVISIONS.**

13 (a) **RETIREMENT INCOME CREDIT.**—Section 37 (c)
14 (1) of the Internal Revenue Code of 1954 (relating to
15 definition of retirement income) is amended—

16 (1) by striking out subparagraph (A) and inserting
17 in lieu thereof the following:

18 “(A) pensions and annuities (including, in the
19 case of an individual who is, or has been, a self-
20 employed individual within the meaning of section
21 401 (c) (2), distributions by a trust described in
22 section 401 (a) which is exempt from tax under
23 section 501 (a)),”; and

24 (2) by striking out “and” at the end of subpara-

1 graph (C), by striking out “or” at the end of subpara-
2 graph (D) and inserting in lieu thereof “and”, and by
3 adding after subparagraph (D) the following new sub-
4 paragraph:

5 “(E) bonds described in section 405 (b) (1)
6 which are received under a qualified bond purchase
7 plan described in section 405 (a) or in a distri-
8 bution from a trust described in section 401 (a)
9 which is exempt from tax under section 501 (a),
10 or”.

11 (b) ADJUSTED GROSS INCOME.—Section 62 of the
12 Internal Revenue Code of 1954 (relating to the definition of
13 adjusted gross income) is amended by inserting after para-
14 graph (6) the following new paragraph:

15 “(7) PENSION, PROFIT-SHARING, ANNUITY, AND
16 BOND PURCHASE PLANS OF SELF-EMPLOYED INDIVID-
17 UALS.—In the case of an individual who is a self-em-
18 ployed individual within the meaning of section 401 (c)
19 (2), the deductions allowed by section 404 and sec-
20 tion 405 (c) to the extent attributable to contributions
21 made by or for such individual.”

22 (c) DEATH BENEFITS.—Section 101 (b) of the Inter-
23 nal Revenue Code of 1954 (relating to employees’ death
24 benefits) is amended—

1 (1) by striking out clause (ii) of paragraph (2)
2 (B) and inserting in lieu thereof the following:

3 “(ii) under an annuity contract under a
4 plan described in section 403 (a), or”; and

5 (2) by adding at the end thereof the following new
6 paragraph:

7 “(3) SELF-EMPLOYED INDIVIDUAL NOT CON-
8 sidered AN EMPLOYEE.—For purposes of this
9 subsection, an individual shall not be treated as an em-
10 ployee in the case of—

11 “(A) a pension or profit-sharing trust described
12 in section 401 (a) which is exempt from tax under
13 section 501 (a), or

14 “(B) an annuity contract under a plan de-
15 scribed in section 403 (a).

16 if such individual was included at any time under the
17 plan as a self-employed individual within the meaning
18 of section 401 (c) (2).”

19 (d) AMOUNTS RECEIVED THROUGH ACCIDENT OR
20 HEALTH INSURANCE.—Section 104 (a) of the Internal
21 Revenue Code of 1954 (relating to compensation for injuries
22 or sickness) is amended by adding at the end thereof the
23 following new sentence:

24 “For purposes of paragraph (3), in the case of an indi-

1 vidual who is, or has been, a self-employed individual within
2 the meaning of section 401 (c) (2), contributions made by
3 or for such individual while he was such an individual to a
4 trust described in section 401 (a) which is exempt from tax
5 under section 501 (a), or under a plan described in section
6 403 (a), shall, to the extent attributable to contributions
7 allowed as deductions under section 404, be treated as con-
8 tributions by the employer which were not includible in the
9 gross income of the employee.”

10 (e) AMOUNTS RECEIVED UNDER ACCIDENT AND
11 HEALTH PLANS.—Section 105 of the Internal Revenue
12 Code of 1954 (relating to amounts received under accident
13 and health plans) is amended by adding at the end thereof
14 the following new subsection:

15 “(g) SELF-EMPLOYED INDIVIDUAL NOT CON-
16 sidered AS EMPLOYEE.—For purposes of this section, the
17 term ‘employee’ does not include an individual who is a
18 self-employed individual within the meaning of section
19 401 (c) (2).”

20 (f) NET OPERATING LOSS DEDUCTION.—Section
21 172 (d) (4) of the Internal Revenue Code of 1954 (relating
22 to nonbusiness deductions of taxpayers other than corpora-
23 tions) is amended—

24 (1) by striking out “and” at the end of subpara-
25 graph (B) ;

1 (2) by striking out the period at the end of sub-
2 paragraph (C) and inserting “; and”; and

3 (3) by adding after subparagraph (C) the follow-
4 ing new subparagraph:

5 “(D) any deduction allowed under section 404
6 or section 405 (c) to the extent attributable to con-
7 tributions which are made on behalf of an individual
8 who is a self-employed individual within the mean-
9 ing of section 401 (c) (2) shall not be treated as
10 attributable to the trade or business of such individ-
11 ual.”

12 (g) CERTAIN LIFE INSURANCE RESERVES.—Section
13 805 (d) (1) of the Internal Revenue Code of 1954 (relating
14 to pension plan reserves) is amended—

15 (1) by striking out in subparagraph (B) “meeting
16 the requirements of section 401 (a) (3), (4), (5), and
17 (6) or” and inserting in lieu thereof “described in
18 section 403 (a), or plans meeting”; and

19 (2) by striking out “section 401 (a) (3), (4),
20 (5), and (6),” in subparagraph (C) and inserting in
21 lieu thereof “section 401 (a) (other than paragraphs (1),
22 (2), and (12)) and, in the case of a plan described in
23 section 404 (a) (9), which meets the requirements of
24 section 401 (d) (other than paragraphs (1), (3), and
25 (4)),”; and

1 **(h) UNINCORPORATED BUSINESS ELECTING TO BE**
2 **TAXED AS CORPORATIONS.**—Section 1361 (d) of the Inter-
3 nal Revenue Code of 1954 (relating to unincorporated busi-
4 ness enterprises electing to be taxed as domestic corpora-
5 tions) is amended to read as follows:

6 “(d) **LIMITATION.**—For purposes of sections 401 (a)
7 (relating to employees pension trusts, etc.) and 405 (re-
8 lating to qualified bond purchase plans), a partner or pro-
9 prietor of an unincorporated business enterprise as to which
10 an election has been made under subsection (a) shall not be
11 considered an employee other than as a self-employed in-
12 dividual within the meaning of section 401 (c) (2).”

13 **(i) ESTATE TAX EXEMPTION OF EMPLOYEES’ AN-**
14 **NUITIES.**—Section 2039 of the Internal Revenue Code of
15 1954 (relating to exemption from the gross estate of annui-
16 ties under certain trusts and plans) is amended—

17 (1) by striking out in subsection (c) (2) “met the
18 requirements of section 401 (a) (3), (4), (5), and
19 (6)” and inserting “was a plan described in section
20 403 (a)” ; and

21 (2) by adding at the end of subsection (c) the
22 following new sentence: “For purposes of this subsec-
23 tion, contributions or payments on behalf of the decedent
24 while he was a self-employed individual within the
25 meaning of section 401 (c) (2) made under a trust or

1 plan described in paragraph (1) or (2) shall be con-
2 sidered to be contributions or payments made by the
3 decedent.”

4 (j) GIFT TAX EXEMPTION OF EMPLOYEES' ANNUI-
5 TIES.—Section 2517 of the Internal Revenue Code of 1954
6 (relating to exclusion from gift tax in case of certain annui-
7 ties under qualified plans) is amended—

8 (1) by striking out in subsection (a) (2) “met the
9 requirements of section 401 (a) (3), (4), (5), and
10 (6)” and inserting in lieu thereof “was a plan described
11 in section 403 (a)”; and

12 (2) by adding at the end of subsection (b) the fol-
13 lowing new sentence: “For purposes of this subsection,
14 payments or contributions on behalf of an individual
15 while he was a self-employed individual within the mean-
16 ing of section 401 (c) (2) made under a trust or plan
17 described in subsection (a) (1) or (2) shall be consid-
18 ered to be payments or contributions made by the em-
19 ployee.”

20 (k) FEDERAL UNEMPLOYMENT TAX ACT.—Section
21 3306 (b) (5) of the Internal Revenue Code of 1954 (relating
22 to definition of wages) is amended by striking out subpara-
23 graph (B) and inserting in lieu thereof the following new
24 subparagraphs:

25 “(B) under or to an annuity plan which, at the

1 time of such payment, is a plan described in section
2 403 (a), or

3 “(C) under or to a bond purchase plan which,
4 at the time of such payment, is a qualified bond pur-
5 chase plan described in section 405 (a);”.

6 (l) WITHHOLDING OF INCOME TAX.—Section
7 3401 (a) (12) of the Internal Revenue Code of 1954 (relat-
8 ing to definition of wages) is amended by striking out sub-
9 paragraph (B) and inserting in lieu thereof the following
10 new subparagraphs:

11 “(B) under or to an annuity plan which, at the
12 time of such payment, is a plan described in section
13 403 (a); or

14 “(C) under or to a bond purchase plan which,
15 at the time of such payment is a qualified bond
16 purchase plan described in section 405 (a).”

17 (m) INFORMATION REQUIREMENTS.—

18 (1) IN GENERAL.—Subpart B of part III of sub-
19 chapter A of chapter 61 of the Internal Revenue Code
20 of 1954 (relating to information concerning transactions
21 with other persons) is amended by adding at the end
22 thereof the following new section:

1 "SEC. 6047. INFORMATION RELATING TO CERTAIN TRUSTS
2 AND ANNUITY AND BOND PURCHASE PLANS.

3 "(a) TRUSTEES AND INSURANCE COMPANIES.—The
4 trustee of a trust described in section 401 (a) which is exempt
5 from tax under section 501 (a) to which contributions have
6 been paid under a plan by or for any owner-employee (as
7 defined in section 401 (c) (4)), and each insurance company
8 which is the issuer of a contract purchased by such a trust,
9 or purchased under a plan described in section 403 (a), con-
10 tributions for which have been paid by or for any owner-
11 employee, shall file such returns (in such form and at such
12 times), keep such records, make such identification of con-
13 tracts and funds (and accounts within such funds), and sup-
14 ply such information, as the Secretary or his delegate shall
15 by forms or regulations prescribe.

16 "(b) OWNER-EMPLOYEES.—Every individual by or
17 for whom contributions have been paid as an owner-employee
18 (as defined in section 401 (c) (4))—

19 "(1) to a trust described in section 401 (a) which
20 is exempt from tax under section 501 (a), or

21 "(2) to an insurance company under a plan de-
22 scribed in section 403 (a),

1 shall furnish the trustee or insurance company, as the case
 2 may be, such information at such times and in such form
 3 and manner as the Secretary or his delegate shall prescribe
 4 by forms or regulations.

5 “(c) EMPLOYEES UNDER QUALIFIED BOND PUR-
 6 CHASE PLANS.—Every individual in whose name a bond
 7 described in section 405 (b) (1) is purchased by his em-
 8 ployer under a qualified bond purchase plan described in sec-
 9 tion 405 (a), or by a trust described in section 401 (a)
 10 which is exempt from tax under section 501 (a), shall
 11 furnish—

12 “(1) to his employer or to such trust, and

13 “(2) to the Secretary (or to such person as the
 14 Secretary may by regulations prescribe),

15 such information as the Secretary or his delegate shall by
 16 forms or regulations prescribe.

17 “(d) CROSS REFERENCE.—

“For criminal penalty for furnishing fraudulent in-
 formation, see section 7207.”

18 (2) CLERICAL AMENDMENT.—The table of sec-
 19 tions for such subpart B is amended by adding at the end
 20 thereof the following:

“Sec. 6047. Information relating to certain trusts and an-
 nuity and bond plans.”

21 (3) PENALTY.—Section 7207 of the Internal Rev-
 22 enue Code of 1954 (relating to fraudulent returns,

1 statements, or other documents) is amended by adding
2 at the end thereof the following new sentence: "Any
3 person required pursuant to section 6047 (b) to furnish
4 any information to any trust, any insurance company,
5 his employer, or the Secretary who willfully furnishes
6 any information known by him to be fraudulent or to be
7 false as to any material matter shall be fined not more
8 than \$1,000, or imprisoned not more than 1 year, or
9 both."

10 **SEC. 8. EFFECTIVE DATE.**

11 The amendments made by this Act shall apply to taxable
12 years beginning after December 31, 1961.

87TH CONGRESS
1ST SESSION

H. R. 6910

A BILL

To encourage the establishment of voluntary pension plans by self-employed individuals.

By Mr. FOGARTY

MAY 9, 1961

Referred to the Committee on Ways and Means