

## CHAPTER 52

SURVIVOR BENEFIT PLAN - TAXABILITY OF ANNUITIES5201 FEDERAL INCOME TAX

SBP annuities are taxable for federal income tax purposes. A refund of cost resulting from an administrative error, correction of records, or the awarding of DIC is taxable to the annuitant. The member's retired pay tax status has no bearing on the taxability of the annuity or the refund of cost. See Table 52-1 for exceptions on the taxability of the annuities.

5202 FEDERAL INCOME TAX WITHHOLDING (FITW)

520201. General Provisions. SBP annuity payments are income subject to FITW. An annuitant has the right to elect that no tax be withheld. In the absence of such an election, or if the annuitant does not otherwise submit a withholding certificate, the DFAS-Denver Center will withhold on the basis of "married, three exemptions." The annuitant may use TD Form W-4P or any substitute form furnished by the payer.

520202. Notice Requirements. The DFAS-Denver Center must advise the annuitant of the withholding requirement, and the right to elect that no tax be withheld, when making the first payment to the annuitant. Thereafter, the DFAS-Denver Center must provide annual notice to the annuitant of the right to elect no withholding, revoke an election or submit a new withholding certificate. An annuitant also may submit a withholding certificate at any time to elect no withholding, revoke such election, or request any rate of withholding.

520203. One-Time Payments

A. SBP Cost Refunds. Cost refunds, a "non-periodic distribution," are subject to FITW at the rate of 10 percent unless the annuitant has elected no withholding. The annuitant has the right to make a FITW election on this refund separately from any election already in operation for all other SBP annuity payments.

B. Other. SBP annuity payments, other than the regular monthly entitlement, and other than the cost refunds above, are subject to FITW at the rate of 28 percent unless the annuitant has elected no withholding.

5203 INCOME EXCLUSION

520301. Consideration for Contract. The SBP annuitant is entitled to an income exclusion when, upon death of the participant member, the "consideration for contract" has been excluded in whole from the member's gross income.

After December 31, 1965, the member's survivor who is receiving the annuity may exclude from gross income such annuity payments received until the total exclusion equals the portion of

the “consideration of contract” not previously excluded from the member’s taxable income. The DFAS-Denver Center will accomplish the applicable direct reduction in taxable income for the annuitant and report the residual amount as taxable income on the annuitant’s Form 1099-R.

**Example:** When a member died on January 1, 1995, \$1000 of the total “consideration for contract” had not yet been excluded from the member’s non-disability retired pay. For 1995, DFAS would have reported the taxable annuity less \$1000, and this reported residual amount would have been used by the surviving spouse in his or her income tax computation for the calendar year.

★520302. Disabled Member’s Death Before Normal Retirement Age. In addition to the income exclusion allowed for “consideration for the contract,” the survivor of a member who retired because of a physical disability resulting from military service and died after September 20, 1972, but before August 21, 1996, before reaching normal “retirement age,” may exclude an aggregate of \$5,000 from taxable income on income tax returns. The survivor includes amounts in excess of \$5,000 in gross income. The DFAS-Denver Center should, upon request, provide the effective date of premiums, the total premiums paid (showing separate totals for deductions and direct remittances), the effective date, and amount of annuity.

★520303. Direct Cost Payments. The tax-free benefit on SBP premiums is not available to members who waived military retired pay to receive disability compensation from the Department of Veterans Affairs (see paragraph 450602 of this volume). Instead, upon the member’s death, annuity paid to the member’s survivor will be exempt from federal income tax until the amount excluded equals the total of the member’s direct cost payments.

#### 5204 ADJUSTMENT TO TAXABLE ANNUITY

Reserved

#### ★5205 FEDERAL ESTATE TAX

The value of the annuity at the time of the member’s death may be subject to federal estate tax if any portion of the cost was paid by direct remittance, or if the value of the annuity exceeds the amount that may be excluded from the gross estate. The DFAS may furnish the annuitant the current annuity amount and/or a summary of annual payments, and total cost paid (separate totals for deductions and direct remittances). For a computation of the amount of an annuity that will be subject to the tax, if any, the executor of the member’s estate may write to:

Internal Revenue Service  
Chief, Estate and Gift Tax Branch  
Attn: CC:DOM:PSI:4 RM 5431  
1111 Constitution Avenue, NW  
Washington, DC 20224

Commercial Telephone (202) 622-3090

5206 STATE TAXATION

The Form 1099-R information is furnished to the appropriate state tax authority whether SBP annuities are subject to state inheritance or income tax and the method of calculating such tax depend upon the laws of the state concerned.

5207 FURTHER TAX INFORMATION

Survivors should be advised that they may obtain further information concerning taxation of SBP annuities from the cognizant District Director of Internal Revenue or the cognizant state tax authority.

<b>TAXABILITY OF SURVIVOR BENEFIT PLAN/RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN-NON-RESIDENT ANNUITANTS RESIDING OUTSIDE THE UNITED STATES</b>				
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>R U L E</b>	<b>If the SBP annuitant resides in the country of</b>	<b>and</b>	<b>then the SBP annuity is</b>	<b>at the rate of</b>
<b>1</b>	Australia, Belgium, Cyprus, Egypt, Finland, France, Germany, Iceland, Korea, Morocco, Netherlands, Norway, Pakistan, Romania, Trinidad and Tobago, and United Kingdom	is a citizen of the country in which residing	not taxable (note)	
<b>2</b>	Italy	is an Italian national		
<b>3</b>		is not an Italian national	taxable	30 percent.

NOTE: In order to claim entitlement to exemption from taxation based upon a tax convention or treaty, a non-resident alien annuitant is required to file Treasury Form 1001 (Ownership, Exemption, or Reduced Rate Certificate) with DFAS–Denver Center.

**Table 52-1. Taxability Of Survivor Benefit Plan/Retired Serviceman’s Family Protection Plan-Non–Resident Annuitants Residing Outside the United States**