

Part I

Section 807.--Rules for certain reserves

(Also § 812)

Rev. Rul. 2007-61

Rev. Rul. 2007-54, 2007-38 I.R.B. 1, released on August 16, 2007, addresses the determination of life insurance reserves under section 807 of the Internal Revenue Code for a variable contract where some or all of the reserves are accounted for as part of a life insurance company's separate account reserves. The ruling also addresses the interest rate used under section 812(b)(2) to calculate required interest on the reserves if the amounts of those reserves are determined under section 807(d)(2).

Sections 807 and 812 were added to the Code by the Deficit Reduction Act of 1984, P.L. 98-369 (the 1984 Act). The legislative history of the 1984 Act provides that the regulations, rulings and case law under the Life Insurance Company Tax Act of 1959 (the 1959 Act) are to serve as interpretive guides to those 1984 Act provisions that carry over the provisions of prior law. See H. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess. 1402; S. Prt. 169, Vol. 1, 98th Cong. 2d

Sess. 524. Since Rev. Rul. 2007-54 was issued, some taxpayers have argued that the provisions on which the ruling is based carried over from the 1959 Act to the 1984 Act, and that the ruling should not be applied retroactively because its analysis is not consistent with certain authorities under the 1959 Act.

The Treasury Department and the Internal Revenue Service (IRS) believe it is important that the company's share and policyholders' share of net investment income be determined in a manner that effectively prevents the double benefit that otherwise would result from the use of tax favored investment income (such as dividends qualifying for the dividends received deduction) to fund the company's obligations to policyholders. In addition, the Treasury Department and the IRS are mindful of the benefit of notice and public comment and believe the issues in the revenue ruling would more appropriately be addressed by regulation. Accordingly, this ruling suspends Rev. Rul. 2007-54 and informs taxpayers that the Treasury Department and the IRS intend to address in regulations the issues considered in Rev. Rul. 2007-54. Until such time, the issues should be analyzed as though Rev. Rul. 2007-54 had not been issued. Regulations also may provide guidance for determining required interest under section 812(b)(2) if neither the prevailing State assumed rate nor the applicable Federal rate is used to determine the reserves for an insurance or annuity contract. This project has been added to the 2007 -2008 Priority Guidance Plan and will be reflected in the next periodic update to that plan.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2007-54 is suspended.

DRAFTING INFORMATION

The principal author of this revenue ruling is Stephen D. Hooe of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Mr. Hooe at (202) 622-3900 (not a toll-free call).