

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Number: **199941024**

Person to Contact:

Release Date: 10/15/1999

Telephone Number:

Refer Reply To:

CC:DOM:FI&P:4-PLR-106213-99

Date:

JULY 14, 1999

In Re:

Legend

Date RR =

Taxpayer =

Parent =

Policy A =

years s =

b =

c =

x =

y =

State =

Dear

This is in further response to your letter dated Date RR, and supplemental submissions, requesting a ruling that waivers be granted pursuant to §§ 101(f)(3)(H)

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and 7702(f)(8) of the Internal Revenue Code, as applicable, with regard to the failure of certain contracts to satisfy the “guideline premium limitation” under §§ 101(f)(2) and 7702(c)(2), as applicable. A ruling letter, LTR 199924028, was issued to Taxpayer on March 19, 1999, granting waivers pursuant to §§ 101(f)(3)(H) and 7702(f)(8), as applicable, with regard to the failure of x contracts listed in Exhibit A of that ruling. This ruling letter applies to the y contracts (the “Contracts”) listed in Exhibit 1 of this ruling.

FACTS

Taxpayer represents that it is a stock life insurance company organized and operated under the laws of State, and that it is a life insurance company within the meaning of § 816(a) of the Code.

Taxpayer further represents that it is a wholly-owned subsidiary of Parent. Taxpayer represents that Parent is a life insurance company within the meaning of § 816(a) of the Code, and that Taxpayer joins in the filing of a consolidated federal income tax return with Parent.

The facts are generally the same as in LTR 199924028. Additional facts that were not stated in LTR 199924028 and certain particularly relevant facts that were stated in LTR 199924028 are noted herein.

This request for waivers relates to Policy A flexible premium universal life contracts that were issued by Taxpayer in years s. Policies issued on or before December 31, 1984, were intended to comply with § 101(f) of the Code by satisfying both the “guideline premium limitation” of § 101(f)(1)(A)(i) and (2) and the “applicable percentage” requirements of § 101(f)(1)(A)(ii) and (3)(C). Policies issued after December 31, 1984, were intended to comply with § 7702 of the Code by both satisfying the “guideline premium requirements” of § 7702(a)(2)(A) and (c) and falling within the “cash value corridor” of § 7702(a)(2)(B) and (d).

Taxpayer represents that due to an error, discussed below, premiums paid with respect to the Contracts were accepted in excess of the applicable guideline premium limitation, and that such excess premiums were not refunded (with interest) within 60 days of the end of the contract year in which they were accepted, in accordance with §§ 101(f)(3)(B) and 7702(f)(1)(B) of the Code, whichever was applicable.

Taxpayer represents that the error causing the Contracts to fail to meet the requirements of § 101(f) or § 7702 of the Code, as applicable, was the result of the failure of certain of Taxpayer’s computer technicians to correctly implement programming instructions in connection with updates and modifications made to Taxpayer’s computerized system for checking compliance with the requirements of § 7702. The programming instructions to the technicians were based on proper

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interpretations of §§ 101(f) and 7702, and the technicians did not misunderstand the instructions. Hence, if Taxpayer's computer system had been programmed in accordance with these instructions, the mechanical programming errors would not have occurred. However, the technicians made certain inadvertent errors in programming into the computer the commands necessary to properly implement the instructions. As a result, the computerized checking system determined the guideline premium limitation for contracts affected by these programming errors to be higher than it should have been.

One such mechanical programming error, which Taxpayer represents caused the Contracts to fail to meet the requirements of §101(f) or §7702 of the Code, as applicable, involved the computer program's failure to reflect the correct monthly expense charge in the guideline premium limitation. Taxpayer's computer was instead inadvertently programmed to compute the guideline premium limitation using a monthly expense charge equal to the annual amount of the expense charge. Thus, the guideline premium limitation reflected an amount allocable to expenses that was twelve times greater than it should have been.

Taxpayer further represents that the Contracts would have been in compliance with § 101(f) or § 7702 of the Code, as applicable, but for the mechanical programming error concerning the monthly expense charge.

All y of the Contracts that are the subject of this ruling letter have terminated as a result of the death of the insured. Further, for each of the y Contracts, as of the date of the insured's death, the sum of the premiums paid exceeded the Contract's guideline premium limitation as of the date. In the case of b of the Contracts, the insured was the policyowner. In the case of c of the Contracts, the beneficiary, who was not the insured, was the policyowner.

Taxpayer proposes to remedy the failure of the Contracts by providing to the beneficiary (or beneficiaries) under each Contract an amount equal to the excess of the sum of the premiums paid under the Contract on the date of the insured's death over the Contract's guideline premium limitation on that date, with interest at the policy's crediting rate. Taxpayer represents that it will take this action within 60 days of the date of this letter ruling. Taxpayer has also represented that it has eliminated the monthly expense charge error from its computer program for checking compliance with §§ 101(f) and 7702 of the Code.

LAW AND ANALYSIS

Section 101(f) of the Code requires a “flexible premium life insurance contract” to satisfy either of two tests in order for the death benefit thereunder to be excludable under § 101(a) as the proceeds of a life insurance contract: (1) a “guideline premium limitation” (coupled with an “applicable percentage” requirement) set forth in § 101(f)(1)(A) or (2) a “cash value test” set forth in § 101(f)(1)(B). Section 101(f) applies only to flexible premium life insurance contracts issued before January 1, 1985.

Section 7702 of the Code contains a definition of the term “life insurance contract” for all purposes of the Code. Under § 7702(a), in order to be considered a life insurance contract for federal tax purposes, a contract which is a life insurance contract under applicable law must either satisfy the “cash value accumulation test” set forth in § 7702(a)(1) and (b), or both meet the “guideline premium requirements” set forth in § 7702(a)(2)(A) and (c) and fall within the “cash value corridor” pursuant to § 7702(a)(2)(B) and (d). In general, § 7702 applies to all life insurance contracts issued after December 31, 1984.

Section 101(f)(3)(B) of the Code provides that, if, in order to comply with the requirements of § 101(f)(1)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of the contract year, then the amount so returned (excluding interest) will be deemed to reduce the sum of the premiums paid under the contract during such year.

Similarly, § 7702(f)(1)(B) of the Code provides that, if, in order to comply with the requirements of § 7702(a)(2)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of the contract year, then the amount so returned (excluding interest) will be deemed to reduce the sum of the premiums paid under the contract during such year.

Sections 101(f)(3)(H) and 7702(f)(8) of the Code provide that the Secretary of the Treasury may waive a taxpayer’s failure to satisfy the requirements of §§ 101(f) and 7702, respectively, if the taxpayer establishes to the satisfaction of the Secretary that the failure was due to “reasonable error” and that “reasonable steps are being taken to remedy the error.”

The mechanical programming error involving the monthly expense charge was attributable to a human error that was clerical in nature. Further, Taxpayer has represented that it has eliminated this error from its computer program for checking compliance with §§ 101(f) and 7702 of the Code. Taxpayer has also, as stated above, represented that it will promptly refund excess premiums with interest to the beneficiaries of the Contracts.

After consideration of all the facts and circumstances, we find that the failure of

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the y Contracts to satisfy the applicable requirements of § 101(f) or § 7702(a) of the Code, as set forth in this ruling, was due to reasonable error, and that Taxpayer is taking reasonable steps to remedy the error.

CONCLUSION

Taxpayer is granted a waiver under §§ 101(f)(3)(H) and 7702(f)(8) of the Code for the failure of the y Contracts listed in Exhibit 1 to satisfy the applicable requirements of §§ 101(f) and 7702.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47. However, when the criteria in section 12.05 of Rev. Proc. 99-1, 1999-1 I.R.B. at 47, are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

A copy of this letter must be attached to any income tax return to which it is relevant.

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Assistant Chief Counsel
(Financial Institutions & Products)

By: /s/ _____
Donald J. Drees, Jr.
Senior Technician Reviewer
Branch 4

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Exhibit 1