

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201105027**
Release Date: 2/4/2011
Index Number: 7702B.02-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B04
PLR-135748-10
Date:
November 05, 2010

Legend

Taxpayer:

Rider:

Dear :

This is in response to your request for rulings concerning a Rider to be offered in connection with certain qualified long-term care insurance contracts under § 7702B of the Internal Revenue Code.

FACTS

Taxpayer represents as follows:

Taxpayer is a stock life insurance company taxable under § 801 and is the issuer of certain qualified long-term care contracts (“Contracts”) that comply with the requirements of § 7702B. Taxpayer proposes to issue Rider, by either including it on Contracts to be issued or adding it to certain in-force Contracts.

In its base form, there are two attributes to the Rider. First, through the Rider Taxpayer will provide the policyholder¹ with access to information pertaining to health,

¹ The policyholder is generally the person insured under a Contract hence the term “policyholder” will be used herein.

wellness, and long-term care that promotes and encourages a healthy lifestyle. This information will be disseminated through written or media-based educational materials. Telephonic or internet-based access to a registered nurse or other professional to answer questions on general wellness, long-term care, and other health-related topics, will also be available. Additionally, information about long-term care and other health care services that the policyholder may separately purchase from third-party sources will be provided. The purpose of providing such information is to either facilitate the provision of long-term care services or reduce the incidence or severity of any future need for long-term care. This information will be provided regardless of the policyholder's health; i.e., no "insurable event" need have occurred.

Second, the Rider sets forth a voluntary incentive program for policyholders to maintain wellness. If the policyholder participates in certain periodic health assessments to be offered by a third-party, and satisfies certain medical criteria (e.g., a prescribed "body mass index" score) that evidences healthy living, the policyholder will be entitled to any incentive benefit Taxpayer may declare, such as a premium discount or increase in benefits. As part of the assessment, information customized to the policyholder's particular circumstance may be provided. The extent and scope, including termination, of this program is at Taxpayer's discretion.

In some instances, the Rider will be offered in an alternative form without the voluntary incentive program.

There will be no additional charge for the Rider.²

REQUESTED RULINGS

Taxpayer requests rulings that:

1. The inclusion of a Rider in a Contract will not cause the Contract to be treated as providing insurance coverage other than of qualified long-term care services within the meaning of § 7702B(b)(1)(A); and

2. All premiums paid for a Contract that includes a Rider are premiums for a qualified long-term care insurance contract.

LAW AND ANALYSIS

Requested Ruling #1

² There is no stated charge for the Rider nor is it taken into account in pricing the Contract, except as part of Taxpayer's overall administrative expenses.

Under § 7702B(b)(1)(A), a qualified long-term care insurance contract is an insurance contract under which “the only insurance protection provided ... is coverage of qualified long-term care services”.

Neither the Code nor the regulations define the terms “insurance” or “insurance contract.” The Supreme Court of the United States has explained that in order for an arrangement to constitute insurance for federal income tax purposes, both risk shifting and risk distribution must be present. Helvering v. Le Gierse, 312 U.S. 531 (1941). The risk transferred must be risk of economic loss. Allied Fidelity Corp. v. Commissioner, 572 F.2d 1190, 1193 (7th Cir. 1978). The risk must contemplate the fortuitous occurrence of a stated contingency, Commissioner v. Treganowan, 183 F.2d 288, 290-91 (2d Cir. 1950), and must not be merely an investment or business risk. Le Gierse, 312 U.S. at 542; Rev. Rul. 2007-47, 2007-2 C.B. 127. In addition, the arrangement must constitute insurance in the commonly accepted sense. See, e.g., Ocean Drilling & Exploration Co. v. U.S., 988 F.2d 1135, 1153 (Fed. Cir. 1993); AMERCO, Inc. v. Commissioner, 979 F.2d 162 (9th Cir. 1992), aff’g 96 T.C. 18 (1991).

It is common for insurance contracts to be priced with reference to the risk profile of the insured. Life insurance contracts are implemented and priced differently depending on underwriting risk factors. Some life insurance contracts provide “wellness” incentives in determining the current mortality charge.³

Section 7702B was enacted to “provide an incentive for individuals to take financial responsibility for their long-term care needs. [Section 7702B] therefore generally provides favorable tax treatment with respect to long-term care insurance contracts and services meeting [§ 7702B’s] requirements.” H. Rep. No. 104-496, at 115 (1996).

The Rider will not provide any diagnostic (except as is implied from the periodic health assessments) or therapeutic treatment. In essence the Rider allows the Contract to be implemented based on the risk profile of the policyholder. It would be inconsistent with the stated goal of § 7702B to deny qualification to a long-term care insurance contract because it provided ancillary mechanisms aimed at minimizing long-term care needs. Accordingly, the inclusion of a Rider, in either form, in a Contract will not cause the Contract to be treated as providing insurance coverage other than of qualified long-term care services within the meaning of § 7702B(b)(1)(A).

Requested Ruling #2

Under § 7702B(a)(4), the general rule is that amounts paid for a qualified long-term care insurance contract providing the benefits described in § 7702B(b)(2)(A) shall

³ See, e.g., Society of Actuaries, 2010 Product Tax Seminar, Session 1: Life Insurance Product Tax Update: 7702 and 7702A, www.soa.org/files/pdf/2010-washington-prod-tax-sess1.pdf at 23-24.

be treated as payments made for insurance for purposes of § 213(d)(1)(D). Section 7702B(b)(2)(A) provides that “per diem” payments without regard to the expenses incurred will not disqualify a contract under § 7702B(b)(1)(A) or (B). Under § 7702B(b)(1)(A), a qualified long-term care insurance contract provides only coverage of qualified long-term care services. Qualified long-term care services are defined by § 7702B(c)(1) as being those required by a chronically ill individual pursuant to a plan of care prescribed by a licensed health care practitioner.

The information and incentives provided by the Rider are not insurance benefits but are a loss prevention program consistent with the purpose of § 7702B as explain in connection with Requested Ruling #1. The amount of consideration paid for the Contract that could be allocated to this program should not be recharacterized as something other than an amount paid for a long-term care insurance contract.

RULINGS

Based on the foregoing,

1. The inclusion of a Rider in a Contract will not cause the Contract to be treated as providing insurance coverage other than of qualified long-term care services within the meaning of § 7702B(b)(1)(A); and

2. All premiums paid for a Contract that includes a Rider are premiums for a qualified long-term care insurance contract.

CAVEATS

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. No ruling has been requested, and no opinion is expressed, concerning whether the Contract constitutes a qualified long-term care insurance contract or the treatment of any incentive declared by Taxpayer.

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

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

The rulings contained in this letter are based upon information and representations submitted by the 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.

Sincerely,

/s/

SHERYL B. FLUM
Chief, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)