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Notice 2007-24

Reporting on acquisitions of interests in insurance contracts in which certain tax-exempt organizations hold an interest

Notice 2007-24; 2007 IRB LEXIS 140; 2007-12 I.R.B. 750

February 23, 2007

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TEXT:**PURPOSE**

This notice invites public comments on draft IRS forms to implement a new information reporting requirement for charities and certain other entities with respect to certain structured insurance contracts explained below. Public comments are also invited with respect to a Congressionally mandated study being conducted by the Department of the Treasury (the Treasury) and the Internal Revenue Service (the Service). The new reporting requirements and study are required by section 6050V of the Internal Revenue Code (the Code), which was added by section 1211 of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006) (PPA). In general, section 1211 of the PPA imposes a new information reporting requirement on organizations (including certain government entities) to which contributions are deductible for Federal income, estate or gift tax purposes and which acquire an applicable insurance contract in a reportable acquisition after August 17, 2006, but on or before August 17, 2008. To enable these organizations to satisfy the requirements of section 6050V, the Treasury and the Service designed Form 8921, Transactions Involving a Pool of Applicable Insurance [*2] Contracts, and Form 8922, Applicable Insurance Contract Information Return (for Tax-Exempt Organizations and Government Entities under Section 6050V). Copies of the draft forms, and their instructions, are attached to this notice. The information collected on the forms and the public comments will assist the Treasury and the Service in conducting the study mandated under section 1211 of the PPA.

BACKGROUND

Recently, there has been an increase in transactions involving the acquisition of life insurance contracts under arrangements in which both a tax-exempt organization and private investors have an interest in a contract. Under such arrangements, private investors often provide capital used to fund the purchase of the life insurance contracts (and, sometimes, annuity and endowment contracts). Both the private investors and the tax-exempt organization have an interest, directly or indirectly, in the contracts and receive cash, either while the contracts are in force or upon the death of the insured individual.

LEGISLATION

Section 6050V of the Code requires each applicable exempt organization that makes a reportable acquisition of an applicable insurance contract to file an information [*3] return at a prescribed time and in a prescribed form. The information reporting requirement applies to reportable acquisitions after August 17, 2006, but before August 17, 2008. Penalties under sections 6721 and 6724 (d) (1) (B) (iv) apply to applicable exempt organizations that do not file an information return as required under section 6050V.

For purposes of section 6050V of the Code, an applicable exempt organization is generally a religious, charitable, scientific, literary, educational, amateur sports or similar organization, a fraternal society operating on a lodge system, a

governmental organization (including an Indian Tribal Government) , a Veterans' organization, a cemetery company, or an employee stock ownership plan. A reportable acquisition is the acquisition by an applicable exempt organization of a direct or indirect interest in an applicable insurance contract in any case in which the acquisition is a part of a structured transaction involving a pool of such contracts. An applicable insurance contract is any life insurance, annuity, or endowment contract in which both an applicable exempt organization and a person other than an applicable exempt organization have directly [*4] or indirectly held an interest (whether or not at the same time) . Exceptions apply in the case of persons with an insurable interest in the insured independent of the applicable exempt organization, named beneficiaries, or in limited circumstances, trust beneficiaries or trustees. For example, under section 6050V (d) (2) (B) (ii) , an insurance contract is not an applicable insurance contract if the applicable exempt organization's sole interest in the contract is as a named beneficiary.

The Treasury and the Service intend that Form 8921 will be used to report information to the Service about structured transactions under which there have been reportable acquisitions of applicable insurance contracts made by an applicable exempt organization. Form 8922 will be used to report information to the Service about the applicable insurance contracts that are part of a structured transaction required to be reported on a Form 8921.>>

Generally, on Form 8921, an applicable exempt organization would:

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- . Report information on the transaction itself, including information about the applicable exempt organization, other participants in the transaction, and the cash flows associated with the transaction.4% . [*5] Assign a unique structured transaction identifier (STI) to each transaction as provided on the Form and the instructions.
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- . Provide a description of the allocation formulas, interest rates, and other terms that govern the financial arrangement between the applicable exempt organization and the other participants in the transaction.
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- . Attach copies of documents related to the reportable acquisition, including any contracts covering the relationships between the applicable exempt organization and the persons other than the applicable exempt organization.

Generally, on Form 8922 an applicable exempt organization would:

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- . Report information on the underlying applicable insurance contracts, including information about the issuers of the contracts and the individuals insured under the contracts.
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- . Use the STI assigned on Form 8921 that specifically relates to the underlying applicable insurance contracts.
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- . Attach a representative copy of the applicable insurance contract.

It is anticipated that a separate Form 8922 will be required with respect to a single transaction if the transaction involves more than one issuer, or more than one type of applicable insurance contract.

In addition [*6] to imposing the new information reporting requirements, section 1211 of the PPA requires the Treasury and the Service to undertake a study on the use by applicable exempt organizations of applicable insurance contracts for the purpose of sharing with investors the benefits of the applicable exempt organization's insurable interest in individuals insured under such contracts. It also requires the Treasury and the Service to address in the study whether these activities are consistent with the tax-exempt status of certain applicable exempt organizations. The study may address whether such arrangements are or may be used to improperly shelter income from tax. The study will be based, in part, on information received from applicable exempt organizations on Forms 8921 and 8922 and the public comments. A report on the study is due to the Senate Finance Committee and the House Ways and Means Committee in 2009.

REQUESTS FOR PUBLIC COMMENT

The Treasury and the Service request comments on draft Forms 8921 and 8922. In addition to comments on the draft forms more generally, the Treasury and the Service specifically request comments on (i) the clarity of the forms and instructions and how they can [*7] be made easier to understand, (ii) the availability of the information that is requested on the forms without new or additional recordkeeping on the part of the filers, (iii) the relevance of the requested information to the study mandated by section 1211 of the PPA, (iv) the use of such structured insurance transactions to improperly shelter income from tax, (v) the meaning of the term "direct or indirect interest" in an applicable insurance contract, (vi) the meaning of the term "structured transaction involving a pool" of applicable insurance contracts, and (vii) the application of the unrelated business income tax under section 511 of the Code on the inside buildup of income.

The Treasury and the Service also request comments more generally to assist in the required study, especially on: (i) the purpose of transactions that are the subject of the study, other than to raise money for the applicable exempt organizations, (ii) the use of life insurance and annuity contracts by applicable exempt organizations in transactions that do not involve the participation of persons that are not tax-exempt, and (iii) in the case of an applicable insurance contract in which a charity, as defined [*8] under State law, has an interest, the appropriate treatment of amounts received by the charity as a death benefit in light of (A) the charity's role in the transaction, (B) how the charity financed the acquisition of its interest, (C) whether the charity's activities with respect to the contract are substantially related to the charity's exempt purpose or function, and (D) any other relevant factors.

Written comments on draft Forms 8921 and 8922 and the study mandated under section 1211 of the PPA should be sent to: CCPA:LPD:PR (Notice 2007-24) , Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2007-24) , Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2007-24" in the subject line of any electronic communications.

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All comments will be available for public inspection and copying. Because organizations will need to begin filing [*9] Forms 8921 and 8922 as soon as possible in 2007, comments, if any, on Forms 8921 and 8922 must be received by March 16, 2007. **RELEASED TO THE TAX SERVICES**.

Written comments on the study mandated under section 1211 of the PPA should be received by August 22, 2007.

DRAFTING INFORMATION

The principal author of this notice is Stephen J. Coleman of the Office of Associate Chief Counsel (Procedure & Administration) . For further information regarding this notice contact Stephen J. Coleman at (202) 622-4910 (not a toll-free call) .