industry-wide? (ii) What is the relevance of a tax or regulatory characterization of Proposed AG VACARVM and Proposed Life PBR as CARVM or CRVM, respectively, for purposes of applying section 807? Does such a characterization limit or broaden the discretion of the Treasury Department and IRS to provide guidance? (For example, if Proposed AG VACARVM and Proposed Life PBR are characterized as CARVM or CRVM, respectively, for regulatory purposes, could the Treasury Department and IRS nevertheless conclude they do not constitute CARVM or CRVM as Congress envisioned those terms to apply in 1984; alternatively, if Proposed AG VACARVM and Proposed Life PBR were not characterized as CARVM or CRVM, respectively, for purposes of applying section 807, could Proposed AG VACARVM and Proposed Life PBR nonetheless be required as the appropriate tax reserve method under the authority of section 807(d)(3)(A)(iv)); (iii) what criteria or other parameters would limit the selection of scenarios taken into account in determining the CTE amount (under Proposed AG VACARVM) or the stochastic reserve (under Proposed Life PBR); and (iv) In the case of Proposed Life PBR, what is the appropriate treatment of company-specific expense, lapse and margin assumptions for purposes of applying section 807? For example, are such assumptions permitted to be taken into account at all, either for purposes of the federally-prescribed reserve or the statutory reserve cap? If so, what limits apply to a taxpayer's discretion with respect to those assumptions, and would a 10-year spread result under section 807(f) from the unlocking of those assumptions in later years?

.02 The Treasury Department and IRS are concerned about the use of a gross premium valuation methodology in the case of Proposed Life PBR, because such a methodology generally is not permitted under existing authorities. *See, e.g.*, *Maryland Casualty Co. v. U.S., 251 U.S. 342 (1920)*, § 1.801–4(e), Rev. Rul. 77–451, 1977–2 C.B. 224. In general, a gross premium valuation takes into account the present value of all cash flows under the contract, including future death benefits, future surrender benefits, premiums, future profits, and future expenses. Thus, a reserve determined using a gross premium valuation may include amounts, such as future expenses and margins, that are not now included in life insurance reserves for federal income tax purposes. How will a gross premium valuation under Proposed Life PBR differ from current valuation methods? Is the discretion to permit a gross premium valuation methodology for federal income tax purposes limited by sections 461 and 811, or by the deficiency reserve rule of section 807(d)(3)(C)? Are similar issues raised in the case of Proposed AG VACARVM? If not, are expense, policy owner behavior, surrender rates, and other parameters nonetheless included in the valuation of reserves under Proposed AG VACARVM?

03. The Treasury Department and the IRS are concerned that, except in the case of the standard scenario under Proposed AG VACARVM, the proposed methods contemplate revising certain parameters and assumptions on an annual basis. How is this procedure consistent with the existing statutory framework that contemplates that such parameters and assumptions are determined as of the date a contract is issued, and, in general, are not adjusted thereafter? Would such annual changes in assumptions constitute a change of basis subject to a 10-year spread under section 807(f)?

.04 Comments should be submitted in writing on or before May 5, 2008, and should contain a reference to this Notice 2008–18. Comments may be submitted to CC:PA:LPD:PR (Notice 2008–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively comments may be submitted electronically via the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2008–18" in the subject line of any electronic communications.

.05 Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2008–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this notice is James A. Polfer of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Mr. Polfer at (202) 622–3970 (not a toll-free call).

Cell Captive Insurance Arrangements: Insurance Company Characterization and Certain Federal Tax Elections

Notice 2008–19

SECTION 1. PURPOSE

Rev. Rul. 2008–8, this Bulletin, provides guidance on the standards for determining whether an arrangement between a participant and cell of a Protected Cell Company (defined below) constitutes insurance for federal income tax purposes, and whether amounts paid to the cell are deductible as "insurance premiums" under § 162 of the Internal Revenue Code. The purpose of this notice is to request comments on further guidance to address issues that arise if those arrangements do constitute insurance, specifically (a) the status of such a cell as an insurance company within the meaning of §§ 816(a) and 831(c), and (b) some of the consequences of a cell's status as an insurance company.

SECTION 2. BACKGROUND

.01 Under §§ 816(a) and 831(c), an insurance company is any company more than half the business of which during the taxable year is the issuing of insurance or annuity contracts or the underwriting of risks underwritten by insurance companies. Although its name, charter powers, and subjection to State insurance laws are significant in determining the business which a company is authorized and intends to carry on, it is the character of the business actually done in the taxable year which determines whether a company is taxable as an insurance company under the Internal Revenue Code. Treas. Reg. § 1.801–3(a)(1).

.02 A taxpayer that qualifies as an insurance company is treated as a corporation under § 7701(a)(3), even if it would not otherwise be classified as a corporation for state law purposes or under other provisions of the Code. Thus, for example, in Rev. Rul. 83–132, 1983–2 C.B. 270, a non-corporate business entity was held to be an insurance company, and therefore a "corporation" within the meaning of § 7701(a)(3), because its primary and predominant business activity was underwriting insurance risks.

.03 An insurance company is subject to tax under either Part I or Part II of Subchapter L, as applicable, and is eligible to make a number of elections. For example, § 831(b) permits certain small insurance companies other than life insurance companies to elect to be taxed only on taxable investment income (and not on underwriting income); § 846(e) permits an insurance company to compute discounted unpaid losses using the company's historical payment patterns, rather than the historical payment patterns determined by the Secretary under § 846(d); and § 953(d) generally permits a controlled foreign corporation to elect to be treated as a domestic corporation if it would qualify to be taxed under subchapter L (that is, as an insurance company) if it were a domestic corporation. *See also* Rev. Proc. 2003–47, 2003–2 C.B. 55 (setting forth procedural rules regarding the election under § 953(d)).

.04 A number of jurisdictions have statutes that provide for the chartering of a legal entity commonly known as a protected cell company, segregated account company or segregated portfolio company ("Protected Cell Company"). Rev. Rul. 2008–8, this Bulletin, sets forth facts that are typical of arrangements involving Protected Cell Companies and provides guidance on how to determine whether such an arrangement qualifies as insurance for federal income tax purposes.

.05 Section 3 of this Notice sets forth proposed guidance that would address (a) when a cell of a Protected Cell Company is treated as an insurance company for federal income tax purposes, and (b) some of the consequences of the treatment of a cell as an insurance company. The proposed guidance, if adopted, may take the form of a regulation, revenue ruling, revenue procedure, or other Internal Revenue Bulletin publication.

SECTION 3. PROPOSED GUIDANCE

.01 *In general*. The proposed guidance would include a rule to the effect that a cell of a Protected Cell Company would be treated as an insurance company separate from any other entity if:

(a) the assets and liabilities of the cell are segregated from the assets and liabilities of any other cell and from the assets and liabilities of the Protected Cell Company such that no creditor of any other cell or of the Protected Cell Company may look to the assets of the cell for the satisfaction of any liabilities, including insurance claims (except to the extent that any other cell or the Protected Cell Company has a direct creditor claim against such cell); and

(b) based on all the facts and circumstances, the arrangements and other activities of the cell, if conducted by a corporation, would result in its being classified as an insurance company within the meaning of §§ 816(a) or 831(c).

.02 *Effect of insurance company treatment at the cell level*. Consistent with the proposed rule:

(a) Any tax elections that are available by reason of a cell's status as an insurance company would be made by the cell (or, in certain circumstances, by the parent of a consolidated group) and not by the Protected Cell Company of which it is a part;

(b) The cell would be required to apply for and receive an employer identification number (EIN) if it is subject to U.S. tax jurisdiction;

(c) The activities of the cell would be disregarded for purposes of determining the status of the Protected Cell Company as an insurance company for federal income tax purposes;

(d) The cell (or, in certain circumstances, the parent of a consolidated group) would be required to file all applicable federal income tax returns and pay all required taxes with respect to its income; and

(e) A Protected Cell Company would not take into account any items of income, deduction, reserve or credit with respect to any cell that is treated as an insurance company under section 3.01.

.03 *No inference*. No inference should be drawn regarding the treatment of a cell that does not meet the requirements to be treated as an insurance company separate from any other entity under section 3.01 or regarding the treatment of the Protected Cell Company of which it is a part.

.04 *Effective date*. The proposed guidance would be effective for the first taxable year beginning more than 12 months after the date the guidance is published in final form.

SECTION 4. REQUEST FOR COMMENTS

Statutes under which Protected Cell Companies are chartered differ among various jurisdictions, and cell arrangements differ among taxpayers due to variations in contractual terms. In order to ensure that entity classification and federal tax elections for Protected Cell Companies are both legally correct and administrable in all cases, the Service requests comments on the proposed guidance described in section 3 of this Notice. In particular, the Service requests comments on (a) what transition rules may be appropriate or necessary for Protected Cell Companies, or cells of such companies, if a Protected Cell Company is not currently following the rule in section 3.01, or if a cell of such a company qualifies as an insurance company for some taxable years but not for others; (b) what reporting, if any, would be necessary on the part of an individual cell to ensure that a Protected Cell Company has the information needed to comply with section 3.02(c) and (e); (c) whether different or special rules should apply with respect to foreign entities, including controlled foreign corporations; (d) whether further guidance would be needed concerning the proper treatment of Protected Cell Companies and their cells under the rules regarding consolidated returns. The Service also requests comments on what guidance, if any, would be appropriate concerning similar segregated arrangements that do not involve insurance. Written comments may be submitted to the Office of the Associate Chief Counsel (Financial Institutions & Products), Attention: Chris Lieu (Notice 2007–YY), Room 3552, CC:FIP:4, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to *Notice.Comments@irscounsel.treas.gov*. The Service requests any comments by May 4, 2008.

DRAFING INFORMATION

The principal author of this notice is Chris Lieu of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Mr. Chris Lieu at (202) 622–3970 (not a toll-free call).

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26 CFR 301.7216: Disclosure or use of information by preparers of returns.
(Also 26 CFR 301.7216–3; section 6713).

Rev. Proc. 2008–12

SECTION 1. PURPOSE

This revenue procedure provides guidance to tax return preparers regarding the format and content of consents to disclose and consents to use tax return information with respect to taxpayers filing a return in the Form 1040 series, *e.g.*, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ, under section 301.7216–3 of the Regulations on Procedure and Administration (26 CFR Part 301). This revenue procedure also provides specific requirements for electronic signatures when a taxpayer executes an electronic consent to the disclosure or use of the taxpayer's tax return information.

SECTION 2. BACKGROUND

.01 In general, section 7216(a) of the Internal Revenue Code imposes criminal penalties on tax return preparers who knowingly or recklessly make unauthorized disclosures or uses of information furnished in connection with the preparation of an income tax return. A violation of section 7216 is a misdemeanor, with a maximum penalty of up to one year imprisonment or a fine of not more than $1,000, or both, together with the costs of prosecution. Section 7216(b) establishes exceptions to the general rule in section 7216(a) and also authorizes the Secretary to promulgate regulations prescribing additional permitted disclosures and uses.

.02 Section 6713(a) prescribes a related civil penalty for unauthorized disclosures or uses of information furnished in connection with the preparation of an income tax return. The penalty for violating section 6713 is $250 for each disclosure or use, not to exceed a total of $10,000 for a calendar year. Section 6713(b) provides that the exceptions in section 7216(b) also apply to section 6713.

.03 Section 301.7216–3 provides that, unless section 7216 or § 301.7216–2 specifically permits the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax return information prior to obtaining a consent from the taxpayer. Section 301.7216–3(a) provides that consent must be knowing and voluntary. Section 301.7216–3(a)(3)(i) prescribes the form and content requirements that all consents to disclose or use must include.

.04 Section 301.7216–3(a)(3)(ii) provides that the Secretary may, by publication in the Internal Revenue Bulletin, prescribe additional requirements for tax return preparers regarding the format and content of consents to disclose and consents to use tax return information with respect to taxpayers filing a return in the Form 1040 series, as well as the requirements for a valid signature on an electronic consent under section 7216. This revenue procedure provides such additional requirements.

SECTION 3. SCOPE

This revenue procedure applies to all tax return preparers, as defined in § 301.7216–1(b)(2), who seek consent to disclose or use tax return information pursuant to § 301.7216–3 with respect to taxpayers who file a return in the Form 1040 series, *e.g.*, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ.

SECTION 4. FORM AND CONTENT OF A CONSENT TO DISCLOSE OR A CONSENT TO USE FORM 1040 TAX RETURN INFORMATION

.01 Separate Written Document. Except as provided by § 301.7216–3(c)(1) (special rule for multiple disclosures or uses within a single consent form), and described in section 4.05, below, a taxpayer's consent to each separate disclosure or use of tax return information must be contained on a separate written document, which can be furnished on paper or electronically. For example, the separate written document may be provided as an attachment to an engagement letter furnished to the taxpayer.

.02 A consent furnished to the taxpayer on paper must be provided on one or more sheets of 8½ inch by 11 inch or larger paper. All of the text on each sheet of paper must pertain solely to the disclosure or use the consent authorizes, and the sheet or sheets, together, must contain all the elements described in section 4.04 and, if applicable, comply with section 4.06. All of the text on each sheet of paper must also be in at least 12-point type (no more than 12 characters per inch).

.03 An electronic consent must be provided on one or more computer screens. All of the text placed by the preparer on each screen must pertain solely to the disclosure or use of tax return information authorized by the consent, except for computer navigation tools. The text of the consent must meet the following specifications: the size of the text must be at least the same size as, or larger than, the normal or standard body text used by the website or software package for direction, communications or instructions and there must be sufficient contrast between the text and background colors. In addition, each screen or, together, the screens must—

(1) contain all the elements described in section 4.04 and, if applicable, comply with section 4.06,

(2) be able to be signed as required by section 5 and dated by the taxpayer, and

(3) be able to be formatted in a readable and printer-friendly manner.

.04 Requirements for Every Consent. In addition to the requirements provided in § 301.7216–3, consents to disclose or use Form 1040 series tax return information must satisfy the following requirements—

(1) Mandatory statements in the consent. The following statements must be included in a consent under the circumstances described below, except that a tax return preparer may substitute the preparer's name where "we" or "our" is used.

(a) Consent to disclose tax return information in context other than tax preparation or auxiliary services. Unless a tax return preparer is obtaining a taxpayer's consent to disclose the taxpayer's tax return information to another tax return preparer for the purpose of performing services that assist in the preparation of, or provide auxiliary services (as defined in § 301.7216–1(b)(2)(ii)) in connection with