26 CFR 601.601 Rules and regulations.

(Also Part I, §7702A.)

Rev. Proc. 2018–20

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor concerning the application of §§ 7702 and 7702A of the Internal Revenue Code (the "Code") to life insurance contracts that (1) have mortality guarantees based upon prevailing commissioners' standard tables[1] that extend beyond age 100, such as the 2001 Commissioners' Standard Ordinary Mortality Tables ("2001 CSO tables") and the 2017 Commissioners' Standard Ordinary Mortality Tables ("2017 CSO tables"), and (2) may continue in force after the day on which the insured individual ("the insured") attains age 100. This revenue procedure modifies and supersedes Rev. Proc. 2010-28, 2010-34 I.R.B. 270, to provide for application of the safe harbor described in Rev. Proc. 2010-28 to life insurance contracts that have mortality guarantees based upon not only the 2001 CSO tables, but also upon the 2017 CSO tables and any other prevailing commissioners' standard tables that extend beyond age 100.

SECTION 2. BACKGROUND

.01 Section 7702 defines the term "life insurance contract" for purposes of the Code. Section 7702(a) provides that a "life insurance contract" is any contract that is a life

[1] Section 13517 of Public Law 115-97 amended §§ 807(d) and 7702(f)(10) of the Code. References in this revenue procedure to "prevailing commissioners' standard tables" refer to the term as defined in § 807(d)(5) for taxable years beginning on or before December 31, 2017, and as defined in § 7702(f)(10) for taxable years beginning after December 31, 2017.

insurance contract under the applicable law, but only if such contract either (1) meets the cash value accumulation test of § 7702(b), or (2) both meets the guideline premium requirements of § 7702(c) and falls within the cash value corridor of § 7702(d).

.02 A contract meets the cash value accumulation test of § 7702(b) if, by the terms of the contract, the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at that time to fund future benefits under the contract.

.03 A contract meets the guideline premium requirements of § 7702(c) if the sum of the premiums paid under the contract does not at any time exceed the guideline premium limitation as of that time. The guideline premium limitation as of any date is the greater of the guideline single premium, or the sum of the guideline level premiums to that date. The guideline single premium is the premium that would be required on the date the contract is issued to fund the future benefits under the contract. The guideline level premium is the level annual premium, computed on the same basis as the guideline single premium but with a lower interest rate, that would be required on the date the contract is issued to fund the future benefits under the contract.

.04 A contract falls within the cash value corridor of § 7702(d) if the death benefit under the contract at any time is not less than the applicable percentage, as determined under the table set forth in § 7702(d)(2), of the cash surrender value. Under that table, the applicable percentage for an insured with an attained age of 95 is 100 percent.

.05 Section 7702(e) provides computational rules that must be used for purposes of § 7702, other than for purposes of applying the cash value corridor. In particular, under § 7702(e)(1)(B) the maturity date (including the date on which any death benefit is payable) under a contract is deemed to be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100. Section 1.7702-2 of the Income Tax Regulations provides guidance on determining the attained age of the insured for this purpose.

.06 Section 7702A(a) provides that a life insurance contract is a modified endowment contract ("MEC") if the contract is entered into on or after June 21, 1988, and fails to meet the 7-pay test, or is received in exchange for a contract that is a MEC. A contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums that would have to be paid on or before such time if the contract were to provide for paid-up future benefits (including death benefits) after the payment of 7 level annual premiums. Under § 7702A(c)(1)(B), the determination of the 7 level annual premiums generally is made by applying the computational rules of § 7702(e), including the rule requiring a deemed maturity date no earlier than the day on which the insured attains age 95 and no later than the day on which the insured attains age 100.

.07 The 2017 CSO tables became the prevailing commissioners' standard tables on January 1, 2017. For tax purposes, the 2017 CSO tables generally must be used for purposes of applying the reasonable mortality charge requirements of § 7702(c)(3)(B)(i) with regard to contracts issued on or after January 1, 2020. *See* Notice 2016-63, 2016-45 I.R.B. 683. Either the 2001 CSO tables or the 2017 CSO tables may be used for contracts issued on or after January 1, 2017, and before January 1, 2020. *Id.* The 2001 CSO tables generally must be used for purposes of applying the reasonable mortality charge requirements of § 7702(c)(3)(B)(i) with regard to contracts issued on or after January 1, 2009, and before January 1, 2017. *Id.*

.08 Unlike the 1958 Commissioners' Standard Ordinary Mortality Tables ("1958 CSO tables") and the 1980 Commissioners' Standard Ordinary Mortality Tables ("1980 CSO tables"), the 2001 CSO tables and 2017 CSO tables extend to age 121. As a result, an increasing number of issuers now develop contracts that may continue in force beyond age 100, even though the qualification of a contract as a life insurance contract (and as a MEC) under §§ 7702 and 7702A is tested using computational rules that deem the contract to mature between the day on which the insured attains age 95 and the day on which the insured attains age 100.

.09 The 2001 CSO Maturity Age Task Force of the Taxation Section of the Society of Actuaries ("Task Force") recommended a series of computational rules for compliance with the requirements of §§ 7702 and 7702A in a manner that is actuarially sound in the case of contracts that may continue in force beyond age 100. *See 2001 CSO Implementation Under IRC Sections 7702 and 7702A*, 2 Taxing Times 23 (May 2006).

.10 Notice 2009-47, 2009-24 I.R.B. 1083, proposed a safe harbor drawn from the recommendations of the Task Force, with modifications. Specifically, the notice addressed the application of §§ 7702 and 7702A to a contract that may continue in force after the day on which the insured attains age 100. The notice also requested comments on related matters.

.11 The Treasury Department and the Internal Revenue Service ("IRS") subsequently determined that it was in the interest of sound tax administration to adopt the safe harbor that was proposed in Notice 2009-47, with modifications, in the form of a revenue procedure. Rev. Proc. 2010-28 adopted, with modifications, the safe harbor testing methodologies proposed in Notice 2009-47 for life insurance contracts that (1) have mortality guarantees based upon the 2001 CSO tables, and (2) may continue in force after the day on which the insured attains age 100. Rev. Proc. 2010-28 did not address the other issues on which comments were requested in Notice 2009-47.

.12 Following the issuance of the 2017 CSO tables, the Treasury Department and the IRS have determined that it is in the interest of sound tax administration to extend the safe harbor adopted in Rev. Proc. 2010-28 to life insurance contracts that (1) have mortality guarantees based upon prevailing commissioners' standard tables that extend beyond age 100, such as the 2001 CSO tables and the 2017 CSO tables, and (2) may continue in force after the day on which the insured individual attains age 100.

SECTION 3. APPLICATION

.01 *In general*. The IRS will not challenge the qualification of a contract as a life insurance contract under § 7702, or assert that a contract is a MEC under § 7702A, if the contract satisfies the requirements of those provisions using all of the Age 100 Safe Harbor Testing Methodologies of section 3.02 of this revenue procedure.

.02 *Age 100 Safe Harbor Testing Methodologies*. The Age 100 Safe Harbor Testing Methodologies are as follows:

(a) All determinations under §§ 7702 and 7702A (other than the cash value corridor) assume that the contract will mature by the day on which the insured attains age 100, notwithstanding that the contract specifies a later maturity date (such as by reason of using prevailing commissioners' standard tables that extend beyond age 100).

(b) The net single premium determined for purposes of the cash value accumulation test under § 7702(b), and the necessary premiums determined for purposes of § 7702A(c)(3)(B)(i), assume an endowment on the day on which the insured attains age 100.

(c) The guideline level premium determined under § 7702(c)(4) assumes premium payments through the day on which the insured attains age 99.

(d) Under § 7702(c)(2)(B), the guideline level premiums accumulate through a date no earlier than the day on which the insured attains age 95 and no later than the day on which the insured attains age 99. Thereafter, premium payments are allowed and are tested against the guideline premium limitation, but in determining the guideline premium limitation the sum of the guideline level premiums does not change after the day on which the insured attains age 100.

(e) In the case of a contract issued or materially changed within fewer than 7 years of the day on which the insured attains age 100, the net level premium under § 7702A(b) is computed assuming level annual premium payments over the number of years between the date on which the contract is issued or materially changed and the date on which the insured attains age 100.

(f) In the case of a contract issued or materially changed within fewer than 7 years of the day on which the insured attains age 100, the sum of the net level premiums increases until the day on which the insured attains age 100. Thereafter, the sum of the net level premiums does not increase, but premium payments are allowed and are tested against this limit for the remainder of the 7-year period.

(g) In the case of a contract that (i) is not subject to § 7702A(c)(6) and (ii) is issued or materially changed within fewer than 7 years of the day on which the insured attains age 100 and thereafter has a reduction in benefits, the reduction in benefits rule of § 7702A(c)(2) applies for 7 years from the date of issue or the date of the material change. In the case of a contract that is subject to § 7702A(c)(6) (generally, a contract with more than one insured), the rule of § 7702A(c)(6) concerning reductions in benefits applies as long as the contract remains in force whether or not the contract is issued or materially changed fewer than 7 years before the day on which the insured attains age 100.

(h) A change in benefits under (or in other terms of) a life insurance contract that occurs on or after the day on which the insured attains age 100 is not treated as a material change for purposes of § 7702A(c)(3) or as an adjustment event for purposes of § 7702(f)(7). Thus, necessary premium testing under § 7702A(c)(3)(B)(i) ceases on the day on which the insured attains age 100.

.03 *No inference*. No adverse inference should be drawn with respect to the qualification of a contract as a life insurance contract under § 7702, or its status as not a MEC under § 7702A, merely by reason of a failure to satisfy all of the requirements of this section 3. Furthermore, this revenue procedure neither answers nor comments on any issue raised in Notice 2009-47 that is not specifically covered by the safe harbor in this revenue procedure.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2010-28 is modified and superseded.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective February 23, 2018.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Kathryn M. Sneade of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Kathryn M. Sneade at (202) 317-6995 (not a toll-free call).