Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 - PLR-115326-99
Date:
July 13, 2000

X =

A =

B =

C =

D =

D1 =

Company =

Trust =

a =

b =

c =

d =

e =

f =

Dear :

This letter responds to a letter dated September 16, 1999, and subsequent correspondence submitted by you as X's authorized representative on behalf of X, requesting a ruling under § 691 of the Internal Revenue Code.

The information submitted states that on D1, X purchased a contract (Contract) from Company. X is identified in the Contract as "owner" and "annuitant", and A, X's spouse, is identified as "co-annuitant." B, C, and D, X's children, are named as "beneficiaries" (Beneficiaries) under the Contract.

X represents that the Contract is a "deferred variable annuity contract" and is registered as a security under the Securities Act of 1933.

Under the Contract, X may allocate, and from time to time, reallocate, "purchase payments" and earnings thereon to either a "variable account" or a "fixed account." Amounts allocated to the variable account, which is registered as a unit investment trust under the Investment Company Act of 1940 (the 1940 Act) are used to purchase "accumulation units" in one or more "sub-accounts," which in turn are each invested in corresponding shares of Trust, which is registered as an open-end management investment corporation ("mutual fund") under the 1940 Act. The value of sub-account units fluctuates based on the investment performance of the underlying mutual funds. Amounts allocated to the fixed account are allocated to one or more "guarantee periods." Amounts allocated to a particular guarantee period earn interest for the duration of the guarantee period at a fixed rate equal to the "guaranteed interest rate" established by Company for that guarantee period. At any given time, the value of amounts allocated to the variable account together with the value of amounts allocated to the fixed account constitutes the "contract value" for the Contract at that time.

Under the Contract, annuity payments will commence on the "maturity date" under an "annuity option" selected by X. The Contract offers four "annuity options": (1) a life annuity, (2) a life annuity with a 10-year period certain, (3) a joint and survivor annuity, and (4) a joint and survivor annuity with a period certain. If no annuity option is selected before the maturity date, annuity payments will be made on a fixed basis under annuity option (2), above. X selected as the maturity date X's attainment of age a, and has not selected an annuity option.

Annuity payments under the applicable annuity options may be provided in the form of variable annuity payments, fixed annuity payments, or a combination of both. The amount of annuity payments is determined by reference to "annuity payment rates" set forth in the Contract (or, if more favorable, such annuity payment rates published by Company and in use on the maturity date). The annuity payment rates specify the amount of annuity payment that will be provided per $b of contract value, and these rates vary with the type of annuity option.

Prior to the maturity date, X may surrender the Contract in full or receive a partial withdrawal from the Contract. If X surrenders the Contract in full, X will receive a cash payment equal to the contract value at the end of the "valuation period" during which the surrender becomes effective, less an annual administration fee, any applicable "withdrawal charge," and, in the case of amounts withdrawn from the fixed account, any applicable "market value adjustment," as defined in the Contract. If X elects to receive a partial withdrawal, X will receive a cash payment equal to such portion of the contract value as X specifies.

The withdrawal charge applies, with certain exceptions, to any amount treated as a withdrawal of premiums paid within c years of the date of withdrawal. The withdrawal charge equals the applicable "withdrawal charge percentage" multiplied by the amount of the withdrawal that is subject to a withdrawal charge. The applicable withdrawal charge percentage equals d percent for a withdrawal occurring during the first Contract year after payment and declines thereafter until the e year when it equals f percent.

The Contract provides for the payment of a "death benefit" to the named beneficiary or to X's estate if X dies before the maturity date. The recipient and amount of the death benefit depend on when X dies. If X dies, and is survived by the co-annuitant, X's estate will receive a death benefit equal to the contract value on the last valuation date prior to death, less certain charges. Under the Contract, this death benefit must be paid to X's estate within five years of X's death.

If X dies, and is not survived by the co-annuitant, the death benefit will be paid to the beneficiaries under the Contract. In this event, the amount of the death benefit will depend on X's age at death. If X dies prior to attaining age a, the death benefit will be the greater of (a) the contract value or (b) the death benefit on the last day of the previous six-year contract period plus any purchase payments made and less any amounts deducted in connection with partial withdrawals. If X dies after attaining age a, the death benefit is equal to the contract value.

The beneficiaries may choose to receive the death benefit in a lump sum, in which case the Contract will terminate. If the beneficiaries do not choose to receive the death benefit in a lump sum immediately, then in accordance with § 72(s) their entire interest in the Contract must be distributed within five years, over their lives, or over a period not extending beyond their life expectancies. X represents that the Contract satisfies the requirements of § 72(s) and is otherwise an annuity contract for federal income tax purposes.

X requests a ruling that the payment of the death benefit to Beneficiaries under the Contract upon the death of X will constitute income in respect of a decedent (IRD) within the meaning of § 691(a) to the extent such payment exceeds X's investment in the Contract.

Section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of the decedent’s death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent’s estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent’s estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent’s estate of such right.

Section 691(a)(3) provides that the right to receive an amount of income in respect of a decedent shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income shall be considered, in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such income.

Section 1.691(a)-1(b) of the Income Tax Regulations provides that the term "income in respect of a decedent" refers to those amounts to which a decedent was entitled as gross income, but which were not properly includible in computing the decedent’s taxable income for the taxable year ending with the date of the decedent’s death or for a previous taxable year under the method of accounting employed by the decedent.

We conclude that the payment of the death benefit to Beneficiaries under the Contract upon the death of X will constitute income in respect of a decedent (IRD) within the meaning of § 691(a)(1)(B) when distributed to the beneficiaries, to the extent such payment exceeds X’s investment in the Contract.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion as to whether the

Contract satisfies the requirements of § 72(s) or is otherwise an annuity contract for federal income tax purposes.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to X.

Sincerely yours,
J. THOMAS HINES
Acting Branch Chief,Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes