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Date:
August 05, 2010

Legend

Taxpayer: =
Contract: =

Number 1: =

Dear :

This is in response to your request for rulings concerning the application of certain provisions of the Internal Revenue Code to the modification of in-force life insurance contracts.

## FACTS

Taxpayer is a stock life insurance company taxable under § 801 and is the issuer of Contract, a universal life insurance contract. The Contract is not a variable contract under § 817(d); it is a "general account" product. The Contract's value ("Contract Value") is the sum of the premiums (net of any load) and credited interest less withdrawals and deductions. The Contract credits interest at a base guaranteed rate ("Base Account"). On specified dates the owner of the Contract can allocate all or a portion of the Contract Value to certain notional accounts that provide an alternative interest crediting formula ("Investment Options"); as issued the Contract offers two Investment Options: Investment Option 1 and Investment Option 2.

Each Investment Option utilizes a formula for crediting interest based on the change in value of an external equity index, excluding dividends. The basic operation of the formula is that upon expiration of the duration, the change in value of the index is used to determine the 'gross' interest to be credited. This 'gross' interest may be limited by a stated maximum. Subject to this maximum, the 'gross' interest is reduced by the amount of any guaranteed interest, if any, provided by the Investment Option. The balance is then credited to the amount in the option. For example, assume a Contract Value of $100x, of which the owner allocated $50x to an Investment Option with a stated maximum of 10% with a 1% guarantee. If at the duration of the Investment Option the 'gross' interest were 15%, the amount of interest credited would be 10%: 1% guaranteed interest plus 9% 'investment interest' (15% 'gross' interest (reduced to 10% because of the stated maximum), reduced by the 1% guaranteed interest). Once a portion of the Contract Value has been allocated to an Investment Option, it cannot be re-allocated prior to the expiration of the duration. Charges and withdrawals are debited under a hierarchy of the Base Account followed by the Investment Options.

The Contract entitles Taxpayer to add or cease to offer Investment Options at any time; any cessation will not be effective until the duration of the option has expired (i.e., if an option has a multi-year duration and Taxpayer ceases offering that option, any value then allocated to that option will remain in that option for the balance of the duration).

Taxpayer proposes to add Investment Option 3 to the Contract. All three Investment Options have different parameters; the difference relevant here is that both Investment Option 2 and proposed Investment Option 3 have a multi-year duration of the same length. The effective annual interest rate guaranteed under Investment Option 3 is Number 1%.

Taxpayer represents that the Contract is designed to satisfy the guideline premium test of § 7702, unless at issue the cash value accumulation test is chosen.[1] The premium limitations for the Contract at issue were computed using the statutorily prescribed annual effective interest rates of 4 or 6 percent, as appropriate. Taxpayer further represents that the addition of Investment Option 3 will not change any benefits provided under the Contract, including the calculation of the death benefit as stated in the contract. The Contract provides that the death benefit will be increased to the minimum extent necessary for the Contract to qualify under § 7702.[2] Additionally, Taxpayer represents that the addition of Investment Option 3 will not require it to utilize a different reserving method for statutory accounting purposes or otherwise change the basis under which the reserve for the Contract is determined.

## REQUESTED RULINGS

Taxpayer requests the following rulings:

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[1] No ruling has been requested, and none is made, concerning the Contract's qualification as a life insurance contract under § 7702.

[2] No ruling has been requested, and none is made, concerning whether such increase is described by §§ 7702(f)(7) and 7702A(c).

1. the addition of Investment Option 3 to the Contract will not cause the Contract to have a “new issue” date for any purposes under § 7702, nor require a restart in the computation of its § 7702 limits or a new test period under § 7702, e.g., for the 5/15 year periods in § 7702(f)(7);

2. the addition of Investment Option 3 to the Contract will not cause the Contract to by treated as a new contract resulting from a deemed exchange for purposes of determining its limits under § 7702A;

3. the addition of Investment Option 3 to the Contract will not cause the Contract to have a new “issue date” for any purposes under § 807, nor otherwise cause Taxpayer to have to recompute its tax reserves for the Contract;

4. the addition of Investment Option 3 to the Contract will not require an adjustment in the computation of the Contract’s guideline single or level premium limits under § 7702(f)(7)(A);

5. the addition of Investment Option 3 to the Contract will not require an adjustment in the computation of the Contract’s cash value accumulation test limits under § 7702(f)(7)(A); and,

6. the addition of Investment Option 3 to the Contract will not require a recomputation of the Contract’s § 7702A limits under § 7702A(c)(3)(A).

## LAW AND ANALYSIS

In essence three issues are presented: a) does the addition of Investment Option 3 produce a “deemed exchange” of the Contract such that the Contract, with Investment Option 3, is effectively a “new contract”; b) is the addition of Investment Option 3 an “adjustment event” under § 7702(f); and c) is the addition of Investment Option 3 a “material change” under § 7702A(c)?

Section 7702 defines the term “life insurance contract” for purposes of the Code, providing that a “life insurance contract” is any contract that is a life insurance contract under applicable law, but only if such contract either: (1) meets the cash value accumulation test (“CVAT”) of § 7702(b) or (2) both meets the guideline premium requirements of § 7702(c) and falls within the cash value corridor of § 7702(d). Both the CVAT and guideline premium requirements determine limits by reference to the time that a policy is issued except in the case of an adjustment under § 7702(f)(7). Sections 7702(b)(2), (c)(3), and (c)(4). The CVAT and guideline level premium are computed using an interest rate which is the greater of an annual effective rate of 4 percent or the rate or rates guaranteed on issuance of the contract; the guideline single premium is determined using interest at the greater of an annual effective rate of 6 percent or the rate or rates guaranteed on issuance of the contract. Section 7702(f)(7)(A) provides that if there is a change in benefits under (or in other terms of) the contract which was not reflected in any previous determination or adjustment made under § 7702, there shall be proper adjustments in future determinations made under § 7702.

Section 7702A defines the term "modified endowment contract" and sets forth a 7-pay test. Under § 7702A(c)(3)(A) if there is a "material change" in the benefits under (or in the terms of) the contract which was not reflected in any previous determination under section 7702A, then for purposes of section 7702A: (1) such contract shall be treated as a new contract entered into on the day on which such material change takes effect; and (2) appropriate adjustments shall be made in determining whether such contract meets the 7-pay test of section 7702A(b) to take into account the cash surrender value under the contract.

Section 807 sets forth the method for computing reserves for purposes of determining income. Section 807(d)(3) provides that the tax reserve method for a life insurance contract is the Commissioner's Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract. Section 807 applies to tax years beginning after December 31, 1983. Deficit Reduction Tax Act of 1984, Pub. L. No. 98-369, § 215, 98 Stat. 494 (1984).

*Issue A: deemed exchange*

Section 7702 applies to contracts issued after December 31, 1984 and to plans of insurance in existence on March 15, 1984. As explained by the Senate Committee, STAFF OF S. COMM. ON FINANCE, 98TH CONG., EXPLANATION OF PROVISIONS APPROVED BY THE COMMITTEE, at 579 (Comm. Print 1984) ("1984 Senate Committee Print"),

> [c]ontracts issued in exchange for existing contracts after December 31, 1984 are to be considered new contracts issued after that date. For these purposes a change in an existing contract will not be considered to result in an exchange, if the terms of the resulting contract (that is, the amount or pattern of death benefit, the premium pattern, the rate or rates guaranteed on issuance of the contract, or mortality and expense charges) are the same as the terms of the contract prior to the change.

Accordingly, if a contract is changed such that the amount or pattern of death benefit, the premium pattern, the rate or rates guaranteed on issuance of the contract, or the mortality and expense charges, are different than when originally issued, the changed contract is to be considered a new contract. <u>See</u> <u>also</u> § 7702A(c)(3)(A)(i); <u>Cf</u>., Rev. Rul. 92-95, 1992-2 C.B. 43 ("date of purchase" of annuity contract received in an exchange is the date of the purchase of the original annuity contract).

Section 7702A applies to contracts issued on or after June 21, 1988. With respect to this effective date, the Conference Report indicates that, among other things,

> a contract is considered entered into on or after June 21, 1988, for purposes of [the] effective date if (1) on or after June 21, 1988, the death benefit under the contract is increased or a qualified additional benefit is increased or added to the contract and, prior to June 21, 1988, the owner of the contract did not have a unilateral right under the contract to obtain such increase or addition without providing additional evidence of insurability, or (2) the contract is converted after June 20, 1988, from a term life insurance contract into a life insurance contract providing coverage other than term coverage, without regard to any right of the owner under the contract to obtain such conversion.

H. R. Rep. No. 100-110, pt II, at 106 (1988) (Conf. Rep.).

In Cottage Savings Assoc. v. Commissioner, 499 U.S. 554, 566 (1991), the Court held that "under … § 1001(a), an exchange of property gives rise to a realization event so long as the exchanged properties are 'materially different' – that is, so long as they embody legally distinct entitlements." For example, groups of stock are not materially different if they confer the same proportional interest of the same character in the same corporation, but are materially different if they are issued by different corporations or confer different rights and powers in the same corporation. Id. at 565 (citations omitted).

Rev. Rul. 2003-19, 2003-1 C.B. 468, addressed the "demutualization" of a mutual insurance company and posits three situations under which a demutualization is effected. Though in each situation the demutualization does not affect any of the in force contracts nor the policyholders' rights to receive any policy dividends, in all situations the members surrender their interests in the mutual company. The ruling holds that the demutualization has

> no effect on the date each life insurance and annuity contract of [the mutual insurance company] was issued, entered into, purchased or came into existence for purposes of §§ … 7702 and 7702A. Furthermore, the [demutualization] do[es] not require retesting or the starting of new test periods for contracts under §§ 7702(f)(7)(B) through (E) and 7702A(c)(3)(A).

In Notice 2006-95, 2006-2 C.B. 848, guidance was provided on the use of either the 1980 or 2001 Commissioners' Standard Ordinary mortality and morbidity tables. Section 5.01 of the Notice recites the legislative history regarding the effective date of § 7702 and § 5.02 provides that contracts which satisfied certain conditions when originally issued are not required to change to the 2001 tables if, among other things, certain changes are made pursuant to the terms of the contract. Among the changes permitted by § 5.03 are an increase or decrease in death benefit (whether or not the change is underwritten) and a change in death benefit option (such as a change from an option 1 to option 2 contract or vice versa). See also, Rev. Proc. 92-57, 1992-2 C.B. 410 (providing administrative relief with respect to the rehabilitation of insurance companies by treating the modification or restructuring of certain contracts as not resulting in a loss of "grandfathered" status).

Read together, these authorities lead to the conclusion that the addition of Investment Option 3 does not produce a deemed exchange of the Contract for purposes of §§ 7702, 7702A, or 807.

*Issue B: § 7702(f)(7) adjustment event*

Section 7702(f)(7)(A) provides that if there is a change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination or adjustment, there shall be proper adjustments in future determinations made under § 7702.

Section 7702 was meant to extend to all life insurance contracts rules similar to those contained in § 101(f), enacted two years earlier. See THE STAFF OF JT. COMM. ON TAXATION, 98TH CONG., GENERAL EXPLANATION OF THE REVENUE PROVISIONS OF THE DEFICIT REDUCTION ACT OF 1984, at 646 (Comm. Print 1984) ("DEFRA Blue Book"). Section 101(f) has an analog to § 7702(f)(7)(A) in § 101(f)(2)(E). Section 101(f)(2)(E) has been said to apply in only two circumstances: 1) if the amount or pattern of the benefit is changed by the policy owner or 2) upon the occurrence of a change in benefits previously scheduled that could not earlier be taken into account. See THE STAFF OF JT. COMM. ON TAXATION, 97TH CONG., GENERAL EXPLANATION OF THE REVENUE PROVISIONS OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982, at 370-71 (Comm. Print 1982) ("TEFRA Blue Book"). The Senate Report underlying § 101(f)(2)(E), S. Rep. No. 97-494, pt. I, at 354 (1982) states that

> [a]t the start of the contract the guideline premiums are based on the future benefits specified in the contract as of such date. If future contract benefits are changed at a subsequent date, the guideline premiums will be adjusted (upward or downward) to reflect the change. Such adjustments should not be made for increases in the death benefit that reflect excess interest that has been credited.

The TEFRA Blue Book, supra, pages 371-73, contains two examples where adjustments are made to the guideline premium. In the first, ten years after issue of an "option 1" contract, the death benefit is increased by $25,000 and the guaranteed interest rate is increased from 4% to 8%. The second addresses an adjustment event involving an increase in death benefit and an additional premium payment on an "option

2" contract. With respect to the cash value accumulation test tied to the net single premium, the TEFRA Blue Book states that even though the statute does not specifically call for an adjustment, an adjustment to the net single premium is required by the language of the test itself to reflect increases or decreases in the death benefit provided under the policy.

In describing § 7702(f)(7), the committee reports indicate that

> [t]he bill provides that proper adjustments be made for any change in the future benefits or any qualified additional benefit (or in any other terms) under the contract, which was not reflected in any previous determination made under the definitional section. Changes in the future benefits or terms of a contract can occur at the behest of the company or the policyholder, or by the passage of time. However, proper adjustments may be different for a particular change, depending on which alternative test is being used or on whether the changes result in an increase or decrease of future benefits. In the event of an increase in current or future benefits, the limitations under the cash accumulation test must be computed treating the date of change, in effect, as a new date of issue for determining whether the changed contract continues to qualify as life insurance under the definition prescribed in the bill. Thus, if a future benefit is increased because of a scheduled change in death benefit or because of the purchase of a paid-up addition (or its equivalent), such a change will require an adjustment and new computation of the net single premium definitional limitation. Under the guideline premium limitation, an adjustment will be required under similar circumstances, but the date of change for increased benefits should be treated as a new date only with respect to the changed portion of the contract. Likewise, no adjustment shall be made if the change occurs automatically due, for example, to the growth of the cash surrender value (whether by the crediting of excess interest or the payment of guideline premiums) or due to changes initiated by the company. If the contract fails to meet the recomputed limitations, a distribution of cash to the policyholder may be required.

1984 Senate Committee Print, supra, at 577-78; see also H. R. Rep. No. 98-432, pt. II, at 1448 (1984); DEFRA Blue Book, supra, at 653-54.

As originally enacted, § 7702(f)(7) applied the §§ 1035 and 1031 regime when a change in the terms of the contract reduced future benefits under the contract. A technical correction included in the Tax Reform Act of 1986 changed this regime to the 5 and 15 year "recapture" regime. This correction was not explained in the conference report, but was in the Senate report, which described "present" law almost verbatim from the earlier committee reports, and in putting the correction in context, explained that the

> bill retains the requirement that, in determining whether the contract continues to qualify as life insurance, proper adjustments be made when future benefits are changed. … [T]he bill provides that if there is a change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination or adjustment made under the definitional section, there shall be proper adjustments in future determinations made under the definitional section.

S. Rep. No. 99-313, at 987-88 (1986); see also STAFF OF JT. COMM. ON TAXATION, 99TH CONG., EXPLANATION OF TECHNICAL CORRECTIONS TO THE TAX REFORM ACT OF 1984 AND OTHER RECENT TAX LEGISLATION, at 105-09 (Comm. Print 1987).

A seminal article on § 7702, explains that the definition's "[r]eliance on limitations based on the contractual benefits specified when the contract is issued made it necessary to devise a mechanism to cope with changes in the terms of the contract. The mechanism used to adjust the limitations to changes in the contractual terms are the adjustment rules." Pike, *Reflections on the Meaning of Life: An Analysis of Section 7702 and the Taxation of Cash Value Life Insurance*, 43 Tax L. Rev. 491, 550 (1988). Pike notes that "[t]he threshold question in examining this provision is whether an event has occurred that triggers an adjustment. Although the terms 'benefits under the contract' and 'other terms of the contract' are not defined in the statute, the legislative history provides several illustrations of adjustment-triggering events." Id. at 552. Therefore, "[t]he adjustment rule trigger is not limited to changes in the basic death benefit. An adjustment is required to reflect any 'change in the benefits under (or in other terms of) the contract.' Consequently, an increase in the endowment benefit or any qualified additional benefit also triggers an adjustment." Id. at 553.

Pike observes that

> [i]t is unclear whether company initiated changes should never trigger adjustments for contracts subject to the guideline premium limitation. Because the payment of excess interest (interest paid at a rate in excess of the contractually guaranteed rate) does not trigger an adjustment, no adjustment should result from a short-term guarantee of a higher interest rate. It is arguable, however, that increases in the permanent contractually guaranteed rate of interest, or reductions in the mortality charges, should trigger an adjustment. At a minimum, where the timing and magnitude of the changes are sufficient to call into question the original contractual terms, an adjustment is appropriate.

Id. at 552 n. 321.

Moreover, Pike notes

> [i]t is unclear whether an adjustment is required when a policyholder withdraws cash from a contract under which the net amount at risk remains constant. Under such a contract, the cash withdrawal reduces both the current death benefit and the endowment benefit. An adjustment should be required unless the reduced level of benefits was previously reflected in the computations of the tax net single premiums and the guideline premiums. If the tax net single premium or the guideline premium would have been smaller if the post-withdrawal endowment benefit had been provided at all prior times, then the change was not reflected in the prior computations.

Id. at 553, n. 323.

It has been said that adjustment events can include long-term changes to basic interest and other guarantees. DesRochers, et al., LIFE INSURANCE & MODIFIED ENDOWMENTS UNDER INTERNAL REVENUE CODE SECTIONS 7702 AND 7702A 93 (2004). See also DesRochers, *The Definition of Life Insurance Under Section 7702 of the Internal Revenue Code*, 40 Soc'y Actuaries Transactions 209, 228 (1988).

With regard to the interest rate used to determine compliance with § 7702, the House Report explains in the context of the cash value accumulation test that

> [t]o be consistent with the definitional test reference to the cash surrender value, the 'rate or rates guaranteed on issuance of the contract' means the interest rate or rates reflected in the contract's nonforfeiture values. With respect to variable contracts that do not have a guaranteed rate, then the 4-percent rate shall apply.

H.R. Rep. No. 98-432, pt. II, at 1444. The Senate Committee Print is substantially the same:

> [t]o be consistent with the definitional test reference to the cash surrender value, the 'rate or rates guaranteed on the issuance of the contract' means the interest rate or rates reflected in the contract's nonforfeiture values assuming the use of the method in the Standard Nonforfeiture Law. With respect to variable contracts that do not have a guaranteed rate, the 4-percent rate shall apply.

1984 Senate Committee Print, supra, at 573.

The DEFRA Blue Book helps explain this:

> In making the determination that a life insurance contract meets the cash value accumulation test, the net single premium for any time is computed using a rate of interest that is the greater of an annual effective rate of 4 percent or the rate or rates guaranteed on the issuance of the contract. To be consistent with the definitional test reference to the cash surrender value, the 'rate or rates guaranteed on the issuance of the contract' means the interest rate or rates reflected in the contract's nonforfeiture values (i.e., the cash surrender value), assuming the use of the method in the Standard Nonforfeiture Law. With respect to variable contracts that do not have a guaranteed rate, the 4-percent rate applies.
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> * * *
>
> The statutory reference to the rate or rates of interest guaranteed on the issuance of the contract serves the same role as the 'minimum rate or rates' referred to in the TEFRA provision of § 101(f). Thus, although the company may guarantee a higher interest rate from time to time, either by contractual declaration or by operation of a formula or index, generally, the rate guaranteed on the issuance of the contract refers to the floor rate, that is, the rate below which the interest credited to the cash surrender value of the contract cannot fall. The statutory reference to 'rate or rates' recognizes that a contract may guarantee different floor rates for different periods of the contract, although each is guaranteed upon issuance and remains fixed for the applicable period for the life of the contract. Likewise, the reference to multiple rates indicates that the comparison of the statutorily prescribed rate (e.g., 4 percent or 6 percent) to the rate or rates guaranteed, and the selection of the higher one, must be done for each period for which an interest rate is guaranteed in the cash surrender value. Specifically, it should be noted that when the initial interest rate guaranteed to be credited to the contract is in excess of the generally applicable floor rate assumed in the contract, the higher initial interest rate is the rate guaranteed on the issuance of the contract with respect to the initial period of that guarantee. *De minimis* guarantees (i.e., guarantees of short duration) in excess of the otherwise assumed floor rates may be ignored in certain situations; generally short-term guarantees (extending no more than one year) will be *de minimis* in the calculation of the guideline level premium, but will not be considered *de minimis* in the calculation of the guideline single premium or the net single premium.
>
> The rate or rates guaranteed on issuance of the contract may be explicitly stated in the contract or may be implicitly stated by a guarantee of particular cash surrender values.

DEFRA Blue Book, supra, at 648-49 (footnotes 51 and 52 omitted. Footnote 51 is significant, stating that "[d]iscussions herein relating to the determination of the 'rate or rates guaranteed on issuance of the contract … are generally applicable for purposes of computing definitional test limitations under both the cash value accumulation test and the guideline premium/cash value corridor test.").

Accordingly, it would appear that where the contract does not state a specific guaranteed rate, the appropriate statutory rate is to be used. As noted by a commentator, "[a] contract in which the minimum rate is set by an index would generally use the minimum guaranteed basis, except that the initial index value would be used if it is higher than the statutory and contractual minimum[,]" DesRochers, *The Definition of Life Insurance Under Section 7702 of the Internal Revenue Code*, 40 Soc'y Actuaries Transactions 209, 222 (1988). For variable contracts, "[i]n determining the net single premium under the cash value accumulation test, a 4 percent interest rate is to be used if no nonforfeiture interest rate is provided. Similarly, for the guideline premium test, a 6 percent rate applies in the determination of the guideline single premium." Id. at 235.

The addition of Investment Option 3, having a duration longer than one year, in essence effects a long-term change in a guaranteed rate of interest. The rate of interest guaranteed for Investment Option 3, Number 1 percent, is less than the statutorily prescribed effective annual rates of 4 and 6 percent. The actual rate of interest will be determined by a formula tied to an index. Though the contract is not a variable contract, the statutorily prescribed rates should be used with reference to Investment Option 3 because the rate guaranteed under this option is less than the statutorily prescribed rates. Because the § 7702 premium limitations were determined using the statutorily prescribed rates, the addition of Investment Option 3 is not a change in the benefits or other terms of the Contract which were not reflected in any previous determination or adjustment. Hence the addition of Investment Option 3 is not an adjustment event under § 7702(f)(7).

*Issue C: § 7702A(c)(3) material change*

Section 7702A(c)(3)(A) provides that if there is a material change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination under § 7702A, then the contract shall be treated as a new contract entered into on the day on which such material change takes effect and appropriate adjustments shall be made in determining whether such contract meets the 7-pay test to take into account the cash surrender value under the contract.

Section 7702A(e)(3) provides that except as otherwise provided in § 7702A, terms used in § 7702A shall have the same meaning as when used in § 7702. We are concerned with whether the addition of Investment Option 3 implicates § 7702A(c)(3). In this connection, the triggering language of § 7702A(c)(3)(A) is identical to that in § 7702(f)(7)(A) with the addition of the adjective "material" before "change". Section 7702A(c)(3)(B) provides that "material change" includes any increase in the death benefit under the contract or any increase in, or addition of, a qualified additional benefit. The term does not include an increase attributable to the payment of necessary premiums or to the crediting of interest or other earnings (including policyholder dividends) in respect of the necessary premium and any cost-of-living increase provided in regulations.

The goal of § 7702A is to minimize the investment use of life insurance. To this end, the 7-pay test requires that

> the amount of the death benefit for the first 7 years of the contract must be greater than the death benefit that is required under present law for the same premium dollar. By requiring increased insurance protection during the first 7 years of the contract, the committee believes that the purchase of life insurance as an investment vehicle will be reduced.

H.R. Rep. No. 100-795, at 479 (1988). In explaining the material change provision, this report uses an example of an increased death benefit.

The essence of the material change rule is that when the essential elements of a contract are changed in a manner that affects the premium limitation, adjustments and testing need to be completed. Here, the addition of Investment Option 3 does not involve a change in any benefit or other term of the Contract which was not reflected in any previous determination under § 7702A. Hence it is not a "material change" to the Contract.

RULINGS

We rule as follows:

1. the addition of Investment Option 3 to the Contract will not cause the Contract to have a "new issue" date for any purposes under § 7702, nor require a restart in the computation of its § 7702 limits or a new test period under § 7702, e.g., for the 5/15 year periods in § 7702(f)(7);

2. the addition of Investment Option 3 to the Contract will not cause the Contract to be treated as a new contract resulting from a deemed exchange for purposes of determining its limits under § 7702A;

3. the addition of Investment Option 3 to the Contract will not cause the Contract to have a new "issue date" for any purposes under § 807, nor otherwise cause Taxpayer to have to recompute its tax reserves for the Contract;

4. the addition of Investment Option 3 to the Contract will not require an adjustment in the computation of the Contract's guideline single or level premium limits under § 7702(f)(7)(A);

5. the addition of Investment Option 3 to the Contract will not require an adjustment in the computation of the Contract's cash value accumulation test limits under § 7702(f)(7)(A); and,

6. the addition of Investment Option 3 to the Contract will not require a recomputation of the Contract's § 7702A limits under § 7702A(c)(3)(A).

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 qualifies as a life insurance contract pursuant to § 7702, the treatment of any rider thereto, or concerning the treatment of the Contract under subchapter L of the Code.

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/

JOHN E. GLOVER
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)