Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

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PLR-121796-11
Date: January 20, 2012

Legend

Taxpayer	=	
Agreement	=	
Date	=	
Number A	=	
Insurance Companies	=	

Dear :

This is in response to your request for a letter ruling regarding the application of § 101(j) of the Internal Revenue Code (Code) to certain corporate-owned life insurance policies (Contracts).

FACTS

Taxpayer represents the following facts:

Taxpayer is a closely-held corporation; the stockholders are also employees of Taxpayer ("Shareholders"). Taxpayer and each Shareholder have executed the

Agreement.[1] A purpose of the Agreement is to facilitate continuity in the management of Taxpayer by providing for the purchase of each Shareholder's interest in Taxpayer upon the death or termination of such Shareholder's employment with Taxpayer. To fulfill this purpose, the Agreement provides that Taxpayer will obtain life insurance on the life of each Shareholder, and that Taxpayer will be the owner and beneficiary of such life insurance. If the Agreement is terminated, or a Shareholder disposes of his interest in Taxpayer as allowed by the Agreement, a Shareholder has the right to purchase from Taxpayer any Taxpayer-owned life insurance covering his life. If the life insurance was not purchased, Taxpayer retained the right to surrender or otherwise dispose of the life insurance.

Consistent with the Agreement, Taxpayer purchased Number A life insurance contracts covering certain Shareholders (Contracts) from Insurance Companies; the Contracts are listed in the Appendix. The process of purchasing these life insurance contracts required each affected Shareholder to complete an Application. The Application indicated that Taxpayer was to be the owner and beneficiary, and the amount of coverage being obtained.

Prior to purchasing these life insurance contracts, Taxpayer did not obtain from each affected Shareholder separate documentation (e.g., a form or forms) which advised such Shareholder that Taxpayer intended to insure the Shareholder's life and of the maximum face amount for which the Shareholder could be insured at the time the contract was issued; provided the Shareholder's consent to being insured under the contract and that the coverage may continue after the Shareholder terminates employment; and informed the Shareholder that Taxpayer will be a beneficiary of any proceeds payable upon the death of the Shareholder. Taxpayer obtained such separate documentation subsequent to purchasing these life insurance contracts, but not before the due date of Taxpayer's U.S. Income Tax Return.

REQUESTED RULING

Taxpayer requests a ruling that pursuant to Notice 2009-48, 2009-1 C.B. 1085, the Service will not challenge the application of § 101(j)(2) of the Internal Revenue Code to the Contracts listed in the Appendix because Taxpayer made a good faith effort to comply with § 101(j)(4).

LAW

The Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (2006), added section 101(j) to the Code. Section 101(j) applies to life insurance contracts issued after August 17, 2006, except for a contract issued after that date pursuant to a section 1035 exchange for a contract issued before that date. Section 101(j) provides that, in the

[1] Agreement was first executed on Date; when additional Shareholders are admitted to Taxpayer a joinder is added to the Agreement.

case of an employer-owned life insurance contract, the amount of death benefits excluded from gross income under § 101(a)(1) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract. For this purpose, an employer-owned life insurance contract is a life insurance contract that (i) is owned by a person engaged in a trade or business and under which such person is directly or indirectly a beneficiary under the contract, and (ii) covers the life of an insured who is an employee with respect to the trade or business on the date the contract is issued. An applicable policyholder is generally a person who owns an employer-owned life insurance contract or a related person as described in § 101(j)(3).

Section 101(j)(2) provides exceptions to the general rule of § 101(j)(1) in the case of certain employer-owned life insurance contracts with respect to which certain notice and consent requirements are met. Those exceptions are based either on (i) the insured's status as an employee within 12 months of death or as a highly compensated employee or highly compensated individual, or (ii) the extent to which death benefits are paid to a family member, trust, or estate of the insured employee, or are used to purchase an equity interest in the applicable policyholder from a family member, trust or estate.

The exceptions provided by § 101(j)(2) apply only if the notice and consent requirements of § 101(j)(4) are satisfied. Section 101(j)(4) specifies that its notice and consent requirements are met if, before the issuance of the contract, the employee[2] (A) is notified in writing that the applicable policyholder intends to insure the employee's life and the maximum face amount for which the employee could be insured at the time the contract was issued, (B) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and (C) is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

The Service issued Notice 2009-48, effective June 15, 2009, that provided guidance in question and answer format concerning the treatment of employer-owned life insurance contracts under § 101(j). In question 12, the Service specified that the requirement of § 101(j)(4)(A) to advise the employee of the maximum face amount for which the employee could be insured requires the disclosure of a face amount of life insurance, either in dollars or as a multiple of salary, that the applicable policyholder reasonably expects to purchase with regard to the employee during the course of the employee's tenure; additional notice and consent is required if the aggregate face amount of the contracts exceed the amount of prior notice and consent. In question 13, the Service

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[2] See, e.g., Notice 2009-48; STAFF OF JT. COMM. ON TAXATION, 109TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 109TH CONGRESS 514-15 (Comm. Print 2007) ("In the case of an employer-owned life insurance contract with respect to which the notice and consent requirements of the provision are met, the income inclusion rule does not apply to an amount received by reason of the death of an insured individual who, with respect to the applicable policyholder, was an employee at any time during the 12-month period before the insured's death, or who, at the time the contract was issued, was a director or highly compensated employee or highly compensated individual.")

provided a remedy for certain employer-owned life insurance contracts that inadvertently failed to comply with the notice and consent requirements of § 101(j)(4). The Notice indicates that the Service will not challenge the applicability of an exception under § 101(j)(2) based on an inadvertent failure to satisfy the notice and consent requirements if (1) the applicable policyholder made a good faith effort to satisfy those requirements, such as by maintaining a formal system for providing notice and securing consents from new employees; (2) the failure to satisfy the requirements was inadvertent; and (3) the failure to obtain the requisite notice and consent was discovered and corrected no later than the due date of the tax return for the taxable year of the applicable policyholder in which the employer-owned life insurance contract was issued.

In addition, the Notice stated that it is effective June 15, 2009 and that the Service will not challenge a taxpayer who made a good faith effort to comply with § 101(j) based on a reasonable interpretation of that provision before that date.

ANALYSIS

Taxpayer is an applicable policyholder and the Contracts are employer-owned life insurance contracts. For § 101(j)(2) to except the Contracts from § 101(j)(1), the requirements of § 101(j)(4) needed to be met before the issuance of the Contracts.

The requirements of § 101(j)(4) were met if before the issuance of the Contracts each Shareholder:

a) was notified in writing that Taxpayer intended to insure the Shareholder's life;
b) was notified in writing of the maximum face amount for which the Shareholder could be insured at the time the Contract was issued, either in dollars or as a multiple of salary;
c) provided written consent to being insured under the Contract;
d) provided written consent that such coverage may continue after the Shareholder terminates employment; and,
e) was informed in writing that Taxpayer will be a beneficiary of any proceeds payable upon the death of the Shareholder.

Here, while Taxpayer did not obtain from each Shareholder separate documentation (e.g., a form or forms) which contained all of the information required by § 101(j)(4), considering all of Taxpayer's documentation as a whole, for the Contracts listed in the Appendix, all of the requirements of § 101(j)(4) were met before the issuance of the Contracts:

a) through the Agreement and the Application, each Shareholder was notified in writing that Taxpayer intended to insure the Shareholder's life;

b) through the Application, each Shareholder was notified in writing of the maximum face amount for which the Shareholder could be insured at the time the Contract was issued, in dollars;
c) by signing both the Agreement and the Application, each Shareholder consented to being insured under the Contract;

d) by signing the Agreement, each Shareholder consented that such coverage may continue after the Shareholder terminates employment; and,
e) through the Agreement and the Application, each Shareholder was informed in writing that Taxpayer will be a beneficiary of any proceeds payable upon the death of the Shareholder.

RULING

We rule that for the Contracts listed in the Appendix, Taxpayer satisfied the requirements of § 101(j)(4) before the Contracts were issued.

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 was requested, and none is made, whether the Shareholders are described by § 101(j)(2).

This ruling is directed only to the taxpayer 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
(Financial Institutions & Products)