Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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July 13, 2012

Legend

Taxpayer:
Subsidiary A:
Subsidiary B:

Dear :

This is in response to your request for a ruling that an after-death distribution option available to beneficiaries under certain annuity contracts will satisfy § 72(s) of the Internal Revenue Code.

FACTS

Taxpayer represents as follows:

Subsidiary A and Subsidiary B are stock life insurance companies within the meaning of § 816(a). Subsidiary A and Subsidiary B are indirect, wholly-owned subsidiaries of Taxpayer. The Subsidiaries join the Taxpayer in filing a consolidated federal income tax return.

The Subsidiaries offer non-qualified deferred variable annuity contracts (the "Contracts"). The owner of a Contract is the person or persons designated as the owner on the Contract's annuity information page, unless subsequently changed. The owner may exercise the rights, options, and privileges granted under the Contract or permitted by the Subsidiaries. Subject to certain restrictions, the owner may designate the annuitant(s), beneficiary(ies), and any contingent annuitant(s) or contingent beneficiary(ies), if applicable, and in certain circumstances, the owner may change each of these designations. The beneficiary is entitled to the Contract's death benefit.

The Contracts are purchased with an initial premium and subsequent premiums may be paid subject to certain limitations. On the annuity starting date, the Subsidiaries will pay the owner a series of annuity payments determined in accordance with the terms of the annuity option selected under the Contract. Prior to the annuity starting date, the Contract provides an account value, which consists of the total value of all the allocations to the Contract's subaccounts.

At any time prior to the annuity starting date, the owner may take a withdrawal from the account value, provided that the requested withdrawal equals or exceeds the minimum withdrawal amount set forth in the Contract. Each year the owner may withdraw up to a specified amount from the Contract without the imposition of a surrender charge; any amount withdrawn in excess of the specified amount may be subject to a surrender charge. The owner also can surrender the entire Contract at any time and receive the Contract's surrender value.

In the event that an owner or, in certain cases, the annuitant, dies before the annuity starting date under the Contract, a death benefit is payable to the beneficiary. The amount of the death benefit varies with the terms of the Contract and any death benefit riders. The Contracts provide various distribution options pursuant to which the beneficiary can receive the death benefit. Each of the distribution options is designed to assure that the entire interest in the Contract is received in accordance with the requirement of § 72(s). Accordingly, if an owner dies before the annuity starting date, a non-spouse beneficiary can elect to receive the owner's death benefit under the Contract in one of the following ways: (1) as a lump sum immediately after furnishing due proof of the decedent's death; (2) within five years of the decedent's death; or (3) over his or her life expectancy with payments commencing within one year of the decedent's death.

The Subsidiaries offer various additional benefits by rider or endorsement in connection with the Contracts, including guaranteed lifetime withdrawal benefits ("GLWBs"). In general, a GLWB guarantees the owner the right to take annual withdrawals from his or her Contract's account value of a certain amount (the "Guaranteed Amount") for as long as the owner (or in some cases the annuitant or beneficiary) (a "Covered Person") is alive. In this regard, the GLWB provides that if the Contract's account value is reduced to zero as a result of withdrawals of the Guaranteed Amount and/or poor investment performance, the Subsidiary thereafter will make payments of the Guaranteed Amount as long as the Covered Person is alive, if certain conditions are satisfied. If the owner makes withdrawals in excess of the Guaranteed Amount ("Excess Withdrawals"), future guaranteed payments are reduced (or eliminated).

A GLWB can cover one life or two lives, and if two lives are covered, the payments are guaranteed for as long as either of the Covered Persons is alive. If the GLWB covers two lives, the charge for the GLWB can be higher or the Guaranteed Amount can be lower than if the GLWB covers only one life. The issue that arises in connection with offering a GLWB that covers the lives of both an owner and non-spouse beneficiary is that each of the existing distribution options (described above) that are designed to satisfy § 72(s) would likely result in Excess Withdrawals that would reduce or eliminate the Guaranteed Amount otherwise payable for the life of the non-spouse beneficiary.

The Subsidiaries believe that there are many circumstances in which the longevity protection offered by a GLWB covering two lives would be valuable to individuals, if they could avoid the potential adverse consequences of the current distribution options. As a result, the Subsidiaries have developed a new after-death distribution option (the "New Distribution Option"). The New Distribution Option would be made available to a non-spouse beneficiary when an owner of a Contract with a GLWB with two Covered Persons (one of whom is the non-spouse beneficiary) dies prior to the Contract's annuity starting date. After providing due proof of the owner's death, the non-spouse beneficiary would be offered the New Distribution Option in addition to the existing distribution options.

Under the New Distribution Option, the Contract and the GLWB will be continued without any mandatory withdrawals from the Contract due to the owner's death. The non-spouse beneficiary would become the new owner of the Contract and would succeed to the rights and obligations that the deceased owner had under the Contract. The non-spouse beneficiary would not receive a new contract form, but would continue the existing Contract with the existing contract number continuing to identify the Contract on the Subsidiary's books and records. All the terms of the Contract would remain the same, including any guarantees and surrender charges, and a new death benefit would be payable when the non-spouse beneficiary dies.

If the non-spouse beneficiary elects the New Distribution Option, the Subsidiaries will require the non-spouse beneficiary to sign the New Distribution Election Form. The New Distribution Election Form will include statements that will inform the non-spouse beneficiary that:

- The non-spouse beneficiary will not actually receive a payment with respect to the death benefit under the Contract, but will be required to include in his or her gross income the amount that would have been includible in his or her gross income if he or she had instead elected to completely surrender the Contract for the death benefit proceeds (the entire interest in the contract within the meaning of § 72(s)).

- The Subsidiaries will send the non-spouse beneficiary a Form 1099-R that will report both the amount the non-spouse beneficiary will be treated as receiving for tax purposes and the amount that will be taxable to the non-spouse beneficiary as a consequence of this election.

The non-spouse beneficiary would be required to affirmatively and irrevocably decline the existing distribution options if he or she wishes to elect the New Distribution Option. The Subsidiaries do not plan to change their current procedures for processing death benefit claims under the Contracts for the New Distribution Option; therefore, once the non-spouse beneficiary elects a different distribution option, fails to make a clear election, or if the non-spouse beneficiary cannot be located and the death benefit is sent for escheatment to the applicable state, the non-spouse beneficiary will thereafter no longer be able to elect the New Distribution Option.

The Subsidiaries will not charge a non-spouse beneficiary a fee to elect the New Distribution Option. However, since the non-spouse beneficiary will continue the Contract as the new owner, he or she will continue to pay whatever fees are otherwise payable under the Contract, the GLWB, and other Contract riders.

RULING REQUESTED

The Subsidiaries request the Service to rule that the New Distribution Option will satisfy the requirements of § 72(s).

LAW AND ANALYSIS

Section 72(s) provides that, with certain exceptions, a non-qualified annuity contract will not be treated as an annuity contract for federal income tax purposes unless it provides for certain distributions in the event that the holder of the contract dies. Under § 72(s)(1)(A), the contract must provide that if any holder dies on or after the annuity starting date and before the entire interest in the contract has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used as of the date of death. Under § 72(s)(1)(B), the contract must also provide that if any holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within five years after the death of such holder.

Section 72(s)(2) provides an exception for certain amounts payable over the life of a designated beneficiary (as defined in § 72(s)(4)). Specifically, § 72(s)(2) provides that if:

(A) any portion of the holder's interest is payable to (or for the benefit of) a designated beneficiary,

(B) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(C) such distributions begin no later than one year after the date of the holder's death or such later date as the Secretary may by regulations prescribe,

then, for purposes of § 72(s)(1), the portion referred to in § 72(s)(2)(A) shall be treated as distributed on the day on which such distributions begin.

Examination of the text and purpose of § 72(s) indicates an intent that the entire interest of non-qualified annuity contracts be distributed within certain periods following the death of the holder in order to prevent additional tax deferral. We see no indication that § 72(s) prevents the non-spouse beneficiary of a non-qualified annuity contract from electing to be treated for tax purposes as if he or she had received that entire interest.

RULING

We rule that the New Distribution Option will satisfy the requirements of § 72(s).

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. The ruling contained in this letter is based upon information and representations submitted by the Taxpayer 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 ruling, it is subject to verification on examination. 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.

Sincerely,

Donald J. Drees, Jr.
Senior Technician Reviewer, Branch 4
(Financial Institutions & Products)

cc: