**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B04
PLR-131113-15

Date:
March 16, 2016

Legend

| | |
|---|---|
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| Date 6 | = |
| Taxpayer | = |
| Father | = |
| Son 1 | = |
| X | = |
| Annuity 1 | = |
| Annuity 2 | = |
| Company 1 | = |
| Company 2 | = |
| Year 1 | = |

Dear :

This letter responds to your request for a ruling concerning the federal income tax consequences of a transaction.

Facts

Taxpayer's father died on Date 1 and left his entire estate to his two children, Son 1 and Taxpayer, in equal shares. One of the assets that Taxpayer inherited from his father was x% interest in Annuity 1, held by Company 1. On Date 2, Taxpayer, thinking that the form was an exchange form pursuant to § 1035 of the Internal Revenue Code ("Code"), mistakenly signed a "Lump Sum Payment" form for Annuity 1. On Date 3, the lump sum payment was deposited into Taxpayer's checking account.

On Date 4, Taxpayer signed an application for Annuity 2, sold by Company 2. Taxpayer used, in part, the funds that he received in a lump sum payment from Annuity 1 to pay for Annuity 2.

On Date 5, while preparing Taxpayer's federal income tax return for year ending Date 6 (Year 1), Taxpayer's accountant discovered a Form 1099R that Taxpayer had received from Company 1, that reflected the lump sum payment that Taxpayer had received on Date 3. Taxpayer requested an extension of time to file Taxpayer's Year 1 federal income tax return and submitted this request prior to filing the return.

Rulings Requested

1. That the erroneous distribution from Annuity 1 and the subsequent contribution of those distributed funds to Annuity 2 will be treated as a tax deferred exchange under § 1035(a)(3) of the Code and will not result in the imposition of income tax under § 72(e) of the Code; and

2. That no further corrective transactions are required as between Annuity 1 and Annuity 2 in that, although the distribution was made erroneously, both Annuity 1 and Annuity 2, as of Date 6, are exactly as they would have been had the error not occurred.

Law and Analysis

Section 72(a) provides that, except as otherwise provided in Chapter 1 of the Internal Revenue Code, gross income includes any amount received as an annuity under an annuity contract. Under § 72(e), amounts received under an annuity contract, but not as an annuity, generally are included in gross income to the extent allocable to

income on the contract. That is, they are taxed on an income-first basis. Section 72(e)(5)(E) provides that this rule applies to any amounts received on the complete surrender, redemption, or maturity of an annuity contract.

Section 1035(a)(3) provides that no gain or loss is recognized on the exchange of an annuity contract for another annuity contract. The legislative history of § 1035 explains that § 1035 provides non-recognition treatment for taxpayers who have "merely exchanged an [annuity contract] for another better suited to their needs and who have not actually realized gain." H. Rep. 1337, 83d Cong., 2d Sess. 81 (1954). Under § 1.1035-1, the contracts exchanged must relate to the same insured, and the obligee or obligees under the contract received in the exchange must be the same as those under the original contract.

In Rev. Rul. 72-358, 1972-2 C.B. 473, a taxpayer who owned a life insurance contract issued by one insurance company assigned the contract, prior to its maturity, to a second insurance company in exchange for a variable annuity contract issued by the second company. The ruling concludes that, pursuant to § 1035, no gain or loss is recognized on the exchange. Similarly, Rev. Rul. 2002-75, 2002-2 C.B. 812, concludes that an individual's assignment of an annuity contract issued by one insurance company to a second insurance company, which then deposits the cash surrender value of the assigned contract into a pre-existing annuity contract owned by the same taxpayer, qualifies as a tax-free exchange under § 1035.

In Rev. Rul. 2007-24, 2007-1 C.B. 1282, insurance company one disbursed a check representing a surrender of old non-qualified annuity policy to taxpayer who, in turn, endorsed the check to a second insurance company as consideration for a new non-qualified insurance contract. Noting that neither § 1035 nor the regulations make any special provision for the purchase of an annuity contract with amounts distributed to the policyholder under another contract and because the annuity contract was a non-qualified contract, no rollover provision, such as § 403(a)(4), applied to the amount received. The amount that taxpayer received from insurance company one under the first annuity contract is taxable in the year received to the extent set forth in § 72(e).

Similarly, in the present case, the proceeds from Taxpayer's request for lump sum payment of Annuity 1 were deposited into Taxpayer's checking account. Taxpayer then used those funds to purchase Annuity 2. Accordingly, the amount that Taxpayer received from Company 1 under Annuity 1 is taxable in the year received to the extent set forth in § 72(e).

Conclusion

The amount that Taxpayer received from Company 1 under Annuity 1 is taxable in the year received to the extent set forth in § 72(e). Accordingly, the erroneous distribution from Annuity 1 and the subsequent contribution of those distributed funds to

Annuity 2 will not be treated as a tax deferred exchange under § 1035(a)(3) of the Code.

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. This office has not verified any of the material submitted in support of the request for rulings, and it is subject to verification on examination.

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. In addition, no opinion is expressed regarding whether Taxpayer timely elected to receive annuity payments.

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. A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Alexis A. MacIvor
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products )