Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:FIP:B4-PLR-134422-02
Date:
December 16, 2002

Legend

Date 1 =
Date 2 =
Individual A =
Contract B =
Company C =

Trust D =

Dear :

This is in reply to your letter of June 10, 2002, as supplemented by letters dated October 30, 2002 and November 8, 2002, requesting certain rulings under the Internal Revenue Code.

Effective Date 1, which was after January, 1970 and before October 21, 1979, Individual A entered into Contract B with Company C, and made all contributions to Contract B prior to October 21, 1979. Contract B was intended to function as a deferred annuity contract, subject to § 72 of the Internal Revenue Code, with Individual A as the annuitant.

The annuity starting date provided in Contract B is Date 2. Contract B provides that if Individual A dies prior to the annuity starting date, Company C will pay to the beneficiary either a sum equal to the value in the account or (if the beneficiary is a natural person) an appropriate annuity beginning on the stated annuity starting date.

The named beneficiary of Contract B is Trust D.

Individual A died before the annuity starting date.

Section 1014(a) of the Internal Revenue Code provides, in part, that the basis of property in the hands of a person acquiring the property from a decedent is the fair market value of the property at the date of the decedent's death or, if the decedent's executor so elects, at the alternate valuation date prescribed in § 2032.

Section 1014(b)(9) provides that in the case of persons dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (if by reason thereof the property is required to be included in determining the value of the decedent's gross estate) shall, for purposes of § 1014(a), be considered to have been acquired from or to have passed from the decedent.

Section 1014(b)(9)(A) excepts annuities described in § 72 from the rule of § 1014(b)(9).

Rev. Rul. 70-143, 1970-1 C.B. 167, considers a situation where an annuity contract owner dies prior to the annuity starting date. Under the contract, in the event of the owner's death prior to the annuity starting date, the beneficiary has the option to surrender the contract in exchange for a lump sum payment of the cash redemption value at any time prior to the annuity date specified in the contract. The ruling treated a beneficiary's contract right to receive the redemption value in the variable annuity contract as not being an annuity under § 72. Accordingly, the ruling concluded that under § 1014, the basis of the contract right to receive the redemption value is the fair market value of the contract right on the date of the decedent's death or the alternate valuation date, if so elected.

Rev. Rul. 79-335, 1979-2 C.B. 292, prospectively revoked Rev. Rul. 70-143; the conclusions in Rev. Rul. 70-143 will be applied to deferred annuity contracts purchased prior to October 21, 1979, including any contributions applied to such contracts pursuant to a binding commitment entered into before that date.

Under § 72(s)(1)(B), a contract shall not be treated as an annuity contract unless the contract provides that if any holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within 5 years of the death of such holder.

Section 72(s)(1)(B) was added by sec. 222(b) of the Deficit Reduction Act of 1984, 98 Stat. 494, 774-75 (1984). Section 222(c)(1) of the Act provides that it applies "to contracts issued after the day which is 6 months after the date of enactment of the Act in taxable years ending after such date." The date of enactment is July 18, 1984.

Therefore, we hold as follows:

1. The conclusion of Rev. Rul. 70-143 applies to Contract B because Contract B was purchased and all contributions were applied to it prior to October 21, 1979.

2. Section 72(s) does not apply to Contract B because Contract B was issued before the enactment of the Deficit Reduction Act of 1984.

We express no opinion on the tax treatment of any other transaction involving these parties and these contracts.

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.

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.

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

Sincerely,

/s/

DONALD J. DREES, JR.
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)