

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:FIP:B04  
PLR-121010-10  
Date:  
June 22, 2010

Taxpayer

Company 1

Contract 1

Company 2

Date 1

Date 2

Date 3

Date 4

Date 5

Amount 1

Amount 2

Dear :

This is in response to your request, as revised, seeking a ruling that your transaction of Date 2 described below is a transaction described by § 1035(a) of the Internal Revenue Code.

FACTS

Taxpayer represents as follows:

Taxpayer owned Contract 1, which is an annuity contract issued by Company 1. Prior to Date 1, Taxpayer attained the age of 59 ½ years. On or about Date 1, Taxpayer requested Company 1 to transfer \$ Amount 1 of the cash surrender value of Contract 1 to Company 2, to be allocated to an annuity contract issued by Company 2. This transfer was done on Date 2. Taxpayer intended that this transfer qualify as a “partial exchange” of Contract 1. See, § 2, Rev. Proc. 2008-24, 2008-13 I.R.B. 684.

Consistent with his practice of taking annual withdrawals from various accounts for gifting purposes, on or about Date 3, Taxpayer requested a withdrawal of \$ Amount 2 from Contract 1. Company 1 honored this request on Date 4.

On Date 5, Company 1 sent Taxpayer a letter stating that the withdrawal honored on Date 4 disqualified the Date 2 transfer from qualifying as a “partial exchange” and that it will report \$ Amount 1, the Date 2 transfer, as being a distribution taxable under § 72(e).<sup>1</sup>

#### REQUESTED RULING

Taxpayer requests a ruling that the Date 2 transfer qualifies as an exchange described by § 1035(a).

#### LAW AND ANALYSIS

As explained in Rev. Proc. 2008-24, § 1035(a) provides that no gain or loss shall be recognized on the exchange of an annuity contract for another annuity contract. Further, as held in Conway v. Commissioner, 111 T.C. 350 (1998), acq., 1999-2 C.B. xvi, the direct exchange by an insurance company of a portion of an existing contract to an unrelated insurance company for a new annuity contract was a tax-free exchange under § 1035.

Rev. Proc. 2008-24 applies to the direct transfer of a portion of the cash surrender value of an existing annuity contract for a second annuity contract, regardless whether the two annuity contracts are issued by the same or different companies. Section 3.02, Rev. Proc. 2008-24. The revenue procedure provides that such a transfer will be treated as a tax-free exchange under § 1035 if either (a) no amounts are withdrawn from, or received in surrender of, either of the contracts involved in the exchange during the 12 months beginning on the date on which amounts are treated as received as premiums or other consideration paid for the contract received in the exchange (the date of the transfer); or (b) the taxpayer demonstrates that one of the conditions described by § 72(q)(2)(A), (B), (C), (E), (F), (G), (H), or (J), or any similar life event (such as divorce or loss of employment), occurred between (i) the date of the transfer, and (ii) the date of the withdrawal or surrender. Section 4.01, Rev. Proc. 2008-24.

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<sup>1</sup> The letter does not address the Date 4 withdrawal.

A transfer that is within the scope of Rev. Proc. 2008-24 but is not treated as a tax-free exchange will be treated as a distribution, taxable under § 72(e), followed by a payment for the second contract.

Because Taxpayer attained the age of 59 ½ years prior to Date 1, Taxpayer believes the Date 2 transfer should qualify as a tax-free exchange under § 4.01(b) of Rev. Proc. 2008-24.

Section 4.01(b) of Rev. Proc. 2008-24 incorporates, inter alia, § 72(q)(2)(A), which provides that the increased tax provided by § 72(q)(1) does not apply “to any distribution – (a) made on or after the date on which the taxpayer attains age 59 ½”.

Here, Taxpayer has demonstrated that he met the condition described by § 72(q)(2)(A): the Date 4 withdrawal was made on or after the date on which Taxpayer attained age 59 ½ years.

#### RULING

The Date 2 transfer qualifies as an exchange described by § 1035(a).

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.

This letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material so submitted and it is subject to verification on examination.

This ruling is directed only to Taxpayer. 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,

/S/

Sheryl B. Flum  
Chief, Branch 4  
(Financial Institutions & Products)

cc: