

Each Adviser Life Contract will have a cash value that is credited with earnings or interest. Upon the death of the insured, the cash value will be used to support a death benefit. Before the death of the insured, the cash value will be available to the Owner for withdrawal. The earnings or interest that contribute to the Adviser Life Contract's cash value will be based on options the Owner selects from a menu provided by Taxpayer (the "Options"). The Adviser Life Contract will allow the Owner to allocate amounts of premiums and cash value between the Options upon purchasing an Adviser Life Contract and to reallocate amounts among the Options thereafter.

The Options will correspond to segregated asset accounts. The Adviser Life Contract's cash value will fluctuate up or down with the actual investment performance and market value of the segregated account assets corresponding to the selected Options. An Adviser Life Contract may also offer one or more fixed rate Options that are supported by Taxpayer's general account. A fixed rate Option will credit interest based on an interest rate that is set by Taxpayer in advance of each crediting period, subject to a guaranteed minimum rate set in accordance with applicable state nonforfeiture law. This will allow the Owner an alternative in allocating the cash value to market-based investment Options. The Adviser Life Contracts will be registered as securities with the Securities and Exchange Commission.

The Adviser Life Contracts are designed for an Owner who will receive ongoing investment advice from an investment adviser (the "Adviser") on how to allocate an Adviser Life Contract's premiums and cash value among the available Options. The Adviser will be expected to take into account factors such as (1) the Owner's personal risk tolerance and investment timeline, (2) the interest rate and market environment, (3) the menu of Options available under the Adviser Life Contract, and (4) the various other benefits and features available under the Adviser Life Contract. The Adviser will be licensed to provide investment advice in accordance with all applicable laws and regulations. The Adviser and the firm the Adviser is associated with (if any) may or may not be affiliated with Taxpayer.

In consideration for the Adviser's investment advice, the Owner will authorize investment advisory fees (the "Fees") to be paid periodically to the Adviser from the Adviser Life Contract's cash value in a separate agreement between the Owner and Taxpayer (the "Authorization"). The Fees will be determined based on an arms-length transaction between the Owner and the Adviser, or, if the Owner and the Adviser are related parties, the Fees will not exceed those the Adviser charges unrelated parties. The Fees will not exceed an amount equal to an annual rate of 1.5% of the Adviser Life Contract's cash surrender value (within the meaning of section 7702(f)(2)(A)), determined at the time and in the manner provided in the Authorization or other written agreement between the Owner and the Adviser but in all events based on such cash value during the period to which the Fees relate. The Fees will compensate the Adviser only for investment advice that the Adviser provides to the Owner with respect to the Adviser Life Contract, and not for any other services. The payment of the Fees will not result in any reduction in fees related to any other asset or for any other service.

Taxpayer will pay the Fees directly to the Adviser. During any period for which the Authorization is in effect, the Adviser Life Contract will be solely liable for paying the Fees, and the Fees will not be paid directly by the Owner. Similarly, the Owner will not have the right to direct payment of the Fees for any other purpose or to any other person. The Adviser will not receive a commission for the sale of the Adviser Life Contract from Taxpayer, but in some cases, Taxpayer may pay the Adviser a wholesaling fee or marketing allowance.

REQUESTED RULING

Taxpayer requests a ruling that the Fees Taxpayer deducts from the Adviser Life Contract's cash value and remits to the Adviser will not be treated as an "amount received" by the Owner of the Adviser Life Contract for purposes of section 72(e).

LAW AND ANALYSIS

Law

Section 72 distinguishes between an "amount received as an annuity" under an annuity, endowment, or life insurance contract and an "amount not received as an annuity" under those contracts. Section 1.72-1(b) of the Income Tax Regulations (the "Regulations") provides that "amounts received as an annuity" are amounts which are payable at regular intervals over a period of more than one full year from the date on which they are deemed to begin, provided the total of the amounts so payable or the period for which they are to be paid can be determined as of that date. See section 1.72-2(b)(2) and (3) of the Regulations. Any other amounts to which the provisions of section 72 apply are considered to be "amounts not received as an annuity."

Section 1.72-2(b)(2) of the Regulations provides that amounts are considered "amounts received as an annuity" only in the event that the following tests are met:

- (i) They must be received on or after the "annuity starting date" as that term is defined in paragraph (b) of section 1.72-4(b) of the Regulations (the first day of the first period for which an amount is received as an annuity under the contract);
- (ii) They must be payable in periodic installments at regular intervals (whether annually, semiannually, quarterly, monthly, weekly, or otherwise) over a period of more than one full year from the annuity starting date; and
- (iii) Except as indicated in subparagraph 1.72-2(b)(3) of the Regulations (relating to variable contracts), the total of the amounts payable must be determinable at the annuity starting date either directly from the terms of the contract or indirectly by the use of either mortality tables or compound interest computations, or both, in conjunction with such terms and in accordance with sound actuarial theory.

Section 1.72-11(a)(1) of the Regulations describes “amounts not received as an annuity” as any amount received under a contract to which section 72 applies if the amount:

- (i) does not meet the requirements set forth in section 1.72-2(b) of the Regulations for amounts received as an annuity;
- (ii) meets the requirements of section 1.72-2(b) of the Regulations for amounts received as an annuity but the annuity payments received differ in either amount, duration, or both, from those originally provided under the contract; or
- (iii) meets the requirements of section 1.72-2(b) of the Regulations for amounts received as an annuity but the annuity payments are received by a beneficiary after the death of an annuitant (or annuitants) in full discharge of the obligation under the contract and solely because of a guarantee.

Section 72(e) generally applies to any “amount not received as an annuity” under an annuity, endowment, or life insurance contract. Section 72(e)(5)(A) and (C) provide that, for life insurance contracts that are not MECs, the amount that is not received as an annuity is included in gross income, but only to the extent it exceeds investment in the contract. Section 72(e)(2)(B) and (e)(10) provides that, for life insurance contracts that are MECs, if any amount which is not received as an annuity is received before the annuity starting date, it is included in gross income to the extent allocable to income on the contract and is not included in gross income to the extent allocable to the investment in the contract.

Analysis

In this case, the Fees are integral to the operation of the Adviser Life Contract. During any period for which the Authorization is in effect, the Owner will receive ongoing investment advice from the Adviser with respect to the Adviser Life Contract so that the Owner may properly utilize the Adviser Life Contract. The Adviser is expected to help the Owner select Options related to the Adviser Life Contract. Taxpayer has represented that the Fees will not serve as consideration for anything other than investment advice provided by the Adviser in relation to the Adviser Life Contract. Furthermore, Taxpayer has represented that the Fees will not exceed an annual rate of 1.5% of the Adviser Life Contract’s cash surrender value based on the period in which the Fees relate. Based on Taxpayer’s representations, the Fees will only be used to pay for investment advisory services relating to the Adviser Life Contract. Because the Adviser Life Contracts are designed to work with an Adviser, the Adviser Life Contract is solely liable for the Fees. The Fees do not constitute compensation to the Adviser for services related to any assets of the Owner other than the Adviser Life Contract or any services other than investment advice services with respect to the Adviser Life Contract.

Therefore, the Fees are an expense of the Adviser Life Contract, not a distribution to the Owner.

RULING

The Fees that Taxpayer deducts from the Adviser Life Contract's cash value and remits to the Adviser will not be treated as an "amount received" by the Owner of the Adviser Life Contract for purposes of section 72(e).

CAVEATS

The ruling contained in this letter is based upon information and representations Taxpayer submitted, accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the material submitted in support of the ruling request and it is subject to verification on examination.

The ruling contained in this letter does not apply to any amount paid by Taxpayer that compensate the Adviser for services related to assets other than the Adviser Life Contract or for any services provided other than investment advice services with respect to the Adviser Life Contract. Any such amount would be an "amount received" by the Owner of the Adviser Life Contract for purposes of section 72(e).

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the proposed transaction under any other provision of the Internal Revenue Code or Regulations.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Taxpayer must attach a copy of this letter ruling to any tax return to which it is relevant.

In accordance with a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representatives.

Sincerely,

Rebecca L. Baxter
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions & Products)

cc: