

INTERNAL REVENUE SERVICE

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District Director,

Assistant Chief Counsel
Financial Institutions & Products
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Withdrawal of Ruling Request
PLR-109833-99

In accordance with section 8.07(2)(b) of Rev. Proc. 99-1, 1999-1 I.R.B. 6, we are providing you notification of a taxpayer withdrawal of a letter ruling request. Two rulings were requested on the transaction described below. The first was whether the transfer of annuity contracts to a partnership in exchange for limited partnership in exchange for limited partnership interests qualified for nonrecognition under § 721 (nonrecognition of gain or loss on contribution). The second is whether the annuity contracts after the transfer to the partnership will be considered as held by a natural person under § 72(u). We reached a tentatively adverse conclusion only with regard to the second requested ruling dealing with § 72(u) (treatment of annuity contracts not held by natural persons). This document is not binding upon Examination and is not to be cited as precedent.

Legend:

Parent A =

Child A =

Child B =

Partnership =

Grantor Trust =

Life Company X =

Life Company Y =

x =

Year 1 =

Year 2 =

Year 3 =

ISSUE

Whether an annuity contract transferred to a partnership as partnership property may be considered as being held by a nonnatural person as an agent for natural persons within the meaning of § 72(u)(1) of the Internal Revenue Code?

TENTATIVE CONCLUSION

Under the facts and circumstances described below, it is our tentative conclusion that an annuity contract held as partnership property by a partnership may not be considered as held for natural persons within the meaning of § 72(u)(1).

FACTS

In Year 1, Parent A, an individual taxpayer, through Grantor Trust, purchased a deferred annuity contract from Life Company X. In Year 2, Parent A, again, through Grantor Trust, purchase a second deferred annuity contract from Life Company Y.

In Year 3, Parent A, organized Partnership and transferred property to it. In exchange for the transfer of property, Parent A received a one percent interest as a general partner, and a x percent interest as a limited partner. Also, in exchange for property transferred to Partnership, one percent limited partnership interest was received by a grantor trust established by Child A. Similarly, for property transferred to Partnership, a one percent limited partnership interest was received by a grantor trust established by Child B.

Parent A proposes to cause to be transferred to Partnership the two annuity contracts, referred to above, in exchange for limited partnership interests equal to the fair market value of the annuities on the date of transfer. Parent's principal purpose in doing so was to facilitate the making of gifts of limited partnership interests from time to time.

LAW AND ANALYSIS

Section 72(u)(1) provides that if an annuity contract is held by a person who is not a natural person, then such contract shall not be treated as an annuity contract for purposes of subtitle A (other than subchapter L) and the income on the contract for any taxable year shall be treated as ordinary income received or accrued by the owner during such taxable year. Section 72(u)(1) further provides that if an annuity contract is held by a trust or other entity as an agent for a natural person, then § 72(u)(1) shall not apply. Section 7701(a)(1) provides that the term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

Section 72(u)(3) contains a number of exceptions to the agency requirement of § 72(u)(1). For example, § 72(u)(3)(A) provides that the agency requirement of § 72(u)(1) will not apply to any annuity contract which is acquired by the estate of a decedent by reason of the death of a decedent. No such exception under § 72(u)(3), however, was provided for partnerships even through partnerships are a commonly used business form.

Under the present facts, Partnership is not a mere agent holding the deferred annuities for natural persons, rather it is proposed that Partnership actually receive and possess the deferred annuities as property of Partnership, thus, subjecting this property to any possible claims of creditors against Partnership. By way of contrast, the example set forth in the drafting history of § 72(u) clearly demonstrates a that the agency exception was limited to a situation where a pure agency was created as the nonnatural person holding the property had no interest other than as agent. S. Rept. No. 99-313, 99th Cong., 2d Sess. 567 (Group annuity held by a corporation as agent for natural persons who are the beneficial owners, the contract is treated as an annuity). See also Joint Committee on Taxation Staff, General Explanation of the Tax Reform Act of 1986, 99th Cong., 2d Sess. 658 (1987) (If an employer holds a group policy to satisfy State group policy requirements, but has no right to any amounts contributed to the contract and all amounts are employee contributions, the employer is merely the nominal holder of the contract and the contract is not treated as held by a nonnatural person).

If you have any questions concerning this memorandum, please call (202)-622-3970.

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