

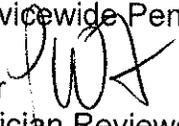
Office of Chief Counsel
Internal Revenue Service
memorandum

CC:PA:02:CONRAD
POSTS-130912-16

UILC: 6652.00-00, 6047.04-00, 6721.00-00, 6722.00-00

date: January 04, 2017

to: Thuy Yee
Senior Program Analyst
(Office of Servicewide Penalties)

from: Pamela Fuller 
Senior Technician Reviewer
(Procedure & Administration)

subject: The application of the section 6721, failure to file correct information returns, and the section 6722, failure to furnish correct payee statement penalties to a Form 1098-Q

This Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

Whether the Form 1098-Q, Qualifying Longevity Annuity Contract Information, is subject to the sections 6721 and 6722 penalties? If not, whether the failure to file the Form 1098-Q with the Service or the failure to furnish the Form to the plan participant is subject to a penalty or addition to tax?

CONCLUSIONS

No, the Form 1098-Q is not subject to the sections 6721 and 6722 penalties because it is not an information return or a payee statement as defined under section 6724. The failure to file a Form 1098-Q with the Service is subject to the section 6652(e) addition to tax. The failure to furnish the Form 1098-Q to the plan participant is not subject to a penalty or addition to tax.

BACKGROUND

On July 2, 2014, the IRS promulgated final regulations for Longevity Annuity Contracts in 79 F.R. 37633. The regulations allow for the use of longevity annuity contracts in tax qualified defined contribution plans under sections 401(a), 403(b), individual retirement annuities and accounts under section 408, and certain eligible government plans under section 457(b). A-17 of Treas. Reg. § 1.401(a)(9)-6 provides the rules and

requirements for qualifying longevity annuity contracts (QLAC) and Treas. Reg. § 1.6047-2(a)(1) provides the information reporting requirements.

The issuer of a contract intended to be a QLAC must file annually the Form 1098-Q, Qualifying Longevity Annuity Contract Information, with the IRS, and furnish a copy (or a statement containing the information to be included on the form) to the participant of a QLAC to report the status of the contract. You have asked whether an issuer's failure to file a Form 1098-Q with the IRS, or furnish a Form 1098-Q to the participant will subject the issuer to the section 6721, failure to file correct information returns, and section 6722, failure to furnish correct payee statements penalties, respectively. If not, you have asked whether an issuer's failure to file a Form 1098-Q with the IRS, or furnish the Form to the plan participant, will subject the issuer to any other penalty or addition to tax.

LAW AND ANALYSIS

The final regulations prescribe reporting requirements under section 6047(d) for any person issuing a contract intended to be a QLAC to file annual reports with the Service, and to provide the participants of the QLAC with annual statements regarding the status of the contract.

Section 6047(d)(1) provides

The Secretary shall by forms or regulations require that – (A) the employer maintaining, or the plan administrator (. . .) of, a plan from which designated distributions (as defined in section 3405(e)(1)) may be made, and (B) any person issuing any contract under which designated distributions (as so defined) may be made, must make returns and reports regarding such plan (or contract) to the Secretary, to the participants and beneficiaries of such plan (or contract)

Treas. Reg. § 1.6047-2(a)(1) provides

Any person issuing any contract that is intended to be a qualifying longevity annuity contract (**QLAC**), defined in A-17 of § 1.401(a)(9)-6, shall make the report required by this section.

Treas. Reg. § 1.6047-2(a)(2) sets forth the required information that the issuer of a QLAC must include in the annual report to be filed with the Commissioner.¹ Here the report is filed on Form 1098-Q.

¹ The information to be included in the annual report is "(i) The name, address, and identifying number of the issuer of the contract, along with information on how to contact the issuer for more information about the contract; (ii) The name, address, and identifying number of the individual in whose name the contract has been purchased; (iii) If the contract was purchased under a plan, the name of the plan, the plan number, and the Employer Identification number (EIN) of the plan sponsor; (iv) If payments have not yet

Section 6721 provides a penalty for any failure to file an information return by the required filing date, and any failure to include all of the information required to be shown on the information return, or the inclusion of incorrect information on the information return. The penalty provided for in section 6721 applies only for such failures with regard to an information return "as defined in section 6724(d)(1) and paragraph (g) of this section." Treas. Reg. § 301.6721-1(a). The Form 1098-Q is not subject to the penalty provided for in section 6721 because it does not fall within the definition of an information return as provided in section 6724(d)(1) and Treas. Reg. § 301.6721-1(g).

Treas. Reg. § 1.6047-2(c) requires the issuer of a QLAC to furnish a copy of the information to be included in the annual report to the participant of the QLAC. Treas. Reg. § 1.6047-2(d) is silent with respect to a penalty for the failure to furnish a copy of the information to be included in the annual report to the participant of the QLAC.

Section 6722 provides a penalty for any failure to furnish a payee statement by the date prescribed, and any failure to include all of the information required to be shown on the payee statement, or the inclusion of incorrect information on the payee statement. The penalty provided for in section 6722 applies only for such failures with regard to a payee statement "as defined in section 6724(d)(2)". Treas. Reg. § 301.6722-1. The Form 1098-Q is not subject to the penalty provided for in section 6722 because it does not fall within the definition of a payee statement as provided in section 6724(d)(2).

Treas. Reg. § 1.6047-2(d) explicitly provides that section 6652(e) "prescribes a penalty for failure to file the report required by paragraph (a)(2) of this section."

The section 6652(e) addition to tax provides

In the case of a failure to file a return or statement required under section . . . 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) . . . on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand . . .) by the person failing so to file, \$25 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed \$15,000. This subsection shall not apply to any return or statement which is an information

commenced, the annuity starting date on which the annuity is scheduled to commence, the amount of the periodic annuity payable on that date, and whether that date may be accelerated; (v) For the calendar year, the amount of each premium paid for the contract and the date of the premium payment; (vi) The total amount of all premiums paid for the contract through the end of the calendar year; (vii) The fair market value of the QLAC as of the close of the calendar year; and (viii) Such other information as the Commissioner may require." Treas. Reg. § 1.6047-2(a)(2)(i)-(viii).

return described in section 6724(d)(1)(C)(ii) or a payee statement described in section 6724(d)(2)(Y).

The failure to file the Form 1098-Q with the Service is subject to the section 6652(e) addition to tax because, as discussed above, it is not an information return described in section 6724(d)(1)(C)(ii).

Neither the code nor regulations provide a penalty for the failure to furnish the information to be included in the annual report to the participant of the QLAC, pursuant to Treas. Reg. § 1.6047-2(c).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 317-6844 if you have any further questions.