



Walter Welsh

Executive Vice President, Taxes & Retirement Security
(202) 624-2157 t (202) 572-4795 f
walterwelsh@accli.com

Mandana Parsazad

Senior Counsel, Taxes & Retirement Security
(202) 624-2152 t (202) 572-4816 f
mandanaparsazad@accli.com

May 18, 2009

Mr. R. Joseph Durbala
Supervisory Tax Analyst
Internal Revenue Service
Room 6129
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comment Request for Form 712, Life Insurance Statement – OMB 1545-0022

Dear Mr. Durbala:

On behalf of our member companies,¹ we are writing to comment on the Notice and request for comment on Form 712, Life Insurance Statement, (Form 712) published in the Federal Register on March 19, 2009 (“Notice”).

In the Notice, you invite comments by May 18, 2009 on “ways to enhance the quality, utility, and clarity of the information to be collected,” as well as “ways to minimize the burden of the collection on information on respondents”. As providers of life insurance and annuity contracts, our members are responsible for completing the Form 712 in connection with transactions involving life insurance and annuity contracts. Below, we provide you with our comments on how certain items on Form 712 could be improved to better serve the goals you outline in the Notice. We believe that the changes we propose will improve the quality, use, and clarity of the information, while reducing unnecessary burden on respondents. By streamlining the form as we suggest, the goals of both respondents and the Internal Revenue Service are met.

¹ ACLI represents 353 member companies that account for 93 percent of the life insurance industry’s total assets in the United States. Our members account for 94 percent of annuity considerations in the United States.

Form 712, Part II – Living Insured Information

Recommendation:

We suggest that a new line item be added to Part II of the Form 712, so that member companies can enter an alternate valuation pursuant to Reg. §25.2512-6. We also request that the instructions direct that Line Item 58 not be completed when the alternate valuation is supplied and a statement be added to clarify that providing an alternate valuation does not represent tax advice. Finally, we are seeking clarification as to the determination of face amount for reporting the face amount of a life insurance policy owned by the decedent but insuring a third party.

Discussion:

Part II, Line item 58, relating to policies that are not paid-up, requests the items used in Reg. §25.2512-6(a) to approximate the value of a policy which “has been in force for some time”. According to the Regulation, these items are the “interpolated terminal reserve on date of death, assignment, or irrevocable designation of a beneficiary” (Line item 58a), the “proportion of gross premium paid beyond date of death, assignment” (Line item 58b) and [for participating policies] the “adjustment on account of dividends to credit of policy” (Line item 58c). The sum of these items appear in Line item 58d. Outstanding indebtedness is then subtracted from the amount shown in Line item 58d to produce the “Net total value of the policy (for gift and estate tax purposes)” reported on Line item 58(f).

However, as recognized in Reg. §25.2512-6, adding the interpolated terminal reserve to the other values reported in Line Item 58 may not provide an accurate value of the policy on the valuation date. Specifically, the Regulation states that “If ... because of the unusual nature of the contract such approximation is not reasonably close to the full value, this method may not be used”. Since the Regulation recognizes that the items currently reported in Line items 58a through 58c may not be used in all cases, it would be useful if the Form 712 permits life insurance companies to enter an alternate value to Line item 58, as supplied by the actuarial department of the life insurer.

Examples of situations where using the interpolated terminal reserve may not be the most appropriate valuation measure include transactions involving certain variable life insurance policies (as described in IRC § 817), since, at any point in time, the policy’s value is principally based upon the value of the securities in the segregated asset account in which the policy is invested. Similarly, in transactions involving the valuation of term life insurance policies or certain universal life policies with

secondary guarantees, using interpolated terminal reserves may not always be appropriate. Therefore, we suggest that a new Line item be added to Form 712, so that member companies can enter an alternate valuation pursuant to Reg. §25.2512-6, and that the instructions direct that Line item 58 need not be completed when the alternate valuation is supplied.

We also request that Form 712 or the Instructions to Form 712 state that the determination of the fair market value of property for estate and gift taxation is a question of fact for the taxpayer and that supplying an alternate valuation is not the provision of tax advice by the insurer. Such a statement is consistent with the government's overall approach to valuation issues, as expressed in the recent Reply Brief for the Petitioner filed in the Supreme Court by the Solicitor General in *Commissioner v. Estate of Frazier Jelke, III*, <http://www.usdoj.gov/osg/briefs/2008/2pet/7pet/2007-1582.pet.rep.html>.

With respect to Form 712, Part II, Line item 47, which relates to life insurance owned by a deceased policy owner on the life of a third party who is still living, clarification is needed as to whether the term "Face amount" refers to the face amount at the time of issuance or the face amount at the time of the policy owner's death. Since Line item 48 requests the "Issue date" of the policy, it would be reasonable for the instructions to provide that "Face amount" in Line item 47 is the amount as of the issue date. Clarification is also needed as to whether that amount should include the amount of any insurance riders.

Form 712, Part I – Deceased Insured Information:

Recommendation:

We suggest that the words "or beneficiary" be deleted from Line item 33.

Discussion:

Line Item 33 asks whether the deceased insured was the annuitant or beneficiary of any annuity contract issued by the company. Our member companies may be able to provide a response as to whether the deceased insured was the annuitant of an annuity contract issued by them. In contrast, it would be almost impossible to ascertain whether the deceased insured may have been listed as a beneficiary in someone else's annuity contract. Consequently, we suggest that the words "or beneficiary" be deleted.

Mr. R. Joseph Durbala
May 18, 2009
Page 4 of 4

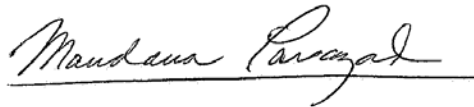
Alternatively, the existing text in Line item 33 can be replaced with the following: "Was the Insured receiving annuity payments from the company? Yes/No".

We believe that these modifications will facilitate the accurate completion of Form 712, which, in turn, will provide accurate information to taxpayers and the Internal Revenue Service. Please contact us should you have any comments or questions concerning our requests in this letter.

Sincerely yours,



Walter C. Welsh
Executive Vice President,
Taxes & Retirement Security



Mandana Parsazad
Senior Counsel
Taxes & Retirement Security