



FINANCIAL SERVICES

- Insurance Tax Bulletin

PRICEWATERHOUSECOOPERS 

Minimum Reserve Requirement for Multistate Life Insurance Company July 2, 2008

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For purposes of determining a life insurance company's income or deduction from decreases or increases in life insurance reserves, § 807(d)(1) provides that the amount of the life insurance reserves for any contract is the greater of-- (i) the contract's net surrender value, or (ii) the contract's tax reserve determined under § 807(d)(2). However, the life insurance reserves for a contract cannot exceed the amount that would be taken into account with respect to the contract in determining "statutory reserves", as defined in § 807(d)(6). Accordingly, the statutory reserves with respect to a contract operate as a limit on the amount of the contract's life insurance reserves that might otherwise be taken into account in determining a life insurance company's taxable income. Section 807(d)(1) (flush language). Statutory reserves do not include any reserve attributable to deferred and uncollected premium if the establishment of such reserve is not permitted under § 811(c).

The IRS recently issued a ruling (Rev. Rul. 2008-37) providing that, if a life insurance company does business in several states with different minimum reserve requirements, the amount of the company's statutory reserves under Section 807(d)(6) is the highest aggregate reserve amount set forth on an annual statement pursuant to the minimum reserving requirements of any state in which the company does business.

In two situations the IRS describes an insurance company who does business in 45 states. The company is subject to regulation under the insurance laws of each state in which it does business, and each state has laws or regulations for determining the minimum amount of reserves the company is required to set aside to mature or liquidate policyholder or beneficiary claims.

In the first situation, the insurance company files one annual statement in all states in which it conducts business which reflects the highest minimum reserve require by any state in which the company conducts business. In the second situation, the company files an annual statement with each state reflecting the minimum amount of reserves required by that state. Accordingly, more than one annual statement was filed by the company.

In both situations the amount of the company's end-of-year statutory reserves under Section 807(d)(6) is determined as the highest aggregate reserve amount for Section 807(c) items on the statement pursuant to the minimum reserve requirement of any state in which the company does business.

PwC Observes: While this is the conclusion believed to be appropriate by most tax advisors and insurance companies, the Service has taken a different view in certain examinations. This holding is consistent with Reg. 1.801-5(a), which is cited as authority in the ruling. This regulation provides in relevant part that "In determining total reserves, a company is permitted to make use of the highest aggregate reserve required by any State or Territory or the District of Columbia in which it transacts business, but the reserve must have been actually held during the taxable year for which the reserve is claimed."

For additional information please call Anthony DiGilio at (202) 414-1702 or contact your local insurance tax professional. Please visit us at: <http://www.pwc.com/us/insurance/tax>

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