

# ***Financial Services - Insurance Tax Bulletin***

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ITB 12-14

*IRS ruled that insurance sub is eligible to be part of the parent's consolidated group*

The IRS recently published PLR 201210015, dated December 2, 2011, in which it ruled that Sub, a corporation other than a life insurance company (nonlife company) as defined under Treas. Reg. §1.1502-47(d)(7) that will become a life insurance company (life company) as defined under Treas. Reg. §1.1502-47(d)(6), qualifies as an eligible corporation to be included as a life member of the life subgroup as defined under Treas. Reg. §1.1502-47(d)(8) of the parent's consolidated group, as defined under §1504(c) of the Internal Revenue Code of 1986, as amended (IRS, Code).

Parent is the common parent of an affiliated group of corporations (Parent Group) which includes life companies and nonlife companies. Parent was organized in Year 1, and since Year 4, the Parent Group has filed a consolidated "life/nonlife" federal income tax return under Code §1504 and Treas. Reg. §1.1502-47.

Lifeco is a life company and a wholly owned subsidiary of Parent. Lifeco was organized in Year 2 and has been part of the consolidated federal income tax return of the Parent Group since Year 4. Sub is a nonlife company and is a wholly owned subsidiary of Lifeco. Sub was organized in Year 3 and joined in the filing of the Parent Group's consolidated federal income tax return in Year 4. Sub is licensed to issue life insurance products in some jurisdictions but has never conducted an insurance business. Sub holds investment assets that were contributed to it by Lifeco upon its formation, plus retained earnings on those assets. Parent, Lifeco and Sub are calendar year taxpayers.

In Year 5, Sub will begin writing insurance contracts that will require life insurance reserves under Code §816(b), such as reserves required by law and policies covering life, accident and health insurance premiums combined in one policy issued on the weekly payment plan, continuing for life, and not subject to cancellation. Lifeco will

make an additional contribution (Capital Contribution) to Sub prior to Sub issuing the life insurance contracts described above.

The taxpayer made the following representations to the IRS in connection with the proposed transaction:

1. During every day of the Base Period, Lifeco will have been in existence and a member of the Parent Group;
2. During every day of the Base Period, Lifeco will have been engaged in the active conduct of a life insurance business;
3. During the Base Period, Lifeco will have qualified as a life insurance company;
4. During the Base Period, Lifeco will not have undergone any disproportionate asset acquisition as defined under Treas. Reg. §1.502-47(d)(12)(viii);
5. Immediately after the Capital Contribution, at least 80 percent of the fair market value of Sub's assets will have been acquired from Lifeco on account of the Capital Contribution;
6. The Capital Contribution will qualify as Code §351(a) transaction;
7. None of the assets transferred to Sub from Lifeco as part of the Capital Contribution will have been acquired from outside the Parent Group in transactions not conducted in the ordinary course of business;
8. At the end of Year 5 taxable year of the Parent Group, both Lifeco and Sub will qualify as life insurance companies; and
9. Sub will not undergo a disproportionate asset acquisition during Year 5 taxable year of the Parent Group.

Based on the facts provided, the law and the representations made by the Taxpayer, the IRS ruled that in Year 5, Sub qualifies as an eligible corporation to be included as a life member of the life subgroup of the parent's consolidated group.

***For further information, please feel free to contact Anthony DiGilio at (703) 918-4812 or contact your local insurance tax professional.***

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