

Financial Services - Insurance Tax Bulletin

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ITB 12-12

S. 2048 - New reporting requirements for life insurance settlement transactions

On January 31, 2012, Senator Robert P. Casey (D-PA) introduced S.2048, a bill to amend the Internal Revenue Code of 1986 to clarify the tax treatment of certain life insurance contract transactions, (the "Bill"), which sets down reporting requirements for life insurance settlement transactions and clarifies the tax basis of life insurance contracts. The Bill contains three sections one of which adds new Code section 6050X and conforming amendments, the second section clarifies rules to determine the tax basis of life insurance contracts, and the third one provides an exception to the transfer for valuable consideration rules.

Section 1 of the Bill would amend the Code by adding new section 6050X. Subsection (a) of proposed section 6050X, would require every person who acquires a life insurance contract or any interest in a life insurance contract (the "Contract") in a reportable policy sale during any given taxable year to prepare a return, as prescribed by the Secretary, including:

1. The name, address, and TIN of the person acquiring the Contract;
2. The name, address, and TIN of each recipient of payment in a reportable policy sale;
3. The date of the sale;
4. The name of the issuer of the Contract sold as well as the policy number of the contract; and
5. The amount of each payment.

Paragraph 2 of subsection (a) would then require the person who completes a return as described above, to issue a statement to each person, whose name is required to be included in the return, showing the following information:

1. Name, address, and phone number of the contact person who is required to make the return, and
2. The information required to be disclosed in the return with respect to such person. In the case of an issuer of a life insurance contract, the statement need not include the amount of each payment.

Subsection (b)(1) of section 6050X, would require reporting of the life insurance issuer's basis in the life insurance contract. In particular, it would require that upon receipt of the statement as described above (i.e. as required by subsection (a)(2)) or of a notice of transfer to a foreign person, that each issuer of a life insurance contract make a return showing the following information:

1. The name, address, and TIN of the seller who transfers any interest in such contract in such sale;
2. The investment in the contract (as provided in section 72(e)(6) of the Code) with respect to the seller; and
3. The policy number of the contract.

In addition, to making the return, paragraph 2 of subsection b, would require the issuer of the life insurance contract to furnish to the person whose name is required to be included in the return under subsection (a)(1) and (2) a statement including the following information:

1. The name, address, and phone number of the information contact of the person required to make the return; and
2. The information required to be shown on the return under subsection (b)(1) with respect to each seller whose name is required to be included in the return.

Subsection (c)(1) of the proposed section 6050X, would require that the person who makes a payment of reportable death benefits during the taxable year, to make a return for that year showing the following information:

1. The name, address, and TIN of the person making the payment;
2. The name, address, and TIN of person receiving the payment;
3. The date of the payment; and
4. The amount of each payment.

In addition preparing this return, the person making the payments would be required to furnish to the person whose name is required to be included in the return under subsection (a)(1) and (2) a statement including the following information:

1. The name, address, and phone number of the information contact of the person required to make the return; and
2. The information required to be shown on the return under subsection (b)(1) with respect to each seller whose name is required to be included in the return.

Subsection (d) provides definitions for terms such as payment, reportable policy sale, issuer, and reportable death benefits.

- ✓ The term "payment" includes all cash and fair market value of any consideration transferred in a reportable transaction.
- ✓ The term "reportable policy sale" is defined under Section 3 of the Bill as the acquisition of an interest in a life insurance contract, directly or indirectly, if the person who acquires it has no substantial family, business, or financial relationship with the insured other than an interest in the life insurance contract itself. It further provides that "indirectly" applies to the acquisition of an interest in a partnership, trust, or other entities that have an interest in the life insurance contract.
- ✓ The term "issuer" is defined as any life insurance company that bears the risks with respect to a life insurance contract on the date any return or statement is required to be made under section 6050X.
- ✓ The term "reportable death benefits" is defined as amounts paid by reason of death of the insured under a life insurance contract transferred in a reportable policy sale.

Section 2 of the Bill would modify Section 1016(a)(1) of the Code, which currently provides that an adjustment shall be made for expenditures, receipts, losses, or other items, properly chargeable to capital account except for certain types of taxes or expenditures. If passed, section 1016(a)(1) would set forth that no adjustment shall be made for mortality, expense, or other reasonable charges incurred under an annuity or life insurance contract. Section 1016(a)(1), as proposed, would be applicable to transactions entered into after August 25, 2009.

Section 3 of the Bill would modify section 101(a) of the Code, which deals with proceeds of life insurance contracts payable by reason of death, by adding an exception to the valuable consideration rules for commercial transfers. The Bill sets forth that the provisions on the second sentence of paragraph (2) of section 101(a) do not apply where a transfer of a life insurance contract or any interest therein, is deemed to be a "reportable policy sale." Section 101(a), as proposed by the Bill, would be applicable to transfers made after December 31, 2012.

To access the Bill, click [here](#).

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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