

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9431]

RIN 1545-BG58

Information Reporting on Employer-Owned Life Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations concerning information reporting on employer-owned life insurance contracts under section 6039I of the Internal Revenue Code (Code). This final regulation is necessary to provide taxpayers with guidance as to how the requirements of section 6039I should be applied. These regulations generally apply to taxpayers that are engaged in a trade or business and that are directly or indirectly a beneficiary of a life insurance contract covering the life of an insured who is an employee of the trade or business on the date the contract is issued.

DATES: Effective Date: These regulations are effective on November 6, 2008.

Applicability Date: These regulations are applicable for tax years ending after November 6, 2008.

FOR FURTHER INFORMATION CONTACT: Linda K. Boyd, 202-622-3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (2006), added sections 101(j) and 6039I to Code concerning employer-owned life insurance contracts.

Section 101(j)(1) provides that, in the case of an employer-owned life insurance contract, the amount of death benefits excluded from gross income under section 101(a)(1) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract. For this purpose, an employer-owned life insurance contract is a life insurance contract that (i) is owned by a person engaged in a trade or business and under which such person is directly or indirectly a beneficiary under the contract, and (ii) covers the life of an insured who is an employee with respect to the trade or business on the date the contract is issued. An applicable policyholder is generally a person who owns an employer-owned life insurance contract, or a related person as described in section 101(j)(3).

Section 101(j)(2) provides exceptions to the general rule of section 101(j)(1) in the case of certain employer-owned life insurance contracts with respect to which certain notice and consent requirements are met. Those exceptions are based either on (i) the insured's status as an employee within 12 months of death or as a highly compensated employee or highly compensated individual, or (ii) the extent to which death benefits are paid to a family member, trust, or estate of the insured employee, or are used to purchase an equity interest in the applicable policyholder from a family member, trust or estate.

Section 6039I provides that every applicable policyholder that owns one or more employer-owned life insurance contracts shall file a return, at such time and in such manner as the Secretary shall prescribe by regulations, showing for each year the contracts are owned--

(1) The number of employees of the applicable policyholder at the end of the year;

(2) The number of such employees insured under such contracts at the end of the year;

(3) The total amount of insurance in force at the end of the year under such contracts;

(4) The name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged; and

(5) That the policyholder has a valid consent for each insured employee (or, if not all such consents are obtained, the number of insured employees for whom such consent was not obtained).

Section 6039I(c) provides that any term used in section 6039I that is used in section 101(j) has the same meaning given that term by section 101(j).

Sections 101(j) and 6039I apply to life insurance contracts issued after August 17, 2006, except for a contract issued after that date pursuant to a section 1035 exchange for a contract issued before that date. For this purpose, a material increase in the death benefit or other material change causes the contract to be treated as a new contract except that, in the case of a master

contract within the meaning of section 264(f)(4)(E), the addition of covered lives is treated as a new contract only with respect to those additional covered lives.

On November 13, 2007, the IRS published temporary regulations in the **Federal Register** (TD 9364) (72 FR 63806), which serve as the basis for a cross-reference notice of proposed rulemaking (REG-115910-07) (72 FR 63838). The temporary regulations and notice of proposed rulemaking provide that the Commissioner may prescribe the form and manner of satisfying the reporting requirements imposed by section 6039I on applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006. Pursuant to these regulations, on January 24, 2008, the IRS released Form 8925, "Report of Employer-Owned Life Insurance Contracts", for taxpayers to use to comply with the reporting requirements of section 6039I.

No public hearing was requested or held. The IRS received comments from one taxpayer. Those comments primarily concern the notice and consent requirements of section 101(j), rather than the reporting requirements of section 6039I. Accordingly, this Treasury decision adopts the proposed regulations without substantive change and removes the corresponding temporary regulations. In order to make the regulations more useful to taxpayers, this Treasury decision sets forth the information that is enumerated in section 6039I and required to be reported under that provision. The IRS and Treasury Departments will continue to consider the comments received in connection with any future published guidance under section 101(j).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. Even though a substantial number of small entities may be subject to the requirements of section 6039I, these final regulations do not require the reporting of information other than that which is specifically required by section 6039I. Further, the burden associated with completing the prescribed form is minimal because the information required by section 6039I is readily available. Accordingly, the regulations will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Linda K. Boyd, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.6039I-1T, and adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6039I-1 also issued under 26 U.S.C. 6039I. * * *

Par. 2. Section 1.6039I-1 is added to read as follows:

§1. 6039I-1 Reporting of certain employer-owned life insurance contracts.

(a) Requirement to report. Section 6039I requires every taxpayer that is an applicable policyholder owning one or more employer-owned life insurance contracts issued after August 17, 2006, to file a return showing the following information for each year the contracts are owned--

(1) The number of employees of the applicable policyholder at the end of the year;

(2) The number of such employees insured under such contracts at the end of the year;

(3) The total amount of insurance in force at the end of the year under such contracts;

(4) The name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged; and

(5) That the applicable policyholder has a valid consent for each insured employee (or, if all such consents are not obtained, the number of insured employees for whom such consent was not obtained).

(b) Time and manner of reporting. Applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006, must provide the information required under §6039I by attaching Form 8925, “Report of Employer-Owned Life Insurance Contracts”, to the policyholder’s income tax return by the due date of that return, or by filing such other form at such time and in such manner as the Commissioner may in the future prescribe.

(c) Effective/applicability date. These regulations are applicable for tax years ending after November 6, 2008.

§1.6039I-1T [Removed]

Par. 3. Section 1.6039I-1T is removed.

Linda E. Stiff

Deputy Commissioner for Services and Enforcement.

Approved: October 16, 2008

Eric Solomon

Assistant Secretary of the Treasury (Tax Policy).