



December 19, 2006, requesting certain rulings with respect to the transactions described below.

#### FACTS:

Based on the representations of Taxpayer, the relevant facts are as follows:

Taxpayer is a State corporation with its principal place of business also in State. Taxpayer maintains a Business Owned Life Insurance (BOLI) program. As part of its BOLI program, Taxpayer owns master contract BOLI policies issued by Companies 1, 2, and 3, and individual BOLI policies issued by Companies 4, 5, and 6. All of Taxpayer's BOLI policies insure the lives of Taxpayer's active and former employees. All of taxpayer's existing contracts are general account policies that, in the aggregate, cover Number A active employees and Number B former employees. In the master contract policies issued by Companies 1, 2, and 3, the individual covered employees are identified by separate policy certificates. The master contract policies and the individual BOLI policies are single premium modified endowment contracts. No policy loans exist currently, or in the past, with respect to any of the BOLI policies currently held by Taxpayer.

Taxpayer proposes to exchange the BOLI policies associated with the active employees. First, Taxpayer proposes to exchange the certificates issued pursuant to the master account BOLI policies issued by Companies 1, 2, and 3, with respect to currently active employees, for individual, separate account BOLI policies issued by Company 5. Second, Taxpayer proposes to exchange the individual general account BOLI policies issued by Companies 4 and 5 with respect to currently active employees for individual separate account BOLI policies issued by Company 5. Third, Taxpayer proposes to exchange the individual general account BOLI policies issued by Company 6 with respect to currently active employees for individual separate account BOLI policies issued by Company 6. Each of the new separate account BOLI policies will be issued to the same policyholder and on the same lives as the certificates surrendered in the exchange. There will be no change in the face value of the policies except to the extent necessary to continue to comply with the cash value accumulation test or the guideline premium requirements under § 7702(a) of the Code. Taxpayer does not intend to surrender or make distributions from either the existing policies or the new policies. Prior to the proposed exchange, Taxpayer will obtain written consent from each active employee for which an exchange is proposed.

#### REQUESTED RULINGS

Taxpayer requests the following rulings: (1) that the proposed exchanges be treated as tax free exchanges under § 1035(a)(1); and (2) upon completion of the proposed exchanges, that the new policies issued by Companies 5 and 6 be exempt from the provisions of §§ 101(j) and 6039I.

## LAW AND ANALYSIS

Section 1035(a)(1) provides that no gain or loss is recognized on the exchange of a contract of life insurance for another contract of life insurance. Section 1035(b) defines life insurance contract as a contract with an insurance company which depends in part on the life expectancy of the insured and is not ordinarily payable in full during the life of the insured. Section 1.1035-1 of the regulations provides that "section 1035 does not apply to such exchanges if the policies exchanged do not relate to the same insured." The legislative history indicates that § 1035 was designed to eliminate the taxation of individuals "who merely exchanged one insurance policy for another better suited to their needs but who have actually recognized no gain." H.R. Rep. No. 1337, 83<sup>rd</sup> Cong., 2d Sess. 81 (1954).

Taxpayer's proposes to exchange certificates issued pursuant to the master account BOLI policies issued by Companies 1, 2, and 3, with respect to currently active employees, for individual, separate account BOLI policies issued by Company 5 with respect to those same individuals. Taxpayer represents that the certificates issued for a single insured pursuant to a master account BOLI policy are treated as separate contracts for purposes of state insurance laws, and that Taxpayer does treat each certificate issued under the master account BOLI policies as a separate contract for purposes of §§ 817(h), 7702, and 7702A. Sections 101(j)(3)(A) and 264(f)(4)(E) provide that if coverage for each insured under a master contract is treated as a separate contract for purposes of §§ 817(h), 7702, and 7702A, each certificate under such policy shall be treated as a separate contract.

Section 863 of the Pension Protection Act of 2006 added §§ 101(j) and 6039I to the Internal Revenue Code. Section 101(j)(1) provides that death benefits from employer-owned life insurance contracts, such as BOLI policies, shall be taxable, in excess of premiums paid, unless the employer-owned life insurance contract meets one of the exceptions provided under § 101(j)(2). Section 6039I requires the policyholders of employer-owned life insurance contracts to file a return showing certain information for each such contract.

Section 863(d) of the Pension Protection Act of 2006 provides

The amendments made by this section shall apply to life insurance contracts issued after the date of enactment of this Act, except for a contract issued after such date pursuant to an exchange described in section 1035 of the Internal Revenue Code of 1986 for a contract issued on or prior to that date. For purposes of the preceding sentence, any material increase in the death benefit or other material change shall cause 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) of such Code), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives.

Taxpayer represents that, in its proposed exchanges, it will not make any material increase in the death benefit or other material change.

#### RULING

Taxpayer's proposed exchanges of (1) certificates issued pursuant to the master account BOLI policies issued by Companies 1, 2, and 3, with respect to currently active employees, for individual, separate account BOLI policies issued by Company 5 with respect to those same individuals; (2) individual general account BOLI policies issued by Companies 4 and 5 with respect to currently active employees for individual separate account BOLI policies issued by Company 5; and (3) individual general account BOLI policies issued by Company 6 with respect to currently active employees for individual separate account BOLI policies issued by Company 6, meet the requirements of § 1035 (a)(1). Sections 101(j) and 6039I do not apply to Taxpayer's proposed exchanges.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

/S/

Donald J. Drees, Jr.  
Acting Chief, Branch 4  
Office of Associate Chief Counsel  
(Financial Institutions & Products)