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Update on Federal Tax Issues Under the 2001 CSO Mortality Tables

by Craig Springfield

In the November, 2002, edition of *Product Matters!*, John Adney and John Spina of Davis & Harman LLP described various federal tax issues relating to the 2001 Commissioners Standard Ordinary Tables ("2001 CSO Tables") that the National Association of Insurance Commissioners was then in the process of promulgating. In concluding remarks, it was noted in the article that the Treasury or Internal Revenue Service (IRS) likely would issue guidance to address the federal tax implications of the new 2001 CSO Tables, particularly in the context of the federal tax definition of "life insurance contract" and "modified endowment contract" in sections 7702 and 7702A, respectively, of the Internal Revenue Code. Given that the 2001 CSO Tables probably will be adopted by at least 26 states by the end of 2004, and thus will become the "prevailing table" for purposes of these statutes, it is especially important that guidance be issued, such as to address the effective date for use of such tables.

To briefly update the matter, the issuance of guidance with respect to the 2001 CSO Tables is currently a project on the IRS's business plan. The business plan provides, in this regard, that such guidance is expected to be issued before the end of June, 2004. In addition, the American Council of Life Insurers has communicated with the IRS, requesting the issuance of specific guidance on key issues.

In a recent conversation with a representative of the IRS, we learned that the IRS have already devoted considerable resources to this project, and that it is likely that the IRS will be able to issue guidance sooner than mid-year. The representative noted that the issuance of guidance on the 2001 CSO Tables is a high priority for the Insurance Branch of the IRS's National Office, and, more particularly, they view the timely issuance of guidance as important in order to give taxpayers certainty with respect to the tax implications of the new tables. We also learned that, given the focus on timeliness, guidance likely would be more of the "short and sweet" variety, rather than an attempt to comprehensively address the many issues that have arisen over the years in connection with mortality assumptions under sections 7702 and 7702A. There clearly is some concern that the project would be inappropriately delayed if its scope became too expansive.

At this time, it is unclear which particular issues will be addressed by the expected guidance. It seems likely, given the IRS's (not inappropriate) focus, that some questions will remain unanswered. □

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