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New IRS Letter Ruling Provides Guidance on Substantially Equal Periodic Payments from Immediate Variable Annuities

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The Internal Revenue Service (the "Service") recently released a new private letter ruling, PLR 200818018 (Jan. 29, 2008), that provides guidance on the treatment of variable annuity payments as "substantially equal periodic payments" (or "SEPPs") for purposes of the definition of "immediate annuity" under section 72(u)(4).[1] The ruling is significant for at least two reasons. First, it is the only ruling to date to confirm that variable annuity payments can constitute SEPPs for purposes of section 72(u)(4). To the extent prior rulings regarding SEPPs involved variable annuities, they addressed only partial withdrawals during the accumulation phase of the contracts. Second, the ruling concludes that a methodology for calculating variable annuity payments that differs from, but is actuarially equivalent to, a more traditional "annuity unit" methodology can produce SEPPs. This conclusion represents a logical and reasonable interpretation of the legislative history of another Code provision that includes a SEPP requirement, which indicated that SEPPs include variable annuity payments that are based on a constant number of annuity units that fluctuate in value. This article summarizes the new private letter ruling and discusses its significance in light of the prior available guidance regarding variable annuities and SEPPs.

Background on Immediate Annuities and SEPPs

Section 72(u)(4) defines an "immediate annuity" as an annuity (1) that is purchased with a single premium or annuity consideration, (2) the annuity starting date of which commences within a year of purchase, and (3) that provides for a series of SEPPs to be made at least annually. A contract's status as an immediate annuity can be relevant for several reasons. First, section 72(u)(1) generally denies annuity tax treatment for any annuity contract held by a non-natural person (*e.g.,* a corporation), but this rule does not apply to an immediate annuity.[2] Second, section 72(q) imposes a 10 percent penalty tax on certain "premature" distributions from non-qualified annuities, that is, annuities purchased with after-tax monies and that are not part of a qualified retirement plan or similar arrangement. This penalty tax does not apply to distributions from an immediate annuity as defined in section 72(u)(4).[3]

In addition to its relevance to the definition of an immediate annuity, the concept of SEPPs is important in two related circumstances. Specifically, a separate exception to the section 72(q) penalty tax is available for distributions that are part of a series of SEPPs made at least annually for the life or life expectancy of the taxpayer (or joint lives or joint life expectancies of the taxpayer and a beneficiary).[4] A contract does not need to be an immediate annuity for this exception to apply; rather, the partial withdrawals or annuity payments from the contract need only constitute SEPPs over life or life expectancy. In addition, section 72(t) imposes a similar 10 percent penalty tax on certain premature distributions from "qualified" annuity contracts, such as section 401(k) plans and individual retirement annuities under section 408(b). In that context, a similar exception is available for SEPPs paid over life or life expectancy.[5]

Legislative History Addressing SEPPs

Congress added section 72(u) to the Code in 1986 in order to preclude the use of non-qualified deferred annuities by employers to fund, on a tax-favored basis, significant amounts of deferred compensation for employees and to remove a perceived disincentive that such a funding opportunity created for employers' use of qualified retirement plans.[6] As originally enacted, the provision included the exception for immediate annuities as defined in section 72(u)(4), but the definition did not include a SEPP requirement. Congress added that requirement two years later, as part of the Technical and

Miscellaneous Revenue Act of 1988 ("TAMRA"),[7] and made the amendment retroactive to the 1986 effective date of section 72(u). The TAMRA legislative history indicates that the SEPP requirement was intended to "prevent the structuring of a contract that appears to be an immediate annuity contract, but that is in substance a deferred annuity."[8] The legislative history includes a brief statement that a joint and reduced survivor annuity will not fail to satisfy the SEPP requirement, but it does not elaborate further on what constitutes SEPPs, including how variable annuity payments might be treated.[9]

Although the legislative history of section 72(u) sheds little light on the treatment of variable annuity payments under the SEPP component of the immediate annuity definition, the legislative history of section 72(q) provides some guidance on SEPPs and variable annuity payments. As indicated above, in addition to the exception for immediate annuities, section 72(q) includes an exception to its 10 percent penalty tax for distributions that are in the form of SEPPs for life or life expectancy. In general, Congress added section 72(q) to the Code in 1982 in order to discourage the use of non-qualified deferred annuities as short-term investment vehicles, and instead to encourage their use towards the "worthy ideal" of meeting long-term investment and retirement goals.[10] Thus, pre-retirement distributions generally were penalized, but because SEPPs for life or life expectancy would provide income throughout retirement they were excepted from the penalty. With regard to how variable annuities might comply with the SEPP exception to the penalty tax, the 1982 legislative history of section 72(q) states that "the requirement that the amount be paid out as one of a series of [SEPPs] is met whether it is paid as part of a fixed annuity, or as part of a variable annuity under which the number of units withdrawn to make each distribution is substantially the same."[11]

Published Guidance

The Service has not published any guidance on which taxpayers can rely for purposes of determining whether the SEPP component of the section 72(u)(4) definition of immediate annuity is satisfied. However, it has published guidance on how to calculate SEPPs for purposes of the exceptions to the sections 72(q) and (t) penalty taxes for SEPPs made over life or life expectancy.

In Notice 89-25,[12] the Service stated that payments will satisfy the SEPP exception to the section 72(t) penalty tax if they are determined in accordance with one of three methods described in the Notice. The three methods generally involve dividing an "account balance" by a factor specifically defined in the Notice, which produced a specific dollar amount that could be withdrawn from the account on a level basis for life or life expectancy. While such an approach could work for partial withdrawals from the "account balance" of a deferred annuity, it was not necessarily workable for determining variable annuity payments after the annuity starting date. However, one of the methods described in the Notice was based on compliance with the required minimum distribution ("RMD") rules of section 401(a)(9), which include rules that specifically apply to variable annuity payments. To that extent, the Notice could be read as equating SEPPs with an RMD-compliant variable annuity stream.

Subsequently, the Service published Rev. Rul. 2002-62,[13] which modified Notice 89-25 to provide additional definitions and special rules regarding SEPPs for purposes of section 72(t). One of those modifications was to define more specifically the RMD method for calculating SEPPs as consisting of an account balance divided by a factor determined under the RMD rules. Thus, perhaps unintentionally, Rev. Rul. 2002-62 appeared to eliminate Notice 89-25's implicit incorporation of the RMD rules for variable annuity payments into the rules governing SEPPs under section 72(t). This, in turn, led to some uncertainty regarding the availability of published guidance to rely upon in concluding that variable annuity payments could constitute SEPPs for purposes of section 72(t).

In Notice 2004-15,[14] the Service stated that any of the methods described in Notice 2002-62 could be used to satisfy the SEPP exception to the section 72(q) penalty tax. The Notice stated that this approach was acceptable because section 72(t) and section 72(q) "were enacted for the same purpose," namely, to discourage pre-retirement distributions from annuity contracts. The Notice, however, did not specifically reference the meaning of SEPPs in the context of section 72(u)(4). In that regard, because section 72(u) generally is directed at denying non-natural persons the benefits of tax deferral provided by a non-qualified deferred annuity, the SEPP component of the immediate annuity exception to section 72(u)(1) could be viewed as protecting against "back-loading" of annuity payments that would enhance the tax deferral effects of the annuity. In contrast, because sections 72(t) and (q) generally were enacted to discourage pre-retirement distributions from annuity contracts, the SEPP exceptions to those provisions might be viewed as protecting against "front-loading" of annuity payments that would accelerate the premature receipt of retirement savings.

As indicated above, the Service seemed to suggest in Notice 2004-15 that the reason the section 72(t) guidance

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on SEPPs could apply to section 72(q) was because those provisions were enacted for the same purpose. In light of this statement, the difference between the "anti-back-loading" intent behind section 72(u) and the "anti-front-loading" intent behind the penalty tax provisions of sections 72(q) and (t) might suggest that the SEPP requirement has a different meaning under section 72(u) than it does under sections 72(q) and (t). Of course, section 72(q) also includes a separate exception to the penalty tax for payments under an immediate annuity, which incorporates the SEPP requirement of section 72(u)(4)(C) and therefore supports a consistent interpretation of that term. At a minimum, however, the differences between the provisions and the statement in Notice 2004-15 made some ponder how much weight should be given to the statements that appeared in the legislative history of section 72(q) regarding variable annuity payments that are calculated using an "annuity unit" methodology when analyzing the SEPP component of section 72(u)(4)(C).

Prior Letter Rulings

In addition to the published guidance summarized above, the Service has issued multiple private letter rulings regarding SEPPs.[15] Most of those rulings have involved interpreting Notice 89-25 and Rev. Rul. 2002-62 in the context of section 72(t).[16] To the extent that the rulings have involved variable annuities, they have focused on applying the methods described in the published guidance to the account balance of such contracts during their accumulation phase. In other words, variable annuity payments were not addressed. Moreover, the rulings involving deferred variable annuities have taken inconsistent (and in some cases incorrect) views on how the SEPP requirement applies to them.

In particular, PLR 9115041 (Jan. 15, 1991) involved a non-qualified deferred variable annuity contract under which a "systematic withdrawal" option was available during the accumulation phase. Under the option, the owner could make a revocable election to begin receiving a series of partial withdrawals from the cash value of the contract in a specified dollar amount. The dollar amount was to be determined using a method that appeared consistent with one of the methods described in Notice 89-25. Nonetheless, the Service concluded that the resulting withdrawals would not constitute SEPPs for purposes of section 72(q)(2)(D).

In reaching this conclusion, the Service reasoned that the Notice 89-25 method that the taxpayer intended to use provided only for a level amortization of the account value of a fixed annuity contract, and that in order for a variable annuity contract to satisfy the SEPP exception "the number of annuity accumulation units withdrawn to make each periodic distribution must remain the same." In other words, the Service acknowledged the legislative history of section 72(q) regarding the "annuity unit" methodology, but then interpreted that legislative history as applying to variable annuities during the accumulation phase. This effectively meant that the "annuity unit" methodology was the only acceptable means of calculating SEPPs under a deferred variable annuity. Thus, the conclusion appears to have misapplied that legislative history to deferred variable annuities, thereby denying SEPP treatment for distributions that clearly would have been SEPPs if distributed from any other deferred annuity contract.

Continuing this questionable logic, the ruling then stated that, because section 72(q)(2)(D) requires SEPPs to be paid over life or life expectancy, the rule "presupposes that the distribution method must create a fixed or determinable future payment stream" that can be calculated on the date the first payment is received, and that otherwise "a taxpayer would be unable to determine on receipt whether the distribution is part of a series of [SEPPs] or simply a discrete withdrawal." For this reason, the Service concluded that the contract owner's ability to revoke or modify the systematic withdrawal election was fatal to the treatment of the resulting distributions as SEPPs, because the election did not "fix either the amount or duration of payments under the Policy." Presumably shocked by this reasoning in the absence of any statutory, regulatory, or judicial guidance imposing a "fixed and determinable" requirement for SEPPs in any context, the taxpayer formally asked the Service to reconsider its view on the facts presented. The Service responded by affirming the ruling.[17]

However, logic and reason ultimately prevailed on this question, when the Service later issued a private letter ruling reaching the opposite conclusion on virtually identical facts. Like the earlier ruling, PLR 200014024 (Jan. 6, 2000) involved a non-qualified deferred variable annuity contract under which a systematic withdrawal option was available.[18] Like the earlier ruling, the dollar amount of each partial withdrawal was to be determined using one of the methods set forth in Notice 89-25, and the contract owner could revoke or modify the election to receive partial withdrawals under the systematic withdrawal option. The Service cited the section 72(q) legislative history regarding variable annuity payments, but did not draw the same erroneous conclusion regarding

the applicability of that language during the accumulation phase of a deferred variable annuity. Rather, the Service concluded that the resulting distributions would qualify as SEPPs for purposes of section 72(q)(2)(D). The Service subsequently issued additional rulings of the same ilk, under both section 72(q) and section 72(t).[19] However, none of the rulings expressly addressed the SEPP requirement in the context of variable annuity payments received after the annuity starting date; *i.e.*, none correctly applied the legislative history of section 72(q)(2)(D). Moreover, none of the rulings involving variable annuities addressed the SEPP requirement in the context of section 72(u)(4).

In that regard, it appears that prior to PLR 200818018 only two letter rulings have dealt with the definition of an immediate annuity under section 72(u)(4). In PLR 9237030 (June 16, 1992), the Service considered the treatment of a "nonvariable" immediate annuity contract under that section. The contract provided for monthly annuity payments to be made at a guaranteed minimum amount for the annuitant's life, beginning within one month of purchase. The carrier could periodically increase or decrease the amount of the monthly payment based on interest rate adjustments, but the payments would never fall below the guaranteed amount. The contract also provided an "account value" after the annuity starting date, which the owner could access via a partial withdrawal or full surrender. After concluding that the guaranteed payments would be treated as amounts received as an annuity and entitled to an exclusion ratio under section 72(b), and that any periodic payment received in excess of the guaranteed payments would be treated as a dividend that was not received as an annuity, the Service addressed the treatment of the payments as SEPPs.

The Service began its analysis by quoting the TAMRA legislative history regarding the intent of the SEPP requirement in the context of section 72(u). It then summarized that intent as a congressional effort "to minimize any possibility of deferral of taxation beyond the deferral inherent in the section 72(b) exclusion ratio applicable to a level payment annuity." In light of that intent, the Service noted that there could be some variation in the amount of the monthly payments under the contract involved in the ruling, depending on whether the carrier upwardly adjusted the guaranteed minimum payment based on relevant interest rate considerations. However, the Service observed that any such changes were not prescheduled and were outside of the owner's control. The Service also observed that any excess interest would be currently paid to the taxpayer and that the periodic payments would fully amortize the contract's principal over the payment stream's duration. It characterized the possible excess interest payments as dividends received after the annuity starting date, and concluded that such dividends would not prevent the contract from qualifying as an immediate annuity contract. In that regard, the Service reasoned that section 72(u)(4)(C) (imposing the SEPP requirement) does not require that all distributions from an immediate annuity contract be in the form of SEPPs, and that there is no prohibition of non-periodic distributions in the nature of dividends after the annuity starting date. Based on these considerations, the Service concluded that the payments would constitute SEPPs within the meaning of section 72(u)(4)(C). In effect, the Service reached a conclusion that is fully consistent with the legislative history of section 72(q)(2)(D) regarding variable annuity payments, in that the ruling and the legislative history involve periodic payments that can fluctuate based on certain changes in interest rates or the investment performance of separate account assets. However, the ruling did not involve a variable annuity and the Service did not cite to that legislative history in reaching its conclusion.

The carrier could periodically increase or decrease the amount of the monthly payment based on interest rate adjustments, but the payments would never fall below the guaranteed amount.

The other private letter ruling addressing section 72(u)(4) was PLR 200036021 (June 7, 2000). In that ruling, the Service considered a non-qualified immediate annuity contract that had features similar to the contract involved in PLR 9237030. For example, the contract provided for fixed monthly annuity payments over a stated duration. Although the contract did not provide a "cash value," it did provide a "commuted value" that the owner could access after the annuity starting date. The carrier could declare excess interest payments from time to time, which would either be added to the commuted value or paid immediately to the owner in a dividend-like distribution. The Service concluded that the amount of the monthly annuity payments would remain unchanged despite the potential for dividend-like

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payments based on interest rate improvements, and that the payments therefore satisfied the SEPP requirement of section 72(u)(4)(C). Like the earlier ruling, the Service did not cite the legislative history of section 72(q)(2)(D) regarding variable annuity payments in reaching this conclusion, and the ruling did not technically involve a variable annuity contract. Thus, prior to the recent issuance of PLR 200818018, there were no rulings addressing the treatment of variable annuity payments under section 72(u)(4)(C). Likewise, no rulings squarely addressed the treatment of such payments under the SEPP exceptions to the penalty taxes imposed by sections 72(q) and (t).

A "minimum payment option" also is available, which provides that periodic payments will never fall below an amount specified in the Contract that is less than the initial periodic payment.

Facts of PLR 200818018

In PLR 200818018, the taxpayer life insurance company intended to issue certain single premium, non-qualified annuity contracts (each, a "Contract"). According to the ruling's statement of facts, each Contract will provide for periodic payments for the life of an annuitant during two distinct "phases"— "Phase I" and "Phase II." During Phase I, the Contract owner can take withdrawals from the Contract's "account value" or surrender the Contract in full, and if the annuitant dies the remaining account value is payable either in a lump sum or as continued periodic payments. Phase II begins at the completion of Phase I, during which periodic payments will continue for the life of the annuitant. A "minimum payment option" also is available, which provides that periodic payments will never fall below an amount specified in the Contract that is less than the initial periodic payment. This option can be terminated after issuance, and the minimum payment will be reduced pro rata by any withdrawal during Phase I.

Upon issuance of the Contract, the owner must make irrevocable elections regarding the following factors to be used in calculating periodic payments: (1) the length of Phase I, (2) the assumed interest rate ("AIR"), (3) the payment mode (monthly, quarterly, *etc.*), and (4) which of two methods will be used to reflect ongoing investment performance of the assets supporting the Contract. The first periodic payment is determined as the product of the account value and an annuity factor divided by 1,000. The annuity factor is based on the age and gender of the annuitant, an "acceptable mortality table," and the first three factors identified above. Subsequent periodic payments during Phase I are calculated differently depending upon which alternative the owner chose for item (4) above.

Under one alternative, each subsequent periodic payment is adjusted to reflect the then-current account balance in relation to the AIR (*e.g.*, if payments are made monthly, they can vary in amount from month-to-month). Under the other alternative, periodic payments remain level throughout the year but are adjusted once per year to reflect the then-current account value in relation to the AIR. Irrespective of the alternative chosen, periodic payments during Phase I are calculated using the same basic formula—the account value multiplied by an annuity factor and divided by 1,000.

The ruling states that the taxpayer's method of using the account balance in calculating periodic payments during Phase I "differs somewhat in form from the method more traditionally used to calculate variable annuity payments, commonly described as an 'annuity unit' approach." However, the ruling states that the taxpayer's methodology is "based on the same actuarial principles as an annuity unit methodology and is actuarially indistinguishable from such a methodology." In that regard, the ruling states that the taxpayer illustrated that its methodology yields payments that fluctuate in "exactly the same manner as if the annuity unit methodology were used."

During Phase II, periodic payments based on the variable sub-accounts supporting the Contract are determined using the more traditional "annuity unit" methodology, and payments based on the taxpayer's fixed account are determined using an "actuarially equivalent methodology." In that regard, the ruling states that "[d]espite the differences in form with respect to the way the periodic payments are calculated during Phase I and Phase II, all of the methodologies … are actuarially equivalent to one another."

Analysis and Conclusion of PLR 200818018

Based on the foregoing facts, the taxpayer requested a ruling that the Contract constitutes an immediate annuity within the meaning of section 72(u)(4). As described above, that section defines an immediate annuity as an annuity (1) that is purchased with a single premium or annuity consideration, (2) the annuity starting date

of which commences within a year of purchase, and (3) provides for a series of SEPPs to be made at least annually. The taxpayer represented that the Contract met the first two requirements. Thus, the issue on which the Service focused in analyzing the requested ruling was whether the Contract provides for a series of SEPPs for purposes of section 72(u)(4).

The Service concluded that the Contract constitutes an immediate annuity. In reaching this conclusion, the Service noted that Congress provided little guidance on what constitutes a series of SEPPs for purposes of section 72(u)(4), but then acknowledged that the same term is used in sections 72(q) and (t) and cited to the legislative histories of those sections as providing appropriate guidance for purposes of section 72(u)(4). In particular, the Service cited the 1982 legislative history of section 72(q) for the proposition that "[i]t was understood that a methodology utilized by a variable annuity under which substantially the same number of annuity units is withdrawn to make each periodic payment provided substantially equal periodic payments." The Service also observed that the Code and the various rulings by the Service "must be viewed against the backdrop of the extant actuarial methodologies for computing periodic payments."

Based on the foregoing, the Service concluded that, because the methodologies that the taxpayer would use to determine periodic payments under the Contract are the actuarial equivalent of the more traditional "annuity unit" approach discussed in the section 72(q) legislative history, the Contract should be viewed as providing SEPPs. Accordingly, because the taxpayer represented that the Contract would be purchased with a single premium or annuity consideration and its annuity starting date would commence within a year of purchase, the Contract would be viewed as an immediate annuity for purposes of section 72(u)(4). In addition, the fact that the Contract provided a minimum payment option apparently did not affect the Service's analysis or conclusions in the ruling.

Final Observations

As indicated above, PLR 200818018 is significant in that it (1) is the first private letter ruling to confirm that variable annuity payments can constitute SEPPs for purposes of section 72(u)(4), and (2) concludes that a methodology for calculating variable annuity payments that differs from, but is actuarially equivalent to, a more traditional "annuity unit" methodology can produce SEPPs. The ruling also stands for the proposition that the legislative history, and perhaps other interpretive guidance, regarding SEPPs under section 72(q) can be used in an analysis of the SEPP component of the definition of an immediate annuity under section 72(u)(4). In other words, the ruling appears to confirm that SEPPs are SEPPs, regardless of the context. These revelations, while perhaps intuitive, had not been expressed in prior guidance. For these reasons, the ruling, albeit non-precedential, is a very helpful and informative piece of guidance.

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End Notes

1 Unless otherwise indicated, each reference to a "section" means a section of the Internal Revenue Code of 1986, as amended (the "Code").
2 The rule denying annuity tax treatment also does not apply if the non-natural person holds the contract as an agent for a natural person. *See* section 72(u)(1).
3 Section 72(q)(2)(I).
4 Section 72(q)(2)(D).
5 Section 72(t)(2)(A)(iv). There is no "immediate annuity" exception to the section 72(t) penalty tax.
6 *See* Staff of the J. Comm. on Tax'n, 99th Cong., General Explanation of the Tax Reform Act of 1986, at 658 (Comm. Print 1987). Section 72(u) was added to the Code by section 1135(a) of the Tax Reform Act of 1986, Pub. L. No. 99-514 (1986).
7 Pub. L. No. 100-647 § 1011A(i)(4) (1988).
8 S. REP. NO. 100-445, at 149 (1988).
9 *Id.* With respect to joint life annuities, the legislative history states that "[a]n annuity will not be treated as failing to satisfy the [SEPP requirement] if it is an annuity payable over the joint lives of 2 or more individuals and the amounts paid to as survivor after the death of the first annuitant are less than the amounts paid during the joint lives of the annuitants."
10 Staff of the J. Comm. on Tax'n, 97th Cong., General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982, at 361 (Comm. Print 1982).
11 *Id.* at 364. As described in the text above, section 72(t) also includes an exception to its penalty tax for SEPPs made over life or life expectancy. The legislative history of that provision states that "[a] series of payments will not fail to be substantially

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equal solely because the payments vary on account of (1) certain cost of living adjustments; (2) a benefit increase provided to retired employees; (3) an adjustment due to the death of the employee's beneficiary; or (4) the cessation of a social security supplement." Staff of J. Comm. on Taxation, 99th Cong., General Explanation of the Tax Reform Act of 1986, at 712 (Comm. Print 1986).

[12] 1989-1 C.B. 662.

[13] 2002-2 C.B. 710.

[14] 2004-1 C.B. 526.

[15] A private letter ruling is issued to a particular taxpayer and can be relied upon only by that taxpayer. *See* section 6110(k)(3). However, such rulings are widely regarded as reflecting the view of the Service's National Office on the specific facts as of the time the ruling was issued.

[16] For example, Notice 89-25 required the use of a "reasonable" interest rate assumption in the SEPP methodologies it described, and taxpayers sought rulings to ensure that their assumptions would meet this general standard. A few court cases have addressed similar questions. *See*, *e.g.*, *Farley v. Comm'r,* T.C. Summary Opinion 2003-43 (April 22, 2003) (finding that certain assumed rates in the calculation of SEPPs was not reasonable).

[17] *See* PLR 9146008 (Aug. 8, 1991).

[18] *See* also PLR 9805023 (Oct. 31, 1997). The ruling was issued after PLR 9115041, and concluded that certain partial withdrawals from a deferred variable annuity contract would constitute SEPPs within the meaning of section 72(q)(2)(D). The facts of the ruling stated that the contract owner would make a separate written request for each partial withdrawal, which certainly did not establish a fixed and determinable payment stream like the one the Service concluded was necessary in PLR 9115041.

[19] *See* PLR 200113022 (Dec. 29, 2000); PLR 200115039 (Jan. 18, 2001); PLR 200118057 (Feb. 9, 2001).

Coming Later this Fall …

A *Taxing Times* Supplement on IRS Revenue Procedures Addressing Contract Corrections

On June 30, 2008 the Internal Revenue Service (IRS) released five revenue procedures which address the correction of contracts which fail to comply with IRC sections 101(f), 7702, 7702A and 817(h). These revenue procedures will be the subject of our upcoming supplement.

Learn more about:

- Rev. Proc. 2008-38 — Remediation for failure to properly account for QAB charges.
- Rev. Proc. 2008-39 — Remediation of inadvertent non-egregious MECs.
- Rev. Proc. 2008-40 — Remediation for failure to satisfy the requirements of IRC sections 101(f) or 7702.
- Rev. Proc. 2008-41 — Remediation for failure to satisfy IRC section 817(h)— diversification requirements.
- Rev. Proc. 2008-42 — Procedure for obtaining an automatic waiver for certain reasonable errors that caused failure under IRC sections 101(f) or 7702.

In addition, this supplement traces the history of contract corrections and the unique interaction between the IRS, the Treasury and the industry in working toward a solution. It also details the developments leading up to these final revenue procedures.