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PRIVATE LETTER RULING ON SECTION 807(f) REFINES CHANGE-IN-BASIS RULE

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SUMMARY

In a recent private letter ruling LTR 201511013 (PLR), the Internal Revenue Service (IRS) concluded that the section 807(f) change-in-basis rule applied where certain life insurance contracts were treated as being reinsured when they actually were not, which had resulted in the life insurance reserves for the contracts being recorded in the wrong legal entity. The PLR represents the first guidance on reserve changes since Revenue Ruling 94-74. Revenue Ruling 94-74[1] addressed many of the issues presented by section 807(f),[2] primarily relating to whether changes to items prescribed by statute were "changes in basis" or "errors." However, certain issues persisted. By narrowing the category of what the IRS considers to be errors, the PLR expands the universe of reserve adjustments considered to be accounting method changes to which the change-in-basis rule potentially applies. The PLR speaks to a few of these important issues and provides some analytical clarity as to how the IRS approaches them.

This article looks at the facts of the PLR, the statutory and administrative background for life insurance reserves and accounting method changes, the difference between errors and changes in basis, and the issues both resolved and raised by the PLR.

BACKGROUND OF THE RULING

The Life Insurance Contracts and Erroneous Reinsurance Treatment

In the PLR, a U.S. branch of a non-U.S. life insurance company (IC 1) entered into reinsurance agreements under which IC 1 assumed risks on both whole life and term life insurance contracts from unrelated third party insurers. IC 1 then entered into a reinsurance treaty with another insurance company (IC 2), which was related to IC 1 through common ownership. IC 1 retroceded 100 percent of the risk on the *term* life insurance policies to IC 2; IC 1 retained the risk on the *whole* life insurance policies. IC 1 had two systems for accounting for all of the insurance contracts on a contract-by-contract basis. First, it had an administrative system to track premiums, benefits payments, and other accounting items. Second, it had a valuation system specifically to calculate life insurance reserves. IC 1 and IC 2 used the information from these two systems to prepare financial statements, including statutory financial statements prepared under accounting rules prescribed by the National Association of Insurance Commissioners (NAIC), which were then used in preparing IC 1's and IC 2's U.S. federal income tax returns.

Several years after entering into the reinsurance agreement, IC 1 and IC 2 reviewed the valuation system's coding of the life insurance contracts as either whole life or term life. They discovered that, in the valuation system, some whole life insurance contracts (on which IC 1 had intended to retain the risk) had been labelled as term life insurance contracts. Consequently the valuation system reported the life insurance reserves for these contracts as reserves of IC 2 rather than of IC 1. All of the relevant accounting items other than reserves were maintained in the administrative system and were reported on the appropriate legal entity. IC1 and IC 2 corrected their statutory annual statements and reported the life insurance reserves on the appropriate legal entity in the year the error was discovered (Tax Year U). There is no assertion in the ruling that the amount of the life insurance reserves determined under sections 807(d)(1) and 807(d)(2) was incorrect; the reserves were simply reported on the wrong legal entity.

Tax Effects of Recording Reserves in the Wrong Entity

IC 1 reported premium income attributable to the identified whole life insurance contracts under section 803(a)(1)(A). It did not reduce its premium income for any amounts paid to IC 2 for reinsurance under section 803(a)(1)(B) because these contracts were not ceded to IC 2. However, IC 1 decreased its life insurance reserves for the mislabeled contracts because, according to the valuation system, these contracts had been reinsured to IC 2. Thus, IC 1 understated its deduction allowed under section 807(d)(1), which in turn overstated its taxable income.

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Similarly, IC 2 did not report reinsurance premium income under section 803(a)(1)(A) because the contracts were not assumed by IC 2. However, IC 2 increased its life insurance reserves for the mislabeled contracts because they were treated as reinsured by the valuation system. This increase in reserves understated IC 2's taxable income.

The misstatements of income by IC 1 and IC 2 would reverse over time. The administrative system would properly treat the death benefits, claims, losses, and surrender proceeds as accounting items on the financial statements and tax returns of IC 1. The valuation system would reduce the reserves on the financial statements and tax returns of IC 2 when the benefits were paid. Thus, the misstatement of income by each entity would naturally reverse over the durations of the underlying insurance contracts.

The IRS's conclusion

The IRS concluded that the changes in life insurance reserves by IC 1 and IC2 for Tax Year U were changes in basis subject to section 807(f). Tax Year U was treated as the year of change. The opening reserves of IC 1 and IC 2 were adjusted as of the beginning of the following taxable year (Tax Year V) with one-tenth of adjustment to be recognized in each of the ten succeeding tax years.

LEGAL CONTEXT

Section 446-Basic Rules for Changes in Accounting Methods

Treasury Regulation section 1.446-1(e)(2)(ii)(a) provides that a change in method of accounting includes a change in the overall plan of accounting for gross income or deductions, or a change in the treatment of any "material item." A material item is "any item that involves the proper time for the inclusion of the item in income or the taking of a deduction." In determining whether timing is involved, the critical question is whether the accounting practice permanently affects the taxpayer's lifetime income, in which case it is not a material item, or merely changes the taxable year in which taxable income is reported, in which case it is a material item.[3]

Generally, consistent treatment of an item establishes a method of accounting. The treatment of a material item in the same way in determining the gross income or deductions in two or more consecutively filed tax returns constitutes consistent treatment of that item sufficient to establish a method of accounting.

Treasury Regulation section 1.446-1(e)(2)(ii)(b) provides that a change in method of accounting does not occur when a taxpayer seeks to correct a *mathematical error*, a *posting error*, or an error in the *computation of tax liability*. The IRS has interpreted this regulation to require that *systematic* posting errors—errors that are repeated over at least two years and that affect timing—be treated as methods of accounting.[4] In both *Huffman v. Commissioner*[5] and *Wayne Bolt & Nut Co. v. Commissioner*,[6] the Tax Court concluded that the systematic errors at issue were methods of accounting because the error embedded at the end of one year would be picked up and offset in the next or a future year.

Section 481(a) provides that, in computing taxable income for any taxable year (year of change), if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted. An adjustment under section 481(a) can include amounts attributable to taxable years that are closed by the applicable statute of limitations.[7]

Section 807 (a brief history) and Revenue Ruling 94-74

Section 807(a) and (b) provide that increases in a life insurance company's reserves are deducted from the company's gross income, and decreases in reserves are includible in its gross income. Section 807(c) sets forth the items to be taken into account by a life insurance company in determining whether it has an increase or decrease in reserves for purposes of sections 807(a) and (b). The specified items in section 807(c) include life insurance reserves. Section 807(d)(2) prescribes the U.S. federal income tax rules for computing a company's life insurance reserves, including the reserve methods, interest rates, and mortality tables to be used in these computations.

Section 807(f) provides that if the basis for determining any item referred to in section 807(c) as of the close of any taxable year differs from the basis for determining that item as of the close of the preceding taxable year, the taxpayer must spread the taxable income effects of the change ratably over

the 10 years following the year of change. A change that is subject to section 807(f) is referred to as a "change in basis." Significantly for U.S. tax purposes, such changes are automatic and do not require the consent of the Commissioner of Internal Revenue.

The provision that is currently section 807(f) was enacted as section 810(d) by the Life Insurance Company Income Tax Act of 1959.[8] By enacting section 810(d), Congress provided a specific tax rule for adjustments resulting from a change in method of computing reserves; such changes otherwise would have been subject to section 481 for changes in method of accounting.[9] This special rule was intended to allow insurance companies to avoid the income distortion created by taking the entire impact of a change in basis of computing reserves into account in computing taxable income for a single taxable year.[10]

The 10-year ratable adjustment rule was reenacted as section 807(f) by the Tax Reform Act of 1984.[11] By using the same language that was used in pre-1984 Act section 810(d), Congress signaled its intent that section 807(f) be construed in accordance with prior law: "The present law allowing income or loss resulting from a change in the method of computing reserves to be taken into account ratably over a 10-year period is retained."[12]

Under the rulings and case law interpreting section 807(f)'s predecessor section, a change in basis may occur whether the change in manner of computing the reserve is voluntary or involuntary, as well as where there is a change from incorrect to correct reserve computations.[13] As indicated above, a change in basis of computing any of the items in section 807(c) is not a change in method of accounting requiring the consent of the Secretary under section 446(e).[14] Accordingly, where there is a change in basis under section 807(f), the taxpayer is required to apply the more specific insurance tax accounting rules in section 807(f) rather than the general tax accounting method rules in section 446.

The IRS provided significant guidance on section 807(f) in Revenue Ruling 94-74.[15] Revenue Ruling 94-74 addresses the applicability of section 807(f) to four situations in which a life insurance company makes changes to its reserves. The first situation involves a change in the mortality table used to compute the reserves; the second involves a change in the interest rate used; the third involves a changed assumption from a curtate to continuous function; and the fourth involves a computer program error which causes certain policies to be omitted from the computation altogether. In each of the first three situations, the revenue ruling concludes that the change is a change in basis subject to section 807(f) and, thus, the 10-year spread rule applies. Situation four postulates a fact pattern where a reserve is properly computed, but because of a computer error, is not included in the sum of total reserves for the year in question. The ruling concludes the change is an error and not subject to the 10-year spread rule. The revenue ruling was significant in that it concluded that even changes in the computation of reserves for items which are mandated by statute, such as interest rates or mortality tables, are changes in basis rather than corrections of errors.

The conclusion in situation four in Rev. Rul. 94-74 is consistent with the narrow definition of an error under section 446 where an "error" of this type is not a method of accounting when it is isolated and nonrecurring. In contrast, a systematic error in the computation of taxable income that affects only the timing of lifetime taxable income and self-corrects over time is a method of accounting. In the years following the issuance of Rev. Rul. 94-74, both the Examination and Appeals divisions of LB&I (then LMSB) published Coordinated Issue Papers[16] clarifying that the conclusion in situation four only applied to nonrecurring mathematical or posting errors, apparently to ensure consistency with the general accounting method rules.

Changes in Basis and Corrections of Errors

Assume that a life insurance company (L1) issues whole life insurance contracts. Assume that for all contracts issued by L1, the reserve computed under section 807(d)(2) is greater than the net surrender value and less than the statutory reserve for the contract. In 2014, L1 determines that the reserve was "improperly" computed for statutory and federal income tax purposes and was corrected on the 2014 annual statement. For simplicity, assume that no new contracts were issued in 2014. On Dec. 31, 2014, the tax reserve computed under the "old" method is $10,000,000. The tax reserve computed on that date under the "new" method is $12,000,000.

This change in the computation of the reserve is treated as a change in basis under section 807(f), the tax year ending Dec. 31, 2014 is the year of change, but the "old" method of

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computing reserves is used to compute the tax reserve for the contracts issued prior to 2014 at Dec. 31, 2014. The opening reserve at Jan. 1, 2015 on the tax return for the year ending Dec. 31, 2015 is adjusted from $10,000,000 to $12,000,000 and the $2,000,000 adjustment is spread over ten tax years beginning on the return for the year ended Dec. 31, 2015. In this case, the taxpayer "missed" deducting the $2,000,000 in years prior to 2015, but recovers that deduction over the following ten years. The issue is purely one of timing for tax return, and, perhaps more importantly, for financial reporting purposes.

"The PLR appears to take a broad view of what changes are governed by section 807(f) as opposed to the more general accounting method change rules."

Alternatively, assume the taxpayer finds in 2014 that it made an error in the computation of reserves for the year ending 2012 such that total reserves were reported for tax purposes as $6,000,000, but the correct total reserve should have been $7,000,000. Assume the error was a one-time misstatement that did not impact reserve computations for tax years 2013 and 2014. If the $1,000,000 change is treated as the correction of an error instead of a change in basis, the taxpayer would restate its opening reserve as of January 1, 2012 on its tax return for the year ended December 31, 2012. The opening reserve would be increased from $6,000,000 to $7,000,000 and the reserve at each subsequent tax year end would be recomputed under the corrected method. The net effect of this characterization is the permanent loss of $1,000,000 of reserve deductions for tax purposes. There is no spread or recovery of the $1,000,000 opening reserve adjustment on the 2012 tax return.

ANALYSIS OF PLR

The PLR implicates several important issues:

- How do sections 446 and 807(f) interact?
- Are changes in statutory reserves potentially subject to sections 446 or 807(f)?
- Can merely repeating a "posting" or "computer" error over multiple years create a method of accounting?

Interaction of Sections 807(f) and 446

Section 807(f) is properly viewed as a subset of accounting method changes otherwise subject to section 446. This reading of the statutory scheme was articulated in *American General Life & Accident Ins. Co. v. United States*:

> There need be no conflict between section 481 and the 10-year spread rule of section 810. Code section 481 is simply a much more general provision dealing with recapture of tax income in a broad variety of cases. It is a broad rule which generally authorizes recapture. Code section 810, on the other hand, is much more specific and deals with a very narrow and limited type of "change in method of accounting." It in no way contradicts the general rule that there should be recapture of tax loss. It simply provides a more specific manner of recapturing tax loss under one set of particular circumstances in which there was an accounting change, namely circumstances in which there was a change in the method of computing reserves. As usual, the specific controls the general. It is not a contradiction of the general rule. Accordingly, while the government is correct in classifying the change at issue as a change in method of accounting, it is also more specifically a change in the method of computing reserves.[17]

The same interpretation was adopted in Revenue Ruling 94-74:

> Under section 446, a change in method of accounting does not include correction of mathematical or posting errors. See, e.g., section 1.446-1(e)(2)(ii)(b). Because section 807(f) is a more specific application of the general tax rules governing a change in method of accounting, a circumstance that is not a change in method of accounting under the general rules cannot be governed by the more specific rules of section 807(f). Accordingly, consistent with section 446, the correction of reserves for a mathematical or posting error would not be treated as a change in basis under section 807(f).

Thus, in assessing how a particular change to the calculation of the deduction allowed by section 807(d)(1) should be implemented, a two-step analysis applies:

- Is the change a "method of accounting" or "correction of an error" under section 446?
- If it is a change in method of accounting, is it a change in basis subject to section 807(f) or is it subject to the more general accounting method change rules of section 446?

The PLR appears to take a broad view of what changes are governed by section 807(f) as opposed to the more general accounting method change rules. As indicated above, the amount of the reserve actually computed by the taxpayers under sections 807(d)(1) and (d)(2) was apparently correct. One might ask how there could be a "change in basis" where the reserve was properly computed. Alternatively, Treasury Regulation section 1.801-4(a) provides that the amount of the

reserve for a contract must be reduced by the net value of risks reinsured. This would suggest that the reserve was not, in fact, properly computed and that the correction is a change in basis. The PLR seems to adopt the second point of view.

A change under section 807(f) does not require the IRS's consent, but it also does not bring with it the audit protection provided by filing a Form 3115 under the general rules of section 446. Also, while it may generally be beneficial to taxpayers to spread income arising from a change in basis over ten years, some taxpayers (perhaps those with expiring net operating losses) would prefer to recognize the income immediately. Also, taxpayers that are realizing a deduction from a change in basis may prefer to recognize that deduction immediately instead of over a decade. Finally, 10 years is a long time—tracking multiple section 807(f) adjustments can become an administrative burden that some taxpayers may wish to avoid.

Would a Change in Method for Computing Statutory Reserves or Net Surrender Value Be Subject to Section 446 or Section 807(f)?

The PLR could provoke questions regarding whether there can be a change in basis under section 807(f) that is not also a change in method under the general method of accounting rules in section 446. This gives rise to an interesting, unanswered question as to whether, for instance, changes in the calculation of the statutory reserve or net surrender value which indirectly affect the amount of the reserve deduction allowed for a contract for federal tax purposes is a change in basis subject to section 807(f) or, if it does not represent a change in basis, whether it could be a change in method of accounting subject to section 446.

In Notice 2010-29,[18] the IRS addressed an issue arising from the implementation of Actuarial Guideline 43 (AG 43) effective Dec. 31, 2009. AG 43 introduced new actuarial guidance for the calculation of reserves on a variety of annuity contracts, most significantly those with minimum guaranteed benefits. AG 43 generally had the effect of reducing statutory reserve requirements for these contracts. The IRS has taken the view that actuarial guidance does not apply for tax purposes to contracts issued prior to the effective date of the new guidance—even if the guidance is retroactively effective for statutory purposes.[19] AG 43 generally resulted in lower statutory reserves than the tax reserves associated with the contracts computed under the actuarial guidance previously applicable to the contracts. Thus, upon adoption of AG 43 for statutory accounting purposes, many taxpayers had their reserve deduction reduced due to "statutory capping" in section 807(d)(1)(B).[20]

Section 3.04 of Notice 2010-29 provides that the effect of statutory capping upon adoption of AG 43 is to be spread over 10 years. The notice refers to "the method prescribed by section 807(f)(1)(B)," although it is careful not to refer to the change as governed by section 807(f). In addition, the notice specifically states (in section 3.07) that no inference should be drawn from this treatment with respect to any other federal tax issue. The PLR does not address whether the appropriate treatment of statutory capping caused by a change in the methodology used to calculate the statutory reserve is a change in method of accounting, an error, a change in basis, or a change not governed by any of those provisions. There are two ways to approach this issue.

One approach would be to determine if a change in the treatment of a statutory reserve item constitutes a change in method of accounting. In this analysis, we must first determine if a change in statutory reserving that effects the reserve deduction qualifies as a change in method of accounting. In other words, would a change in the treatment of a statutory reserve item not permanently affect taxable income (i.e., would it involve timing) and is it recurring? This being the case, a change in statutory reserving could be seen as a change in accounting method. The next step would be to determine if a change in accounting method for statutory reserves could be a change in basis, requiring that the change in statutory reserving be spread over ten years pursuant to section 807(f), or whether the change in method would be subject to Treasury Regulation section 1.446-1(e). Taking a broad view of Notice 2010-29, notwithstanding its cautionary language, it seems that if a change in statutory reserving was seen as a change in accounting method, the IRS would consider that change to be a change in basis subject to section 807(f).

Viewed differently, changes to statutory reserve methods that impact statutory capping could be considered a change in fact, but not a change in the application of section 807(c). Under this view, a change to the statutory reserve method would not be a change in accounting method, so neither section 446 nor section 807(f) would apply.

Most practitioners have taken the view that changes in the deductible reserve caused by changes in the net surrender value of a contract or statutory reserves are not subject to section 446 or 807(f), at least when the change occurs by normal operation of the calculations over time, i.e., there is no change in the computational methodology for the net surrender value or the statutory reserve. This view is supported by language in the Report of the Joint Committee on Taxation on the Tax

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Reform Act of 1984 which provides that changes in net surrender value are not subject to section 807(f).[21] It is, however, unclear as to how broadly this language is to be read, if it is to be given any deference at all.[22] Does it apply when a taxpayer corrects an improper calculation of the net surrender value, or only when the net surrender value exceeds the section 807(d)(2) reserve and, thus, determines the amount of the reserve deductible under section 807(d)(1)?

CAN A REPEATED ERROR BE A METHOD OF ACCOUNTING?

As discussed above, under Treasury Regulation section 1.446-1, if the treatment of an item is a "method of accounting," it is treated as a method of accounting even if it is also an error. The tax accounting treatment of an item is a method of accounting if it meets two requirements: first, it must be "material," i.e., an item affecting the timing of the recognition of income or deduction, and, second, it must be consistently applied.

Arguably, the mislabeling of the contracts that occurred in the valuation system is merely a posting error, i.e., an error in "the act of transferring an original entry to a ledger."[23] However, IC 1 and IC 2 reported the life insurance reserves for the mislabeled contracts as reserves of IC 2 for several years, which represents the consistent treatment of an item as provided for in the regulation.

In addition, the effect of reporting the life insurance reserves as reserves of IC 2 is only a timing matter and does not affect the total amount of taxable income to be recognized by either entity over the life of the reinsurance agreement. Therefore, the item is "material" as defined in the regulation. Because the mislabeling is both material and consistently applied, it is an accounting method as defined in Treasury Regulation section 1.446-1. Further, the change is not caused by a nonrecurring mathematical or "posting" error of a permanent nature. Said another way, the type of error that caused the misreporting of life insurance reserves by IC 1 and IC 2 is not the type of "error" described in the regulation (see the discussion above on the definition of an error).

The narrow definition of an "error" would seem to be a practical approach to a difficult problem. Like many tax computations, the determination of life insurance reserves is a complicated process involving complex actuarial and accounting systems and requires a significant amount of actuarial expertise. In many cases it would be difficult, if not impossible, to determine whether the root cause of an "error" is simply a "posting" or "mathematical" error embedded in a computer system or a mistake of judgment made by a person.

For instance, it is clear that a change from an erroneous mortality table to a correct mortality table in a reserve computation is a change in basis as defined in section 807(f),[24] despite the fact that the use of an incorrect mortality table can be caused by any number of factors, including but not limited to the intentional or unintentional choice by an actuary, the incorrect coding of the mortality table within the actuarial valuation system, a data transfer error within the program, or any number of other possibilities given the complexity of modern accounting and valuation systems. Since it is beneficial to the tax authorities for taxpayers to avail themselves of correction mechanisms, there should be little incentive to make inquiries as to how the error occurred. The tax effects of the correction of the mortality table are always appropriately treated as a change subject to section 807(f) regardless of the underlying root cause which may, in any case, be difficult to identify.

In the PLR, the life insurance reserves of IC 1 and IC 2 were misstated. This could be cast either as a computer error, i.e., miscoding of contracts in the system, a human error since someone made the decision to treat the contracts as reinsured when they were not, or a misapplication of the tax law because the computations of life insurance reserves were not properly increased or decreased for the net value of risks reinsured as required by section 807 and Treasury Regulation section 1.801-4(a). The narrow section 446 definition of an error is a practical and rational way to avoid attempts to distinguish between the root causes of computational issues in tax accounting.

CONCLUSION

Perhaps the most important point to be gleaned from this PLR is that, by treating the mislabeling of the life insurance reserves as not being a mere posting error, the IRS is maintaining its position that most changes to the calculations of a life insurance reserve are not errors. Revenue Ruling 94-74 included only one situation with an error, and that error was limited to a mistake made in a single year. The companies in the PLR made what arguably is a posting error, but because they consistently repeated the error, the IRS felt justified in classifying the error as a method of accounting to which section 807(f) applied. ◂

END NOTES

[1] 1994-2 C.B. 157.

[2] Unless otherwise specified or clear from context, "section" references are to the Internal Revenue Code of 1986, 26 U.S.C., as amended.

[3] *See* Rev. Proc. 97-27, § 2.01(1), 1997-1 C.B. 680; Primo Pants Co. v. Commissioner, 78 T.C. 705, 723 (1982).

[4] *See* Rev. Rul. 77-134, 1977-1 C.B. 132; Rev. Rul. 80-190, 1980-2 C.B. 190.

[5] 126 T.C. 322, 343-45, aff'd, 518 F.3d 357 (6th 2008).

[6] 93 T.C. 500, 510-11 (1989).

[7] *Graff Chevrolet Co. v. Campbell*, 343 F.2d 568, 571- 572 (5th Cir. 1965); *Rankin v. Commissioner,* 138 F.3d 1286, 1288 (9th Cir. 1998); *Superior Coach of Florida v. Commissioner,* 80 T.C. 895, 912 (1983).

[8] P.L. 86-69, 73 Stat. 112, 125 (1959).

[9] Rev. Rul. 94-74, *supra.*

[10] *See* H.R. Rep. No. 86-34 (Feb. 13, 1959); S. Rep. No. 86-291 (May 14, 1959).

[11] P.L. 98-369, 98 Stat. 494 (the "1984 Act").

[12] *See* H.R. Rep. No. 432, at 1417; Senate Committee on Finance, Deficit Reduction Act of 1984, at 543. In general, where a provision was carried over from prior law by the 1984 Act, Congress intended the new provision to be interpreted in a manner consistent with the prior law provision. H.R. Rep. No. 432, at 1402; Senate Committee on Finance, *Deficit Reduction Act of 1984,* at 524.

[13] *See, e.g., American General Life & Accident Ins. Co. v. United States,* 71A AFTR 2d 93-3319 (M.D. Tenn. 1989); Rev. Rul. 77-198, 1977-1 C.B. 190 (change from a nonactuarial method of computing reserves to a method that utilizes recognized mortality tables and assumed rates of interest is a change in basis of computing reserves).

[14] Treas. Reg. § 1.806-4(a); Rev. Rul. 94-74, *supra.*

[15] Rev. Rul. 94-74, *supra.*

[16] *See* IRC Section 807 Basis Adjustment Change in Basis v. Correction of Error, Coordinated Issue Paper (Jan. 6, 1997).

[17] *American General Life, supra.*

[18] 2010-1 C.B. 547.

[19] See Richard N. Bush, "IRS Rules on *American Financial*," *Taxing Times* vol. 6, issue 2, page 10 (Sept. 2010); Peter H. Winslow, "The Sixth Circuit gets it Right in *American Financial*-An Actuarial Guideline can Apply to Prior Contracts when the Interpretation was a Permissible Option At the Time the Contract Was Issued," *Taxing Times* vol. 8, issue 3, page 1 (Oct. 2012).

[20] See Peter Winslow and Christian Desrochers, "Attorney-Actuary Dialogue on Notice 2010-29," *Taxing Times* vol. 6, issue 2, page 23 (Sept. 2010).

[21] Joint Committee on Taxation, *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984* 604 (Dec. 31, 1984) ("1984 Act Blue Book").

[22] JCT Blue Books are among the authorities that can be cited as "substantial authority" for purposes of defending against accuracy-related penalties in section 6662. Treas. Reg. §1.6662-4(d)(3)(iii). However, because they are not written by House or Senate tax-writing committees, tax professionals and courts sometimes debate whether Blue Books are to be considered legislative history. See, for example, John T. Adney, "Blue Book Blues: The Supreme Court Discounts the Value of the Joint Committee's Blue Books in *U.S. v. Woods,*" *Taxing Times* vol. 10, issue 2, page 12 (May 2014).

[23] *Wayne Bolt & Nut Co.,* 93 T.C. at 510-511 (quoting Black's Law Dictionary 1050 (5th ed. 1979)).

[24] *See* Rev. Rul. 94-74, *supra,* situation 1.

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