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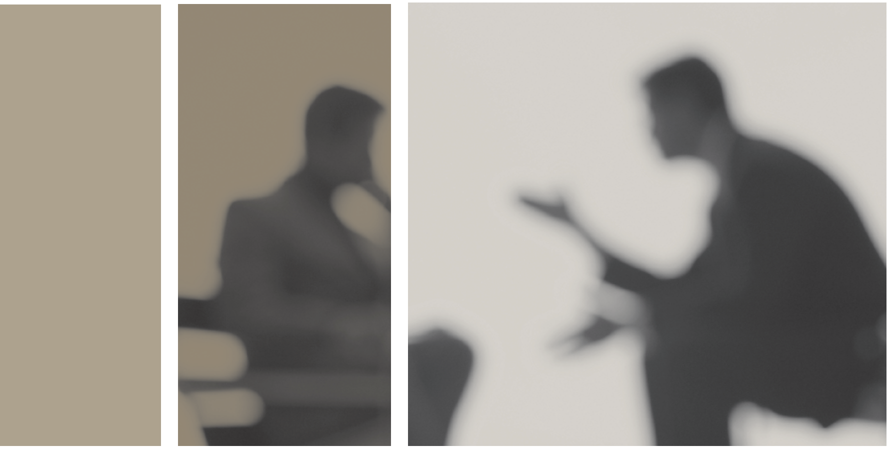

ACTUARY/TAX ATTORNEY DIALOGUE ON SELECTED TAX ISSUES IN PRINCIPLE-BASED RESERVES (PART IV)

By Christian DesRochers, Mark S. Smith and Peter H. Winslow

Editor's Note: *Since the May 2006 issue of* Taxing Times*, we have dedicated nearly 50 pages of content to the broad topic of principle-based reserves (PBR) and related issues, including five articles,[1] 1 three dialogues,[2] two tidbits[3] and one letter to the editor.[4] On Dec. 2, 2012, the National Association of Insurance Commissioners (NAIC) adopted the revised Valuation Manual that sets forth principle-based reserving (PBR) requirements for life insurance and annuities. The vote allows the Standard Valuation Law (and the accompanying Valuation Manual) to be sent to state legislatures for adoption. As the implementation of PBR is moving closer, we present yet another actuary/attorney dialogue on PBR to revisit federal-income-tax-related issues in the context of what we have learned since we began the discussions nearly seven years ago. In the prior dialogues, we discussed a number of tax reserve issues, including whether PBR constitute insurance reserves under Section 816(b) of the Internal Revenue Code, whether they qualify as CRVM or CARVM reserves, as applicable, under Section 807(d) in whole or in part, and, if so, how PBR should be recomputed for tax purposes.*

I am joined in the discussion by two individuals who are familiar to readers of Taxing Times*, Peter Winslow of Scribner, Hall & Thompson, LLP and Mark Smith of PricewaterhouseCoopers, LLP. As always, the views that we express are our own.*

Chris: As we begin the conversation, I'd like to ask Peter what has changed with respect to PBR since we last discussed the issue.

Peter: Since Part III of our PBR dialogue published in the March 2008 edition of *Taxing Times,* there have been several significant developments. These developments can be grouped into four general categories. First, the Internal Revenue Service (IRS) and Treasury have provided guidance in the form of two notices: Notice 2008-18[5] dealing with PBR generally and Notice 2010-29,[6] addressing the transition to Actuarial Guideline 43 (AG 43), which represents a principle-based approach to variable annuity guaranteed benefits. Second, several court cases have been decided that are relevant to our discussion, including the *American Financial*[7] and *CIGNA*[8] cases. And, I would even add a recent property/casualty tax case, *State Farm*[9] to the list of relevant cases, and I will explain why later. Third, there have been changes to PBR itself including the Net Premium Reserve Floor and a three-year transition rule. The fourth category I will label as "outside influences" that could have a direct or indirect impact on PBR itself and/or the tax treatment of PBR. I would put into this category the possibility of adoption of International Financial Reporting Standards (IFRS), or a revised insurance contract standard for GAAP, as well as the possibility of comprehensive corporate tax reform.

Let's take these topics one at a time. Mark, could you start with the IRS' guidance in Notice 2008-18 and 2010-29 and bring us up to date as to how the IRS' analysis in those notices could apply to PBR?

Mark: Well, Peter, my sense is that Notices 2008-18 and 2010-29 together give the IRS and Treasury a tremendous head start in guidance on PBR. For example, the fundamental issues that Notice 2008-18 identified in connection with Life PBR remain the most important issues on the IRS and Treasury agenda for addressing tax issues that PBR raises. The industry comments in response to that notice are as helpful in 2013 as they were in 2008. Also, the similarities between the Standard Scenario Amount (SSA) of AG 43 and the Net Premium Reserve Floor of VM-20 suggest a path forward for PBR that would require little additional work, should the IRS and Treasury decide to begin their work starting with the same template.

The larger concern, I think, is not the treatment of the SSA or Net Premium Reserve Floor, but rather unanswered questions about other elements of tax reserves. What is the treatment of the CTE Amount of AG 43? What about the Stochastic Reserve or Deterministic Reserve of VM-20? Why has the IRS to date not confirmed that the statutory reserve cap is simply the amount of a company's statutory reserves? These are industry-wide issues that should be addressed prospectively, rather than the subject of after-the-fact challenge in exam or litigation. I would like to believe that the work that went into Notices 2008-18 and 2010-29 frees up the IRS and Treasury to tackle a broader range of issues in the context of PBR and pick up where work left off on AG 43 in 2010.

Chris, can you share a little bit about how Notice 2010-29 was received from the perspective of an actuary? What worked well, and what didn't work well?

Chris: Notice 2010-29 and AG 43 are a good starting point, as together the IRS, Treasury and the life insurance industry are gaining some practical experience dealing with PBR in the context of variable annuity reserves. However, there are also some differences between AG 43 and Life PBR under VM-20, including the fact that AG 43 was retroactive to 1981 issues while Life PBR is prospective for issues after its effective date. Overall, I believe that positive results have been achieved through Notice 2010-29. One of the most important is the belief that while the emerging reserve methods may make it more difficult to fit the "square peg" of PBR into the "round hole" of Section 807, there is a commitment on the part of Treasury and the IRS to work with the industry to keep life insurance companies in Part I of Subchapter L of the Code; that is, to keep life insurance companies taxed as such, and not as property/casualty companies under Part II. However, in the long run, the approach used in Notice 2010-29 of bifurcating the statutory reserve into a deductible tax reserve segment and a non-deductible reserve segment based on the actuarial computation method applied to each segment may prove to be problematic.

Peter: I agree with you that it is problematic for the IRS. It will be difficult for the IRS to have it both ways and say, on the one hand, that PBR qualify as life insurance reserves for purposes of the life insurance company test under Section 816, and, on the other hand, argue that they are not life insurance reserves for deduction purposes under Section 807. Yet, if the IRS takes a different approach and says that PBR are not life insurance reserves for any purpose, then the door would be open for tax planning on the company status issue by choosing to hold, or not to hold, principle-based statutory reserves.

Mark: For what it's worth, I don't believe the IRS would on the one hand rely on the cross-reference to life insurance reserves under Section 816(b) to exclude reserves from section 807, and on the other hand claim that the definition of life insurance reserves is different for purposes of the two provisions. Notice 2008-18 included an assurance that the IRS and Treasury did not think it would be appropriate to treat PBR in a way that summarily converted life insurance companies to non-life insurance companies for tax purposes. And, even Notice 2010-29 included at least the SSA in life insurance reserves.

I don't think the IRS has been very focused on life insurance company status at all for one practical reason: many assume that so far under AG 43 the treatment of the CTE Amount is not material enough to change a company's status. Likewise for PBR, assuming the Net Premium Reserve, at a minimum, is treated as a life insurance reserve, how many companies would find their status at risk? Some companies may hover close to the line. I know there was tension around life insurance company status for a handful of companies 10 or 15 years ago, driven by differences between life and non-life proration, an issue that has occupied nearly as many pages in *Taxing Times* as PBR has.

Chris: One objective of Congress in enacting the 1984 Act concept of "federally prescribed reserves" was to allow life insurance companies to deduct reserves appropriate to the risks under their contracts but not allow a deduction for voluntary reserves that an insurer may choose to hold. If the goal of PBR is to develop a definition of reserves that reflects the economic cost to the insurer of the benefits to be provided, it can be argued that PBR in their entirety are the appropriate measure of the liabilities, consistent with the intent of Congress in 1984. Thus, the separation of reserves into segments to determine deductibility, while an expedient to identify that part of the reserves that clearly fits the formulaic model under Section 807, also represents an artificial allocation of the potential cost of the liability with respect to the determination of a life insurer's taxable income. This can create situations where significant non-deductible reserves emerge, which are not consistent with the underlying economic cost of the liability being reserved for.

To address the specific question, Notice 2010-29 was helpful to the industry by providing guidance on the transition to AG 43. At the same time, by limiting tax reserves to the SSA, Notice 2010-29 creates potentially unresolved issues for the industry, the IRS and Treasury. For example, the limitation on deductible reserves for 2010 and later issues creates a situation where a significant portion of the reserves required under AG 43 may not be deductible, where the statutory reserves

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include a significant stochastic element while the tax reserve is limited to the SSA.

Peter, another feature under AG 43 is that it applies retroactively to statutory reserves, but not necessarily for tax. Can you talk about how companies are handling that aspect of AG 43?

Peter: Companies generally are taking one of two approaches. Because Section 807(d) defers to the National Association of Insurance Commissioners' (NAIC's) prescribed tax reserve method at the time the contract was issued, some companies are using AG 39 (and AG 34 for guaranteed minimum death benefits) for pre-2010 contracts. Other companies are using some version of what is now being referred to as the "hybrid method," that Mike LeBoeuf and I outlined in our article in the May 2011 edition of *Taxing Times*.[10] These companies do not use AG 39 because it always was scheduled to sunset at the time the contracts were issued. I think both of these groups of companies include the CTE Amount in statutory reserves for purposes of the statutory reserves cap. Needless to say, the IRS should address this issue to determine which group has adopted the correct position. Who knows? Maybe the IRS will permit either tax reserve method to be used to avoid audit disputes.

I do not know of any companies that are applying AG 43 retroactively to pre-2010 contracts. Mark, is this now a viable position in light of the *American Financial* case and should companies reconsider whether AG 43 should have retroactive effect for tax purposes?

Mark: Well, I think the term "retroactivity" itself prejudices the conversation in a way that's not helpful. We're not talking about changing or restating reserves for prior years. The issue is what reserve methodology applies in future years, for previously issued contracts. In this regard, I think the primary lesson of *American Financial* is that there is no hard-and-fast rule for all new AGs. Rather, each AG will need to be evaluated to determine the extent to which it represents a change to previous actuarial guidance, versus a clarification or refinement.

The application of AG 43 to previously issued contracts would present unique issues: Although some features of AG 43 already were familiar before 2010, others are quite different from prior guidance. A taxpayer that already adopted AG 43 in 2010 based on Notice 2010-29 could lose the protection of that notice as a safe harbor for taxable years in which AG 43 is applied with respect to pre-2010 contracts. The IRS would likely challenge such a move. Companies may differ in terms of the impact of AG 43 on their block of business, or their intended treatment of the CTE Amount. There may be circumstances where a conversation about retroactivity could be had, but where that conversation would lead is uncertain. I do not anticipate a wholesale move to apply AG 43 to previously issued contracts.

Your comment about the IRS permitting either AG 39 or the "hybrid" method for pre-AG 43 years could be prescient, though. There may be other methods as well. I think in the long term, it is inevitable that the IRS and Treasury will need to acknowledge that in some cases, there can be more than one permissible reserve methodology. Since NAIC has at different points in time endorsed both AG 39 and individual elements of the hybrid method, it may be too late for the IRS to come in after the fact and declare that one, but not the other, was permissible for contracts issued before 2010.

Chris: In dealing with the issue of pre-2010 contracts, AG 39 may be unique among actuarial guidelines, as it was designed to be temporary from inception, although that fact does not extend to Actuarial Guideline 34 (related to minimum death benefit reserves), which AG 43 also replaced for statutory reserves. However, the current situation raises an audit issue for the IRS, and that is: what methods are acceptable for pre-2010 contracts? At some point, some guidance may be needed as to what is acceptable and what is not, or the issue may simply be left to audit. It is a transitional issue, as it applies to a closed block of contracts, but it will be around for several years. Now I'd like to turn the conversation to Life PBR which is looming on the horizon. Before we do that, earlier Peter mentioned the *State Farm* case, which did not even involve a life insurance company. How is that relevant?

Peter: In my opinion, the *State Farm* case just underscores an important lesson already gleaned from *American Financial*—when the Internal Revenue Code defers to the NAIC, there is no room in the statute for the IRS to second-guess the NAIC and select its own tax reserve method.

The *State Farm* case dealt with a property/casualty company that included extra-contractual obligations (ECOs) in its deductible claim reserves. This treatment was consistent with clear NAIC guidance. As in the case of the tax reserve method for life companies, the Internal Revenue Code, Sections 832 and 846, defers to the NAIC's method of accounting for property/casualty claim reserves. The IRS argued that ECOs were not claims "on insurance contracts" and, therefore, the NAIC's accounting guidance was inapplicable. The Seventh Circuit disagreed, noting Congress' direction in the Code that NAIC accounting governs for underwriting income. So, in giving guidance under PBR, the IRS must pay close attention to what the NAIC has done—and defer to it.

Mark: Peter, do you think it matters that the *State Farm* case involved the nature of risks that are appropriately included in reserves (that is, ECOs), whereas the instruction in Section 807(d)(2) is to use CARVM or CRVM, *i.e.*, the methodology for accounting for those risks?

Peter: Not really. For property/casualty companies, the Internal Revenue Code defers to the NAIC to determine the accounting for underwriting income. So, in effect, the court in *State Farm* held that the deference to the NAIC could include what is included in underwriting income—in that case ECOs. In the case of life insurance reserves, the Code defers to the NAIC for the tax reserve method. Although this could be considered narrower deference, I believe that deference should include, for example, tax recognition for NAIC-prescribed CRVM reserves that are computed using a gross premium or stochastic method.

Chris: Peter, does the *American Financial* case have any other possible impacts on PBR?

Peter: I believe that there are two fundamental principles in *American Financial*. The first is what we have been discussing—the court made clear that the Code defers to the NAIC, not the IRS, to interpret the tax reserve method—in this case CRVM. The second principle is that, under the NAIC method, there can be more than one permissible interpretation at the time the contract is issued. And, if the company changes its statutory reserves from one permissible method to another, there is nothing that precludes the company from making a conforming change to tax reserves.

The second principle from *American Financial* I just mentioned is directly relevant to PBR's three-year transition rule. During a three-year period after VM-20 is adopted by the NAIC, companies will be able to choose whether to stay on old CRVM or to adopt PBR. Because VM-20 will say that either method is a permissible interpretation of CRVM during the transition period, whichever choice is made for statutory reserves also should apply for tax purposes.

Even though there are major tax issues to be resolved under PBR, it is interesting to note that the adoption of VM-20 should resolve at least one of the central disputes in *American Financial* as it relates to contracts for which PBR reserves will be held. The primary cause of the *American Financial* litigation was a basic disagreement about what tax reserve method to use when a company adopts a new statutory reserve method that was permissible, but not required, when the contract was issued. Companies, including American Financial, argued that they were entitled to conform their tax reserves to the new previously permissible statutory method. The IRS responded that the companies were required to search for the method that would yield the lowest reserve permitted by 26 states. This issue arose because the Standard Valuation Law's definition of CARVM (or CRVM) did not change—it was only the NAIC's or states' interpretation of the Standard Valuation Law that had changed.

This issue will go away once PBR is adopted. The Standard Valuation Law will cross-reference to the Valuation Manual, and state law will incorporate the manual. This means that if

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the method described in the manual changes, then both the CRVM and the 26-state interpretation will automatically change along with it. So, we should have no more disputes about whether a new actuarial guideline or 26-state prevailing view should govern for changes in the CRVM.

Chris: One thing we discussed earlier related to AG 43 and Notice 2010-29 is the concept that the deductible reserve is made up of a portion of the total reserve that fits within the definition of "reserves" as it is found in Section 816 as well as meeting the requirements of Section 807 for computing federally prescribed reserves. Under VM-20, the minimum reserve for life insurance policies subject to PBR is based on three elements, depending on the policy: an aggregate net premium reserve plus deterministic and stochastic reserve elements, if applicable to the policy. We know that the "net premium floor" was important to identify at least a portion of Life PBR that would unquestionably satisfy the Internal Revenue Code's reserve criteria. However, are we once again falling into the "trap" of bifurcating the statutory reserve as an expedient to meet the Code's requirements? Peter, is Life PBR CRVM and how far did Congress go in allowing the NAIC to set the tax reserve method under Section 807?

Peter: The decisions of the Sixth and Seventh Circuits that I just mentioned call into question whether the IRS could successfully limit the federally prescribed reserves for PBR to the Net Premium Reserve Floor. If the NAIC decides that PBR in its entirety is CRVM and is the minimum amount necessary to provide for future benefits under the contract, it is questionable whether the IRS has the ability to say that only a net premium method qualifies for tax purposes. Similarly, the fact that PBR takes into account all cash flows, including expenses, may not matter. As in *State Farm*, it is for the NAIC to determine how tax reserves should be computed and factors outside the contract can appropriately be considered.

I understand that the IRS is considering taking the position that the deterministic and stochastic portions of PBR are not part of the federally prescribed tax reserves because they do not qualify as life insurance reserves under Section 816(b). But, I believe that this potential position is a dead end for two reasons. First, and most importantly, as I have said in prior dialogues, I think that PBR in its entirety will satisfy every criteria of the definition of life insurance reserves. I find this whole argument that only a net premium reserve will qualify as a life insurance reserve, or deductible reserve, troubling. To me, the argument boils down to: Congress did not intend to permit tax reserves to evolve to reflect life insurance liabilities more accurately. It seems strange to presume that Congress made a tax policy decision to preserve outdated tax reserves. Fortunately, Congress did just the opposite by deferring to the NAIC's tax reserve method, whatever that is, at the time the contract is issued.

The second reason this Section 816(b) argument is a dead end is that the legislative history is pretty clear that, regardless of whether statutory reserves satisfy Section 816(b), tax reserves still must be computed under Section 807(d). That Code section defers to the NAIC.

Mark: Well, it is fortunate that VM-20 includes a net premium reserve floor. I don't think anyone from the IRS or Treasury could reasonably believe that anything less than that amount should be allowed for life insurance contracts subject to VM-20. It might be easiest for them to limit federally prescribed reserves to the net premium reserve with little further thought, but that would be a mistake. Given the still-unanswered questions from Notice 2008-18, lessons learned on AG 43 since Notice 2010-29, the *American Financial* and *State Farm* cases, and development of a more robust regime for Life PBR in VM-20, I think the IRS still needs to address some fundamental issues head-on before moving forward. One such issue is, as you point out, the legislative history that says that the cross-reference to the definition of life insurance reserve under Section 816(b) is meant only to identify the "types" of reserves for which increases and decreases are taken into account. I don't believe that cross-reference superimposes a second computational limitation on life insurance reserves in addition to the rules of Section 807(d)(2).

Peter: So, do you agree that if the IRS appropriately defers to VM-20, and overcomes its historic objection to a gross premium reserve methodology, the deterministic reserve and stochastic reserve are automatically included in both the federally prescribed reserve and the statutory cap?

Mark: Yes, but. For the statutory reserve cap, the issue is pretty simple. The Internal Revenue Code asks only what is the aggregate amount set forth in the annual statement with respect to enumerated items, including life insurance reserves. Statutory reserves equal statutory reserves, or stat equals stat. This is why including the CTE Amount of AG 43 in the statutory reserve cap should not be controversial. It is also why (in addition to legislative history directly on point) the priority guidance plan project on deficiency reserves should be easy to answer.

For the federally prescribed reserve, though, logistical issues are still unanswered (at least with regard to stochastic reserves). Part of the reason for excluding the CTE Amount from the federally prescribed reserve in Notice 2010-29 was the inconsistency between the formulaic approach of Section 807(d)(2)—including the use of a single prescribed interest rate contract-by-contract—and the stochastic approach used to determine the CTE Amount. Likewise, if the stochastic reserve of VM-20 were to be included in the federally prescribed reserve, would a methodology be needed to compute that reserve using the greater of the applicable federal interest rate (AFIR) or the prevailing state assumed rate? Or would the comparison at that point become meaningless?

Peter: I agree. As I keep repeating, I think the correct answer is that PBR in its entirety should qualify both as life insurance reserves and as CRVM reserves deductible as the federally prescribed reserves. Having said that, I still do not know exactly how we are supposed to recompute the stochastic reserve component under Section 807(d). For example, what do we do with the requirement to use the greater of the AFIR or prevailing state assumed rate? Chris, Is there an actuarial way to solve this conundrum?

Chris: Section 816 codified the long-standing requirement that reserves "are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest." Broadly defined, Section 816 does not appear to require that reserves be computed under a tradition formulaic approach, only that reserves are based on "assumed mortality and interest."

Under Section 807(d)(2), the amount of the reserve for any contract is determined using the tax reserve method applicable to the contract, the greater of the applicable federal or state assumed rate of interest, and the commissioners' standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (*e.g.*, substandard risks) incurred under the contract which are not otherwise taken into account. Except for the designated tax reserve method, interest rate and mortality table, the federally prescribed reserve must be computed using the same actuarial basis as the statutory reserve. The term "prevailing state assumed rate" (PSAR) means the highest assumed interest rate permitted in computing life insurance reserves for insurance or annuity contracts (as the case may be) under the insurance laws of at least 26 states. In general, the term "prevailing commissioners" standard tables means the most recent commissioners' standard tables prescribed by the NAIC permitted to be used for reserve computations (for the type of contract at issue) under the insurance laws of at least 26 states upon contract issuance. If we work from the assumption that VM-20 will become CRVM once it is adopted, then how are the state assumed rate and commissioners' standard tables determined? Do the requirements of Section 807(d) limit deductible reserves to formulaic reserves having a fixed mortality and interest basis or have the definitions of commissioners' standard tables and prevailing state assumed rate been fundamentally changed by the implementation of PBR through revisions to the Standard Valuation Law? Are the appropriate mortality and interest assumptions those mandated for the net premium floor, or is a broader reading of the statute possible because of its deference to the NAIC? These are all questions that will need to be addressed in considering the extent to which stochastic reserves are incorporated into federally prescribed reserves.

If we work from the assumption that VM-20 will become CRVM once it is adopted, then how are the state assumed rate and commissioners' standard tables determined?

The last point that Peter mentioned when we began this discussion was the possible effect of outside influences. Peter, could one of those influences be a change in federal regulation of insurance which leads to the use of an accounting basis other than statutory, for example GAAP or IFRS?

Peter: I think the new reserve methods being developed by the IASB and FASB could have a profound effect on PBR generally, and tax reserves specifically, whether or not we ever get federal regulation of insurance. My belief (without much to back it up) is that there will be a lot of pressure on the NAIC (or future federal regulator) to abandon statutory accounting, at least for the statement of operations, if some version of the IFRS' proposed accounting for insurance contracts is adopted. Solvency concerns could be addressed by retaining some version of statutory accounting for the balance sheet or relying on risk-based capital (RBC) to ensure that insurance companies retain sufficient surplus. But, there is no compelling need as far as I am concerned to have different reserve methods for statutory, IFRS and GAAP to show the periodic emergence of profits. Furthermore, if book conformity occurs, there will be no compelling need to have one reserve method for statutory, GAAP and IFRS on the one hand and a different method for tax on the other. If I am right, then at some future date, we may

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find ourselves with a PBR-type statutory reserve that is the same as, or at least similar to, GAAP or IFRS, but without a net premium reserve floor, or even a deterministic reserve. The issues we have been focusing on this dialogue certainly would need to be addressed directly by the IRS or Congress to try to bring tax reserves more up to date.

Chris: As statutory reserve methods have evolved toward PBR, it is becoming more and more difficult for the IRS to audit tax reserves. The increasing development of actuarial guidelines by the NAIC as well as the increasing complexity of reserve methods has left both the industry and the IRS frustrated. Actuarial guidelines have emerged as a key tool for the NAIC and the industry by which emerging reserve methods are developed and communicated. In 1984, there were approximately a dozen guidelines; now there are more than 40. Moreover, guidelines are continually being updated, so the concept in Section 807(d)(3)(B) that the applicable method is that "in effect on the date of issuance of the contract" is becoming increasingly difficult to reconcile with the evolution of reserve standards, even without considering *American Financial*. Conceptually, PBR requirements are intended to be continually modified and adjusted as conditions warrant. Perhaps it is time to reconsider whether a separate tax reserve system is worth the cost compared to simply using statutory reserves, perhaps with controls on margins, similar to the "fair and reasonable" approach applied to loss reserves under Section 832. Placing the responsibility on taxpayers to demonstrate the methods and assumptions they relied upon to make their estimates are reasonable, perhaps in concert with the 10-year spread on a change in reserve basis under Section 807(f), may simplify the administration of the tax law without adversely affecting the resulting tax revenue from the life insurance industry. This may be particularly appealing if it is done as a part of a broad tax reform effort.

Mark: This has all been really interesting, Chris, but in some ways it leaves us with all the same questions we started with. I'd like to believe that in the broadest sense the lessons here are simple. First, we and the IRS are administering a system whose goal is clear reflection of income. Second, to achieve this goal the Internal Revenue Code instructs us to defer to reserve methodologies prescribed by the NAIC. I don't foresee broad tax reform changing either of these broad principles, nor do I see the actuarial profession declaring "mission accomplished" with the promulgation of VM-20. Peter may be right that IFRS could put tremendous pressure on the NAIC to abandon or at least change statutory accounting to achieve conformity with financial reporting. You may be right that the evolution of statutory reserve methods toward PBR has produced a complex and difficult-to-audit tax regime that serves neither companies nor the IRS well. It seems ironic, but at this point conformity with statutory accounting, however complex, is likely simpler than an approach that tries to fit new actuarial approaches into old tax rules. Simplification is truly in the eye of the beholder.

If I had a single word of advice for tax advisors and companies, and for my former colleagues in the government, it would be not to lose sight of the forest for the trees. Although many of the tax issues we wrestle with are binary, we are not working within a system of gotchas. We are working within a system that attempts to clearly reflect income, and that does so using reserve methodologies prescribed by nontax regulators.

Chris: I'd like to thank Peter and Mark for sharing their thoughts, and adding to the ongoing *Taxing Times* conversations on PBR. Whenever we have started a dialogue, it always seems any wisdom may be found along the way in the journey and not necessarily in the destination. That is certainly the case for me, as I never know where the conversation is going to turn until it actually heads there. In our discussion, we have tried to highlight issues that would be of interest to our readers and at the same time be somewhat provocative and thought provoking. In the spirit of open discussion and discourse, I'd like to invite any of our readers to join the conversation, either through a comment, article or a letter to the editor. I can be reached at *chris.desrochers@ey.com.*

Note: *The views expressed are those of the author and do not necessarily reflect the views of Ernst & Young LLP.*

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