



Article from
Taxing Times
October 2020



ACLI Update

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ACLI COMMENTS ON PROPOSED REGULATIONS REGARDING COMPUTATION AND REPORTING OF RESERVES FOR LIFE INSURANCE COMPANIES

The Tax Cuts and Jobs Act of 2017 (“TCJA”) made significant changes to the rules for determination and reporting of life insurance reserves under section 807 of the Internal Revenue Code (“Code”). On April 2, 2020, a Notice of Proposed Rulemaking (“NPRM” or “proposed regulations”) drafted by the Internal Revenue Service (“IRS”) and the Treasury Department was published in the Federal Register to provide guidance implementing the TCJA’s legislative changes to section 807. Comments on the proposed regulations were due June 1, 2020.

The proposed regulations addressed the following topics:

- computation of life insurance reserves,
- reporting of reserves,
- change in basis of computing reserves,
- definition of life insurance reserves,
- electronic filing of annual statements,
- proposed removal or revision of regulations with no future application and
- proposed conforming changes to regulations.

ACLI tax and actuarial professionals reviewed the topics covered by the proposed regulations and submitted a comprehensive comment letter by the June 1 due date.¹ See the article “New Regulations Provide Guidance on Computation and Reporting of Reserves” published by the Taxation Section for a thorough analysis of the regulations and a summary of the comments submitted by ACLI and other commentators.

ACLI SUBMITS RECOMMENDATIONS FOR 2020–2021 TREASURY/IRS PRIORITY GUIDANCE PLAN

For many years, the IRS and Treasury have publicly issued and maintained a Priority Guidance Plan (“PGP”) to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices and other



published administrative guidance. The 2020–2021 PGP will identify guidance projects that Treasury and the IRS intend to actively work on as priorities during the period from July 1, 2020, through June 30, 2021.

Annually, the IRS and Treasury invite the public to submit recommendations for items to be included on the PGP. Following its usual practice, ACLI submitted by the July 22 due date a letter containing recommendations for guidance on various life insurance company and product taxation matters.²

The ACLI’s recommendations for the 2020–2021 PGP included the following:

- Guidance on life insurance reserves
 - Project was included on 2019–2020 PGP.
 - Proposed regulations were issued in April 2020.
- Guidance under Code section 382 related to built-in gain and loss for corporations experiencing an ownership change.
 - Proposed regulations issued in September 2019 would require special rules for acquisitions of insurance business.
- Guidance on life-nonlife consolidated returns
 - Proposed regulations were issued in July 2020 (see discussion that follows).
 - Further long-overdue substantive changes—advocated by ACLI for many years in prior PGP recommendation letters—also are necessary and needs to be addressed in future guidance.

- Guidance on the use of foreign statement reserves for purposes of measuring qualified insurance income under Code section 954(i)
 - Project was included on 2019–2020 and prior PGPs.
 - Need for guidance has been enhanced by the TCJA.
- Guidance on paid family and medical leave programs (“PFML”)
 - Project was included on 2019–2020 PGP.
 - Insurers issuing PFML products need guidance categorizing PFML as either wage replacement or wage continuation under regulatory definitions.
- Guidance on combination annuity/long-term care (“LTC”) contracts and exchanges of annuities for LTC insurance
 - Project(s) were included on PGP since November 2009.
- Guidance on partnership K-1 reporting
 - IRS should take a comprehensive approach to address the challenges presented by partnership reporting to partners.
- Elimination of the generation skipping transfer tax withholding obligation on insurance companies
 - Current withholding requirement for issuers of life insurance policies and annuity contracts is unduly burdensome.
 - If not entirely withdrawn, modifications should be made to provide relief.
- Guidance on required minimum distributions (“RMD”)
 - Changes are needed to modify the minimum income threshold test to remove barriers to annuitization at later ages.

- SECURE Act beneficiary guidance
 - Changes are needed to clarify uncertainties regarding administration of the RMD provisions following the account holder’s death.

The ACLI letter also suggests that one insurance-related item be eliminated from the PGP: guidance on the exchange of property for an annuity contract. ACLI is unaware of controversy in this area, which was the subject of regulations proposed in 2002.

ACLI COMMENTS ON PROPOSED MODIFICATIONS TO LIFE-NONLIFE CONSOLIDATED RETURN REGULATIONS

On July 8, 2020, a Notice of Proposed Rulemaking drafted by the IRS and Treasury was published in the Federal Register proposing amendments to § 1.1502-21 of the consolidated return regulations to provide guidance for consolidated groups implementing recent statutory amendments to the net operating loss (“NOL”) provisions of Code section 172. In addition, the proposed regulations update the so-called life-nonlife consolidated return regulations (§ 1.1502-47). The due date for comments on the proposed regulations was Aug. 31, 2020.

The TCJA amended section 172 to provide that, except for non-life insurance companies taxed under Code section 831, NOLs incurred in post-2017 taxable years could not be carried back to recoup taxes paid on income in earlier years.³ Such losses instead may be carried over indefinitely, subject to a limitation of 80 percent of taxable income in the year to which carried.⁴ However, in response to the COVID-19 crisis, the CARES Act provided for a five-year carryback of NOLs incurred in 2018–2020 and also waived the 80 percent limitation for taxable years beginning



before 2021. The proposed amendments to the § 1.1502-21 regulations address implementation of these statutory rule changes for affiliated groups of corporations filing consolidated returns.

The NPRM also notes that, as a result of changes in the taxation of insurance companies under the TCJA and prior legislation, various provisions of the life-nonlife consolidated return regulations are outdated. The proposed regulations would update § 1.1502-47 by:

- removing paragraphs implementing statutory provisions that have been repealed,
- revising paragraphs implementing statutory provisions that have been substantially revised,
- updating terminology and statutory references to account for other statutory changes and
- removing paragraphs that contain obsolete transition rules or that are no longer applicable because the effective dates in the current life-nonlife regulations have passed.

ACLI submitted a comment letter on the proposed revisions to the § 1.1502-47 regulations prior to the Aug. 31 due date.⁵ Because ACLI agreed with the vast majority of the changes, the ACLI comment letter was limited to a few specific areas where ACLI believed that its recommended changes would provide useful or necessary clarification.

As noted in the discussion of ACLI’s PGP recommendations, ACLI has for many years urged that substantive changes to the life-nonlife regulations are necessary. The NPRM indicates that Treasury and the IRS continue to study other issues pertinent to life-nonlife groups for purposes of potential future guidance. The ACLI comment letter recommends that the following items should be among those considered for potential future guidance:

- applying normal consolidated return loss allocation rules to losses of eligible and ineligible nonlife members,⁶
- applying separate return limitation years principles to utilization of ineligible nonlife losses, including in the context of acquired nonlife groups,
- applying normal consolidated return rules to allow netting of capital losses against capital gains of all members of the group and
- simplifying the eligibility and tacking rules. ■

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ENDNOTES

- 1 The ACLI comment letter may be found at Tax Analysts Doc. No. 2020-21175.
- 2 The ACLI recommendation letter may be found at Tax Analysts Doc. No. 2020-28806.
- 3 Nonlife insurance company losses may be carried back two years and carried forward 20 years, as under pre-TCJA law.
- 4 The 80 percent limitation does not apply to limit the use of pre-2018 NOLs, nor does it apply to NOLs of nonlife insurance companies.
- 5 The ACLI comment letter may be found at Tax Analysts Doc. No. 2020-32740.
- 6 Losses of ineligible nonlife members may not be offset against life member taxable income; losses of eligible nonlife members may offset life income only to the extent of 35 percent of the lesser of eligible nonlife losses or life income.