

2018 SOA Life & Annuity Symposium

May 7–8, 2018

Baltimore, MD



**SOCIETY OF
ACTUARIES®**

Session 37 PD, Company Taxation Update

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SOCIETY OF ACTUARIES

Antitrust Compliance Guidelines

Active participation in the Society of Actuaries is an important aspect of membership. While the positive contributions of professional societies and associations are well-recognized and encouraged, association activities are vulnerable to close antitrust scrutiny. By their very nature, associations bring together industry competitors and other market participants.

The United States antitrust laws aim to protect consumers by preserving the free economy and prohibiting anti-competitive business practices; they promote competition. There are both state and federal antitrust laws, although state antitrust laws closely follow federal law. The Sherman Act, is the primary U.S. antitrust law pertaining to association activities. The Sherman Act prohibits every contract, combination or conspiracy that places an unreasonable restraint on trade. There are, however, some activities that are illegal under all circumstances, such as price fixing, market allocation and collusive bidding.

There is no safe harbor under the antitrust law for professional association activities. Therefore, association meeting participants should refrain from discussing any activity that could potentially be construed as having an anti-competitive effect. Discussions relating to product or service pricing, market allocations, membership restrictions, product standardization or other conditions on trade could arguably be perceived as a restraint on trade and may expose the SOA and its members to antitrust enforcement procedures.

While participating in all SOA in person meetings, webinars, teleconferences or side discussions, you should avoid discussing competitively sensitive information with competitors and follow these guidelines:

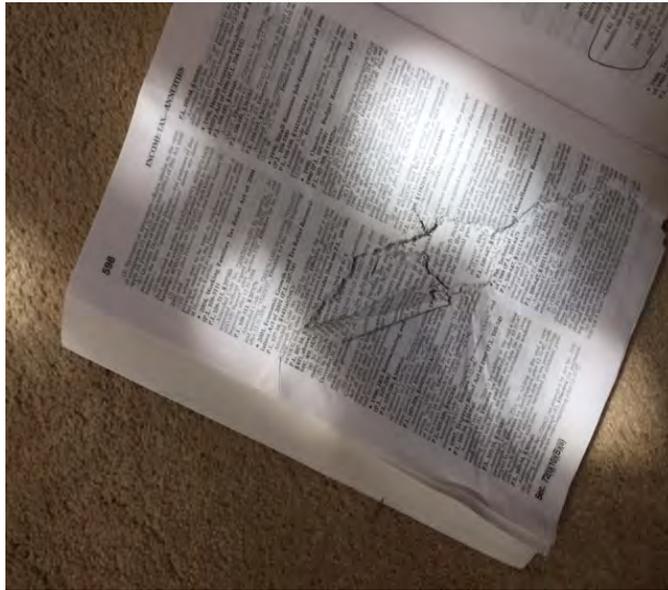
- **Do not** discuss prices for services or products or anything else that might affect prices
- **Do not** discuss what you or other entities plan to do in a particular geographic or product markets or with particular customers.
- **Do not** speak on behalf of the SOA or any of its committees unless specifically authorized to do so.
- **Do** leave a meeting where any anticompetitive pricing or market allocation discussion occurs.
- **Do** alert SOA staff and/or legal counsel to any concerning discussions
- **Do** consult with legal counsel before raising any matter or making a statement that may involve competitively sensitive information.

Adherence to these guidelines involves not only avoidance of antitrust violations, but avoidance of behavior which might be so construed. These guidelines only provide an overview of prohibited activities. SOA legal counsel reviews meeting agenda and materials as deemed appropriate and any discussion that departs from the formal agenda should be scrutinized carefully. Antitrust compliance is everyone's responsibility; however, please seek legal counsel if you have any questions or concerns.

Presentation Disclaimer

Presentations are intended for educational purposes only and do not replace independent professional judgment. Statements of fact and opinions expressed are those of the participants individually and, unless expressly stated to the contrary, are not the opinion or position of the Society of Actuaries, its cosponsors or its committees. The Society of Actuaries does not endorse or approve, and assumes no responsibility for, the content, accuracy or completeness of the information presented. Attendees should note that the sessions are audio-recorded and may be published in various media, including print, audio and video formats without further notice.

Tax Reform is Big News!



I knew it! Lucky for me

Overview/Agenda

- Tax Reform-Corporate tax provisions
- Tax Reform-Life companies
- IRS Guidance

Tax Reform- Corporate tax provisions



TCJA – Key Corporate Changes

- Reduces the corporate tax rate from 35% to 21%
- Repeals corporate alternative minimum tax (“AMT”)
- Limits interest expense deductions (section 163(j))
- Repeals special loss carryback and carryover rules for life companies
- BEAT (new section 59A) and impact on reinsurance

Alternative Minimum Tax Repeal

- A taxpayer's unutilized AMT credits are refundable from 2018 through 2020.
 - 50% taxable income limitation per year
- Any leftover credits are refundable in 2021.
- Sequestration
 - Rate is 6.6% for FY 2018; 6.2% for FY 2019
- Interaction between refundable AMT credits and the limitation under Section 383
 - Consider impact of the decrease in tax rate on the yearly 382 limitation for credits

Interest Expense Limitation

- TCJA limits deductible net interest expense to 30% of adjusted taxable income.
- Status of insurance company interest income and expense as active trade or business interest.
- Life/nonlife consolidated returns may present special fact patterns and opportunities.
- Applies to **all** taxpayers, including individuals, partnerships, and corporations.
 - Conference Report provides “In the case of a group of affiliated corporations that file a consolidated return, the limitation applies at the consolidated tax return filing level.”
- Statute defines business interest and business interest income
 - Legislative reports include a footnote asserting that a corporation has only business interest income and business interest, unless otherwise explicitly provided for in the statute.
- Notice 2018-28 provides information regarding upcoming regulations
 - “Taxpayer”
 - Applicability of BEAT

Use of Operating Losses

- TCJA repeals sections 810 and 844
- Life insurance companies subject to regular corporate carryback and carryforward rules
 - No carryback
 - Unlimited carryforward
 - NOLs can be used to offset only 80% of taxable income
- These changes also apply to non-insurance corporations
- Changes do not impact the old law treatment of existing loss carryovers from pre-2018 tax years
- Nonlife insurance companies maintain old law treatment
- Life/Nonlife consolidated returns-considerations
 - Current year loss crossover within a life/nonlife consolidated return
 - Interaction of pre-2018 losses with post-2017 losses and the application of the 80% limitation based on taxable income

BEAT

- New Section 59A
- Minimum tax on U.S. companies (“applicable taxpayers”) which:
 - Meet gross receipts test (\$500 million threshold)
 - Have a “base erosion percentage” of 3% (lower percentage for certain types of entities)
- BEAT equals 10% x modified taxable income, less certain credits, minus regular taxable income reduced by all credits.
- Modified taxable income is increased by “base erosion tax benefits.”
- Base erosion tax benefits are attributable to “base erosion payments.”
 - Amount paid or accrued by a U.S. person to foreign related party for which a deduction is allowable.
- Base erosion payments include certain reinsurance-related payments.

Tax Reform-Life companies

Provisions amended or repealed

- Life insurance reserves (**amended** section 807)
- Deferred Acquisition Costs (**amended** section 848)
- Company and Policyholder Share Percentage (**amended** section 812)
- Repeal of Small Life Insurance Deduction (**repealed** section 806)
- Repeal of Special Rule for Distributions from Pre-1984 Policyholders Surplus Account (**repealed** section 815)
- Operations Loss Deduction (**repealed** sections 810, 844; already discussed)

Reserves

Life Insurance Reserves

(Life Insurance, Annuities, Non-Cancellable Accident and Health(A&H))

- Tax reserve equals greater of net surrender value or 92.81% of reserve computed using National Association of Insurance Commissioners (NAIC)-prescribed method applicable to the contract at the valuation date
- 92.81% applied to NAIC-prescribed reserve if no net surrender value (e.g., term insurance, immediate annuities, long-term care, disability income)
- Valuation date, not issue date, prescribes the ruleset
- Statutory Reserves Cap still in place
- Rules apply on contract-by-contract basis

Overview of Life Reserves Computation

- Statutory reserves (confirm method conforms with NAIC method, or revise if stat method varies from standard)
 minus
- Deficiency reserves, Deferred & Uncollected premiums;
- Apply 7.19% haircut
- Floor at net surrender value (NSV), cap at statutory reserves

Variable Contracts

- Tax reserve equals greater of net surrender value or separate account portion of reserve plus 92.81% of excess (if any) of reserve computed using NAIC-prescribed method applicable to the contract at the valuation date

Qualified Supplemental Benefits

- Includes benefits when there is a separately identified premium and net surrender value is not a funding source
 - Guaranteed insurability
 - Accidental death or disability benefits
 - Convertibility
 - Disability waiver benefit
 - Other benefits prescribed by regulations
- Special Rule – Tax reserve computed as if benefits provided by separate contract, i.e., 92.81% of reserve computed using NAIC-prescribed method applicable to the contract at the valuation date

Term Certain Annuities

- I.R.C. § 807(c)(3) reserves – not life insurance reserves
- Special Rule – Discount rate equal to highest rate or rates permitted by the NAIC to be used to discount the obligations at the valuation date

Cancellable A&H Claim Reserves

- Tax reserve for disability income equal to 92.81% of reserve computed using NAIC-prescribed method applicable to the contract at the valuation date and company experience for mortality and morbidity
- Tax reserve for other claim reserves computed by assuming unpaid losses paid in the middle of the year following the accident year with discount rate determined by corporate bond yield curve

Transition Rule

- New tax reserves rule applies to taxable years beginning after December 31, 2017.
- Section 13517(c)(2) of the TCJA provides a transition rule as follows:
 - For the first taxable year beginning after December 31, 2017 (i.e., 2018 for calendar year taxpayers), the reserve with respect to any contract under Section 807(d) at the end of the preceding taxable year shall be determined as if the amendments to Section 807 had applied in such preceding taxable year.
 - If the revised 2017 year-end reserve is greater than the original 2017 year-end reserve, 1/8 of the excess is deducted in each year from 2018 through 2025 under Section 805(a)(2) or 832(c)(4).
 - If the revised 2017 year-end reserve is less than the original 2017 year-end reserve, 1/8 of the excess is included in income in each year from 2018 through 2025 under Section 803(a)(2) or 832(b)(1)(C).

Section 807(f) Changes in Basis

- Changes in a taxpayer's basis for computing life reserves were subject to a 10-year spread.
- Under TCJA, the 10-year spread of the difference between reserves on the old versus new basis no longer applies.
- Changes in basis are treated as regular accounting method changes.
 - Treated as initiated by taxpayer, with consent
 - Conference Report says 4-year spread applies-regular rule is one year/four years
- Repeal of 10-year spread is effective for taxable years beginning after December 31, 2017.
 - Treatment of pre-2018 section 807(f) amounts

Other Rules

Deferred Acquisition Costs

- TCJA amends section 848
 - Increases the general amortization period from 10 to 15 years, and
 - Increases the rates for capitalization:
 - From 1.75% to 2.09% of net premiums for annuity contracts,
 - From 2.05% to 2.45% of net premiums for group life insurance contracts, and
 - From 7.7% to 9.2% of net premiums for other specified insurance contracts (including non-group life insurance and non-cancellable A&H insurance).
 - Effective Date – The amendments apply to net premiums for taxable years beginning after December 31, 2017.
 - Transition Rule – Specified policy acquisition expenses first required to be capitalized in a taxable year beginning before January 1, 2018, will continue to be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.

Dividends Received Deduction (DRD)

- TCJA amends rules for life insurance proration for purposes of determining the DRD
 - The provision simplifies the proration calculation by setting the company share and policyholder share percentages to a fixed amount.
 - The company share is fixed at 70% and policyholder share is fixed at 30%
 - Effective Date – The provision is effective for tax years beginning after 2017.

Nonlife provisions

- Unpaid loss reserve discounting (**amended** section 846)
- Proration (**amended** section 832(b)(5)(B))
- Special estimated tax payments (**repealed** section 847)

Product-related provisions

- Life settlements reporting (section 6050Y) (discussed in product tax session)
- Basis in life insurance contracts not reduced by cost of insurance (section 1016(a)(1)(B)) (discussed in product tax session)
- Transfer for value rules amended (section 101(a)(3)) (discussed in product tax session)



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