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CC:PA:LPD:PR (REG–103083–18)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Sir/Madame:

This letter concerns proposed regulations described as [REG–103083–18], RIN 1545–BO49, "Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules" (the "Proposed Regulations").

This letter constitutes my personal views and does not necessarily represent the views of my firm or any organization with which I am affiliated. No client has engaged me to write this letter. Rather, the Proposed Regulations address an area in which I actively practice and impose restrictions on arrangements that facilitate succession planning within privately-owned businesses that were not targeted by recent legislative changes to sections 101 and 6050Y by sections 13520 and 13522 of ''[a]n Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97, 131 Stat. 2054, 2149 (the "Act").

The attached comments discuss the framework governing certain transfers of policies that are helpful for business owners that existed before the Act and was were intended to be changed by the Act. They then review the Proposed Regulations and request the continuation of existing relief for taxpayers who make mistakes.

I appreciate the time constraints imposed upon the Treasury and IRS by needing to promulgate so many provisions relating to the Act. Thank you for your service.

Very truly yours,

Thompson Coburn LLP

By
Steven B. Gorin
Partner

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Comments on [REG–103083–18], RIN 1545–BO49:

Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules

The first sentence of section 101(a)(2) provides:

> In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (1) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee.

In other words, the policy is "tainted" in that it loses its exclusion from income under section 101(a)(1). Although section 101(a)(2) continues and describes certain transfers for a valuable consideration that will not be tainted, mistakes do happen (including the mistake of not seeking tax advice from a professional who knows these rules), and taxpayers need to be able to take corrective measures to remove this taint.

Section 1.101-1(b)(3) currently provides such a corrective measure:

> In the case of a series of transfers, if the last transfer of a life insurance policy or an interest therein is for a valuable consideration—
>
> (i) The general rule is that the final transferee shall exclude from gross income, with respect to the proceeds of such policy or interest therein, only the sum of—
>
> (a) The actual value of the consideration paid by him, and
>
> (b) The premiums and other amounts subsequently paid by him;
>
> (ii) If the final transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer, the final transferee shall exclude the entire amount of the proceeds from gross income;
>
> (iii) Except where subdivision (ii) of this subparagraph applies, if the basis of the policy or interest transferred, for the purpose of determining gain or loss with respect to the final transferee, is determinable, in whole or in part, by reference to the basis of such policy or interest therein in the hands of the transferor, the amount of the proceeds which is excludable by the final transferee is limited to the sum of—
>
> (a) The amount which would have been excludable by his transferor if no such transfer had taken place, and
>
> (b) Any premiums and other amounts subsequently paid by the final transferee himself.

Thus, section 1.101-1(b)(3)(ii) allows this taint to be removed by transferring the policy to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer. Section 1.101-1(b)(3)(ii) does not require the transfer to be a sale for fair market value.

However, read together, Examples (1), (2), and (3) in proposed section 1.101-1(g)(1), (2), and (3) appear to require that the transfer to the insured be a sale for fair market value. My concern may be overstated, based on Example (3) including that the transfer was for fair market value, when proposed section 1.101-1(b)(1)(ii)(1) does not impose such a requirement:

> *In general*. The limitation described in paragraph (b)(1)(i) of this section does not apply to the transfer of an interest in a life insurance contract for valuable consideration if both of the following requirements are satisfied. First, the transfer is not a reportable policy sale and the interest was not previously transferred for valuable consideration in a reportable policy sale. Second, the interest is transferred to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer (see section 101(a)(2)(B)).

If my concern is an overreaction to Example (3), I respectfully request that you change the facts of Example (3) to provide that the transfer back to A was merely a transfer for valuable consideration, without stating the magnitude of that consideration.

I also respectfully request that you consider providing an opportunity for a fresh start when all ownership in a policy is transferred to the insured. Due to changes in an insured's health, life insurance policies are often not replicable. The insured may no longer have a business or other need for the current transferee to own the policy and may wish to hold the policy merely to protect the insured's family. The insured also may regret selling the policy and wish to buy the policy back when the policy was transferred in a reportable policy sale. Please consider allowing cleansing of a policy when the insured acquires all ownership in a policy, with the caveat (to prevent any perceived abuse) that the insured must pay fair market value if the policy had been transferred in a reportable policy sale. I recognize that this request is not within the literal language of the statute but believe it is within the spirit of the statute's intent to tax policies that are transferred in a manner that does not provide a death benefit to the insured's beneficiaries.

Also, the relief proposed section 1.101-1(f) provides for charities does not extend to trusts established for the benefit of charities. Section 170(f)(2) recognizes a variety of trusts that may benefit charities and the donor's family. I respectfully suggest that proposed section 1.101-1(d)(1)(vii) be changed to include as a permissible primary beneficiary any organization described in proposed section 1.101-1(d)(2)(iii).

Finally, I respectfully suggest that proposed section 1.101-1(d)(2)(iii) be expanded to included any other such organization with which the insured has substantial personal ties. It is not uncommon for donors to contribute very modestly, if at all, to a charity because the donor is concerned about retirement income, but the donor would be happy to benefit the charity when the donor no longer needs the money. Such personal ties could be that the donor or a family member described in proposed section 1.101-1(d)(1) benefitted from the organization's services in some manner, which may have been an education, supportive services for which the person was unable to pay full value, or grants or loans to help that person through a rough time. Donors often benefit charities through either a split interest trust described in section 170(f)(2) or a bargain sale described in section 1.1011-2.

Thank you for considering these comments.