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July 31, 2017

SUBMITTED ELECTRONICALLY

Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: *Review of Regulations – Request for information on recommendations for Treasury regulations and guidance that should be modified or eliminated in order to reduce burdens*

Dear Sir or Madam:

We are writing on behalf of the Committee of Annuity Insurers (the "**Committee**") in response to the request for information that the Treasury Department published on June 14, 2017 (the "**RFI**").[1] The RFI invites the public to submit views and recommendations on Internal Revenue Service regulations, forms, and guidance documents that should be modified or eliminated in order to reduce burdens. The RFI was published pursuant to Presidential Executive Orders that, among other things, direct agencies to identify for repeal, replacement, or modification regulations that are outdated, unnecessary, or ineffective, or that impose costs exceeding benefits.[2]

Annuity contracts provide a critical benefit to individuals preparing for and living in retirement because they guarantee a stream of income that will continue as long as the owner lives. There are a significant number of IRS regulations, forms, and other guidance that are relevant to annuity purchasers and the life insurance companies that issue annuities. The vast preponderance of these items are useful and necessary contributions to the efficient functioning of the federal tax system. However, the Committee has identified the following regulations, revenue ruling, and IRS form that pertain to annuity contracts and that unnecessarily burden and inhibit individuals from using, or insurers from issuing, annuities to provide retirement security:

[1] 82 Fed. Reg. 27,217 (June 14, 2017). The Committee is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to annuities. The Committee's current 29 member companies represent over 80% of the annuity business in the United States. A list of the Committee's member companies is attached.

[2] *See* Executive Order 13777 of Feb. 24, 2017, 82 Fed. Reg. 12,285 (Mar. 1, 2017); Executive Order 13771 of Jan. 30, 2017, 82 Fed. Reg. 9,339 (Feb. 3, 2017).

(1) *Increasing payments and required minimum distributions for defined benefit plans and annuity contracts, 26 CFR § 1.401(a)(9)-6, Q&A-14*. As a result of outdated and unnecessary provisions of this regulation, many common forms of annuity benefits are inappropriately precluded from use with IRAs and employer provided retirement plans, and these same provisions also unnecessarily discourage the election of life annuities by limiting the ability to accelerate future payments.

(2) *Substantially equal periodic payments, Rev. Rul. 2002-62, 2002-2 C.B. 710*. This ruling addresses when payments will be treated as substantially equal periodic payments ("**SEPPs**") for purposes of an exception to the additional tax that applies to early distributions from IRAs, qualified plans, and non-qualified annuity contracts. The IRS has interpreted this revenue ruling in a way that unnecessarily precludes its application to annuity payments, thus making the guidance ineffective for many taxpayers.

(3) *Qualifying longevity annuity contracts and required minimum distributions for defined benefit plans and annuity contracts, 26 CFR § 1.401(a)(9)-6, Q&A-17*. These regulations were promulgated to facilitate the use of qualifying longevity annuity contracts ("**QLACs**") in IRAs and qualified retirement plans in order to encourage the election of a lifetime income option in retirement. Ambiguous aspects of these rules have unnecessarily hindered the growth of the QLAC marketplace by causing uncertainty and delay when purchasing a QLAC *via* rollover from a qualified retirement plan to an IRA and by effectively limiting benefits for surviving spouses.

(4) *IRS Form 5498, IRA Contribution Information*. This form requires the issuer of an IRA to report to the IRS and the IRA owner the fair market value ("**FMV**") of the IRA's "account" each year. In cases where annuity payments have commenced from an individual retirement annuity ("**IRA annuity**"), which typically has no account, reporting the FMV unnecessarily causes confusion for the IRA owner and creates unnecessary compliance burdens and costs for the issuing life insurance company.

(5) *Generation-skipping transfer tax return requirements, 26 CFR § 26.2662-1(c)*. This regulation requires issuers of annuity and life insurance contracts to pay generation-skipping transfer ("**GST**") taxes from death benefits that exceed a specified threshold, unless the issuer obtains information from the relevant parties regarding the availability of an exemption from the GST tax. The withholding threshold was set over 20 years ago and has never been increased, whereas the GST tax exemption amount has increased more than five-fold since then. The outdated withholding threshold leads to unnecessary confusion and expenses for beneficiaries, unnecessary withholding, unnecessary expenses for insurers, and significant delay in the payment of death proceeds in cases where no GST tax liability ultimately arises.

In each of the foregoing cases, the regulatory or guidance provision is outdated, unnecessary, ineffective, and/or imposes costs that exceed benefits. As a result, the provisions should be modified or eliminated to reduce the associated burdens. These points are discussed in more detail below.

1. Treatment of Annuity Payments Under IRC § 401(a)(9)

The purpose of the required minimum distribution ("**RMD**") rules of IRC § 401(a)(9) and the regulations thereunder is to limit tax deferral in qualified retirement plans and IRAs by mandating certain distributions during and after the participant's life. Over the last decade there has been an ever-increasing need to modify two aspects of the RMD regulations that apply to annuity payments: (1) the minimum income threshold test (the "**MITT**"),[3] and (2) the rules governing the permitted intervals between annuity payments.[4] As described below, these rules are outdated, no longer serve their intended purpose, and unnecessarily prevent retirees from achieving the financial security that can be obtained only through a life annuity.

(a) The minimum income threshold test

The MITT was added to the RMD regulations in 2004 to help prevent excessive tax deferral through back-loaded annuity payments. Since then, mortality improvements and low interest rates have caused the MITT to operate in unexpected ways. This has prohibited very common and traditional forms of annuity benefits that clearly should be allowed because they do not implicate the concerns underlying the MITT. The regulations should be amended to allow such benefits without regard to the MITT, thereby eliminating a significant and unnecessary barrier to the election of life annuities under IRAs and qualified plans.

1. Background

The RMD regulations allow annuity payments to increase only in specific circumstances.[5] In general, any form of increasing payment under a commercial annuity must meet a minimum income threshold test, *i.e.*, the MITT.[6] To satisfy the MITT, the total future expected payments, determined using certain assumptions in the regulations, must exceed the total value being annuitized.[7] The MITT was designed to ensure "that annuity payments start at a high enough amount to prevent inappropriate deferral."[8]

2. The problem

In many circumstances very traditional forms of annuity payments that were permissible when the regulations were issued can no longer satisfy the MITT. In no small part, this is due to the low interest rate environment and mortality improvements developed after the regulations were issued, which together or separately make it impossible to satisfy the MITT in various

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[3] 26 CFR § 1.401(a)(9)-6, Q&A-14(c).

[4] 26 CFR § 1.401(a)(9)-6, Q&A-1(a), Q&A-14(c)(4) and (e)(4).

[5] 26 CFR § 1.401(a)(9)-6, Q&A-14(a).

[6] 26 CFR § 1.401(a)(9)-6, Q&A-14(c). The MITT applies to commercial annuity contracts that, among other things, (i) provide for annuity payments that increase annually by a constant percentage, (ii) provide for annuity payments that may increase due to dividends, *i.e.*, participating annuities, (iii) provide an acceleration option through a partial or full commutation, or (iv) provide a return of premium death benefit.

[7] 26 CFR § 1.401(a)(9)-6, Q&A-14(c), (e)(1), and (e)(3).

[8] 69 Fed. Reg. 33,291 (June 15, 2004).

common scenarios. For instance, a fixed, level-payment life annuity could violate the MITT merely because the contract provides a lump sum return of premium death benefit or the annuity payments can be accelerated. The circumstances in which the MITT cannot be satisfied are arbitrary and could not have been intended. Indeed, in some cases an annuity benefit that would have satisfied the MITT if purchased 10 years ago by a person of a certain age will not satisfy the MITT if purchased today by a person that same age. In sum, the MITT is not only outdated, but because it is outdated it precludes the purchase of annuities that it was never intended to preclude.

3. Solution

The RMD regulations should be modified so that the MITT does not apply to the types of annuity benefits listed below. These types of benefits are very common and important to an individual's decision to elect a life annuity.[9] Each benefit is also fully consistent with the purpose of the RMD rules.

- A return of premium death benefit. Death benefits under annuities help address a potential concern that otherwise may discourage individuals from electing a life annuity, namely, fear of having made a bad financial decision if early death prevents the payment of at least a significant amount under the contract.[10] A lump sum return of premium is simple, straight-forward, and one of the most common types of death benefit.

- Partial and full commutations. Commutation features allow an annuitant to receive a lump sum in lieu of some or all of the future scheduled annuity payments. This provides important flexibility for retirees who otherwise may be reluctant to elect a life annuity.

- Annuity payments that increase annually by a modest fixed percentage, *e.g.*, up to 5%. An individual can spend multiple decades in retirement, during which inflation can significantly erode the purchasing power of his or her retirement income. Annuity payments that are scheduled to increase annually by even a modest percentage can be critical in protecting retirees from this inflation risk.

- Reasonable dividends under participating annuities. Like scheduled annual increases in annuity payments, dividends paid under participating annuities can help offset the erosive effects of inflation on an individual's retirement income. Commercial annuities providing dividends that are based on reasonable assumptions should be allowed.

Adopting these exceptions to the MITT would remove considerable complexity from the regulations, and the resulting simplicity would significantly benefit older individuals seeking to buy a life annuity.

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[9] These options are discussed more fully in the Committee's May 31, 2017, letter to the IRS regarding the 2017-18 Priority Guidance Plan. That letter can be accessed at https://www.annuity-insurers.org/wp-content/uploads/2017/07/5.31.17.attach.pdf.

[10] *See*, *e.g.*, Jeffrey R. Brown, *Rational and Behavioral Perspectives on the Role of Annuities in Retirement Planning* (Nat'l Bureau of Econ. Research, Working Paper No. 13537 October 2007); Wei-Yin Hu and Jason S. Scott, *Behavioral Obstacles to the Annuity Market* (Soc. Sci. Research Network, Working Paper March 2007).

(b) Flexibility on the timing of annuity RMD payments

The RMD regulations unnecessarily preclude individuals from receiving short-term advances of their future annuity payments, even though the regulations allow similar flexibility for non-annuity forms of benefit. This unwarranted distinction discourages elections of life annuities and should be eliminated.

1. Background

The RMD regulations distinguish between annuity forms of benefit and non-annuity forms of benefit, referring to the latter as “individual accounts.” A person can withdraw an RMD from an individual account at any time during the calendar year and is not required to withdraw the RMD in uniform intervals during a year or from year to year.[11] For example, the RMD could be withdrawn in a single lump sum at the *beginning* of one calendar year, in a single lump sum at the *end* of another calendar year, and in installments *throughout* another calendar year. This flexibility is helpful and desirable to many elderly individuals because they can accelerate their account-based RMDs for the year if they have an unexpected financial need. Annuity issuers should be able to provide individuals who annuitize their retirement savings with similar flexibility, but the RMD regulations appear to preclude this flexibility.

2. The problem

Although the RMD regulations allow annuity payments to be accelerated in some cases, additional burdensome conditions apply. Specifically, it appears that the acceleration must either (i) shorten the annuity period or (ii) reduce the amount of the future payments.[12] A limited form of acceleration, such as the receipt in January of the monthly payments for February and March, would affect only the timing of the payments within a given year. In such case, because neither (i) the duration of the annuity period nor (ii) the sum of the future payments would be reduced, the acceleration may run afoul of the regulations. In addition, the regulations can be read as precluding a change in the interval between annuity payments even though the change is only temporary and results only in an acceleration of payments.[13] These restrictions are unnecessary for achieving the RMD regulations’ goal of limiting tax deferral because the features in question *accelerate* income and, in any event, are short-term in duration. In addition, the restrictions make annuity payouts more rigid and less flexible than needed, which can discourage individuals from electing a life annuity.

3. Solution

These problems can easily be addressed by modifying the RMD regulations to clarify that a short-term advancement of annuity payments is not subject to the limitations on increasing annuity payments and will not result in a change in the interval between annuity payments.

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[11] 26 CFR § 1.401(a)(9)-5, Q&A-1(c).

[12] 26 CFR § 1.401(a)(9)-6, Q&A-14(c)(4) and (e)(4).

[13] 26 CFR § 1.401(a)(9)-6, Q&A-1(a).

Importantly, such a clarification would remove a restriction on the frequency of annuity payments that is completely unnecessary in these circumstances.

2. Annuity Payments as SEPPs

The IRS has published guidance on when distributions from an IRA, qualified plan, or non-qualified annuity will be treated as "substantially equal periodic payments," but has unnecessarily suggested that the guidance does not apply to annuity payments. This renders the guidance ineffective at addressing the important question of whether individuals will be subject to a 10% additional tax on their annuity payments. The IRS should address this problem by confirming that the available published guidance applies to annuity payments, such that annuity payments will be treated as SEPPs if they comply with the RMD rules.

(a) Background

Distributions from IRAs, qualified plans, and non-qualified annuity contracts are subject to a 10% additional tax unless an exception applies.[14] One of the available exceptions is for distributions that are made in the form of substantially equal periodic payments, or SEPPs. In 1989, the IRS published guidance on different methods that taxpayers can use to calculate SEPPs. Under one method (the "RMD method"), distributions are treated as SEPPs "if the annual payment is determined using a method that would be acceptable for purposes of calculating the minimum distribution required under section 401(a)(9)."[15] In 2002, the IRS published guidance to update certain aspects of the RMD method for calculating SEPPs.[16]

(b) The problem

In a 2011 private letter ruling,[17] the IRS took the position that its 2002 updates to the 1989 guidance on SEPPs rendered the RMD method unavailable for purposes of determining whether annuity payments are SEPPs. This means there is no published guidance on when annuity payments, including life-contingent annuity payments, will constitute SEPPs. Whether annuity payments constitute SEPPs is a very significant issue for owners of non-qualified annuities, owners of IRA annuities, and participants in qualified plans (including 403(b) plans), as well as the insurance companies that issue those contracts and the plans that use commercial annuities to distribute benefits.

(c) Solution

The IRS should modify Rev. Rul. 2002-62 or issue other guidance to addresses this problem by expressly providing that annuity payments that satisfy the RMD rules for annuity payments will also be treated as SEPPs. Such guidance would not only restore the effectiveness of the earlier published guidance, it also would be appropriate because the RMD rules for

[14] IRC §§ 72(t) (regarding IRAs and qualified plans) and 72(q) (regarding non-qualified annuities).

[15] Notice 89-25, Q&A-12, 1989-1 C.B. 662.

[16] Rev. Rul. 2002-62, 2002-2 C.B. 710.

[17] PLR 201120011 (Feb. 11, 2011).

annuity payments incorporate a "nonincreasing" requirement that is similar to the "substantially equal" requirement in question here.

3. Qualifying Longevity Annuity Contracts (QLACs)

There also is a pressing need to update regulations under IRC § 401(a)(9) as they apply to QLACs. These regulations, released in July 2014,[18] are important because they removed an impediment that effectively precluded the offering of longevity insurance in qualified plans and IRAs. However, technical issues relating to QLAC premiums and survivor benefits continue to exist under the regulations, unnecessarily imposing barriers to the use of QLACs.

(a) Clarify the QLAC premium limits to facilitate rollover purchases

Ambiguous aspects of the regulations regarding QLAC premiums are causing uncertainty and delay when purchasing a QLAC *via* rollover from a qualified plan to an IRA. This has unnecessarily hindered the marketplace for QLACs, making longevity insurance more difficult to obtain. Regulations or guidance should eliminate these barriers to QLACs by facilitating a more rational application of the premium limits in these circumstances.

1. Background

The RMD regulations limit the premiums that an individual can pay for a QLAC to the lesser of $125,000 or 25% of the account balance under the plan or IRA.[19] The $125,000 limit applies across all types of arrangements, whereas the 25% limit applies separately to each qualified plan in which the individual participates and collectively to all IRAs that an individual owns.[20] For purposes of the 25% limit, the account balance of a qualified plan is determined as of the most recent valuation date and is adjusted up or down to reflect subsequent contributions or distributions.[21] In contrast, the account balance of an IRA is determined as of December 31st of the previous calendar year, and there is no specific mention of any adjustment for subsequent contributions or distributions.[22]

2. The problem

QLACs are readily available in the IRA market, but qualified plans rarely offer them directly. As a result, the only way for virtually any participant in a qualified plan to obtain a QLAC is by rolling money out of the plan to an IRA. When a QLAC is purchased in a direct rollover from a qualified plan to an IRA, the regulations are ambiguous regarding which arrangement's account balance is used to determine the 25% premium limit. If the limit applies based on the IRA account balance (rather than the plan account balance), the QLAC purchase could be unnecessarily complicated and delayed because the purchaser may need to wait up to a

[18] 79 Fed. Reg. 37,633 (July 2, 2014).

[19] 26 CFR § 1.401(a)(9)-6, Q&A-17(a)(1) and (b).

[20] 26 CFR § 1.401(a)(9)-6, Q&A-17(b); 26 CFR § 1.408-8, Q&A-12(b)(3).

[21] 26 CFR § 1.401(a)(9)-6, Q&A-17(d)(1)(iii).

[22] 26 CFR § 1.408-8, Q&A-12(b)(3)(i).

full year after making the rollover before the rollover contribution can be counted as part of the IRA account balance. Moreover, in many cases the individual would need to quadruple the amount of the rollover just to facilitate the QLAC purchase. Because of concerns with violating the regulation, the market is generally interpreting it conservatively and applying these cumbersome and unnecessary steps to QLACs purchased *via* rollover. This, in turn, is significantly impeding individuals' ability to protect themselves against longevity risk in retirement.

3. Solutions

The Treasury Department or IRS should modify the regulations or issue guidance to eliminate this unnecessary barrier to purchasing QLACs *via* rollover. Two options for doing so are:

- Use the plan account balance. Regulations or guidance could clarify that the 25% premium limit is based on the account balance in the *plan* when a direct rollover is made from a plan to an IRA for the specific purpose of purchasing a QLAC. This approach would address both the unnecessary delay in purchasing the QLAC and the potential need to roll over four times the desired QLAC premium from the plan to the IRA.

- Use the IRA account balance and adjust for the rollover contribution. Alternatively, regulations or guidance could clarify that in the case of a QLAC purchased in a rollover from a qualified plan to an IRA, the 25% limit is based on the IRA account balance, adjusted upward to reflect any rollover contribution since 12/31 of the previous year. This approach would address the unnecessary delay in purchasing the QLAC, but would not address the potential need to roll over four times the desired QLAC premium from the plan to the IRA.

(b) Clarify spousal death benefits in the event of divorce

The QLAC regulations significantly limit the types of benefits a QLAC can provide for non-spouse beneficiaries, and the regulations are not clear which set of rules applies following a divorce. This is unnecessarily preventing QLAC issuers from offering the fullest permissible survivor benefits to spouses.

1. Background

If a QLAC owner's sole beneficiary is his or her spouse, the contract can provide *both* a lump sum return of premium death benefit *and* a 100 percent survivor annuity.[23] If, however, the owner's sole beneficiary is not his or her spouse, a QLAC can provide *either* a lump sum return of premium death benefit *or* a survivor annuity (but not both), and a non-spouse survivor annuity is subject to a required reduction in the annuity payments after the owner's death.[24]

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[23] 26 CFR § 1.401(a)(9)-6, Q&A-17(c)(1).

[24] 26 CFR § 1.401(a)(9)-6, Q&A-17(c)(2).

2. The problem

The regulations do not address how the foregoing death benefit rules apply if the beneficiary is the owner's spouse when the contract is issued, but because of a subsequent divorce is no longer the owner's spouse when annuity payments commence or when the owner dies.[25] If a beneficiary's status as a spouse or non-spouse is determined after a QLAC is issued, *e.g.*, on the date annuity payments commence, a contract that was issued with permissible benefits might be viewed as providing impermissible benefits merely because of the divorce. If this happens, the purchaser could incur severely adverse tax consequences, such as a 50% excise tax under IRC § 4974.

In theory, the QLAC issuer could help avoid this potential adverse and unintended result by modifying the contract's benefits after the divorce so they adhere to the rules for non-spouses, but this is very difficult or in some cases impossible. The price of a QLAC and the benefits thereunder can differ materially based on whether the spouse or non-spouse rules apply, and insurers need to know which rules will apply when they issue the contract so they can price it and so the purchaser will know what they are getting for what price. As a result, in practice the mere possibility of adverse tax consequences arising for the policyholder due to a post-issuance divorce is preventing QLAC issuers from offering the fullest permissible death benefit to a spouse beneficiary when the contract is issued.

3. Solutions

The regulations should be modified or additional guidance should be issued to eliminate the foregoing unnecessary barrier to obtaining spousal benefits under QLACs. There are several ways this could be accomplished:

- <u>Determine spousal status on the issue date</u>. The simplest and most administrable approach would be to modify the regulations to provide that, for purposes of the relevant QLAC rules, a beneficiary's status as a spouse or non-spouse is determined when a QLAC is issued. Under this approach, it would be clear that a subsequent divorce would not adversely affect the benefits that are permitted under the contract pursuant to the regulations or the status of the contract as a QLAC.

- <u>Look to the terms of the QLAC</u>. Alternatively, the regulations or other guidance could clarify that a former spouse is treated as the spouse for purposes of the QLAC requirements as long as, after the divorce, the former spouse remains contractually entitled to the benefits originally purchased under the contract.

- <u>Look to the divorce agreement</u>. A third alternative would be for the regulations or other guidance to clarify that a divorce occurring after a QLAC is purchased but before payments commence will not affect the permissibility of the joint and survivor benefits previously purchased under the contract if a qualified domestic relations order (in the case of a retirement plan) or a divorce or separation instrument (in the case of an IRA)

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[25] *Compare* 26 CFR § 1.401(a)(9)-6, Q&A-2(b) (spousal status is determined "as of the annuity starting date for annuity payments") and 26 CFR § 1.401(a)(9)-5, Q&A-4(c)(2) (spousal status for individual accounts is re-determined on January 1st of each year).

provides that the former spouse is entitled to the promised spousal benefits under the QLAC.[26]

4. Reporting the Fair Market Value of IRA Annuities on Form 5498

In the case of an IRA annuity under which annuity payments have commenced, the requirement to report the FMV of the contract on Form 5498 is unnecessary, creates confusion, and imposes burdens that exceed the benefits of reporting the information. For these reasons, the requirement should be eliminated from the Form.

(a) Background

Issuers, custodians, and trustees of IRAs generally must report the FMV of the "account" each year on IRS Form 5498, *IRA Contribution Information*. This information can be used, for example, to calculate any RMDs that must be taken from the IRA in the current year.

(b) The problem

In the case of an IRA annuity that has not been "annuitized," meaning periodic payments have not commenced, providing the FMV information on Form 5498 makes sense because the annuity contract typically will have an "account" that the insurer values periodically and that value will be relevant to the owner when calculating RMDs. However, in the case of an IRA annuity that has been annuitized, the contract typically will not provide an "account" that the insurer values periodically or that is relevant to any RMD calculation.[27] In such cases, identifying a FMV for the contract on Form 5498 leads to confusion for IRA owners, who may erroneously interpret the form as indicating an account value that is available to them or that must be reflected in their RMD calculations. It also requires burdensome and costly actuarial work by the insurer. In addition, it is not clear what purpose, if any, providing the FMV information for an annuitized contract serves.

(c) Solution

Form 5498 and its instructions should be modified to clarify that the FMV requirement does not apply to IRA annuities that have been annuitized.

5. Responsibility for Paying the GST Tax on Insurance Contracts

The GST tax withholding standards for annuity and life insurance death benefits were established more than 20 years ago and have become outdated and ineffective. They impose significant burdens on individual taxpayers and life insurance companies in situations that rarely involve any actual GST tax liability. As a result, the withholding rules should be revoked or updated to be more consistent with current law.

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[26] *See, e.g.*, 26 CFR § 1.401(a)(9)-8, Q&A-6(a) (providing that a former spouse is treated as a spouse for RMD purposes if certain requirements are met).

[27] Under the RMD rules applicable to annuity payments, the full amount of a compliant annuity payment is deemed to equal the RMD for the year. The "account balance" RMD method that applies to deferred annuities and other individual accounts does not apply to annuitized contracts. 26 CFR § 1.401(a)(9)-6, Q&A 1(a).

(a) Background

Under the regulations governing the GST tax, if an annuity or life insurance death benefit exceeds $250,000 (the "Threshold Amount") and is paid to a "skip person," the insurer must file the Schedule R-1of Form 706 and pay the GST tax out of the proceeds.[28] The Threshold Amount was placed in the regulations in 1995 without any provision to adjust it for inflation.[29] In contrast, the statutory exemption for the GST tax is indexed to inflation.[30] When the Threshold Amount was set in 1995, the GST tax exemption was $1 million,[31] whereas today the GST exemption amount is $5.49 million.[32] Because the statutory GST exemption amount is tied to inflation whereas the Threshold Amount is static, the discrepancy between the two will continue to expand every year.

(b) The problem

The discrepancy between the outdated Threshold Amount and the indexed exemption amount means that the parties must administer the withholding rules in situations where the GST tax is very unlikely to apply at all. This unnecessarily leads to considerable confusion and burdens for beneficiaries and considerable administrative burdens and expenses for insurers because they must go through the steps required by the withholding rules even when no tax payment is ultimately required.

In that regard, when a death benefit exceeding the Threshold Amount is paid to a skip person, the insurer is liable for any GST tax that is owed on the proceeds. Thus, insurers generally are unwilling to pay the full death proceeds to the beneficiary until the insurer can determine if it is liable for any GST tax. To make such a determination, the insurer needs information from the decedent's estate regarding the amount, if any, of the decedent's exemption from the GST tax that will be allocated to the death proceeds. This often requires extensive back-and-forth with a beneficiary or personal representative of the estate.

In many cases, the beneficiary or personal representative is very confused about the insurer's inquiries because the decedent's estate is much smaller than the exemption amount available under the GST and estate taxes, so the parties have not prepared and do not intend to prepare any estate tax or GST tax returns in which the exemption will be allocated to various assets. The beneficiary or personal representative also may incur expenses in seeking legal or other professional assistance to obtain the information the insurer has requested.

In the experience of the Committee's member companies, the parties ultimately determine in the vast majority of cases that the death proceeds are fully covered by the decedent's GST tax exemption, meaning no GST tax is owed and the insurer can pay the full

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[28] 26 CFR § 26.2662-1(c). A skip person means a natural person assigned to a generation which is 2 or more generations below the generational assignment of the transferor. IRC § 2613(a).

[29] T.D. 8644 (Dec. 26, 1995).

[30] IRC § 2631(c).

[31] P.L. 99-514, IRC § 431(a).

[32] Rev. Proc. 2016-55, 2016-45 I.R.B. 707. The GST tax exemption is the same amount as the basic exclusion under section 2010(c) for estate taxes. IRC § 2631(c).

death benefit to the beneficiary. In other words, the regulations impose significant administrative burdens without resulting in any taxes being owed by any party and result in considerable delay in the payment of death proceeds for no valid reason in most cases. During this delay period, state law also may require the insurer to pay additional interest on the death proceeds, thereby resulting in further unnecessary expenses for the company.

(c) Solutions

The unnecessary burdens imposed by the current GST withholding regime should be eliminated or significantly reduced so they are imposed only in situations that are at least somewhat likely to involve an actual GST tax liability. This could be accomplished in any of the following ways:

- Revoke the requirement. The GST tax withholding obligation that applies to issuers of life insurance and annuity contracts under 26 CFR § 26.2662-1(c) could be eliminated.

- Set the Threshold Amount equal to the exemption amount. Alternatively, the Threshold Amount could be increased to equal the current exemption from the GST tax.

- Set the Threshold Amount to its relative level in 1995. At a minimum, the Threshold Amount should be increased so that it will always equal at least 25% of the current exemption from the GST tax. This was the relative value of the Threshold Amount compared to the GST tax exemption when the former was first established in 1995 ($250,000 compared to $1 million). This would mean, for example, that in 2017 the Threshold Amount would have been 25% of $5.49 million, or $1,372,500.

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Each of the regulations, forms, and guidance documents discussed above is outdated, unnecessary, or ineffective, or imposes costs that exceed the corresponding benefits. As a result, we urge the Treasury Department and IRS to consider eliminating or modifying each of those items as we have requested. We appreciate this opportunity to comment on behalf of the Committee of Annuity Insurers and would be happy to discuss these issues with you in more detail. In that regard, if we can be of any further assistance as the Treasury Department considers these issues, please let us know.

Sincerely,

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Attachment

THE Committee OF Annuity Insurers
www.annuity-insurers.org

AIG Life & Retirement, Los Angeles, CA
Allianz Life Insurance Company, Minneapolis, MN
Allstate Financial, Northbrook, IL
Ameriprise Financial, Minneapolis, MN
Athene USA, Des Moines, IA
AXA Equitable Life Insurance Company, New York, NY
Fidelity Investments Life Insurance Company, Boston, MA
Genworth Financial, Richmond, VA
Global Atlantic Life and Annuity Companies, Southborough, MA
Great American Life Insurance Co., Cincinnati, OH
Guardian Insurance & Annuity Co., Inc., New York, NY
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Lincoln Financial Group, Fort Wayne, IN
Massachusetts Mutual Life Insurance Company, Springfield, MA
Metropolitan Life Insurance Company, New York, NY
National Life Group, Dallas, TX
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Ohio National Financial Services, Cincinnati, OH
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Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
Symetra Financial, Bellevue, WA
The Transamerica companies, Cedar Rapids, IA
TIAA, New York, NY
USAA Life Insurance Company, San Antonio, TX
Voya Financial, Inc., Atlanta, GA

The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal policies with respect to annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States.

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