DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–152524–02]

RIN–1545–BB38

Guidance Under Section 1502; Amendment of Waiver of Loss Carryovers From Separate Return Limitation Years; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 1502 of the Internal Revenue Code that permit the amendment of certain elections to waive the loss carryovers of an acquired subsidiary.

DATES: The public hearing originally scheduled for August 6, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Procedure and Administration), at (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, May 7, 2003, (68 FR 24404), announced that a public hearing was scheduled for August 6, 2003 at 10 a.m., in room 6718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code.

The public comment period for these regulations expired on July 16, 2003. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, July 25, 2003, no one has requested to speak. Therefore, the public hearing scheduled for August 6, 2003 is cancelled.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–163974–02]

RIN 1545–BB77

Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes removing provisions of the Income Tax Regulations that apply a look-through rule to assets of a nonregistered partnership for purposes of satisfying the diversification requirements of section 817(h) of the Internal Revenue Code. The Treasury Department and the IRS believe that removal of these provisions will eliminate any possible confusion regarding the prohibition on ownership of interests by the public in a nonregistered partnership funding a variable contract.

DATES: Written or electronic comments and requests for a public hearing must be received by October 28, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–163974–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–163974–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: James Polfer, (202) 622–3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 817(d) defines a variable contract as an annuity contract, a life insurance contract, or a contract that provides funding of insurance on retired lives as described in section 807(c)(6). A variable contract must provide for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset accounts (a segregated asset account) of the company under State law. In the case of an annuity contract, the amounts paid in, or the amounts paid out, must reflect the investment return and the market value of the segregated asset account. Section 817(d)(3)(A). In the case of a life insurance contract, the amount of the death benefit (or the period of coverage) must be adjusted on the basis of the investment return and the market value of the account. Section 817(d)(3)(B). In the case of a contract for funding of insurance on retired lives, the amounts paid in, or the amounts paid out, must reflect the investment return and the market value of the account. Section 817(d)(3)(C).

Section 817(h)(1) provides that a variable contract based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract unless the segregated asset account is adequately diversified in accordance with regulations prescribed by the Secretary. Under section 817(h)(1), if a segregated asset account fails to be adequately diversified for a period, then the contracts supported by that segregated asset account shall not be treated as annuity, endowment, or life insurance contracts for that period and subsequent periods, even if the segregated asset account is adequately diversified in those subsequent periods. Section 1.817–5(c)(1) defines period as a calendar quarter. If a segregated asset account is not adequately diversified, income earned by that segregated asset account is treated as ordinary income received or accrued by the policyholders.[1]

Section 817(h) was enacted by Congress in the Deficit Reduction Act of 1984 (Pub. L. 98–369). Congress enacted the diversification requirements of section 817(h) to ''discourage the use of tax-preferred variable annuity and variable life insurance primarily as investment vehicles.'' H.R. Conf. Rep. No. 98–861, at 1055 (1984). In section 817(h)(1), Congress granted the Secretary broad regulatory authority to develop rules to carry out this intent. Pursuant to this authority, § 1.817–5 sets forth the standards a segregated asset account must meet to be treated as adequately diversified within the meaning of section 817(h).

Section 817(h)(4) provides a look-through rule under which taxpayers do not treat the interest in a regulated investment company (RIC) or trust as a single asset of the segregated asset account but rather apply the diversification tests by taking into account the assets of the RIC or trust. Section 817(h) further provides that the look-through rule applies only if all of the beneficial interests in a RIC or trust

[1] Section 1.817–5(a)(2) provides a mechanism for insurance companies to avoid this result if certain enumerated correction procedures are satisfied.