

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-126967-03]

RIN 1545-BC20

Value of Life Insurance Contracts when Distributed from a Qualified Retirement Plan

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations under section 402(a) of the Internal Revenue Code regarding the amount includible in a distributee's income when life insurance contracts are distributed by a qualified retirement plan and the treatment of property sold by a qualified retirement plan to a plan participant or beneficiary for less than fair market value. This document also contains proposed amendments to the regulations under sections 79 and 83 conforming the language in those regulations to the language in the proposed amendments to the section 402(a) regulations. These regulations will affect administrators of, participants in, and beneficiaries of qualified employer plans. These regulations also provide guidance to employers who provide group-term life insurance to their employees that is includible in the gross income of the employees and to employers who transfer life insurance contracts to persons in connection with the performance of services. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 13, 2004. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 9, 2004, at 10 a.m., must be received by May 19, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-126967-03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-126967-03), Courier's Desk, Internal

Revenue Service, 1111 Constitution Avenue, NW., Washington D.C. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed amendments to the section 79 regulations, Betty Clary at (202) 622-6080; concerning the proposed amendments to the section 83 regulations, Robert Misner at (202) 622-6030; concerning the proposed amendments to the 402 regulations, Linda Marshall at (202) 622-6090; concerning submissions and the hearing and/or to be placed on the building access list to attend the hearing, Robin Jones at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 402(a) of the Internal Revenue Code (Code) relating to the amount includible in a distributee's income when a life insurance contract, retirement income contract, endowment contract, or other contract providing life

insurance protection is distributed by a retirement plan qualified under section 401(a) of the Code and to the sale of property by a retirement plan to a plan participant or beneficiary for less than the fair market value of the property. This document also contains proposed amendments to the regulations under sections 79 and 83 relating, respectively, to employer-provided group-term life insurance and life insurance contracts transferred in connection with the performance of services.

Section 402(a) provides generally that any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72.

Section 1.402(a)-1(a)(1)(iii) of the current regulations provides, in general, that a distribution of property by a section 401(a) plan shall be taken into account by the distributee at its "fair market value." Section 1.402(a)-1(a)(2) of the regulations provides, in general, that upon the distribution of an annuity or life insurance contract, the "entire cash value" of the contract must be included in the distributee's income. The current regulations do not define "fair market value" or "entire cash value" and questions have arisen regarding the interaction between these two provisions and whether "entire cash value" includes a reduction for surrender charges.

Prohibited Transaction Exemption (PTE) 77-8 (1977-2 C.B. 425), subsequently amended and redesignated as Prohibited Transaction Exemption 92-6, was jointly issued in 1977 by the Department of Labor and the Internal Revenue Service. PTE 77-8 permits an employee benefit plan to sell individual life insurance contracts and annuities to (1) a plan participant insured under such policies, (2) a relative of such

insured participant who is the beneficiary under the contract, (3) an employer any of whose employees are covered by the plan, or (4) another employee benefit plan, for the cash surrender value of the contracts, provided the conditions set forth in the exemption are met.

The preamble to PTE 77-8 (citing Rev. Rul. 59-195; 1959-1 C.B. 18) notes that, for Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value, and that a purchase of an insurance policy at its cash surrender value may therefore be a purchase of property for less than its fair market value. The regulations under section 402 do not address the consequences of a sale of property by a section 401(a) plan to a plan participant or beneficiary for less than the fair market value of that property. In this regard, the preamble to PTE 77-8 states that the Federal income tax consequences of such a bargain purchase must be determined in accordance with generally applicable Federal income tax rules but that any income realized by a participant or relative of such participant upon such a purchase under the conditions of PTE 77-8 will not be deemed a distribution from the plan to such participant for purposes of subchapter D of chapter 1 of the Internal Revenue Code (i.e., sections 401 to 424 of the Code) relating to qualified pension, profit-sharing, and stock bonus plans.

Section 79 of the Code generally requires that the cost of group-term life insurance coverage provided by an employer on the life of an employee that is in excess of \$50,000 of coverage be included in the income of the employee. Pursuant to §1.79-1(b) of the regulations, under specified circumstances, group-term life insurance may be combined with other benefits, referred to as permanent benefits. A permanent

benefit is defined in §1.79-0 of the regulations as an economic value extending beyond one policy year (for example, a paid-up or cash surrender value) that is provided under a life insurance policy. The regulations further provide that certain features are not permanent benefits, including (a) a right to convert (or continue) life insurance after group life insurance coverage terminates, (b) any other feature that provides no economic benefit (other than current insurance protection) to the employee, and (c) a feature under which term life insurance is provided at a level premium for a period of five years or less.

Permanent benefits provided to an employee are subject to taxation under rules described in §1.79-1(d) of the regulations. Under those rules, the cost of the permanent benefits, reduced by the amount paid for those benefits by the employee, is included in the employee's income. The regulations provide the cost of the permanent benefits can be no less than an amount determined under a formula set forth in the regulations. One of the factors used in this formula is "the net level premium reserve at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the cash value of the policy at the end of that policy year."

Section 83(a) provides that when property is transferred to any person in connection with the performance of services, the service provider must include in gross income (as compensation income) the excess of the fair market value of the property, determined without regard to lapse restrictions, and determined at the first time that the transferee's rights in the property are either transferable or not subject to a substantial risk of forfeiture, over the amount (if any) paid for the property. Section 1.83-3(e) of the regulations generally provides that in the case of "a transfer of a life insurance contract,

retirement income contract, endowment contract, or other contract providing life insurance protection, only the cash surrender value of the contract is considered to be property.”

In TD 9092, published in the **Federal Register** on September 17, 2003 (68 FR 54336), relating to split-dollar life insurance arrangements, §1.83-3(e) was amended to add the following sentence: “Notwithstanding the previous sentence, in the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, that is part of a split-dollar life insurance arrangement (as defined in ' 1.61-22(b)(1) or (2)) that is entered into, or materially modified (within the meaning of ' 1.61-22(j)(2)), after September 17, 2003, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section.”

Explanation of Provisions

A. Overview

These proposed amendments to the regulations under section 402(a) clarify that the requirement that a distribution of property must be included in the distributee's income at fair market value is controlling in those situations where the existing regulations provide for the inclusion of the entire cash value. Thus, these proposed regulations provide that, in those cases where a qualified plan distributes a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, the fair market value of such a contract (i.e., the

value of all rights under the contract, including any supplemental agreements thereto and whether or not guaranteed) is generally included in the distributee's income and not merely the entire cash value of the contracts.

These proposed regulations also provide that if a qualified plan transfers property to a plan participant or beneficiary for consideration that is less than the fair market value of the property, the transfer will be treated as a distribution by the plan to the participant or beneficiary to the extent the fair market value of the distributed property exceeds the amount received in exchange. Thus, in contrast to the statement to the contrary in the preamble to PTE 77-8, any bargain element in the sale would be treated as a distribution under section 402(a). It is also intended that any bargain element would be treated as a distribution for other purposes of the Code, including the limitations on in-service distributions from certain qualified retirement plans and the limitations of section 415.

These proposed regulations also amend the current regulations under sections 79 and 83 to clarify that fair market value is also controlling with respect to life insurance contracts under those sections and, thus, that all of the rights under the contract (including any supplemental agreements thereto and whether or not guaranteed) must be considered in determining that fair market value. With respect to section 79, these proposed regulations would amend §1.79-1(d) to remove the term cash value from the formula for determining the cost of permanent benefits and substitute the term fair market value. With respect to section 83, these proposed regulations would amend ' 1.83-3(e) generally to apply the definition of property for new split-dollar life insurance arrangements to all situations involving the transfer of life insurance contracts. Section

83(a) requires that the excess of the fair market value of the property over the amount paid for the property be included in income. The current definition of property outside the context of a split-dollar life insurance arrangement may lead taxpayers to believe that it is appropriate upon receiving a transfer of a life insurance contract to include only its cash surrender value on the day of the transfer when, due to supplemental agreements, the fair market value of the transferred property is much greater. The purpose of the changes to these regulations is to clarify that, unless specifically excepted from the definition of permanent benefits or fair market value, the value of all features of a life insurance policy providing an economic benefit to a service provider (including, for example, the value of a springing cash value feature) must be included in determining the employee's income.

The proposed regulations will not affect the relief granted by the provisions of Section IV, paragraph 4 of Notice 2002-8 (2002-1 C.B. 398) to the parties to any insurance contract that is part of a pre-January 28, 2002, split-dollar life insurance arrangement. Also, consistent with the effective date of the final split-dollar life insurance regulations, §1.61-22, these proposed regulations will not apply to the transfer of a life insurance contract which is part of a split-dollar life insurance arrangement entered into on or before September 17, 2003, and not materially modified after that date. However, taxpayers are reminded that, in determining the fair market value of property transferred under section 83, lapse restrictions (such as life insurance contract surrender charges) are ignored.

B. Determination of Fair Market Value

As noted above, §1.402(a)-1(a)(1)(iii) does not define fair market value. In Rev. Rul. 59-195, the Service ruled that, in situations similar to those in which an employer purchases and pays the premiums on an insurance policy on the life of one of its employees and subsequently sells such policy, on which further premiums must be paid, the value of such policy for computing taxable gain in the year of purchase should be determined under the method of valuation prescribed in §25.2512-6 of the Gift Tax Regulations. Under this method, the value of such a policy is not its cash surrender value but the interpolated terminal reserve at the date of sale plus the proportionate part of any premium paid by the employer prior to the date of the sale which is applicable to a period subsequent to the date of the sale. Section 25.2512-6 of the Gift Tax Regulations also provides that if “because of the unusual nature of the contract such approximation is not reasonably close to the full value, this method may not be used.” Thus, this method may not be used to determine the fair market value of an insurance policy where the reserve does not reflect the value of all of the relevant features of the policy.

In Q&A-10 of Notice 89-25 (1989-1 C.B. 662), the IRS addressed the question of what amount is includible in income under section 402(a) when a participant receives a distribution from a qualified plan that includes a life insurance policy with a value substantially higher than the cash surrender value stated in the policy. The Notice noted the practice of using cash surrender value as fair market value for these purposes and concluded that this practice is not appropriate where the total policy reserves, including life insurance reserves (if any) computed under section 807(d), together with

any reserves for advance premiums, dividend accumulations, etc., represent a much more accurate approximation of the policy's fair market value.

Since Notice 89-25 was issued, life insurance contracts have been marketed that are structured in a manner which results in a temporary period during which neither a contract's reserves nor its cash surrender value represent the fair market value of the contract. For example, some life insurance contracts may provide for large surrender charges and other charges that are not expected to be paid because they are expected to be eliminated or reversed in the future (under the contract or under another contract for which the first contract is exchanged), but this future elimination or reversal is not always reflected in the calculation of the contract's reserve. If such a contract is distributed prior to the elimination or reversal of those charges, both the cash surrender value and the reserve under the contract could significantly understate the fair market value of the contract. Thus, in some cases, it would not be appropriate to use either the net surrender value (i.e. the contract's cash value after reduction for any surrender charges) or, because of the unusual nature of the contract, the contract's reserves to determine the fair market value of the contract. Accordingly, Q&A-10 of Notice 89-25 should not be interpreted to provide that a contract's reserves (including life insurance reserves (if any) computed under section 807(d), together with any reserves for advance premiums, dividend accumulations, etc.) are always an accurate representation of the contract's fair market value.

For example, it would not be appropriate to use a contract's reserve or the net surrender value of the contract as fair market value at the time of distribution if under that contract those amounts are significantly less than the aggregate of: (1) the

premiums paid from the date of issue through the date of distribution, plus (2) any amounts credited (or otherwise made available) to the policyholder with respect to those premiums (including interest, dividends, and similar income items), or, in the case of variable contracts, all adjustments made with respect to the premiums paid during that period that reflect investment return and the current market value of segregated asset accounts, minus (3) reasonable mortality charges and reasonable charges (other than mortality charges) actually charged from the date of issue to the date of distribution and expected to be paid.

The following example provides an illustration of a contract where it would not be appropriate to use a contract's reserve or its net surrender value as its fair market value :

A participates in a plan intended to satisfy the requirements of section 401(a). In Year 1, the plan acquires a life insurance contract on A's life that is not a variable contract and with a face amount of \$1,400,000. In that year and for the next four years, the plan pays premiums of \$100,000 per year on the contract. The contract provides for a surrender charge that is fixed for the first five years of the contract and decreases ratably to zero at the end of ten years. The contract also imposes reasonable mortality and other charges as defined by section 7702(c)(3)(B)(i) and (ii) of the Code.

The contract provides a stated cash surrender value for each of the first ten years (the first five years are guaranteed), as set forth in the table below. The reserves under the contract, including life insurance reserves and reserves for advance premiums, dividend accumulations, etc. (calculated using the rules in section 807(d) of the Code) at the end of the fifth year are \$150,000.

Year	Premium	Net Surrender Value	Cash Value Determined without Reduction for Surrender Charges
1	\$100,000		
2	\$100,000		
3	\$100,000		
4	\$100,000		
5	\$100,000	\$100,000	\$450,000
6		\$195,000	\$475,000
7		\$290,000	\$500,000
8		\$385,000	\$525,000
9		\$480,000	\$550,000
10		\$575,000	\$575,000

At the end of Year 5, A retired and received a distribution of the insurance contract that was purchased on his life.

These regulations clarify that the contract is included in A's income at its fair market value rather than the \$100,000 cash surrender value. Furthermore, A could not treat the \$150,000 reserve as of the end of the fifth year as the fair market value, because this amount is less than the amount a willing buyer would pay a willing seller

for such a contract, with neither party being under a compulsion to buy and sell and both having reasonable knowledge of the relevant facts.

Proposed Effective Dates

The amendments to §1.402(a)-1(a)(2) of the regulations are proposed to be applicable to any distribution of a transferable retirement income, endowment, or other life insurance contract occurring on or after February 13, 2004. The amendment to §1.79-1 is proposed to be applicable to permanent benefits provided on or after February 13, 2004. The amendment to §1.83-3(e) is proposed to be applicable to any transfer occurring on or after February 13, 2004. The amendments to §1.402(a)-1(a)(1)(iii) of the regulations are proposed to be applicable to any transfer of property by a plan to a plan participant or beneficiary for less than fair market value where the transfer occurs on or after the date of publication in the **Federal Register** of the final regulations adopting these amendments. Taxpayers may rely upon these proposed regulations for guidance pending the issuance of final regulations.

Interim Guidance for Determining Fair Market Value

The IRS and the Treasury recognize that taxpayers could have difficulty determining the fair market value of a life insurance contract after the clarification in this preamble that Notice 89-25 should not be interpreted to provide that a contract's reserves (including life insurance reserves (if any) computed under section 807(d), together with any reserves for advance premiums, dividend accumulations, etc.) are always an accurate representation of the contract's fair market value. Accordingly, in connection with this guidance, the IRS has issued Rev. Proc 2004-16 (2004-10 IR.B.), which provides interim rules under which the cash value (without reduction for surrender

charges) of a life insurance contract distributed from a qualified plan may be treated as the fair market value of that contract. The interim rules in Rev. Proc. 2004-16, permit the use of values that should be readily available from insurance companies, because the cash value (without reduction for surrender charges) is an amount that, in the case of a flexible insurance contract (including a variable contract), is generally reported in policyholder annual statements, and in the case of traditional insurance contracts, is fixed at issue and provided in the insurance contract.

Under those interim rules, a plan may treat the cash value (without reduction for surrender charges) as the fair market value of a contract at the time of distribution provided such cash value is at least as large as the aggregate of: (1) the premiums paid from the date of issue through the date of distribution, plus (2) any amounts credited (or otherwise made available) to the policyholder with respect to those premiums, including interest, dividends, and similar income items (whether under the contract or otherwise), minus (3) reasonable mortality charges and reasonable charges (other than mortality charges), but only if those charges are actually charged on or before the date of distribution and are expected to be paid.

In those cases where the contract is a variable contract (as defined in section 807(d)) a plan may treat the cash value (without reduction for surrender charges) as the fair market value of the contract at the time of distribution provided such cash value is at least as large as the aggregate of: (1) the premiums paid from the date of issue through the date of distribution, plus (2) all adjustments made with respect to those premiums during that period (whether under the contract or otherwise) that reflect investment return and the current market value of segregated asset accounts, minus (3) reasonable

mortality charges and reasonable charges (other than mortality charges), but only if those charges are actually charged on or before the date of distribution and are expected to be paid.

Applying those interim rules to the example above, A could treat the cash value (without reduction for surrender charges) of \$450,000 as the fair market value of the contract as of the end of the fifth year, because, in this example, that amount exceeds the aggregate of the five \$100,000 premiums (\$500,000), plus the amounts credited to A with respect to those premiums, minus the reasonable mortality and other charges actually imposed and expected to be paid.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury

Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. In addition, the Treasury Department and the IRS specifically request comments regarding the interim rules set forth in Rev. Proc. 2004-16 and proposals for appropriate permanent methods for valuing life insurance contracts when distributed from qualified retirement plans and for valuing such contracts for purposes of sections 79 and 83, including appropriate discounts which take into account the probability that contracts will be surrendered during the period during which surrender charges apply. The IRS and the Treasury are also reviewing other types of contracts, such as annuities, which have cash surrender value but where that cash surrender value may not reflect the fair market value of the contracts. Accordingly, the IRS and the Treasury also request comments regarding the valuation of these other contracts. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, June 9, 2004, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must use the main building entrance on Constitution Avenue. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written (signed original and eight (8)

copies) or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by Wednesday, May 19, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Robert M. Walsh, Employee Plans, Tax Exempt and Government Entities Division, and Linda Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1 -- INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2 Section 1.79-1, paragraph (d)(3) is revised to read as follows:

§1.79-1 Group-term life insurance -- general rules.

* * * * *

(d) * * *

(3) Formula for determining deemed death benefit. The deemed death benefit (DDB) at the end of any policy year for any particular employee is equal to:

R/Y

where--

R is the net level premium reserve at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the fair market value of the policy at the end of that policy year; and

Y is the net single premium for insurance (the premium for one dollar of paid-up, whole life insurance) at the employee's age at the end of that policy year.

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Par. 3. In §1.83-3, paragraph (e), the last two sentences are revised to read as follows:

§1.83-3 Meaning and use of certain terms.

* * * * *

(e) * * * In the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section. However, in the case of the transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, which was part of a split-dollar arrangement (as defined in §1.61-22(b)) entered into (as defined in §1.61-22(j)) on or before September 17, 2003,

and which is not materially modified (as defined in §1.61-22(j)(2)) after September 17, 2003, only the cash surrender value of the contract is considered to be property.

* * * * *

Par. 4. Section 1.402(a)-1 is amended by:

1. Revising paragraph (a)(1)(iii).
2. Revising the last two sentences of paragraph (a)(2).

The revisions read as follows:

' 1.402(a)-1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(a)* * * (1) * * *

(iii) Except as provided in paragraph (b) of this section, a distribution of property by a trust described in section 401(a) and exempt under section 501(a) shall be taken into account by the distributee at its fair market value. In the case of a distribution of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any interest therein, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed) are included in determining the fair market value of the contract. In addition, where a trust described in section 401(a) and exempt under section 501(a) transfers property to a plan participant or beneficiary in exchange for consideration and where the fair market value of the property transferred exceeds the amount received by the trust, then the excess of the fair market value of the property transferred by the trust over the amount received by the trust is treated as a distribution by the trust to the distributee.

* * * * *

(2)*** If, however, the contract distributed by such exempt trust is a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, the fair market value of such contract at the time of distribution must be included in the distributee's income in accordance with the provisions of section 402(a), except to the extent that, within 60 days after the distribution of such contract, all or any portion of such value is irrevocably converted into a contract under which no part of any proceeds payable on death at any time would be excludable under section 101(a) (relating to life insurance proceeds). If the contract distributed by such trust is a transferable annuity contract, a life insurance contract, a retirement income contract, endowment contract, or other contract providing life insurance protection (whether or not transferable), then notwithstanding the preceding

sentence, the fair market value of the contract is includible in the distributee's gross income, unless within such 60 days such contract is also made nontransferable.

* * * * *

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.