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IRS Third-Party Summonses – Negotiated Cooperation Usually Is the Best Approach

BY SAMUEL MITCHELL

Over the last several years many life insurance companies have received third-party administrative summonses from IRS agents seeking documents and information concerning life insurance policies sold to trusts and individual taxpayers. Most of these summonses arise in the context of trust arrangements the IRS considers abusive. The summonses typically arise in two types of IRS examinations – (1) income tax examinations of the individual taxpayers who participated in the arrangements and (2) promoter penalty examinations of the agents or brokers.

An IRS third-party summons, and particularly one issued in promoter examinations, can be very costly and burdensome. For example, the summons may request detailed information over a period of many years regarding everything from actuarial and reinsurance documents and information to all types of communications with the promoter. An IRS summons is not self-enforcing. If the company refuses to comply, however, the IRS can go to Federal District Court to seek enforcement. There are legal remedies available to a third-party summons recipient in Federal District Courts; however, the IRS has specific statutory authority under I.R.C. § 7602 to issue such a summons and the courts generally have not been kind to recipients who resist. These summons enforcement actions in court can be time-consuming and costly. Therefore, satisfaction of the IRS's request for information outside of court in the most cost-effective manner is usually the best course.

There are a number of things to think about when a company receives a third-party summons, such as privileged and proprietary information, ongoing lawsuits filed by policyholders, and the effect of document production on the company's relationships with agents, brokers and policyholders. Although the deck is stacked in favor of the IRS in obtaining all non-privileged information demanded in the summons, most IRS agents will be cooperative if the situation is handled properly. The IRS agents do not want to be overwhelmed with paper and, perhaps more importantly, operate under timing and budgetary restrictions that incentivize them to be reasonable. The best approach for the company in terms of managing both its costs and external risks is to cooperate with the IRS agents within the scope of their limitations and attempt to negotiate a process that will result in a more limited compliance burden.

States Seeking to Adopt New Unclaimed Property Requirements

BY STEPHANIE FICHERA

Insurers' unclaimed benefits practices continue to occupy state regulators, many of whom are introducing and adopting initiatives addressing their concerns. Their initiatives include:

- Amendments to NCOIL's Model Unclaimed Life Insurance Benefits Act (the Model Act), which will be discussed during its Summer Meeting.
- In February and April 2012, respectively, Alabama introduced and Kentucky adopted Model Act-based legislation.
- In April 2012, New York introduced legislation that requires insurers to undertake a Death Master File match semi-annually, rather than quarterly as under the current Model Act. Also different from the Model Act, it specifically permits insurers to require "satisfactory proof of loss, such as a death certificate, as a condition for conclusively determining the death of the policyholder or account holder."