



Field Bulletin

July 9, 2009
AD 09-058

Audience: Life Producers

Re: Employer-Owned Life Insurance (“EOLI”) – Update on Application of Rules Under IRC Sec.101(j)

What’s New:

- This communication updates information previously reported on employer-owned life insurance.
- The IRS issued a formal notice, Notice 2009-48 that provides certain guidance for IRC Sections 101(j) and 6039I which address the tax treatment and impose annual reporting requirements for EOLI insurance policies.

When:

Effectively immediately.

For More Info:

- See the following pages for details.
- For further details on EOLI, see AD 08-129, AD 08-022, AD 07-017 and “Advanced Marketing E-Notices-May 2009 and February 15, 2008.”
- If you have questions, contact AXA Equitable Advanced Markets at (800) 316-9981, Option 2.

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NP090024 (7/09)

AXA Distributors, LLC, New York, NY 10104. AXA Equitable Life Insurance Company is the parent company of AXA Distributors, LLC.

Background

On May 22, 2009, the IRS issued a formal Notice, IRS Notice 2009-48, which provides some guidance for Internal Revenue Code sections 101(j) and 6039I which address the tax treatment and impose annual reporting requirements for EOLI insurance policies.

Previously AXA Equitable reported on the addition of sections 101(j) and 6039I to the Internal Revenue Code on August 16, 2006, (AD 08-129). IRC Section 101(j) provides that the death proceeds of any employer-owned life insurance issued after August 17, 2006 (or subject to a material change after that date) on the lives of any employee is subject to federal income tax unless the purchase complied with “Notice and Consent” requirements and meets specific listed exceptions. IRC Section 6039I imposes reporting requirements on every applicable policyholder who owns an EOLI contract.

The IRS followed up on the legislation by announcing an annual reporting mandate for tax years ending after November 13, 2007. IRS Form 8925 was released to be completed by employers that owned life insurance on the lives of any employee that was issued or subject to material change after August 17, 2006. See “Advanced Marketing E-Notice-February 15, 2009” for further detail.

In addressing all of these EOLI requirements, AXA Equitable has implemented a process to ensure that policyowners and FPs are aware of the required procedures and are positioned to comply with IRS and state requirements. See AD 08 – 129 for more details.

Below is an update of the *Summary of Application of EOLI Rules to Common Situations* that gives an overview of common situations. The chart and comments are intended to help you understand when the EOLI rules may and may not apply.

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Note for the Financial Professional:

Employer Owned Life Insurance (EOLI) affects many common uses of life insurance. A common misconception is that EOLI only affects nonqualified benefit plans using corporate owned life insurance (COLI). This Table and the explanations that follow are intended to help you with some common situations and identify areas that remain unresolved by the IRS.

Summary of Application of EOLI Rules to Common Situations

	Yes, it probably is EOLI ¹	No, it probably isn't EOLI	Pending Further Guidance, Assume it's EOLI for now ¹
Sole Proprietor			
• On proprietor		✓	
• On an Employee	✓		
Split Dollar Arrangements			
• Endorsement (Employer Owned)	✓		
• Equity Collateral Assignment (Employee Owned)		✓	
• Non-Equity, Collateral Assignment, Economic Benefit Regime Split Dollar			✓
Section 162 Bonus Plan		✓	
Buy-Sell Arrangements			
• Redemption/Entity Purchase	✓		
• Cross-Purchase all business forms except partnerships		✓	
• Partnership Cross-Purchase ²			✓
Qualified Plan Trust		✓	
VEBA		✓	
Charitable Life Insurance³			
• On an Employee			✓
• On a Non-Employee Donor		✓	
Non-Qualified Deferred Compensation (policy used as informal funding)	✓		
Death Benefit Only Plans	✓		
Rabbi Trust	✓		
Key Person	✓		

¹ The following forms must be included with life insurance applications in the situations checked under this column: in Washington State, the Notice and Consent Form (# 140385); in all States but Washington State, the Acknowledgement and Disclosure Form (#141825).

² In an informal discussion with an IRS representative it was confirmed that this issue had not been considered.

³ In an informal discussion with an IRS representative it was confirmed that this issue had not been considered.

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Application of EOLI Rules to Common Situations

Sole Proprietors

Notice 2009-48 made it clear that a policy purchased by a sole proprietor on the life of an employee is EOLI but a policy purchased on the life of the proprietor is not EOLI

(Refer to IRS Notice 2009-48, Question #3)

Endorsement Method Split Dollar (Economic Benefit Tax Regime) Employer Owned

In a split-dollar arrangement where the employer is the named owner of the underlying life insurance policy and is a direct beneficiary of the policy, the arrangement fits squarely within the definition of EOLI.

(Refer to IRS Notice 2009-48, Question #2)

Equity Collateral Assignment Method Split Dollar (Loan Tax Regime) Employee Owned

In a split-dollar arrangement where the employee is the named owner of the underlying life insurance policy, and the employer is entitled to a return of its premium advances from the policy's death benefits, the policy should not be considered EOLI, because the employer is not the named owner of the policy in these arrangements.

Non-Equity Collateral Assignment Method Split Dollar (Economic Benefit Tax Regime)

In a non-equity collateral assignment split-dollar arrangement, subject to the economic benefit tax regime, where the employee is the named owner of the underlying life insurance policy and is only entitled to current life insurance protection under the arrangement, the policy would not normally be considered EOLI. Even though the employer is not the named owner of the policy, the employer is deemed to own the underlying life insurance policy in such arrangements; this is due to the split-dollar life insurance regulations under Code Section 61. It may be prudent to assume that the policy is EOLI until the IRS provides further guidance.

Section 162 Bonus Plans

In a typical Section 162 Bonus Plan, the employee is the named owner of the policy and his or her designated beneficiary receives the entire death benefit. Such plans should not be considered EOLI.

Buy-Sell Arrangements

- **Redemption:** Because the employer is the named owner and direct beneficiary of the underlying life insurance policy, life insurance purchased to fund a redemption buy-sell arrangement should be considered EOLI.
- **Cross-Purchase – Partnerships:** In partnership situations, it is not clearly defined whether the partner who owns the policy will be considered engaged in the trade or business of the partnership. Because of this, it is unclear whether a life insurance policy underlying a cross-purchase buy-sell arrangement will be considered EOLI. It may be prudent to assume that the policy is EOLI in such situations until the IRS provides further guidance.

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Note: In an informal discussion with an IRS representative it was confirmed that this issue has not been considered.

- **Cross-Purchase – Corporations:** In corporate situations, it appears that a life insurance policy underlying a cross-purchase buy-sell arrangement will not be considered EOLI since the corporation is not the named owner of the policy. It is also unlikely that the shareholder who purchases the policy will be considered engaged in the trade or business of the corporation.

Qualified Plan Trusts and VEBA's

Any life insurance policies held by such a trust should not be considered EOLI.
(Refer to IRS Notice 2009-48, Question #1)

Non-Qualified Deferred Compensation Plans and Death Benefit Only Plans

Because the life insurance purchased to fund these plans is owned by the employer, the policy will be considered EOLI.

Rabbi Trusts

Because an employer who establishes a rabbi trust is generally considered to own any assets held by the trust for income tax purposes, life insurance policies held by a rabbi trust will likely be considered EOLI.

(Refer to IRS Notice 2009-48, Question #1)

Charitable Life Insurance

It is unclear whether a charity will be considered to be “engaged in a trade or business” for purposes of the EOLI rules. It may be prudent, at this time, to assume that policies purchased by charities on the lives of their employees in which the charities are beneficiaries will be considered EOLI. A policy on a non-employee donor that is owned by the charity should not be considered EOLI.

Note: In an informal discussion with an IRS representative, it was confirmed that this issue had not been considered.

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