

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-164754-01]

RIN 1545-BA44

Split-Dollar Life Insurance Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to the valuation of economic benefits under certain equity split-dollar life insurance arrangements. The proposed regulations will provide needed guidance to persons who enter into split-dollar life insurance arrangements. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by July 8, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for July 29, 2003, must be received by July 8, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG-164754-01), 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:RU (REG-164754-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at www.irs.gov/regs. The public hearing will be held in the IRS

Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, please contact Elizabeth Kaye at (202) 622-4920. To be placed on the attendance list for the hearing, please contact LaNita M. Vandyke at (202) 622-7180.

SUPPLEMENTARY INFORMATION:

Background and Overview of Notice of Proposed Rulemaking

1. Summary of the Prior Notice of Proposed Rulemaking

On July 9, 2002, a notice of proposed rulemaking (REG-164754-01) was published in the **Federal Register** (67 FR 45414) proposing comprehensive rules for the income, gift, and employment taxation of equity and non-equity split-dollar life insurance arrangements (the 2002 proposed regulations). The 2002 proposed regulations will apply to split-dollar life insurance arrangements entered into after the date final regulations are published in the **Federal Register** and to arrangements entered into on or before that date that are materially modified after that date. Under certain conditions, taxpayers may rely on the 2002 proposed regulations for split-dollar life insurance arrangements entered into on or before the date final regulations are published in the **Federal Register**.

In general, a split-dollar life insurance arrangement is an arrangement between two or more parties to allocate the policy benefits and, in some cases, the costs of a life insurance contract. Under a so-called equity split-dollar life insurance arrangement, one party to the arrangement typically receives an interest in the policy cash value (or

equity) of the life insurance policy disproportionate to that party's share of policy premiums. That party also typically receives the benefit of current life insurance protection under the arrangement. Under a so-called non-equity split-dollar life insurance arrangement, one party typically provides the other party with current life insurance protection but not any interest in the policy cash value.

The 2002 proposed regulations provide two mutually exclusive regimes for taxation of split-dollar life insurance arrangements--a loan regime and an economic benefit regime. Under the loan regime (which is set forth in §1.7872-15 of the 2002 proposed regulations), the non-owner of the life insurance contract is treated as loaning the amount of its premium payments to the owner of the contract. The loan regime generally will govern the taxation of collateral assignment arrangements. Under the economic benefit regime (which is set forth in §1.61-22(d) through (g) of the 2002 proposed regulations), the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract. The economic benefit regime generally will govern the taxation of endorsement arrangements.

The 2002 proposed regulations reserved on the rules for valuing economic benefits provided to the non-owner under an equity split-dollar life insurance arrangement governed by the economic benefit regime, pending receipt of comments from interested parties. The preamble to the 2002 proposed regulations notes that any proposal "for a specific methodology should be objective and administrable" and describes a potential approach under which the non-owner would include in income the difference between current premium payments and the net present value of the amount

to be repaid to the owner in the future.

A public hearing on the 2002 proposed regulations was held on October 23, 2002. In addition, interested parties have submitted detailed comments on the 2002 proposed regulations, including comments on the valuation of economic benefits provided to a non-owner under an equity split-dollar life insurance arrangement governed by the economic benefit regime.

2. Explanation of Provisions and Summary of Comments

a. Overview

These proposed regulations, which supplement the 2002 proposed regulations, provide guidance on the valuation of economic benefits (including the valuation of an interest in policy cash value) under an equity split-dollar life insurance arrangement governed by the economic benefit regime. These proposed regulations apply for purposes of Federal income, employment, and gift taxes.

These proposed regulations address only those comments received by the IRS and the Treasury Department on the valuation of economic benefits under an equity split-dollar life insurance arrangement governed by the economic benefit regime. Comments received on other issues regarding the 2002 proposed regulations and comments on these proposed regulations will be addressed when both sets of proposed regulations are finalized.

These proposed regulations provide that in the case of an equity split-dollar life insurance arrangement, the value of the economic benefits provided to the non-owner under the arrangement for a taxable year equals the cost of any current life insurance

protection provided to the non-owner, the amount of policy cash value to which the non-owner has current access (to the extent that such amount was not actually taken into account for a prior taxable year), and the value of any other economic benefits provided to the non-owner (to the extent not actually taken into account for a prior taxable year). The terms owner and non-owner are defined in §1.61-22(c)(1) and (2) of the 2002 proposed regulations.

b. Current access to policy cash value

Generally, under an equity split-dollar life insurance arrangement governed by the economic benefit regime, the owner of the life insurance contract pays policy premiums, thereby establishing a pool of assets with respect to which the non-owner has certain rights under the arrangement (for example, rights of withdrawal, borrowing, surrender, or assignment). Additionally, the pool of assets is held by a third party, the life insurance company, effectively placing the cash value beyond the reach of the employer or the employer's general creditors in many cases. Thus, an equity split-dollar life insurance arrangement confers on the non-owner rights to direct or indirect economic enjoyment of policy cash value, making current taxation of the non-owner's interest in the cash value appropriate under the doctrines of constructive receipt, economic benefit, and cash equivalence.

These proposed regulations provide that the non-owner has current access to any portion of the policy cash value that is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors. For this purpose, "access" is to be construed broadly and includes any direct or indirect right

under the arrangement of the non-owner to obtain, use, or realize potential economic value from the policy cash value. Thus, for example, a non-owner has current access to policy cash value if the non-owner can directly or indirectly make a withdrawal from the policy, borrow from the policy, or effect a total or partial surrender of the policy.

Similarly, for example, the non-owner has current access if the non-owner can anticipate, assign (either at law or in equity), alienate, pledge, or encumber the policy cash value or if the policy cash value is available to the non-owner's creditors by attachment, garnishment, levy, execution, or other legal or equitable process. Policy cash value is inaccessible to the owner if the owner does not have the full rights to policy cash value normally held by an owner of a life insurance contract. Policy cash value is inaccessible to the owner's general creditors if, under the terms of the split-dollar life insurance arrangement or by operation of law or any contractual undertaking, the creditors cannot, for any reason, effectively reach the full policy cash value in the event of the owner's insolvency.

In a typical equity split-dollar life insurance arrangement, the non-owner has current access to all portions of the policy cash value in excess of the amount payable to the owner. In many arrangements, the non-owner may also have current access to the portion of the cash value payable to the owner if, for example, that portion of the policy cash value is for any reason not accessible to the owner or the owner's general creditors.

Under these proposed regulations, policy cash value is determined without regard to surrender charges or other similar charges or reductions. To provide

uniformity, certainty, and administrative ease, policy cash value generally is determined on the last day of the non-owner's taxable year. In addition, solely for purposes of employment tax (as defined in §1.61-22(c)(5) of the 2002 proposed regulations) and the penalty for failure to pay estimated income taxes, the portion of the policy cash value that is treated as provided by the owner to the non-owner during the non-owner's taxable year is treated as so provided on the last day of that taxable year. The IRS and the Treasury Department request comments regarding circumstances in which it might be appropriate to use a different date for employment tax withholding purposes.

Several commentators on the 2002 proposed regulations asserted that those regulations were contrary to the intention, announced by the IRS and the Treasury Department in Notice 2002-8 (2002-1 C.B. 398), to publish proposed regulations that will not treat an owner as having made a transfer of a portion of the cash surrender value of a life insurance contract to a non-owner for purposes of section 83 solely because interest or other earnings credited to the cash surrender value of the contract cause the cash surrender value to exceed the portion thereof payable to the owner. The valuation methodology described in these proposed regulations, however, does not treat an owner as having made a transfer under section 83 solely because of growth in policy cash value. Rather, this approach, consistent with the doctrines of constructive receipt, economic benefit, and cash equivalence, treats the non-owner as having a taxable interest in policy cash value only to the extent that the non-owner has current access to the policy cash value.

Several commentators stated that a non-owner who includes in income a portion

of the policy cash value should be credited with “inside build-up” on that portion of the policy cash value. This result might be appropriate if there were actual transfers of ownership of the underlying life insurance contract (or a portion thereof) from the owner to the non-owner. Here, by contrast to transfers described in §1.61-22(g) of the 2002 proposed regulations, no part of the life insurance contract is actually transferred from the owner to the non-owner by reason of the non-owner’s taking policy cash value into account.

In addition, some commentators expressed the view that, under the economic benefit regime, if the policy cash value in one year is less than the policy cash value in a prior year, the non-owner should be allowed a loss to the extent this difference was included in income in the prior year. Consistent with the underlying doctrines of constructive receipt, economic benefit, and cash equivalence, a loss should not be allowed in this situation. Note, however, that under §1.61-22(g)(4)(ii)(A) of the 2002 proposed regulations, if a life insurance contract is transferred from an owner to a non-owner (the transferee), the transferee’s investment in the contract under section 72(e) will include the amount of economic benefits previously taken into account by the transferee prior to the transfer.

c. Current term life insurance protection

These proposed regulations provide that, in the case of an equity split-dollar life insurance arrangement governed by the economic benefit regime, the value of the economic benefits provided to a non-owner for a taxable year also includes the cost of current life insurance protection provided to the non-owner. The cost of current life

insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin. The amount of the current life insurance protection (including paid-up additions thereto) provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the sum of the total amount payable to the owner (including any outstanding policy loans that offset amounts otherwise payable to the owner) under the split-dollar life insurance arrangement and the portion of the policy cash value actually taken into account for the current taxable year or for any prior taxable year. This subtraction of the portion of the policy cash value actually taken into account by the non-owner prevents the non-owner from being taxed twice on the same amount, once as part of the policy cash value to which the non-owner has current access and again as an amount provided to the non-owner in the form of death benefit protection.

d. Other economic benefits

These proposed regulations provide that, in the case of an equity split-dollar life insurance arrangement governed by the economic benefit regime, the value of all other economic benefits provided to the non-owner must be taken into account (to the extent not actually taken into account for a prior taxable year). For this purpose, the term “other economic benefits” should be construed broadly to include any benefit, right, or feature of the life insurance contract (other than current life insurance protection and policy cash value) provided to the non-owner under the arrangement.

Proposed Effective Date

These proposed regulations will have the same applicability date as that set forth in §1.61-22(j) of the 2002 proposed regulations. Thus, these proposed regulations will apply to split-dollar life insurance arrangements entered into after the date final regulations are published in the **Federal Register** and to arrangements entered into on or before that date that are materially modified after that date.

In addition, taxpayers may rely on these proposed regulations for equity split-dollar life insurance arrangements entered into on or before the date final regulations are published in the **Federal Register** if the conditions in §1.61-22(j)(2)(i) of the 2002 proposed regulations are met. For taxable years beginning after December 31, 2002, however, parties to an equity split-dollar life insurance arrangement may rely on these proposed regulations only if the value of all economic benefits taken into account by the parties is determined in accordance with these proposed regulations. These proposed regulations also conform the early reliance rules in §1.83-6(a)(5)(ii)(B) and §1.301-1(q)(4)(ii) of the 2002 proposed regulations to that set forth in the preceding sentence.

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 flexibility assessment is not required. It has 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 these 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 Internal Revenue 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 or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 29, 2003, beginning at 10 a.m. in the IRS Auditorium in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Thus, the public hearing concerning these proposed regulations will be held on a date sooner than the usual 120 days after the date of publication of proposed regulations in the **Federal Register**. The IRS and the Treasury Department believe that this shorter period is sufficient for taxpayers to comment on these proposed regulations because the issue addressed by these proposed regulations is narrowly focused and taxpayers have already submitted comments on this issue in connection with the 2002 proposed regulations.

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 information about having your

name placed on the building access 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 comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 8, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of 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 author of these proposed regulations is Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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 1.61-22, as proposed on July 9, 2002, at 67 FR 45423, is amended as follows:

1. The text of paragraph (d)(3)(ii) is added.
2. Paragraph (j)(2)(iii) is added.

The additions read as follows:

§1.61-22 Taxation of split-dollar life insurance arrangements.

* * * * *

(d) * * *

(3) * * *

(ii) Valuation of economic benefits--(A) In general. In the case of a split-dollar life insurance arrangement described in paragraph (d)(3)(i) of this section, the value of the economic benefits provided to a non-owner for a taxable year under the arrangement equals--

(1) The cost of current life insurance protection provided to the non-owner as determined under paragraph (d)(3)(ii)(B) of this section;

(2) The amount of policy cash value to which the non-owner has current access within the meaning of paragraph (d)(3)(ii)(C) of this section (to the extent that such amount was not actually taken into account for a prior taxable year); and

(3) The value of any economic benefits not described in paragraph (d)(3)(ii)(A)(1) or (2) of this section provided to the non-owner (to the extent not actually taken into account for a prior taxable year).

(B) Valuation of current term life insurance protection. In the case of a split-dollar life insurance arrangement described in paragraph (d)(3)(i) of this section, the amount of the current life insurance protection (including paid-up additions thereto) provided to

the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the sum of the total amount payable to the owner under the split-dollar life insurance arrangement and the portion of the policy cash value actually taken into account for the current taxable year or for any prior taxable year. The total amount payable to the owner is increased by the amount of any outstanding policy loan. The cost of current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii) of this chapter).

(C) Current access. For purposes of this paragraph (d)(3), a non-owner has current access to that portion of the policy cash value that is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors.

(D) Valuation date--(1) General rules. For purposes of paragraph (d)(3)(ii)(A) of this section, the policy cash value is determined on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, the policy cash value is determined on the day that the arrangement terminates.

(2) Artifice or device. Notwithstanding paragraph (d)(3)(ii)(D)(1) of this section, if any artifice or device is used to understate the amount of policy cash value to which the non-owner has current access on the valuation date in paragraph (d)(3)(ii)(D)(1) of this section, then, for purposes of paragraph (d)(3)(ii)(A) of this section, the date on which

the amount of policy cash value is determined is the date on which the amount of policy cash value is greatest during that taxable year.

(E) Policy cash value. For purposes of this paragraph (d)(3), policy cash value is determined without regard to surrender charges or other similar charges or reductions.

(F) Special rule for certain taxes. For purposes of employment tax (as defined in paragraph (c)(5) of this section), and sections 6654 and 6655 (relating to the failure to pay estimated income tax), that portion of the policy cash value (as determined under paragraph (d)(3)(ii)(A)(2) of this section) that is treated as provided by the owner to the non-owner under paragraph (d)(1) of this section shall be treated as so provided on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, such portion of the policy cash value shall be treated as so provided on the day that the arrangement terminates.

(G) Examples. The following examples illustrate the rules of this paragraph (d)(3)(ii). Except as otherwise provided, both examples assume the following facts: employer (R) is the owner (as defined in paragraph (c)(1) of this section) and employee (E) is the non-owner (as defined in paragraph (c)(2) of this section) of a life insurance contract that is part of an equity split-dollar life insurance arrangement that is subject to the provisions of paragraphs (d) through (g) of this section; the contract is a life insurance contract as defined in section 7702 and not a modified endowment contract as defined in section 7702A; R does not withdraw or obtain a loan of any portion of the policy cash value and does not surrender any portion of the life insurance contract; the

compensation paid to E is reasonable; E is not provided any economic benefits described in paragraph (d)(3)(ii)(A)(3) of this section; E does not make any premium payments; E's taxable year is the calendar year; and E reports on E's Federal income tax return for each year that the equity split-dollar life insurance arrangement is in effect the amount of income required to be reported under paragraph (d) of this section. The examples are as follows:

Example 1. (i) Facts. In year 1, R and E enter into the equity split-dollar life insurance arrangement. Under the arrangement R pays all of the premiums on the life insurance contract until the termination of the arrangement or E's death. The arrangement also provides that upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums paid or the policy cash value of the contract and E is entitled to receive any remaining amounts. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R upon termination of the arrangement or E's death. To fund the arrangement, R purchases a life insurance contract with constant death benefit protection equal to \$1,500,000. As of December 31 of year 1, the policy cash value equals \$55,000 and R has paid \$60,000 of premiums on the life insurance contract. As of December 31 of year 2, the policy cash value equals \$140,000 and R has paid aggregate premiums of \$120,000 on the life insurance contract. As of December 31 of year 3, the policy cash value equals \$240,000 and R has paid \$180,000 of premiums on the life insurance contract.

(ii) Analysis. Under the terms of the equity split-dollar life insurance arrangement, E has the right for year 1 and all subsequent years to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(3)(ii)(C) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(3)(ii)(A)(1) and (2) of this section provided to E under the arrangement.

(iii) Results for year 1. For year 1, E is provided, under paragraph (d)(3)(ii)(A)(2) of this section, \$0 of policy cash value (excess of \$55,000 policy cash value determined as of December 31 of year 1 over \$55,000 payable to R). For year 1, E is also provided, under paragraph (d)(3)(ii)(A)(1) of this section, current life insurance

protection of \$1,445,000 (\$1,500,000 minus \$55,000 payable to R). Thus, E includes in gross income for year 1 the cost of \$1,445,000 of current life insurance protection.

(iv) Results for year 2. For year 2, E is provided, under paragraph (d)(3)(ii)(A)(2) of this section, \$20,000 of policy cash value (\$140,000 policy cash value determined as of December 31 of year 2 minus \$120,000 payable to R). For year 2, E is also provided, under paragraph (d)(3)(ii)(A)(1) of this section, current life insurance protection of \$1,360,000 (\$1,500,000 minus the sum of \$120,000 payable to R and the aggregate of \$20,000 of policy cash value that E actually includes in income on E's year 1 and year 2 income tax returns). Thus, E includes in gross income for year 2 the sum of \$20,000 of policy cash value and the cost of \$1,360,000 of current life insurance protection.

(v) Results for year 3. For year 3, E is provided, under paragraph (d)(3)(ii)(A)(2) of this section, \$40,000 of policy cash value (\$240,000 policy cash value determined as of December 31 of year 3 minus the sum of \$180,000 payable to R and \$20,000 of aggregate policy cash value that E actually included in gross income on E's year 1 and year 2 federal income tax returns). For year 3, E is also provided, under paragraph (d)(3)(ii)(A)(1) of this section, current life insurance protection of \$1,260,000 (\$1,500,000 minus the sum of \$180,000 payable to R and \$60,000 of aggregate policy cash value that E actually includes in gross income on E's year 1, year 2, and year 3 federal income tax returns). Thus, E includes in gross income for year 3 the sum of \$40,000 of policy cash value and the cost of \$1,260,000 of current life insurance protection.

Example 2. (i) Facts. The facts are the same as in Example 1 except that E cannot directly or indirectly access any portion of the policy cash value, but the terms of the equity split-dollar life insurance arrangement or applicable state law provide that the policy cash value in excess of the amount payable to R upon termination of the arrangement or E's death is inaccessible to R's general creditors.

(ii) Analysis. Under the terms of the equity split-dollar life insurance arrangement or applicable state law, the portion of the policy cash value exceeding the amount payable to R is inaccessible to R's general creditors. Thus, under paragraph (d)(3)(ii)(C) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(3)(ii)(A)(1) and (2) of this section provided to E under the arrangement.

(iii) Results for years 1, 2 and 3. The results for this example are the same as the results in Example 1.

* * * * *

(j) * * *

(2) * * *

(iii) Valuation of economic benefits. Notwithstanding paragraph (j)(2)(ii) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in paragraph (d)(3) of this section may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with paragraph (d)(3)(ii) of this section.

* * * * *

Par. 3. Section 1.83-6, as proposed on July 9, 2002, at 67 FR 45428, is amended by adding paragraph (a)(5)(ii)(B)(3) to read as follows:

§1.83-6 Deduction by employer.

(a) * * *

(5) * * *

(ii) * * *

(B) * * *

(3) Valuation of economic benefits. Notwithstanding paragraph (a)(5)(ii)(B)(2) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in §1.61-22(d)(3) may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with §1.61-22(d)(3)(ii).

* * * * *

Par. 4. Section 1.301-1, as proposed on July 9, 2002, at 67 FR 45428, is amended by adding paragraph (q)(4)(ii)(C) to read as follows:

§1.301-1 Rules applicable with respect to distributions of money and other property.

* * * * *

(q) * * *

(4) * * *

(ii) * * *

(C) Valuation of economic benefits. Notwithstanding paragraph (q)(4)(ii)(B) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in §1.61-22(d)(3) may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with §1.61-22(d)(3)(ii).

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David A. Mader

Assistant Deputy Commissioner of Internal Revenue.