

Suspension of Requirement to File Form 8390 (*Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809*)

Notice 2002-33

Section 809 of the Internal Revenue Code reduces the policyholder dividends that a mutual life insurance company is permitted to deduct under section 808. Each year, the Internal Revenue Service publishes the differential earnings rate (DER) and the recomputed differential earnings rate (RDER) to be used in computing the amount of the reduction. The DER and RDER are determined by the Service on the basis of information reported by mutual life insurance companies and the 50 largest stock life insurance companies (as determined by the Service) on Form 8390, *Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809*.

The Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147,

§ 611, amended section 809 of the Code by adding new paragraph (j). As amended, section 809(j) provides that the DER shall be treated as zero for purposes of computing both the differential earnings amount and the recomputed differential earnings amount for a mutual life insurance company's taxable years beginning in 2001, 2002, or 2003.

As a result of this amendment to section 809, the Service will not be computing the DER and RDER for 2001, 2002, or 2003.* The determination of the 50 largest stock companies, however, will be made for those years.

The suspension of section 809 by section 809(j) expires in 2004. Accordingly, life insurance companies will not be required to file Form 8390 in either 2002 or 2003.

*Notice 2002-19 (2002-10 I.R.B. 619) provided that the tentative DER for 2001 and RDER for 2000 are zero.

The Service will be required to compute a 2004 DER and RDER using prior year income information from both stock and mutual life insurance companies. Therefore, it is expected that the requirement that companies file Form 8390 will be reinstated in 2004. Mutual life insurance companies will be required to file a Form 8390 with respect to calendar years 2002 and 2003. Any stock life insurance company that is determined to be one of the 50 largest stock life insurance companies during 2001, 2002, or 2003 will be required to file a Form 8390 with respect to that year. All life insurance companies that may be required to report 2001, 2002, or 2003 information are obligated to retain the records necessary to report the appropriate information in 2004.

Life insurance companies that will be required to file a Form 8390 with respect to calendar years 2001 or 2002 will be required to file such form no later than July 1, 2004. Life insurance companies that will be required to file a Form 8390 with respect to calendar year 2003 will be required to file such form no later than October 1, 2004.

When filing Form 1120-L (*U.S. Life Insurance Company Income Tax Return*) for 2001, mutual life insurance companies should treat the DER as zero for purposes of computing the differential earnings amount in Schedule C (*Differential Earnings Amount*). Appropriate changes will be made to Form 1120-L for 2002.

For 2004 and years thereafter, the Service will issue additional guidance regarding the filing of Form 8390 by life insurance companies as needed.

Comments are requested on the implementation of section 809(j), the requirement that information with respect to 2001 and 2002 and information with respect to 2003 be filed separately, and any required changes to Form 1120-L (such as temporarily eliminating Schedule C). Comments should be sent to CC:ITA:RU (Notice 2002-33), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (Notice 2002-33), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. In the alternative, e-mail comments to Notice.Comments@irscounsel.treas.gov.

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