

Section 101.—Certain Death Benefits

Viatical settlement providers; licensing. This ruling defines when a viatical settlement provider is required to be licensed by a state rather than meeting requirements imposed by the National Association of Insurance Commissioners.

Rev. Rul. 2002-82

ISSUE

Under what circumstances will a viatical settlement provider be treated as licensed by a State for purposes of § 101(g)(2)(B) of the Internal Revenue Code?

FACTS

Buyer is a person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds who are either terminally or chronically ill (a viatical settlement provider). Buyer purchases, or takes assignments of, life insurance contracts from persons residing in States that have enacted legislation requiring the licensing of viatical settlement providers and in States that have no statute requiring licensing.

Not all States that require licensing for viatical settlement providers have fully implemented their licensing procedures. In State A, the appropriate regulatory authority has issued a letter to Buyer granting temporary authority to engage in the business of purchasing, or taking assignments of, life insurance contracts on the lives of residents of State A while Buyer's application for a license is pending. If State A decides not to issue a license to Buyer, State A will revoke its temporary authority to Buyer.

In State B, the licensing statute is effective, but a procedure is not yet in place for licensing providers. However, the ap-

propriate regulatory authorities of State B have issued a public notice that authorizes all viatical settlement providers to engage in business in State B until further guidance is issued.

In State C, the licensing statute is effective but a procedure is not yet in place for licensing providers, nor has the appropriate regulatory authority granted permission, even temporarily, for providers to engage in business in State C until licensing procedures are in place.

LAW AND ANALYSIS

Section 101(a)(1) excludes from gross income amounts received under a life insurance contract by reason of the death of the insured. If the insured is either terminally or chronically ill, amounts received under the life insurance contract (whether or not the recipient is also the insured) may be treated under § 101(g) as amounts received by reason of the death of the insured and excluded from gross income. For this purpose, terminally ill individuals are defined under § 101(g)(4)(A), and chronically ill individuals are defined under § 101(g)(4)(B). The exclusion is unlimited in amount for contracts insuring terminally ill individuals, but under § 101(g)(3) the exclusion is limited for insureds who are chronically ill.

If the person making the payments to the owner of the life insurance contract is the issuing insurance company, the availability of the exclusion depends solely upon whether the insured meets the definition of either a terminally or chronically ill person. If a life insurance contract insuring a terminally or chronically ill individual is sold or assigned, however, the buyer/assignee must qualify as a viatical settlement provider under § 101(g)(2)(B) in order for the owner of the life insurance contract to exclude all or a portion of the amounts received from the sale or assignment.

Section 101(g)(2)(B)(I) defines a viatical settlement provider as any person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds who are terminally or chronically ill, and such person satisfies one of two alternative tests. If the insured resides in a State that requires licensing of viatical settlement providers with respect to the insured, the buyer/assignee must be so licensed. Sec-

tion 101(g)(2)(B)(i)(I). In some States that require licensing, the licensing program may not be fully operational immediately upon the effective date of the implementing statute.

If the insured resides in a State not requiring the licensing of viatical settlement providers with respect to the insured, the buyer/assignee must meet the requirements set forth by the National Association of Insurance Commissioners (NAIC) in the Viatical Settlements Model Act and the Model Regulations or other NAIC requirements for evaluating the reasonableness of amounts paid by such persons in connection with purchases or assignments with respect to such insureds. Sections 101(g)(2)(B)(i)(II) and 101(g)(2)(B)(ii) and (iii). The Model Act, Model Regulations, and other NAIC standards applicable to viatical settlement providers are comprehensive and complex, and are subject to periodic examination by the NAIC for possible modification or expansion.

For purposes of § 101(g)(2)(B)(i)(I), if the regulatory authority in a State that requires licensing establishes an interim program granting temporary authority to particular viatical settlement providers or blanket authority for all viatical settlement providers to conduct business pending implementation of its licensing program, authorized providers will be treated as licensed in that State.

Conversely, if a State enacts a licensing requirement and the appropriate regulatory authorities of the State do not permit viatical settlement providers to engage in business in that State (either under temporary authority to particular viatical settlement providers or blanket authority to all viatical settlement providers) until licenses are actually granted, providers that nevertheless engage in business in that State will not be treated as licensed for purposes of § 101(g)(2)(B)(i)(I). In such a State, a viatical settlement provider may not rely on the NAIC Model Law or Model Regulations to satisfy the requirements set forth in § 101(g)(2)(B)(i)(II). Accordingly, no exclusion is available for proceeds from the sale or assignment of life insurance contracts insuring the lives of terminally or chronically ill insureds residing in that State until that State actually grants licenses.

HOLDING

Buyer is treated as licensed for purposes of § 101(g)(2)(B)(i)(I) in State A (where temporary authority has been granted to Buyer to engage in business while State A reviews Buyer's pending licensing application) and in State B (where blanket authority to engage in business has been granted to all viatical settlement providers by State B, pending further guidance).

Buyer is not treated as licensed for purposes of § 101(g)(2)(B)(i)(I) in State C. Further, Buyer may not qualify as a viatical settlement provider in State C under § 101(g)(2)(B)(i)(II). Therefore, sellers or assignors residing in State C may not exclude under § 101(a) any portion of the amount received from Buyer. Buyer's failure to qualify as a licensed provider in State C does not affect whether Buyer qualifies as licensed in any other state.

EFFECTIVE DATE

This revenue ruling is effective for all amounts received on or after January 1, 1997, the effective date of § 101(g). However, amounts received pursuant to sales or

assignments entered into before July 1, 2003, by residents of any State that requires licensing of viatical settlement providers but has neither issued temporary authority to particular viatical settlement providers nor blanket authority to all viatical settlement providers that are not yet individually licensed will be treated as received from a viatical settlement provider if, at the time of the sale or assignment, the viatical settlement provider satisfied the requirements of § 101(g)(2)(B)(i)(II).

DRAFTING INFORMATION

The principal author of this revenue ruling is Ann H. Logan of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact her at (202) 622-3970 (not a toll-free call).