Qualification of Certain Arrangements as Insurance

Notice 2005–49

This notice requests comments on additional guidance concerning the standards for determining whether an arrangement constitutes insurance for federal income tax purposes.

In Rev. Rul. 2001–31, 2001–1 C.B. 1348, the Internal Revenue Service announced that it would no longer raise the "economic family theory" set forth in Rev. Rul. 77–316, 1977–2 C.B. 53, in addressing whether captive insurance transactions constitute insurance for federal income tax purposes. Since 2001, the Service and the Treasury Department have published four revenue rulings providing guidance on the standards to be used to determine whether a particular arrangement constitutes insurance. Most recently, Rev. Rul. 2005–40, page 4, this Bulletin, explains that (1) in order for an arrangement to qualify as insurance, both risk shifting and risk distribution must be present, and (2) the risk distribution requirement is not satisfied if the issuer of an "insurance" contract enters into such a contract with only one policyholder. *See also* Rev. Rul. 2002–89, 2002–2 C.B. 984 (setting forth circumstances under which arrangements between a domestic parent corporation and its wholly owned subsidiary constitute insurance); Rev. Rul. 2002–90, 2002–2 C.B. 985 (setting forth circumstances under which payments for professional liability coverage by a number of operating subsidiaries to an insurance subsidiary of a common parent constitute insurance); Rev. Rul. 2002–91, 2002–2 C.B. 991 (setting forth circumstances under which amounts paid to a group captive of unrelated insureds are deductible as insurance premiums and in which the group captive qualifies as an insurance company).

The Service and the Treasury Department are aware that further guidance is needed in this area and request comments on issues that should be addressed. In particular, comments are requested regarding (1) the factors to be taken into account in determining whether a cell captive arrangement constitutes insurance and, if so, the mechanics of any applicable federal tax elections; (2) circumstances under which the qualification of an arrangement between related parties as insurance may be affected by a loan back of amounts paid as "premiums;" (3) the relevance of homogeneity in determining whether risks are adequately distributed for an arrangement to qualify as insurance, and (4) federal income tax issues raised by transactions involving finite risk.

Comments should be submitted in writing on or before October 3, 2005, and should include a reference to Notice 2005–49. Comments may be submitted to CC:PA:LPD:PR (Notice 2005–49), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, comments may be submitted electronically via the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2005–49" in the subject line of any electronic communications.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2005–49), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

For further information regarding this notice, contact William Sullivan or Thomas Preston of the Office of Associate Chief Counsel (Financial Institutions & Products) at (202) 622–3970 (not a toll-free call).