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Re: Overfunded Life Insurance Policies
File number: 5285.0001

Dear Mr. Leibowitz;

You have requested that I address the issue of “overfunded” whole life or universal life insurance policies.

This letter addresses the issue in general and is not meant as a blanket opinion on the issue. Each policy submission should be addressed by an insurance professional, such as yourself. Further, frequently the underwriter, an accountant specializing in insurance matters, or an attorney may need to be consulted.

I would like to make clear what is meant in this letter when referring to overfunded policies. Overfunded life insurance (OLI) is a popular option to build substantial savings in a tax-favored account, via cash value life insurance. OLI policies are designed to offer maximum early high cash value along with the asset protection and tax benefits of life insurance.

Overfunded life insurance is essentially a universal life (UL), whole life insurance (WL), or variable universal life (VUL) insurance policy where additional cash contributions are made

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to boost the policy's cash value. This added cash grows tax free in the policy's cash account and can be accessed via cash withdrawals or policy loans.

An overfunded policy is legal and permitted by law.

With that said, there are risks of overfunding which can result in a taxable event. The IRS has set rules which can turn a tax-free life insurance policy into a modified endowment contract (MEC). This means the IRS can determine that the policy does not meet the requirements of having been obtained primarily for death protection, but having been obtained primarily as a tax-planning device. The fact that a policy is used in tax planning does not necessarily make the benefits taxable. The IRS has set rules as to the when a policy benefit is, or is not, taxable. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) has set forth a "7-pay test" to determine whether the policy retains its tax free nature. (I suggest a review of the publication downloadable at https://www.massmutual.com/mmfg/pdf/mec_client_guide.pdf. This publication may be helpful, however, keep in mind it is published by an insurer with its own commercial objective.). Submissions should be reviewed in accordance with TAMRA. Even if taxable under TAMRA, the product is legal and may be advantageous to the client.

Clients must be advised that there is a cap to the overfunding. Many insurers will provide notice if the over-funding will create a MEC issue. I have been advised that some insurers discourage overfunding. Many agents discourage over-funding. Whether over-funding should be discouraged or encouraged is a function of the insured's financial needs. It is a disservice for anyone, on a blanket basis, to advise a client that overfunding is not in the interest of the client. Likewise, it is a disservice for anyone, on a blanket basis, to advise a client that overfunding is in

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the interest of the client. The sole determinative factor should be the client's financial interest, not the commissions of the agent or the insurer's profitability.

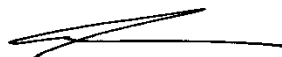
Some insurers do not permit overfunding when the cap is reached if it will result in the loss of the tax deferred/tax free benefits of overfunding. Further, surrender or lapse of the policy may result in a taxable event. This may not be of concern when the policy is initiated but may become critical at later ages.

I caution that any false answer in the application may have serious consequences and therefore it is essential that each insured provide truthful answers in the application. When applying the tax free provisions, a mistake in the insured's income and net worth may severely impact the efficacy of the overfunding.

Please be advised that each client's needs must be reviewed and "one size does not fit all."

If I can be of further assistance, please advise.

Very truly yours,
LIPSIUS-BENHAIM LAW, LLP



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