

made solely to comply with Section IV, Paragraph 4 of Notice 2002–8.

These final regulations provide a non-exclusive list of changes that will not result in a material modification for purposes of the effective date. For example, the final regulations provide that a change solely in the mode of premium payment or a change solely in the interest rate payable on a policy loan under the life insurance contract will not be treated as a material modification.

The 2002 and 2003 proposed regulations provided rules under which taxpayers were permitted to rely on the 2002 and 2003 proposed regulations for arrangements entered into on or before September 17, 2003. This reliance also was intended to be available in circumstances under which taxpayers relied on the proposed regulations to determine that the arrangement would not be subject to the proposed regulations (for example, if the arrangement does not fall with the definition of a split-dollar life insurance arrangement).

Concurrent with the publication of these final regulations in the **Federal Register**, the IRS and Treasury are issuing Rev. Rul. 2003–105 (2003–40 I.R.B.) to obsolete certain revenue rulings with respect to split-dollar life insurance arrangements entered into or materially modified after September 17, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It is hereby certified that the collection of information requirements in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations merely require a taxpayer to prepare a written representation that contains minimal information (if the loan provides for nonrecourse payments) or a projected payment schedule (if the loan provides for contingent payments). In addition, the preparation of these documents should take no more than .28 hours per taxpayer. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The

Chief Counsel for Advocacy did not submit any comments on the regulations.

Drafting Information

The principal authors of these final regulations are Rebecca Asta of the Office of Associate Chief Counsel (Financial Institutions and Products), Lane Damazo of the Office of Associate Chief Counsel (Passthroughs and Special Industries), Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting), Erinn Madden of the Office of Associate Chief Counsel (Tax-Exempt and Governmental Entities), and Krishna Vallabhaneni of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.7872–15 also issued under 26 U.S.C. 1275 and 7872. * * *

■ **Par. 2.** Section 1.61–2 is amended by:

- 1. Redesignating paragraphs (d)(2)(ii)(a) and (b) as paragraphs (d)(2)(ii)(A) and (B), respectively.
- 2. Adding two sentences immediately following the second sentence in newly designated paragraph (d)(2)(ii)(A).

The additions read as follows:

§ 1.61–2 Compensation for services, including fees, commissions, and similar items.

* * * * *

(d) * * *

(2) * * *

(ii)(A) *Cost of life insurance on the life of the employee.* * * * For example, if an employee or independent contractor

is the owner (as defined in § 1.61–22(c)(1)) of a life insurance contract and the payments with regard to such contract are not split-dollar loans under § 1.7872–15(b)(1), the employee or independent contractor must include in income the amount of any such payments by the employer or service recipient with respect to such contract during any year to the extent that the employee's or independent contractor's rights to the life insurance contract are substantially vested (within the meaning of § 1.83–3(b)). This result is the same regardless of whether the employee or independent contractor has at all times been the owner of the life insurance contract or the contract previously has been owned by the employer or service recipient as part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) and was transferred by the employer or service recipient to the employee or independent contractor under § 1.61–22(g). * * *

■ **Par. 3.** Section 1.61–22 is added to read as follows:

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

(a) *Scope*—(1) *In general.* This section provides rules for the taxation of a split-dollar life insurance arrangement for purposes of the income tax, the gift tax, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), and the Self-Employment Contributions Act of 1954 (SECA). For the Collection of Income Tax at Source on Wages, this section also provides rules for the taxation of a split-dollar life insurance arrangement, other than a payment under a split-dollar life insurance arrangement that is a split-dollar loan under § 1.7872–15(b)(1). A split-dollar life insurance arrangement (as defined in paragraph (b) of this section) is subject to the rules of paragraphs (d) through (g) of this section, § 1.7872–15, or general tax rules. For rules to determine which rules apply to a split-dollar life insurance arrangement, see paragraph (b)(3) of this section.

(2) *Overview.* Paragraph (b) of this section defines a split-dollar life insurance arrangement and provides rules to determine whether an arrangement is subject to the rules of paragraphs (d) through (g) of this section, § 1.7872–15, or general tax rules. Paragraph (c) of this section defines certain other terms. Paragraph (d) of this section sets forth rules for the taxation of economic benefits provided under a split-dollar life insurance