

Employer Notification, Consent and Reporting Requirements on Employer Owned Life Insurance (EOLI) Contracts

Section 101(j) of the Internal Revenue Code provides certain Notification and Consent requirements in order for death proceeds from employer-owned life insurance contracts to be received income tax-free. Additionally, IRS Form 8925 must be filed beginning with Tax Years Ending After November 13, 2007 on employer owned life insurance contracts issued after August 17, 2006

Section 101(j) requires before an employer-owned life insurance policy is issued:

1. The employee must be notified in writing of the employer's intention to insure the employee and the maximum face value for which the employee could be insured at the time the contract was issued.
2. The employee must be informed in writing that the employer/policyholder will be the beneficiary of any death proceeds payable on the death of the employee.
3. The employee must consent in writing to be insured under the contract and that coverage may continue after the insured terminates employment.

An insured must be a U.S. citizen or resident to be considered insured under an EOLI contract. Both individuals covered by a contract covering the joint lives of two individuals are considered insured.

The death proceeds received by the employer from a EOLI contract will be income tax free if the above three notice and consent requirements have been met, and if one or more of the following exceptions applies.

Applicable Exceptions for Full Exclusion of Death Benefits:

1. The insured must have been an employee at any time during the 12-month period before his or her death.
2. Insureds who were, at the time the contract was issued directors or a highly compensated employee or individual. At the time the insurance coverage became effective the insured must have been:
 - a. a director, or
 - b. a 5-percent or greater owner at any time during the preceding year, or
 - c. received compensation in excess of \$95,000 (adjusted for inflation) in the preceding year, or
 - d. one of the five highest-paid officers, or
 - e. among the highest-paid 35-percent of all employees

3. Death benefits are income tax free to the extent paid to:
 - a. a member of the insured's family,
 - b. an individual who is the designated beneficiary of the insured under the contract (other than the employer),
 - c. a trust established for any such person, or
 - d. the insured's estate.

When Section 101(j) was passed, Congress also enacted Section 6039I which established reporting requirements with respect to employer-owned life insurance contracts. The reporting requirements generally are applicable to life insurance contracts issued after August 17, 2006, the date the statute was enacted.

IRS Form 8925 is required for tax years ending on or after November 14, 2007 and must be filed by any policyholder who owns an employer-owned life insurance contract that was issued after August 17, 2006. Life insurance contracts issued prior to that date that are materially modified also are subject to reporting.

Form 8925 requires reporting the following:

1. The total number of the policyholder's employees at the end of the tax year.
2. The number of employees insured under employer-owned life insurance contracts issued after August 17, 2006.
3. The total amount of employer owned life insurance on the disclosed policies.
4. Whether the policyholder has valid consents for all applicable employees
5. The number of employees for whom the policyholder does not have valid consents.

Filing requirements: Form 8925 is filed with the policyholder's income tax return for years ending after November 13, 2007. **If this report has not been filed, it is strongly advised that an amendment to the applicable tax returns be filed.**