



BENEFIT *Advisor*

In This Issue

In this twelfth issue of the McGraw Wentworth Benefit Advisor for 2004, we will overview Section 79 of the Internal Revenue Code. Several areas of Section 79 affect the tax treatment of employer-sponsored group term life benefits. Review your group term life programs annually to determine whether you need to calculate imputed income for employer-paid or supplemental life coverage.

We welcome your comments and suggestions regarding this issue of our technical bulletin. For more information on this Benefit Advisor, please contact your Account Manager or visit the McGraw Wentworth web site at www.mcgrawwentworth.com.

“Effect of Internal Revenue Code Section 79 on Group Term Life Plans”

Section 79 governs taxes on employer-sponsored group *term* life insurance only. It does not pertain to employer-sponsored *whole* life insurance. While up to \$50,000 of employer-paid group life insurance coverage can be considered tax-free to the employee, Section 79 covers situations that may affect taxes on employer-provided life benefits.

This Advisor clarifies the key areas you need to review. To decide whether to include imputed income on an employee’s W-2, consider the following key areas of Section 79:

- Non-discriminatory employer-paid life insurance plans.
- Discriminatory employer-paid life insurance plans.
- Voluntary employee-paid life insurance plans.

Each section explains how to determine whether Section 79 affects your organization and how to calculate imputed income. Because Section 79 is so complicated, you need to review your group term life plan annually to determine whether to calculate imputed income for your employees.

Non-Discriminatory Employer-Paid Life Insurance Plans

Up to \$50,000 of employer-paid term life insurance coverage is tax-exempt under Section 79. To determine

whether this part of Section 79 will affect your employees, you will need to review your plan.



Is your plan considered an employer-paid group life insurance plan? If your organization

pays the life coverage premium, the coverage amount is considered employer provided. Some employers pay for base coverage, but allow employees to pay for additional life insurance coverage. This section concerns only the group life benefits your organization pays for. Section 79 defines “group of employees” as:

- All employees or a controlled group.
- Employees considered to be in a covered group because of one of the following factors:
 - Age (subject to ADEA requirements).
 - Employment-related factors, including union membership, job duties, length of employ-

ment, compensation or participation in a company retirement, stock bonus or group insurance plan.

If you provide \$50,000 or less in paid group term life coverage, your employees do not have to pay tax on the insurance value. On the other hand, if you provide more than \$50,000 in coverage, your organization should include the value of the additional coverage in gross income of affected employees. Section 79(b) contains two exceptions to the \$50,000 limit. In the following two circumstances, even if the value of the coverage you provide exceeds \$50,000, you cannot include the value in the employee's gross income:

- If a terminated employee is considered disabled under the terms of Section 72(m) (7) of the Internal Revenue Code. In order to qualify for this exception, employees must

submit proof they are disabled with their tax returns for the first year of disability and submit proof of continuing impairment for subsequent years.

- If an employee names a charitable organization as defined under Section 170(c) as the sole beneficiary of life insurance proceeds. The charitable organization must be the named beneficiary for the entire plan year. This exception applies if the employer is named the beneficiary of the policy as well.

Calculating The Tax Consequences

Employer-Paid Group Term Life Coverage that Exceeds \$50,000

If you pay the full cost of your employees' group term life coverage, but also provide coverage of more

than \$50,000 for certain employees, follow the steps below to calculate imputed income for those employees:

Step 1: Determine employee's life benefit.

For this example, let's assume you offer all employees \$100,000 of coverage.

Step 2: Subtract \$50,000 from the amount of the life benefit.

$$\$100,000 - \$50,000 = \$50,000$$

Step 3: Divide the Step 2 difference by 1,000.

$$\$50,000 / \$1,000 = 50$$

Step 4: Multiply the result from Step 3 by the Table I rate (based on the employee's age at the end of the year). The result is the employee's monthly imputed income. If the employee in this example is 43 years old, imputed income is $50 \times \$0.10 = \5.00 a month.

Step 5: Convert the result in Step 4 into a payroll frequency amount.

Calculations made on a per payroll basis are not required, but they may be the most convenient method for an employer. Imputed income calculations are subject to FICA withholding and must be paid at a minimum once per year. If you do not withhold FICA on each paycheck, you will have to collect it at year-end or when the employee leaves the company if he or she leaves during the year.

Table I Rates Per \$1,000 of Coverage

| Age Bracket | Table 1 Rates Per \$1,000 of Coverage |
|--------------|---------------------------------------|
| Under 25 | \$0.05 |
| 25 to 29 | \$0.06 |
| 30 to 34 | \$0.08 |
| 35 to 39 | \$0.09 |
| 40 to 44 | \$0.10 |
| 45 to 49 | \$0.15 |
| 50 to 54 | \$0.23 |
| 55 to 59 | \$0.43 |
| 60 to 64 | \$0.66 |
| 65 to 69 | \$1.27 |
| 70 and above | \$2.06 |

Discriminatory Employer-Paid Life Insurance Plans

For the tax exemption to apply to coverage amounts up to \$50,000 for key employees, your term life plan must also meet the Section 79 non-discrimination requirements. Section 79 does not allow plans to favor key employees in terms of eligibility for the plan or benefits paid by the plan. Separate non-discrimination tests address eligibility and benefits.

Benefits Eligibility Test

Your plan cannot favor key employees when it determines who may participate in the employer-paid group life plan. A group life plan is discriminatory if it cannot pass at least one of these "tests":

- The plan benefits 70% of all employees.
- At least 85% of all participants are not considered "key employees."
- The plan covers a non-discriminatory class of employees as determined by the Internal Revenue Service.

If the plan is offered under a cafeteria plan, the cafeteria plan must satisfy the non-discrimination requirements of Section 125.

Disregard the following employees when you are trying to determine whether your plan meets the non-discrimination requirements of Section 79:

- Employees who have not completed at least 3 years of service.
- Part-time or seasonal employees.
- Employees covered by a collective bargaining arrange-

Who is a Key Employee?

A key employee is any employee who at any time during the plan year is:

- A 5% owner;
- An employee owning more than a 1% interest in the company and whose compensation or income from the employer exceeds \$150,000 per year;
- An officer of the employer whose compensation exceeds \$130,000.

The Economic Growth and Tax Relief and Reconciliation Act of 2001 simplified the definition of key employee for plan years beginning after December 31, 2001. This law also indexed threshold compensation of company officers. The \$130,000 is indexed in \$5,000 increments. If an increment is not a multiple of \$5,000, it is rounded down to the next lowest multiple of \$5,000.

ment if the benefits provided under the plan were agreed upon in good faith bargaining.

- Non-resident aliens who receive no earned income from the employer.

Non-discrimination standards apply to current, disabled, former or retired employees. When you offer benefits, you need to test each class of employees separately from active employees.

Benefit Amount Test

Section 79 also states group life plans cannot favor key employees in coverage type or amount.

Your plan can automatically pass this test if:

- You provide the same amount of insurance to all employees; for example, a flat \$20,000 life benefit to all employees.
- You base the benefit amount on a percentage of income and use the same percentage for all covered employees. For

example, all eligible employees are covered for an amount equal to their annual earnings.

Even if a plan does not provide the same coverage amount or percentage for all employees, the plan may still not be considered discriminatory. The plan cannot simply favor key employees. If you offer different benefits for different classes of employees, you need to perform the eligibility test for each class separately.

For example, ABC Company has 500 employees and offers two classes of employer-paid group term life coverage. It offers all 400 of its hourly employees a life benefit equal to their annual earnings. At the same time, it offers 100 salaried employees a life benefit equal to double their annual earnings. No key employees are in the hourly class, and 10 key employees are in the salaried class. Only the salaried class must meet benefits eligibility standards because the class contains the key employees. This class has a total of 100 participants and 10 are

Continued on Page 4

considered key employees; since more than 85% of the class participants are not key employees, this arrangement is not discriminatory.

If ABC Company adds a third class of employees to the plan with benefits equal to triple annual earnings but offers it only to key employees, then this class would not meet the eligibility standards. The plan would be considered discriminatory, and there would be tax consequences for the key employees only.

The Internal Revenue Code lists two exceptions to the non-discrimination rules:

- A church group life insurance plan for church employees. This exception does not apply to church supported institutions of higher learning or a church supported non-profit medical or hospital facility.
- Any additional life insurance employees purchase at their own expense is not included in the non-discrimination determination. If this additional life insurance coverage is available only for key employees, however, then the plan is considered discriminatory.

Calculating the Tax Consequences

Plans That Favor Key Employees

If an employer-provided group term life plan favors "key employees," the imputed income calculation is different for **key employees only** in two ways:

- Key employees do not get the \$50,000 benefit exemption; you must calculate imputed

income based on the full amount of their life insurance.

- You must use Table I rates and also the actual rate the insurer charges when you calculate imputed income. Use the greater of Table I or actual carrier rates when you report the amount.

Unfortunately, the IRS does not clearly define the term "actual rate." In general, you should not use the composite rate charged per \$1,000 of life coverage. To determine your composite rate, insurance carriers melds age-banded rates for your employee population. To determine the actual carrier cost, ask your insurer for the actual cost (or age banded rates) for your key employees. It could be argued that the actual cost can also take into account any effective discounts the carrier has applied to your composite rate. For example, if your insurer took a 15% discount off the composite rate during the quoting process, you could take that discount off your key employee age rate before you determine actual cost for imputed income purposes.



Voluntary Life Plans - Employee Pays Premiums

Many employers are not aware that they may need to calculate imputed income for optional life plans. Review your voluntary life age bands to determine whether imputed income calculations are necessary. Is your optional life insurance plan deemed to be "carried" by the employer? Optional life plans are considered to be employer carried if the employee-paid plan rates straddle

the Table I rates in any given age category. If the employee pays life premiums with after-tax money, but your plan's optional life rate table "straddles" Table I rates, you may need to add the cost difference to the the employee's W-2.

Compare your optional life rate table to the Table I rates shown in the chart on page 2. If rate tiers are neither completely over nor completely under Table I, then certain age brackets benefit more from employer-sponsored group life plan. You must impute income for the

value of the coverage for rate tiers that fall below Table I. In 1999 the IRS lowered Table I rates. Be sure to check your organization's optional life rates against

the new Table I rates. Employers could use the previous Table I rates to determine the straddle effect up to January 1, 2003. If your plan has not compared the rate table to Table I rates in the last several years, it is imperative to do it for 2004.

Calculating the Tax Consequences

Voluntary Life Rate Table Straddles Table I

To calculate imputed income for employees who straddle the Table I rates, first identify the employees who fall below the Table I rates. As long as the premium deductions are taken after taxes, the only individuals who will have imputed income issues are those whose age bands fall below Table I.

In this situation, both employer-paid and supplemental life coverage **must** be included when you determine each affected employee's Section 79 imputed income. For the example below, the employer's plan straddles Table I in the age 45-49 category.

For this example, let's assume you provide \$50,000 in employer-paid coverage. The plan also allows employees to buy an extra \$50,000, \$100,000 or \$200,000 in voluntary coverage with after-tax dollars. Assuming your employee is 46 years old and buys an extra \$100,000 in life coverage, the voluntary life rate is \$0.10 per \$1,000 in coverage. The Table I rate at this age is \$0.15 per \$1,000.

Imputed income for this example should be calculated as follows:

Step 1: Determine the total coverage provided and subtract \$50,000

\$50,000 employer-paid plus
\$100,000 employee-paid

\$150,000 - \$50,000 =
\$100,000

Step 2: Determine the imputed income per month

$\$100,000 / \$1,000 = 100$

$100 \times \$0.15$ (Table I rate for 46) = \$15.00

Step 3: Determine the premium for optional life paid on an after-tax basis

$\$100,000 / \$1,000 = 100 \times$
 $\$0.10$ (optional life rate) =
\$10.00

Step 4: Subtract optional premium from imputed income calculation

$\$15.00 - \$10.00 =$ **\$5.00 per month**

While this example seems complicated, it simply calculates the difference between the plan's age band premium rate and Table I, and it imputes income on that amount.



Most organizations design voluntary life plan deductions to be taken after tax to avoid any additional imputed income calculations. However, if pre-tax premium contributions are taken, they are treated as employer contributions and, therefore, need to be calculated as imputed income on life amounts more than \$50,000.

Section 79 Exceptions

Section 79 requirements apply only to **group term life plans**. Group term life plans do not include:

- Accidental Death and Dismemberment coverage, travel accident insurance, or accident and health coverage.
- Any permanent life insurance coverage that includes additional paid up options or cash surrender values.
- *Minimal fringe benefits.* Up to \$2,000 of employer-paid dependent life insurance is considered minimal (*de-minimis*) and is tax-free. If the employee pays for dependent coverage on an after-tax basis, the benefit is still considered tax free.

Conclusion

You need to review your group life plans to determine whether you should calculate your employees' imputed income. Section 79 of the Internal Revenue Code requires you to calculate imputed income if:

- Your organization provides employer-paid coverage that exceeds \$50,000.
- Your life plan favors key employees. In this case, calculate imputed income on the full value of the life insurance provided to these key employees.
- Your organization offers voluntary life coverage and the plan's age banded rates straddle Table I. In this case, calculate imputed income on employees whose rates fall below the Table I rates.

Section 79 can affect both the employer-paid and the supplemental life benefits your organization sponsors. Review your organization's plan to determine whether you have any obligation to impute income under Section 79. Be sure to call your McGraw Wentworth Account Director with any questions on imputed income.

This article is written solely to inform. It does not offer legal advice. Before you implement any welfare or pension benefit program, consult your benefits advisor and/or your attorney. MW

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McGraw Wentworth
 3250 West Big Beaver Road, Suite 500
 Troy, MI 48084
 Telephone: 248-822-8000 Fax: 248-822-4131
www.mcgrawwentworth.com