

Under § 6018(a)(1), a Form 706 must be filed for the estate of a decedent who is a U.S. citizen or resident who dies in 2001 if the gross estate exceeds \$675,000 (the applicable credit amount). This amount increases to \$1,000,000 in years 2002–2003, \$1,500,000 in years 2004–2005, \$2,000,000 in years 2006–2008, and \$3,500,000 in year 2009. (The applicable credit amount for non-resident non-citizens is lower than these amounts.) Accordingly, in *Situations 1, 2, and 3*, *D*'s estate must file a Form 706 notwithstanding that no federal estate tax is due.

## HOLDINGS

In *Situations 1 and 2*, no federal estate tax is due for a qualifying decedent who died in the year 2001 if the taxable estate is not more than \$8,762,500 and the state imposes a death tax that is at least equal to the state death tax credit under § 2011. If the taxable estate exceeds \$2,936,818, however, a state death tax will be due.

In *Situation 3*, under current law, no federal estate tax will be due for a qualifying decedent who dies in the year 2005 if the taxable estate before the deduction for state death taxes does not exceed \$5,953,939 and the state imposes a state death tax equal to the state death tax credit under § 2011 as it existed prior to EGTRRA. However, the state death tax will be due.

## EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 78–361, 1978–2 C.B. 246, is modified and superseded.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Mayer Samuels of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Samuels at (202) 622–3090 (not a toll-free call).

## Section 4980B.—Continuation Coverage Requirements of Group Health Plans

26 CFR 54.4980B–7: Duration of COBRA continuation coverage.

**Duration of COBRA continuation coverage and divorce.** This ruling provides guidance on when COBRA continuation coverage must commence if, in anticipation of divorce, an employee drops the coverage of a spouse under a group health plan of the employee's employer.

## Rev. Rul. 2002–88

### ISSUE

If an employee eliminates the coverage of the employee's spouse under a group health plan in anticipation of their divorce, when must a plan that is required to make COBRA continuation coverage available to the spouse begin to make that coverage available?

### FACTS

A group health plan subject to COBRA allows eligible employees to elect coverage for themselves and their spouses. An employee who has elected coverage for the employee's spouse can notify the plan to eliminate the spouse's coverage, and the spouse's coverage will be terminated as of the end of the month in which the notice is provided. Under the terms of the plan, a spouse loses eligibility for coverage on the date of divorce from an eligible employee.

Employee *E* is enrolled in the group health plan and elected coverage for *E*'s spouse. A decree of divorce is issued dissolving the marriage of *E* and *E*'s spouse. In anticipation of their divorce, *E* notified the plan administrator to eliminate the coverage for *E*'s spouse, and coverage for *E*'s spouse was terminated as of the last day of the month. There are no facts to indicate that *E*'s spouse would have otherwise lost coverage under the plan before the divorce. The plan administrator is provided notice of the divorce within 60 days after the issuance of the divorce decree.

### LAW AND ANALYSIS

Section 4980B of the Internal Revenue Code requires certain group health plans to make continuation coverage available to certain individuals who would otherwise lose their coverage under the plan as a result of

certain occurrences (the "COBRA continuation coverage requirements"). Section 4980B imposes an excise tax if a plan subject to the COBRA continuation coverage requirements fails to comply with those requirements.

Under section 4980B, the obligation of a plan to make COBRA continuation coverage available arises in connection with a qualifying event. The individuals to whom the COBRA continuation coverage must be made available are qualified beneficiaries.

Under Q&A–1 of § 54.4980B–3 of the Miscellaneous Excise Tax Regulations, an individual generally is a qualified beneficiary if the individual is covered under a group health plan on the day before a qualifying event by virtue of being on that day the spouse of a covered employee.

Under Q&A–1 of § 54.4980B–4, a divorce or legal separation of a covered employee from the covered employee's spouse is a qualifying event if, under the terms of the plan, the divorce or legal separation causes the spouse (or a dependent child of the covered employee) to lose coverage under the plan. Paragraph (c) in Q&A–1 of § 54.4980B–4 states that if coverage is eliminated in anticipation of a qualifying event, such as an employee's eliminating the coverage of the employee's spouse in anticipation of a divorce or legal separation, the elimination is disregarded in determining whether the qualifying event causes a loss of coverage.

Q&A–1 of § 54.4980B–7 states that COBRA continuation coverage must be provided for a period that begins on the date of the qualifying event. Under Q&A–1 and Q&A–4 of § 54.4980B–7, a plan generally has the obligation to make COBRA continuation coverage available to a qualified beneficiary in the case of a divorce or legal separation for 36 months after the date of the divorce or legal separation. This obligation can end earlier for a variety of reasons, such as failure to make timely payment to the plan for the qualified beneficiary's coverage.

Q&A–2 of § 54.4980B–6 provides that a group health plan is not required to offer a qualified beneficiary the opportunity to elect COBRA continuation coverage in the case of a divorce or legal separation if notice of the divorce or legal separation is not provided to the plan administrator within 60 days after the later

of the date of the divorce or legal separation or the date the qualified beneficiary would lose coverage on account of the divorce or legal separation.

*E* eliminated the coverage of *E*'s spouse in anticipation of their divorce. Under the regulations, this elimination is ignored in determining whether the divorce is a qualifying event. (There are no facts to indicate that *E*'s spouse would have otherwise lost coverage under the plan before the divorce.) Thus, if the elimination in anticipation of the divorce is ignored, *E*'s spouse would have remained covered until the divorce and then lost coverage because of it. Consequently, the divorce is a qualifying event and *E*'s former spouse is a qualified beneficiary. Because notice of the divorce was provided to the plan administrator within 60 days after the issuance of the divorce decree, the plan has an obligation to make COBRA continuation coverage available to *E*'s former spouse for a period of up to 36 months.

The period of COBRA continuation coverage begins on the date of the qualifying event. There is no authority under the statute or regulations for requiring a plan to make COBRA continuation coverage available before the date of a qualifying event. Thus, the group health plan in the facts described above has the obligation to make COBRA continuation coverage available to *E*'s former spouse effective as of the date of the divorce for a period of up to 36 months.

#### HOLDING

If an employee eliminates the coverage of the employee's spouse under a group health plan in anticipation of their divorce, a plan that is required to make COBRA continuation coverage available to the spouse must begin to make that coverage available as of the date of the divorce.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Russ Weinheimer of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact Russ Weinheimer or Yurlinda Mathis at (202) 622-6080 (not a toll-free number).

### Section 6018.—Estate Tax Returns

How does the estate of a "qualified decedent," as defined in section 2201(b) of the Internal Revenue Code, compute the federal estate tax under section 2201, as amended by the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, section 103, 115 Stat. 2427 (2002)? See Rev. Rul. 2002-86, page 993.