

# ***The “Daily Plan-It™”***

HOOPES & ADAMS, PLC

Volume 9, Issue 16

8/9/2007

## **Annuity “Rollover” Mistake Results in Taxation**

Today’s *Daily Plan-It™* addresses an important issue for all professionals who work with annuities.

A good annuity can make such a huge difference in a successful financial plan. We wanted to take this opportunity to alert you to an important ruling that it’s essential you become familiar with. IRS Revenue Ruling 2007-24 addresses an issue that could create liability for other professionals if they’re not paying attention to important—sometimes called “little”—details.

### **“Rollover” vs. 1035 Exchange**

The facts of this ruling are interesting. In short, an annuity owner asked the IRS if he could rollover the proceeds from one annuity to another under IRC Section 1035. As most professionals know, Section 1035 allows you to do this as a tax-free exchange. In other words, there’s no tax recognition of the gain built up inside the annuity.

### **Endorsing a check**

The owner had purchased a non-qualified annuity with an insurance company. He later wanted to purchase a new annuity with a different insurer. The company that provided the initial annuity refused to do the exchange. Instead, it distributed the annuity proceeds via a check to the owner. He then took the check, endorsed the back of it, and provided the proceeds via the endorsed check to the second company to purchase his new annuity. Note that he never deposited the check—he immediately endorsed it over to the second company.

### **Advice from the IRS**

Realizing the dilemma, the annuity owner then requested the Revenue Ruling to seek guidance on whether this was a Section 1035 exchange, or whether the income generated on this transfer was taxable income.

### **Ouch...it’s taxable!**

The IRS ruled that, because the owner took possession of the check (even though it was endorsed immediately over to the second company), the income was taxable as an annuity withdrawal under IRC Section 72(e).

### **Tough lessons learned**

Section 1035 exchanges require strict adherence to the rules and regulations. If you want the benefit, you need to follow the rules. The owner could have had the annuity directly assigned to the new insurance company. This is a pretty standard process. Why this one went awry is unclear; but we all can learn from it. If you’d like more information, download the ruling at [http://www.irs.ustreas.gov/irb/2007-21\\_irb/ar15.html](http://www.irs.ustreas.gov/irb/2007-21_irb/ar15.html).

We hope you found this article useful, and, as always, thank you for your referrals and support. We sincerely appreciate it.

## **Hoopes & Adams, PLC**

**Hoopes & Adams appreciates the confidence you place in us when referring your clients for their estate planning and business needs. We greatly enjoy working with you, our allied professional advisor. We will ensure the trust you place in us when making a referral is well earned and reflects well on you. Our first priority is to make sure the confidence your clients place in you is enhanced when they work with us. We look forward to working with you, our friends and colleagues. Allow us to be your resource for your estate and business planning issues and questions. Please contact Ron Adams or Eric Wilbanks at (480) 345-8845 or by email at [radams@halaw.com](mailto:radams@halaw.com) or [ewilbanks@halaw.com](mailto:ewilbanks@halaw.com) if we can help you in any way. We look forward to working with you and hearing how we can help.**

**Hoopes & Adams, PLC  
2410 W. Ray Road, Suite 1  
Chandler, Arizona 85224  
Visit us at [www.halaw.com](http://www.halaw.com)**