

## Employer-Owned Life Insurance: Avoid Unnecessary Taxation

### Notice and Consent Form

The Genworth Financial companies request a signed copy of the Notice and Consent form when a life insurance policy is applied for. While compliance with the Notice and Consent requirement is the responsibility of the employer, we ask for the form as an accommodation to our customers and to alert small employers of this requirement. Therefore, at your request, we can waive this form and continue processing the application. However, if the necessary paperwork is not completed, signed and maintained in the employer's files, the death benefit may lose its tax-free status. No corrective action is available under the law for failure to execute a Notice and Consent prior to the policy's effective date.

A key benefit of life insurance is that the death benefit is typically paid income tax free. However, under a provision added to the tax code in 2006, life insurance purchased by an employer after August 17, 2006 (or materially changed after that date) does not automatically qualify for tax-free status.

Internal Revenue Code (IRC) section 101(j) states that any death benefit paid to an employer will be taxable to the extent the death benefit exceeds the sum of the premiums and other amounts paid by the employer unless the employer complies with certain requirements.

To avoid unnecessary taxation, it's important to follow the required steps BEFORE a life insurance policy is effective. Use these guidelines to ensure employer-owned life insurance (EOLI) policies are correctly established.

#### **To protect the tax-free status of the death benefit, you must:**

1. Comply with Notice and Consent requirements BEFORE a policy's effective date
2. Meet one of the four exceptions
3. File IRS Form 8925 every year the policies are in effect

### Notice and Consent:

To meet the Notice and Consent requirements you must notify the insured in writing of the amount of life insurance being issued AND that the employer will be both the policyowner and the beneficiary. The insured must also consent to:

- Being insured
- Allowing the policy to continue after employment ends
- Letting the employer be the beneficiary

(continued)

See next page for more details.

Life Insurance Products Underwritten by

Genworth Life and Annuity Insurance Company, Richmond, VA

Genworth Life Insurance Company, Richmond, VA

Genworth Life Insurance Company of New York, New York, NY

Only Genworth Life Insurance Company of New York is admitted in and conducts business in New York.

## Exceptions:

One of these exceptions must be met:

1. Insured must have been an employee during the 12-month period prior to his/her death
2. Insured is a key employee who satisfies at least one of these criteria:
  - Is a director of the employer
  - Is one of the five highest paid officers
  - Was paid \$110,000 or more (2011, as indexed), in the preceding year
  - Is one of the top 35% highest paid employees
  - Owns 5% or more of the employer the year the policy is issued or the year before
3. Death benefit is used to purchase an equity interest in the employer (buy-sell agreement)
4. Death benefit must be paid to a member of the insured's family, a personal beneficiary of the insured (not the employer), a trust established for the insured's family or the insured's estate

## Reporting:

Employers must report information about their EOLI policies to the IRS annually. IRS Form 8925 reports:

- The total number of employees employed by the business at the end of the year
- How many of those employees are covered by EOLI policies at the end of the year
- The total amount of EOLI in force at the end of the year
- The business address, taxpayer identification number and business type
- That you have a valid consent form from each insured employee and the number of employees from whom consent was not obtained

For purposes of 101(j) an employee includes common law employees, self-employed individuals, directors (in their capacity as directors), officers and highly compensated employees.

If you have questions about the above general information, please consult with your tax advisor.

### Disclaimer

The Genworth Financial companies wrote this content to help you understand the ideas discussed. Any examples are hypothetical and are used only to help you understand the ideas.

They may not reflect your particular circumstances. You should carefully read your contract, policy and prospectus(es), when applicable. What we say about legal or tax matters is our understanding of current law; but we are not offering legal or tax advice. Tax laws and IRS administrative positions may change. We did not write this material for use by any taxpayer to avoid any Internal Revenue Service penalty. You should ask your independent tax and legal advisers for advice based on your particular circumstances.

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