NEW YORK STATE | Department of Taxation and Finance

Important:

Chapter 58 of the Laws of 2024 renamed the Life Insurance Company Guaranty Corporation to be the Life and Health Insurance Company Guaranty Corporation credit (LHICGC). Substantive changes were made to the credit.

As a result, this TSB-M is obsolete and cannot be relied upon for tax years beginning on or after January 1, 2024.

For the most up-to-date information on the LHICGC credit, see Life and Health Insurance Company Guaranty Corporation (LHICGC) credit.

For tax years prior to January 1, 2024, see the Life Insurance Company Guaranty Corporation credit (LICGC).

[Tax Law § 1511(f); Insurance Law § 7712; Part LL of Chapter 58 of the Laws of 2024]

The TSB-M begins on page 2 below.

Insert added on 9/30/24

This memorandum supercedes memorandum TSB-M-85(6)C dated November 25, 1985, which should be destroyed.

Chapters 802 and 803

Life Insurance Company Guaranty Corporation Credit

Chapter 802 of the Laws of 1985 created the Life Insurance Company Guaranty Corporation of New York under Article 77 of the Insurance Law. This corporation shall take effect on August 2, 1985 and is empowered to provide funds, to protect resident policyholders, insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts, funding agreements and supplemental contracts issued by life insurance companies in the event of insolvency or impairment of a member life insurance company, by assessing members in proportion to premiums received on business in this state. Assessments are made to the extent necessary to carry out the powers and duties of the Corporation with regard to an impaired or insolvent insurer, but total assessments less refunds may not exceed $500 million. All life insurance corporations are required to be members of the Life Insurance Company Guaranty Corporation of New York as a condition of their authority to transact business in this State.

Section 7712 of Article 77 of the Insurance Law provides for a credit for a portion of the net assessments paid by insurance companies pursuant to Articles 75 and 77 of the Insurance Law. The credit under Section 7712 amounts to 80% of the net assessments paid by insurance companies, but such credit may not be taken until the net assessments exceed $100 million in any 15 year period. The credit will be taken against the franchise tax imposed by Article 33 of the Tax Law (except for the surcharge imposed by Section 1505-a of the Tax Law).

Chapter 802 also added a new section 1511(f) to Article 33 of the Tax Law to provide for this credit. The credit provided by Section 1511(f) will be allowed after the application of any other credit provided by Section 1511 of the Tax Law. The credit allowed by section 1511(f) will be the maximum authorized credit for the second calendar year preceding the taxable year plus any amount carried forward from previous years. The credit will first be allowed for the taxable year following the second calendar year in which the $100 million threshold is first exceeded, even if this occurs before the fifteenth year. Each company entitled to this credit must compute a cross-over credit which is 80% of the sum of net assessments paid by the insurance company in the cross-over year multiplied by a fraction, the numerator of which is the excess over $100 million of the sum of net assessments paid by all companies during such period and the denominator of which is the sum of net assessments paid by all companies during the cross-over year (Section 7712(b)(2)(B)). Since the $100 million threshold has already been surpassed, the credit for each of the remaining years in the 15 year period will be 80% of the net assessments paid by the insurance company during the year (Section 7712(b)(2)(C)).

Example 1:

Life Insurance Company Y paid $10,000 to the Life Insurance Company Guaranty Corporation of New York for the calendar year ending December 31, 1990. The total assessments to all insurance companies for 1990 is $10 million, thus bringing total assessments to $105 million. Life Insurance Company Y must compute a cross-over credit as follows.

$\frac{\$5 \text{ million - excess over } \$100 \text{ million}}{\$10 \text{ million - net assessments during cross-over year}} = 50\%$

$10,000 Y's assessment x 50% = $5,000 Base on which Cross-Over Credit is computed
$5,000 x 80% = $4000 Y's Cross-Over Credit

Y pays a $10,000 assessment to the Life Insurance Company Guaranty Corporation of New York each year from 1991 to the year 1999, the fifteenth year. Since the $100 million threshold has been passed for this fifteen year period, Y will be entitled to a Life Insurance Company Guaranty Corporation Credit of $8,000 ($10,000 assessment paid x 80%) for each year.

Y will be entitled to take its cross over credit in the taxable year beginning in 1992. Y will be entitled to take its remaining credits for 1991-1999 in its taxable years beginning in 1993-2001.

For each taxable year after the initial fifteen years the credit, if any, will be computed on the previous fifteen year activity. The credit allowed will be equal to 80% of the net assessments paid by the life insurance company during the year. In order for this credit to be taken, the total net assessments paid by insurance companies during the fifteen year period must exceed $100 million.

Example 2:

Life Insurance Company Y paid a net assessment of $8000 for the calendar year 2000. Total assessments less refunds for the 15 year period 1986-2000 was $115 million. Life Insurance Company Y's credit would be computed as follows:

$8000 x 80% = $6400 Life Insurance Company Guaranty Corp. Credit

Life Insurance Company Y paid a net assessment of $8000 for the calendar year 2001. Total assessments less refunds for the 15 year period 1987-2001 was $98 million. Life Insurance Company Y is not entitled to a credit for this year since total net assessments were less than $100 million.

The maximum authorized credit allowed to all life insurance companies for any particular taxable year is limited to the greater of $40 million or 40% of the total tax liability of all such companies, before credits and not including the surcharge imposed by Section 1505-a of the Tax Law. The credit as limited is allocated among the life insurance companies in proportion to the net assessments paid by each company in such calendar year. Any credit unused because of this limitation is carried forward and allowed in subsequent taxable years.

Chapter 803 amended Section 1511(f) of Article 33 of the Tax Law by requiring the life insurance company to take the credit in three equal installments (1/3 of the maximum authorized credit for the second calendar year preceding the taxable year and 1/3 in each of the following two taxable years).

Example 3:

For Example 1, Life Insurance Company Y would take 1/3 of its cross over credit in its taxable year beginning in 1992 and the remaining 1/3 installments of credit in its taxable years beginning in 1993 and 1994. Life insurance Company Y will take its remaining credits (1991-1999) in 1/3 installments for its taxable years beginning in 1993-2003 (the final 1/3 installment for the credit claimed in 1999 will be applied to the taxable year beginning in 2003).