IRS UTILIZES THE INDUSTRY ISSUE RESOLUTION PROGRAM TO RESOLVE THE INSURANCE INDUSTRY BAD DEBT ISSUE

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The Internal Revenue Service ("IRS") is getting serious about resolving resource-intensive examination issues with taxpayers in specific industries through its Industry Issue Resolution Program (IIR Program) described in Revenue Procedure 2003-36.[1] Over the last several years, the IRS has utilized the IIR Program to resolve a number of industry-specific issues with taxpayers. Recent IIR resolutions have included repair and capitalization issues in the power generation and transmission and wireless telecommunications industries, and inventory issues in retail industries.[2] One of the latest successful IIRs disposes of a significant insurance industry issue. On July 30, 2012, the Large Business and International ("LB&I") Division of the IRS published a Commissioner's Directive memorandum to LB&I examiners outlining a safe harbor approach under which insurance companies may report bad debt deductions under Internal Revenue Code ("I.R.C.") § 166 to reflect the partial worthlessness of eligible loan-backed and structured securities that are subject to Statement of Statutory Accounting Principles 43R.[3] This article provides a top-level explanation of the bad debt IIR process and what the safe harbor guidance provides. The authors were part of the team that participated in the IIR process on behalf of the insurance industry.

THE INSURANCE INDUSTRY BAD DEBT ISSUE

In 2008 and 2009, insurance companies reported large investment losses as a result of the financial crisis. Many life and property-casualty insurance companies had invested heavily in residential mortgage-backed securities ("RMBS"), commercial mortgage-backed securities ("CMBS") and direct mortgages. For example, the American Council of Life Insurers ("ACLI") reported that as of Dec. 31, 2008, life insurance companies held in their general accounts approximately $530 billion in agency and non-agency mortgage-backed securities ("MBS") and $338 billion more in farm, residential and commercial mortgages.[4] As the crisis unfolded, insurance companies suffered significant credit losses as these structured instruments and mortgages became worthless in whole or in part. The National Association of Insurance Commissioners ("NAIC") has reported that in the years 2008 through 2010, insurance companies reported $26.8 billion in Other-Than-Temporary-Impairments ("OTTIs") and valuation adjustments in non-agency RMBS alone. Most of these RMBS losses occurred in 2008 ($9.2 billion) and 2009 ($14.7 billion).[5] Additional significant losses occurred in CMBS and mortgages.

The financial crisis resulted in significant tax reporting issues for insurance companies concerning partial worthlessness deductions. Throughout the early to mid-2000s, many insurance companies reported partial worthlessness deductions under I.R.C. § 166 consistent with their statutory OTTIs on RMBS, CMBS, mortgages and other instruments that are eligible for partial worthlessness deductions. To be eligible for a partial worthlessness deduction, the instrument must be a debt and must not be a security as defined in I.R.C. § 165(g)(2) (*i.e.*, the instrument must be a non-security).[6] The definition of a security under § 165(g)(2) includes debts with interest coupons or in registered form that are issued by a corporation, government or political subdivision thereof. Under this test, eligible non-security debts include many MBS and direct mortgages. While the treatment of these partial bad debts had been an examination issue in IRS audits of insurance companies for most of the preceding decade, the 2008 financial crisis increased the stakes exponentially. As it unfolded, the most significant tax deductions involved regular interests in Real Estate Mortgage Investment Conduits ("REMIC regular interests"), which encompass both RMBS and CMBS investments. A specific code provision (I.R.C. § 860B) mandates that REMIC regular interests are treated as debts for all federal tax purposes for the holder. Additionally, REMIC regular interests are issued by trusts (not corporations, governments or political subdivisions) and therefore are not securities under I.R.C. § 165(g)(2).

The REMIC regular interest partial worthlessness deductions that insurance companies reported on their 2008 and 2009 tax returns resulted in the most resource-intensive examination issue in the insurance industry in recent memory. As described in an earlier *Taxing Times* article,[7] LB&I examiners accepted that REMIC regular interests are eligible debts and that some deductions are appropriate. However, the examination teams

for the most part limited the allowance of the deductions to amounts that had been reported as property liquidations on REMIC trust remittance statements. This set up a timing issue because the OTTIs on which the companies based their deductions generally were consistent with statutory accounting requirements that reflected an assessment of the economic loss that had occurred. The structured debt instruments are long-term instruments that pay out in a cash-waterfall structure and are tied to underlying mortgages that can have terms of up to 30 years, often resulting in a significant time-lag between the time an OTTI is reported and the time the underlying mortgaged property is liquidated. Additionally, the OTTIs often are recorded while holders are still receiving payments under the cash-waterfall structure.

In many cases, the companies asserted that the OTTIs, which were required by statutory accounting rules to be charged off, were deductible based on the conclusive presumption of worthlessness in Treas. Reg. § 1.166-2(d)(1), which applies to "banks and other regulated corporations." Under the conclusive presumption, charged-off amounts are conclusively presumed to be worthless for tax purposes if the bank or other regulated corporation is required by its regulator to charge off the amount, or, in the alternative, if the regulator confirms in writing that the amount would have been required to be charged off if examined.

Many examiners accepted the application of the conclusive presumption to insurance companies, but nevertheless asserted that the deductions should be disallowed for other factual or legal reasons. For example, some LB&I examiners asserted that the deductions even under the conclusive presumption could not be allowed while the investors were still receiving payments. Taxpayers explained that the amounts written off were in fact worthless and not recoverable regardless of current cash flow under the cash-waterfall structure. Additionally, LB&I examiners asserted, based on Revenue Ruling 84-95,[8] that the deductions were fair value write-downs that are not subject to the conclusive presumption because they were not based on credit criteria. In Rev. Rul. 84-95, the IRS held that a bank could not rely on the conclusive presumption to support deductions based on mechanical fair value write-downs that bank regulators required for Other Real Estate Owned ("OREO"). Insurance company taxpayers responded by pointing out that the OTTIs, and even those OTTIs based on fair value, were not the type of "mechanical" fair value write-downs applicable to banks' OREO holdings and that the statutory write-downs involved the type of credit analysis which the IRS held in Rev. Rul. 84-95 was required.

As a result of the above-described issues and others, insurance company taxpayers and LB&I examiners could not consistently come to an agreement in the examination setting regarding the application of the conclusive presumption and the worthlessness determination. LB&I examiners issued Information Document Requests ("IDRs") seeking information about actual liquidations and, in the alternative, the voluminous details of the analysis that supported the OTTIs. Taxpayers found it difficult to answer these IDRs and to explain the complexities of their statutory accounting OTTI decisions to the satisfaction of the examiners. These problems led to extended examinations and controversy over the OTTIs, and, in the end, un-agreed issues. Most examiners set up proposed disallowances of all OTTI amounts in excess of the actual liquidations described in remittance reports.

THE INDUSTRY ISSUE RESOLUTION (IIR) PROGRAM

The IIR program is described in Revenue Procedure 2003-36, *supra*. Under the program, industries or large segments of industries are encouraged to resolve issues with the IRS through the priority guidance process. The industries or industry segments submit issues for consideration and the IRS considers the applications at least twice per year, after March 31 and after Aug. 31. Selected issues are placed on the priority guidance list and the IRS fields teams of specialists including LB&I examiners and chief counsel attorneys to consider the issues. The issues can result in different types of guidance, including formal Revenue Procedures such as those referenced above that resolved telecommunications, power transmission and retail issues, or field directives such as the insurance company bad debt guidance described in this article. Revenue Procedure 2003-36 describes the following five issue characteristics that are important in the IRS' decision whether to include a proposed issue in the program:

Selected issues are placed on the priority guidance list and the IRS fields teams of specialists including LB&I examiners and chief counsel attorneys to consider the issues.

1) The proper tax treatment of a common factual situation is uncertain;
2) The uncertainty results in frequent, and often repetitive, examinations of the same issue;

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3) The uncertainty results in taxpayer burden;
4) The issue is significant and impacts a large number of taxpayers, either within an industry or across industry lines;
5) The issue requires extensive factual development, and an understanding of industry practices and views concerning the issue would assist the IRS in determining proper tax treatment.

The OTTI/bad debt issue had all of the above characteristics. Perhaps most important from the IRS' perspective may have been the resource issue. Insurance company examinations are among the most complex examinations, both in terms of the facts and law. There are a limited number of examiners and financial products specialists who are qualified to examine large insurance companies. In many cases, the bad debt issue was the primary un-agreed issue proposed for adjustments to taxable income. It seems that the examination resources could have been better utilized by moving on to other matters. Another important consideration from the IRS' perspective appeared to be widespread support for the IIR process from the industry. The initial IIR request was submitted by a very substantial industry coalition of large companies covering both life and property-casualty segments; and the trade associations were included in the process.

From the insurance industry's perspective, the bad debt issue was an ideal candidate for IIR resolution. As mentioned above, many insurance companies reported partial worthlessness deductions that resulted in examination issues for pre-credit crisis years. Even before the financial crisis, it was evident that the examination procedures for complex instruments like mortgage-backed or other asset-backed securities were very tedious and time-consuming for both parties, and were prone to subjective judgments that would inevitably result in inconsistent treatment of taxpayers. In the aftermath of the financial crisis, the issue became widespread and resulted in substantial uncertainty over the timing of the deductions. In addition to the uncertainty, the issue resulted in long, complex examinations and comprehensive IDR responses that consumed personnel resources not only in tax departments but in the investment and accounting departments of insurance company taxpayers. The IIR process offered an opportunity to resolve the issue without individual companies having to continue to expend resources on examinations, and the issue was susceptible to a resolution that both the IRS and the industry could abide.

The insurance industry so far has a good track record in the IIR program. Early in the IIR program, the IRS resolved an important issue that affected the health insurance industry. After receiving substantial input from the industry through the IIR process, the IRS held in Revenue Procedure 2004-41[9] that accrued incentive payments not yet paid to doctors but included in Loss Adjustment Expenses were not disallowed under I.R.C. § 404 under certain circumstances. This is not to say that the IIR process has no risk for the industry or that companies can completely avoid resource outlays. During the process, the industry is required to fully illuminate the issue for the IRS and it is possible the IRS can disagree on a resolution, as much as both parties would like to reach a mutually acceptable resolution. Also, the process requires a substantial outlay of time and resources. The types of issues that the IRS considers often involve industry practices and accounting rules that must be explained in detail in order for the IRS to gain comfort with the issues.

The authors have participated in two insurance industry IIRs, including the bad debt issue and the ongoing (as of the date of this writing) issue concerning gains and losses on hedges of variable annuity minimum guarantee riders. On reflection, there are three things that are needed from an industry's perspective for a successful IIR resolution. First, the industry group must be prepared to devote substantial resources to the project. Second, there must be broad agreement or consensus in the industry or industry segment from the beginning of the process. Third, the industry must enter the process with an idea regarding how the issue can be resolved but approach the process with flexibility. The IRS has shown a willingness to give serious consideration to the industry's input and point of view, but the industry must be prepared to make compromises in order to reach a mutually acceptable resolution.

THE IIR REQUEST AND PROCESS

In light of the substantial uncertainty and resource drain from partial worthlessness examinations, a coalition within the industry thought that the work involved in seeking broad-based resolution of this issue through the IIR process would be well worth the risk and the required effort. The coalition initially consisted of seven companies from both the life and property-casualty segments that wrote approximately $100 billion in premiums in 2009. The coalition submitted a letter dated Sept. 30, 2010 to the IRS requesting an IIR project that would lead to guidance on the following three points:

(1) Confirmation that the conclusive presumption of worthlessness in Treas. Reg. § 1.166-2(d) applies to insurance companies as "other regulated corporations";

(2) The scope of the presumption as it applies to the charge-offs required by state insurance regulators;

(3) Relief to companies and state insurance regulators from technical compliance burdens.

While the coalition represented a broad swath of the industry, and there were indications from the outset that the IRS had an interest in applying the IIR process to this issue, it was thought that a broader indication of industry support may be helpful. On March 8, 2011, the ACLI submitted a letter supporting the coalition group's initial request for guidance. Shortly thereafter, the IRS notified both the coalition group and the ACLI that the request had been accepted for inclusion in the IIR program. The coalition group expanded to include more companies and property-casualty trade groups also joined in the process, resulting in very broad participation on the part of the insurance industry.

Because the initial industry submission had requested application of the conclusive presumption of worthlessness, the IIR process was initially referred to as the "Conclusive Presumption of Worthlessness IIR" or "CPW IIR." Within a couple of months from the time the project was accepted into the IIR program, the industry began to provide comprehensive information to the IIR team. The process ebbed and flowed but continued through 2011 and into 2012. During the process, the industry explained the statutory accounting for various types of debts, provided its views on the operation of the conclusive presumption of worthlessness, described the capital structures of investments in RMBS and CMBS structured securities, and described industry practices on OTTIs, among other things.

As the IIR process unfolded, the coalition requested guidance and proposed a resolution that would be based on the conclusive presumption of worthlessness and would cover all types of debts eligible for partial worthlessness, including REMIC regular interests, direct mortgages and other debts. As mentioned above, however, the IIR process requires flexibility and compromise. Moreover, the process is fluid and involves an element of pragmatism. The IRS's IIR team understandably wanted a thorough understanding of the statutory accounting and practices that underlie the OTTI deductions. Substantial effort was involved in explaining not only the OTTI determination and statutory accounting rules for different types of debts, but also the complex capital structures of the structured securities that qualify as non-securities eligible for partial worthlessness deductions. In the end, however, the IRS decided not to directly address the conclusive presumption of worthlessness and limited its guidance to the structured debt instruments subject to Statement of Statutory Accounting Principles 43R (SSAP 43R).

SSAP 43R OTHER-THAN-TEMPORARY IMPAIRMENTS

The resolution that ultimately emerged from the IIR process revolves around the statutory accounting rules for OTTIs on loan-backed and structured securities. For purposes of understanding the discussion that follows, it is necessary to briefly describe those statutory accounting rules. SSAP 43R provides a two-step process for impairments of these types of securities. First, if the fair value of a loan-backed or structured security is less than amortized cost, the company must assess whether the impairment is other than temporary. Then, if the present value (using the book yield) of the cash flows expected to be collected is less than amortized cost, a credit-related decline in value exists and an OTTI is considered to have occurred. In such case, the security is written down to the amount of the discounted value of the expected cash flows. Further, if the investor either intends to sell the impaired security, or does not intend to sell but is unable to demonstrate the intent and the ability to retain the security until recovery of amortized cost, the entire difference between amortized cost and fair value is recognized as a realized loss. In other words, in these latter cases, there may be an element of "market" or non-credit-related loss embedded in the impairment.

THE LB&I COMMISSIONER'S DIRECTIVE (THE DIRECTIVE)—

On July 30, 2012, LB&I Commissioner Heather Maloy issued a Directive to LB&I examiners that provides a safe harbor approach to resolve the partial worthlessness issue for eligible debts that are subject to SSAP 43R. Below is a summary of key provisions of the Directive.

1. *Application.* An insurance company may first apply the provisions of the Directive no earlier than the company's 2009 taxable year and no later than its 2012 taxable year (the "Adjustment Year"). The Directive provides that LB&I examiners should not challenge an insurance company's partial worthlessness deduction under I.R.C. § 166(a)(2) for eligible securities if the company complies with the following:

- In the Adjustment Year, the company's partial worthlessness deduction for eligible securities is the same amount

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as its SSAP 43R credit-related charge-offs for the same securities as reported in its Annual Statement, reduced or increased by an adjustment.

- The adjustment is determined on Dec. 31 of the adjustment year and is the difference between (i) the tax basis of eligible securities over (ii) the statutory carrying value of the same securities increased by any non-credit-related portion of any charge-off not allowed as a deduction under the Directive.
- In other words, a true-up is determined for eligible securities still owned at Dec. 31 of the adjustment year, and the tax basis of those eligible securities is set equal to (and not less than) the statutory carrying value of those securities as increased by any non-credit related charge-offs with respect to those securities.
- As a result of this true-up, the Adjustment Year partial worthlessness deduction may be a negative amount, in which case the Directive requires it to be treated as an item of income.

• Following the Adjustment Year, the company's partial worthlessness deduction is the same amount as the company's SSAP 43R credit-related impairment charge-offs for the same securities as reported in its Annual Statement.
  - However, the partial worthlessness deduction cannot reduce the tax basis of an eligible security below its statutory carrying value as increased by any non-credit related impairment.
  - Although subsequent adjustments were discussed at various stages throughout the IIR process, the Directive itself is silent on the matter. Thus, while tax basis and statutory carrying value of the impaired securities are set equal on Dec. 31 of the Adjustment Year, that will not necessarily be the case going forward.

If the company complies with both of these requirements, the Directive instructs LB&I examiners not to challenge the company's partial worthlessness deduction for eligible securities for all open years ending before the Adjustment Year. That is, the company is given audit protection for prior open years.

In allowing the company to choose 2009, 2010, 2011 or 2012 to be the Adjustment Year, the Directive provides welcome flexibility. 2009 was chosen as the first available Adjustment Year because that is the year in which SSAP 43R became effective. By not allowing companies to choose an adjustment year after 2012, the Directive prevents gaming the system so, for example, a company cannot take excessive partial worthlessness deductions on its 2012–2014 returns, choose 2015 as the Adjustment Year, and claim audit protection for prior open years that include the excessive deductions. However, as a consequence, the Directive will not be applicable to new companies formed after 2012 including, presumably, companies acquired in a transaction for which an I.R.C. § 338(h)(10) election is made. On the other hand, existing companies may want to apply the Directive even if there is no adjustment at the end of the Adjustment Year and/or they are not in need of audit protection for prior years, in order to follow the method of accounting allowed by the Directive in future years. Application of the Directive within an affiliated group of companies is made on a company-by-company basis, even for those companies that join in the filing of a consolidated tax return.

2. *Definitions*. Important provisions of the Directive are embodied in the definitions. "Eligible securities" are defined as investments in loan-backed and structured securities within the scope of SSAP 43R, subject to I.R.C. § 166 (and not subject to I.R.C. § 165(g)(2)(c)), including REMIC regular interests. Accordingly, while application of issue resolution to partial worthlessness of other types of debts was discussed during the IIR process, the Directive is of more limited scope. The Directive also requires that there be a "charge-off" of the eligible securities in the Annual Statement—meaning that there must be a reduction of the carrying value of the debt that results in a realized loss or charge to the statement of operations (as opposed to recognition of an unrealized loss).

   Of further note, the term "insurance company" is defined as a life or non-life insurance company that 1) is subject to regulation as an insurance company, 2) is subject to taxation under I.R.C. Subchapter L, and 3) files an Annual Statement for which a state regulator has examination authority. "Annual Statement" is defined as the Annual Statement approved by the NAIC which an insurance company is required to file with insurance regulatory authorities of a state. Thus, a foreign insurance company that has made an election under I.R.C. § 953(d) to be taxed as a domestic insurer would not be allowed to apply the Directive as it would not qualify as an insurance company within the meaning of the Directive.

3. *Consistency Requirement.* The industry's safe harbor proposals discussed during the IIR process would have al-

lowed an insurance company to pick and choose the eligible securities to which it would apply the safe harbor method. This would have been in accordance with applicable law which allows, but does not require, a company to claim a partial worthlessness deduction when there has been a book charge-off. However, in order for the Directive to apply, an insurance company must use the SSAP 43R credit-related impairment charge-off amount for all eligible securities that are partially worthless. This requirement provides a measure of protection for the IRS against possible adverse selection.

4. *Implementation.* The Directive provides different implementation procedures for companies under examination and those not under examination. For a company under examination, LB&I examiners, in consultation with the company, will decide whether the most appropriate way to implement the Directive is 1) to have the company file amended tax returns, or 2) change the amount of the partial worthlessness deduction for the years under examination as part of the examination process. An insurance company that is not under examination may apply the Directive either by filing amended tax returns or by first applying the Directive to its current taxable year. In either case, it must attach a statement to the tax return for the Adjustment Year stating that it is implementing the Directive. For a consolidated return group, a separate statement is required for each company that elects to apply the Directive.

5. *Certification*. When the industry approached the IRS on this matter, it sought relief from cumbersome, perhaps unworkable, rules set forth in the Treasury Regulations for compliance with the conclusive presumption of worthlessness. Those regulations provide that a debt shall, to the extent charged off during a taxable year, be conclusively presumed to have become worthless during the taxable year if the charge-off is either 1) in obedience to the specific orders of regulatory authorities, or 2) in accordance with established policies of such authorities, and, upon their first audit subsequent to the charge-off, such authorities confirm in writing that the charge-off would have been subject to such specific orders if the audit had been made on the date of the charge-off. This latter subsequent confirmation procedure essentially requires a company to claim a deduction for partial worthlessness before it can be established that it has satisfied the requirements of the regulations. As a practical matter, in an effort to satisfy the conclusive presumption of worthlessness regulations prior to the IIR process, an insurance company may have sought a letter from its domestic insurance department acknowledging that charge-offs in accordance with the applicable SSAP would be required upon examination if the company had not made them.

The industry's safe harbor proposal would have simplified the confirmation process by providing that the company certify in a letter to its regulator, or disclose in a footnote or schedule in its Annual Statement, 1) the amount of the charge-off that is in compliance with SSAP 43R, 2) the post-impairment statutory carrying value of the debt, and 3) if there is a non-credit-related portion of the charge-off, the amount of that portion. However, because the Directive does not directly address the conclusive presumption of worthlessness regulations, it provides a different certification requirement in the form of a Certification Statement. An insurance company that applies the Directive must complete and sign the Certification Statement and provide it to the LB&I examiner within 30 days of a request for the statement. A separate certification statement may be requested for each taxable year and for each insurance company in a consolidated return group. A company that fails to comply with the certification requirement will be considered ineligible for application of the Directive and instead subject to regular audit procedures.

The Certification Statement requires the following information:

- Amount of Annual Statement charge-off for eligible securities in compliance with SSAP 43R
- Post-impairment statutory carrying value of eligible securities under SSAP 43R
- Post-impairment tax basis of eligible securities
- Non-credit relation portion of the Annual Statement charge-off, if any
- Positive or negative adjustment to the partial worthlessness deduction determined on Dec. 31 of the Adjustment Year

The statement, which must be signed by a person authorized to execute the company's tax return, certifies under penalties of perjury that 1) the amount of the SSAP 43R credit-related impairment charge-offs are the same as partial worthlessness deductions claimed on the tax return with respect to the same securities, and 2) the tax basis of eligible securities is not less than their post-charge-off

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statutory carrying values as adjusted for any non-credit impairment. The company must retain (and provide to the IRS upon request) the underlying documentation that would permit the LB&I examiner to reconcile the Annual Statement charge-offs with the partial worthlessness deductions. Failure to properly and timely submit the requested documentation may result in a determination by the Industry Director or delegate that the Directive does not apply to the company.

CONCLUSION

While perhaps taking a longer period of time to resolve than the parties may have anticipated at the outset, the IIR process for partial worthlessness deductions for insurance company bad debts ultimately reached a satisfactory conclusion for both the industry and the IRS. The IRS' dedication of resources, time and effort to the process—right up to the top levels of LB&I—was very impressive. The industry was given a full and fair hearing of its views at each step of the process, even to the very end when the Directive was issued in response to the industry's request for guidance that could be taken into account on 2011 tax returns on a timely basis. The Directive provides a fairly simple, yet flexible and very effective, methodology for allowing partial worthless deductions for securities such as REMIC regular interests while providing audit protection for prior open years. The time and expense savings to both the industry and the IRS from application of the Directive, through avoidance of extended controversy and perhaps litigation, are expected to be enormous. In addition, the prospect of inconsistent treatment of similarly situated companies has been greatly reduced. This is a good example of how the tax law can be administered in a fair and reasonable manner.

END NOTES

1. Rev. Proc. 2003-36, 2003-1 C.B. 859 (April 18, 2003).
2. *See, e.g.*, Rev. Proc. 2011-42, 2011-37 I.R.B. 318 (Aug. 19, 2011) and Rev. Proc. 2011-43, 2011-37 I.R.B. 326 (Aug. 19, 2011) (providing safe harbor approaches for capitalization issues in the electric power transmission industry); Rev. Procs. 2011-22, 2011-18 I.R.B. 737 (April 4, 2011), 2011-27, 2011-18-I.R.B. 740 (April 4, 2011) and 2011-28, 2011-18 I.R.B. 743 (April 4, 2011) (providing safe harbors for capitalization and depreciation of network assets in the telecommunications industry); Field Directive on Treatment of Sales-Based Vendor Allowances ("SBVA") and Margin Protection Payments ("MPP") under § 471, LMSB-04-0910-026 (Sep. 24, 2010) (providing resolution of treatment of SBVAs and MPPs). Other IIR resolutions involving a variety of issues and industries are described on the IRS website at http://www.irs.gov/Businesses/IIR-Guidance-Issued.
3. I.R.C. § 166: LB&I Directive Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies, LB&I-4-0712-009 (July 30, 2012). The IRS is working on another IIR insurance issue involving the treatment of gains and losses on hedges related to minimum guarantees on variable annuity contracts. It is hoped that hedging guidance will emerge by the time this article is published.
4. *See ACLI Life Insurers Fact Book 2009.*
5. *NAIC Capital Markets Weekly Special Report* (July 29, 2011).
6. *See* I.R.C. § 166(e) and Treas. Reg. § 1.166-1(g), which limit the deductions to debts that are not securities.
7. *See* Samuel A. Mitchell and Peter H. Winslow, *Insurance Company Bad Debt*, 19 *Taxing Times*, Vol. 7, Issue 3 (September 2011).
8. Rev. Rul. 84-95, 1984-2 C.B. 53 (July 2, 1984).
9. Rev. Proc. 2004-41, 2004-2 C.B. 90 (July 6, 2004).