



# South Carolina Department of Insurance

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## **BULLETIN NUMBER 2004-07** (Issued upon April 8, 2004)

To: All persons transacting the business of pre-need funeral insurance in the State of South Carolina

From: Ernst N. Csiszar  
Director 

Subject: Pre-need insurance policies and Internal Revenue Code Rule 7702

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A question has arisen about whether the sentence in Section 38-55-330, "[t]he amount of an insurance policy sold by a licensed funeral director licensed under this section may not exceed the amount of the pre-need funeral contract as defined in Section 32-7-10(3)," could be interpreted to raise a potential issue under Section 7702 of the Internal Revenue Code (IRC). Specifically, the question presented was whether the requirement that the amount (i.e., face amount) of the insurance policy not exceed the amount of the funeral contract raised Section 7702 issues because there would be no transfer of risk.

Chapter 55 of Title 38 of the South Carolina Code of Laws governs the regulation of pre-need insurance contracts. Section 38-55-330 provides:

"A licensed funeral director employed by a licensed funeral home in South Carolina may be licensed as an agent for a life insurer doing business in this State. However, a funeral director licensed under this section may act as an agent for a life insurer only in connection with the funding of a pre-need funeral contract under Chapter 7 of Title 32. The amount of an insurance policy sold by a licensed funeral director licensed under this section may not exceed the amount of the pre-need funeral contract as defined in Section 32-7-10(3). In addition to the filing and approval requirements of Section 38-61-20, a life insurer must file a sample policy to fund a pre-need funeral contract with the South Carolina Board of Funeral Service, and before the policy can be marketed in this state the board must verify that the policy is consistent with Title 32, Chapter 7. The board also shall maintain a list of all funeral directors licensed as insurance agents, the insurer each director represents, and the type of policy each director is licensed to sell. Except for a funeral director licensed under this title, no insurance agent, as defined in Section 38-1-20, or person, as defined in Section 38-1-20, shall sell any policy, as defined in Section 38-1-20, which has for its purposes the funding of any funeral services, or the furnishing or delivery of personal property, merchandise, services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered

at a time determinable by the death of a person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker, or monument.”

It is the Department’s interpretation that Section 7702 does not apply in this instance. The sentence “[t]he amount of an insurance policy sold by a licensed funeral director licensed under this Section may not exceed the amount of the pre-need funeral contract as defined in Section 32-7-10 (3)” applies to two separate and distinct contracts---the funeral contract and the pre-need insurance policy. The funeral contract does not constitute life insurance under South Carolina law. Accordingly, for purposes of Section 7702, the requirement that the face amount of the insurance policy not exceed the amount of the funeral contract does not raise Section 7702 issues. In order to determine whether there has been a transfer of risk for purposes of Section 7702, we must look to the terms of the insurance policy. The test specified in Section 7702 (a) is designed to determine whether there has been a transfer of risk. In making that determination, one generally examines the premium paid for the policy in relation to the benefit provided under the policy. For example, if a consumer paid \$5000 in premium for an insurance policy with a face amount of \$5000 or even \$5500, there could be a Section 7702 issue because there is no transfer of risk. This same issue does not arise with the requirement that the amount of the insurance policy not exceed the amount of the funeral contract because these are two separate and distinct contracts. The pre-need insurance policy is typically a whole life, small face amount policy, and as long as the premium paid for the policy does not exceed the benefit provided by the policy, there is not a Section 7702 issue.

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