***Cologne Life Reinsurance Co. v. Commissioner, 80 T. C. 859 (1983)***

Risk premium reinsurance contracts qualify for deductions under section 809(d)(5) of the Internal Revenue Code if they are nonparticipating contracts issued or renewed for five years or more.

**Summary**

Cologne Life Reinsurance Co. sought deductions under section 809(d)(5) for its risk premium reinsurance contracts. The Tax Court held that these contracts, which did not provide any right to participate in the company's divisible surplus, qualified as nonparticipating contracts under the statute. The decision hinged on the plain language of the statute, which did not exclude reinsurance contracts from the deduction, and the court rejected the Commissioner's arguments that reinsurance contracts could not be considered nonparticipating. This ruling clarified that life insurance companies issuing risk premium reinsurance contracts are entitled to the same tax treatment as those issuing traditional life insurance policies, provided the contracts meet the statutory requirements.

**Facts**

Cologne Life Reinsurance Co. , a life insurance company, engaged exclusively in indemnity life reinsurance. During the tax years 1974-1977, it claimed deductions under section 809(d)(5) for its risk premium reinsurance contracts. These contracts required ceding companies to pay annual premiums in advance for reinsurance of assigned mortality risks. The contracts did not grant the ceding companies any right to participate in Cologne's divisible surplus. The Commissioner disallowed these deductions, arguing that reinsurance contracts could not be classified as participating or nonparticipating.

**Procedural History**

The case was submitted to the U. S. Tax Court fully stipulated. The parties agreed to allow deductions for coinsurance and modified coinsurance of nonparticipating contracts and disallow them for participating and group contracts. The sole issue for the court was whether Cologne's risk premium reinsurance contracts qualified as nonparticipating under section 809(d)(5).

**Issue(s)**

1. Whether Cologne Life Reinsurance Co. 's risk premium reinsurance contracts are nonparticipating contracts within the meaning of section 809(d)(5).

**Holding**

1. Yes, because the contracts did not provide any right to participate in Cologne's divisible surplus, and thus met the statutory definition of nonparticipating contracts

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under section 809(d)(5).

**Court’s Reasoning**

The Tax Court applied the plain language of section 809(d)(5), which provides a deduction for nonparticipating contracts issued or renewed for five years or more. The court found that Cologne’s risk premium reinsurance contracts fell within this definition as they contained no provision granting the ceding company or the insured any right to participate in Cologne’s divisible surplus. The court rejected the Commissioner’s argument that reinsurance contracts could not be classified as participating or nonparticipating, noting that Congress was aware of reinsurance and did not specifically exclude it from the deduction. The court also distinguished the case from Lincoln National Life Insurance Co. v. United States, where the issue involved coinsurance and modified coinsurance of participating policies, not risk premium reinsurance. The court emphasized that the statute’s language did not support the Commissioner’s interpretation and that the deduction was intended to compensate for the tax disadvantage of issuing nonparticipating contracts.

**Practical Implications**

This decision clarifies that life insurance companies issuing risk premium reinsurance contracts can claim deductions under section 809(d)(5) if the contracts meet the statutory requirements of being nonparticipating and issued or renewed for five years or more. Practitioners should ensure that such contracts do not include any provisions granting participation in the company’s divisible surplus. This ruling impacts how similar cases are analyzed, affirming that reinsurance contracts are subject to the same tax treatment as traditional life insurance policies under this section. It also highlights the importance of the plain language of tax statutes in determining eligibility for deductions. Subsequent cases have applied this ruling to affirm the eligibility of reinsurance contracts for such deductions, provided they meet the nonparticipating criteria.

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