reinsurance premiums) must be capitalized and amortized for each specified contract. The amount of general deductions that must be capitalized varies, depending upon the type of contract to which the premiums received relate, according to a schedule set forth in Section 848. The Policies fall into the category of individual life insurance contracts under Section 848 for which 7.7% of net premiums received must be capitalized and amortized.

11. The impact of the DAC tax on MassMutual may be quantified as follows. For each $10,000 of premiums received by MassMutual under the Policies in a given year, MassMutual must capitalize $770 (*i.e.,* 7.7% of $10,000); $38.50 (one-half year's portion of the ten-year amortization) of this amount may be deducted in the current year. The remaining $731.50 (*i.e.*, $770 minus $38.50) is subject to taxation at the corporate tax rate of 35 percent. As a result, MassMutual would owe approximately $256.03 more in taxes for the current year than before the OBRA tax changes. However, this current tax increase will be offset partially by deductions allowed during the next ten years as a result of amortizing the remainder of the $770–$77 in each of the following nine years, and $38.50 in year ten. When estimating the economic impact of the tax increase, the benefit to MassMutual of being able to deduct $77.00 per year for each of the subsequent nine years and $38.50 for the tenth year must be discounted, so that only the present value of those deductions would be subtracted from the $256.03.

12. To the extent that capital must be used by MassMutual to satisfy its increased federal tax burden under Section 848, such capital used to satisfy this increased federal tax burden under Section 848 is, in essence, MassMutual's after tax rate of return—*i.e.,* the return MassMutual seeks on invested capital—of at least 8 percent. Accordingly, in the business judgment of MassMutual, a discount rate of at least 8% is appropriate for use in calculating the present value of MassMutual's future tax deductions resulting from the amortization described above. To the extent that the 8% discount rate is lower than MassMutual's actual after tax rate of return, Applicants submit that a measure of comfort is provided that the calculation of MassMutual's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to MassMutual is reduced, or its after tax rate of return is lowered.

13. MassMutual considered a number of factors in determining the expected after tax rate of return used in arriving at this discount rate. For example, MassMutual identified the level of investment return that can be expected to be earned over the long term on various types of fixed income securities, including the expected yield on 30-year U.S. Treasury bonds and high-grade corporate bonds, and adjusted these rates in an amount considered appropriate to compensated it for the risks associated with allocating capital to a lien of business, esp0ecially a newer line of business without a performance history. MassMutual also considered whether this expected after tax rate of return is within the normal range in the life insurance industry.

14. Assuming a corporate tax rate of 35 percent, and applying a discount rate of 8 percent, the present value of the federal income tax effect of the increased deductions allowable in the following ten years is $174.60. Because this amount partially offsets the increased tax burden, Section 848 imposes an increased tax burden on MassMutual with a present value equal to $81.43 (*i.e.,* $256.03 minus $174.60) for each $10,000 of net premiums received.

15. Because state premium taxes are deductible in computing federal income taxes, MassMutual does not incur incremental income tax when it passes on state premium taxes to Policy owners. In contrast, federal income taxes are *not* deductible in computing MassMutual's federal income taxes. To offset fully the impact of Section 848, MassMutual must impose an additional charge that would make it whole not only for the $81.43 additional tax burden attributable to Section 848, but also for the tax on the additional $81.43 itself. This additional charge may be determined by dividing $81.43 by the complement of the 35% federal corporate income tax rate (*i.e.,* 65%), resulting in an additional charge of $125.28 for (*i.e.,* 1.25% of) each $10,000 of net premiums.

16. Based on prior experience, MassMutual believes that it is reasonable to expect that virtually all future deductions will be fully taken. MassMutual submits that a charge of 1% will reimburse it for the impact of Section 848 on its federal tax liabilities. Applicants represent that a 1% charge is reasonably related to MassMutual's increased federal tax burden under Section 848, taking into account the benefit to MassMutual of the amortization permitted by Section 848 and the use by MassMutual of a discount rate of 8% in computing the future deductions resulting from such amortization.

17. Applicants also represent that the charge to be deducted under Other Policies by MassMutual pursuant to the relief requested will be reasonably related to MassMutual's increased federal tax burden under Section 848, taking into account the benefit to MassMutual of the amortization permitted by Section 848, and the use by MassMutual of an appropriate discount rate (*i.e.,* a rate not less than MassMutual's expected after tax rate of return) in computing the cost of the increased tax burden ad the present value of the future deductions resulting from such amortization.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act, in relevant part, authorizes the Commission, by order upon application to exempt any person or transaction or class of persons or transactions from the provisions of the 1940 Act or rules thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act exempting them from the provisions of Section 27(c)2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to permit deductions from premium payments received in connection with the Policies and Other Policies an amount that is reasonable in relation to MassMutual's federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than sales load.

3. Applicants also request that the Commission grant an order exempting them from the ''stair step'' provisions of Section 27(a)(3) of the 1940 Act and Rule 6e–3(T)(b)(13)(ii) thereunder in connection with the sale of units of interest in the Separate Account under the Policies.

Section 27(c)(2) and Rule 6e–3(T)(c)(4)—DAC Tax Exemption

1. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as if they were the issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, MassMutual (as the depositor for the Separate Account) and MMLISI (as principal underwriter of the Policies)