Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 – PLR-171522-03

Date:
June 1, 2005

LEGEND:

X =

Y =

Trust =

State =

Portfolio 1 =

Portfolio 2 =

Portfolio 3 =

Portfolio 4 =

Portfolio 5 =

Portfolio 6 =

Portfolio 7 =

Portfolio 8 =

Portfolio 9 =

Portfolio 10 =

Portfolio 11 =

Portfolio 12 =

Account 1 =

Account 2 =

Account 3 =

Dear

This responds to a letter dated December 16, 2003, together with subsequent correspondence, submitted on behalf of X by X's authorized representative requesting entity classification rulings under §§ 7701 and 7704 of the Internal Revenue Code.

The information submitted states that X is a life insurance company that issues variable life and annuity contracts in all 50 states and the District of Columbia. X is wholly owned by Y, but X is not a part of Y's consolidated group. Trust is a managed open-end investment company organized as a series State business trust. The beneficial interests in Trust's property consist of transferable units of interest ("Units") in a series of portfolios, including Portfolios 1 – 12 (the "Portfolios"), each with separate investments. The Portfolios support X's variable contracts. Units may only be purchased by segregated asset accounts of domestic insurance companies. X has 3 segregated asset accounts (the "Accounts"). Premiums received for X's variable contracts are allocated to one of the three segregated asset accounts. Account 1 has been established for premiums received for X's variable contracts that are annuity contracts issued outside the qualified retirement plan market. Account 2 has been established for premiums received for X's variable contracts that are life insurance contracts. Account 3 has been established for premiums received for X's variable contracts that are annuity contracts issued within the qualified retirement plan market. Each of the Accounts has subaccounts that invest solely in a single Portfolio of Trust. Collectively, the Accounts own all of the Units in the Portfolios and have the right to purchase additional Units or have Units redeemed at any time.

The contract holder may specify in which subaccount the premium is to be invested. The benefits X pays to the contract holder is determined by reference to the investment return associated with, and the market value of, the relevant Portfolio supporting the variable contract. However, the benefits under the variable contracts can vary significantly from the value of the Units in the Portfolios, especially where a

contract holder dies before his or her life expectancy. The contract holder is typically entitled to a minimum payment, regardless of Portfolio performance. Typically, a variable contract cannot be redeemed, within a specified period, without a penalty, nor sold at face value. Furthermore, the Units in a Portfolio are owned by the insurance company issuing the variable contract for federal income tax purposes. The contract holder only has claims against the insurance company issuing the variable contract and not against the income, gains, losses or distributions of the Portfolios.

Each Portfolio is currently a regulated investment company (RIC) within the meaning of § 851. X proposes to have each Portfolio elect to treat itself as an entity disregarded as an entity separate from its owner. X will then sell Units to segregated asset accounts of other domestic life insurance companies, including, but not limited to the segregated asset accounts of other Y subsidiaries. X requests a ruling that the Portfolios will be classified as partnerships, and not publicly traded partnerships, after Units are sold and the Portfolios have more than one owner.

X makes the following representations:

1. Trust is a business trust that has never held itself out to be a state law corporation. Each Portfolio is currently a separate RIC as defined in § 851(a).

2. Each of the Portfolios will have at least two members and will not elect pursuant to § 301.7701-3 to be treated other than as a partnership for federal tax purposes.

3. Units will not be held by more than 100 domestic life insurance companies.

4. Units will only be issued to segregated asset accounts of domestic life insurance companies.

5. X and the other insurance companies that purchase Units will be treated as the owners of the Units in the Portfolios for federal income tax purposes and, accordingly, all the distributive shares of income, gain, losses, etc. of the Portfolios and any gains or losses upon redemption of Units in the Portfolios will be includible in their gross incomes, and all distributions made by the Portfolios are, and will be, made solely to, and accounted for solely by, such Unit holders.

6. The assets of X's and other Unit holders' segregated asset accounts will be diversified within the meaning of § 817(h).

7. Allocations of taxable income, gain, loss, deductions and credits of the Portfolios will be made in accordance with §§ 704(b) and (c), and

except as required by § 704(c), each Unit holders' allocable share of each Portfolio's income or loss will be composed of a proportionate share of each item of the Portfolio's income or loss.

8. The segregated asset accounts of the other insurance companies will acquire their Units in the Portfolios solely in exchange for cash.

9. The Units are not and will not be traded on an established securities market.

10. The Units are not and will not be regularly quoted by any person, such as a broker or dealer, making a market in the Units.

11. No person regularly makes available, and will not make available, to the public (including customers or subscribers) bid or offer quotes with respect to the Units or stands ready, or will stand ready, to effect buy or sell transactions at the quoted prices for itself or on behalf of others.

12. No Unit holder has, or will have, a readily available, regular, and ongoing opportunity to sell or exchange the Units through a public means of obtaining or providing information of offers to buy, sell or exchange Units.

13. There is no plan or intention for the redemption of Units by a Portfolio to be combined with the issuance of Units in the Portfolio to a new partner.

Trust Ruling

Section 301.7701-4(c)(1) provides that an "investment" trust will not be classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. See Commissioner v. North American Bond Trust, 122 F.2d 545 (2d Cir. 1941), cert. denied, 314 U.S. 701 (1942).

Section 301.7701-2(a) provides that for purposes of §§ 301.7701-2 and 301.7701-3, a "business entity" is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership.

In this case, there is a power under the declaration of trust to vary the investments of the Portfolios and thus the Unit holders. Therefore, the Portfolios are properly classified as business entities and not trusts.

Partnership Ruling

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes.

Section 301.7701-3(b)(1)(i) provides that, unless it elects otherwise, a domestic eligible entity is classified as a partnership if it has two or more members.

X represents that each Portfolio will have at least 2 members and will not make an election pursuant to § 301.7701-3 to be treated as something other than a partnership. Provided each Portfolio has 2 or more members and does not make an entity classification election, each Portfolio will be properly classified as a partnership for federal tax purposes.

Publicly Traded Partnership Ruling

Section 7704(a) provides that except as provided in § 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term “publicly traded partnership” means any partnership if (1) interests in such partnership are traded on an established securities market and (2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 1.7704-1(a)(2)(i) provides that for purposes of § 7704(b) and § 1.7704-1, an interest in a partnership includes (A) any interest in the capital or profits of the partnership (including the right to partnership distributions); and (B) any financial instrument or contract the value of which is determined in whole or in part by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations).

Section 1.7704-1(a)(3) provides that for purposes of § 7704(b) and § 1.7704-1, a transfer of an interest in a partnership means a transfer in any form, including a redemption by the partnership or the entering into of a financial instrument or contract described in § 1.7704-1(a)(2)(i)(B).

Section 1.7704-1(c)(1) provides that for purposes of § 7704(b) and § 1.7704-1, interests in a partnership that are not traded on an established securities market (within the meaning of § 7704(b) and § 1.7704-1(b)) are readily tradable on a secondary market or the substantial equivalent thereof if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market.

Section 1.7704-1(c)(2) provides that for purposes of § 1.7704-1(c)(1), interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof if-- (i) Interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) Any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) The holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or (iv) Prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of § 1.7704-1(c)(2).

Section 1.7704-1(d) provides that for purposes of § 7704(b) and § 1.7704-1, interests in a partnership are not traded on an established securities market within the meaning of § 1.7704-1(b)(5) and are not readily tradable on a secondary market or the substantial equivalent thereof within the meaning of § 1.7704-1(c) (even if interests in the partnership are traded or readily tradable in a manner described in § 1.7704-1(b)(5) or (c)) unless-- (1) The partnership participates in the establishment of the market or the inclusion of its interests thereon; or (2) The partnership recognizes any transfers made on the market by-- (i) Redeeming the transferor partner (in the case of a redemption or repurchase by the partnership); or (ii) Admitting the transferee as a partner or otherwise recognizing any rights of the transferee, such as a right of the transferee to receive partnership distributions (directly or indirectly) or to acquire an interest in the capital or profits of the partnership.

The Units sold by X to the segregated asset accounts of other insurance companies are interests in the capital or profits of the Portfolios. Therefore, the Units are partnership interests for purposes of § 7704(b). See § 1.7704-1(a)(2)(i)(A). The sale of Units to the segregated asset accounts of other insurance companies does not fall within the definition of trading on an established securities market as defined in § 7704(b)(1) and § 1.7704-1(b). Additionally, Units may only be sold to the segregated asset accounts of other insurance companies and (i) are not regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) no person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to the Units and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) the Unit holder does not have a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or (iv) prospective buyers and sellers do not otherwise have the opportunity to buy, sell, or exchange Units in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of § 1.7704-1(c)(2).

Based solely on the information submitted and the representations made, we conclude that after the transfer of Units to the segregated asset accounts of other insurance companies, and the Portfolios become partnerships, the Portfolios will not be publicly traded partnerships.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

J. Thomas Hines
Chief, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for section 6110 purposes