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Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
November 14, 2005

Taxpayer =

Parent =

w =

x =

y =

z =

Company Y =

Company Z =

State =

Dear :

This is in response to the letter submitted by your authorized representative dated August 16, 2005, requesting a ruling on whether certain regulated investment companies qualify for look-through treatment as described in § 1.817-5(f).

FACTS

Taxpayer is a life insurance company under § 816 of the Internal Revenue Code organized under the laws of State. Taxpayer is a wholly-owned indirect subsidiary of

Parent, and its taxable income is reported on the consolidated federal income tax return of Parent and its consolidated subsidiaries.

Taxpayer is the investment adviser to both company Y and company Z. Company Y and company Z are open-end series investment companies under the Investment Company Act of 1940 and are regulated investment companies under § 851. Company Y consists of w separate funds, which are regulated investment companies under § 851 and are a series of company Y, and Company Z consists of x separate funds, which are regulated investment companies under § 851 and are a series of company Z (hereinafter referred to collectively as “Funds”). Additional Funds may be added to company Y and company Z from time to time

Currently, one governmental retirement plan described under § 414(d) holds shares in y of the z Funds. With the exception of that one governmental retirement plan, all shares of the Funds are held solely as underlying investments for variable annuity and variable life insurance contracts issued by Taxpayer and its affiliates. These variable contracts include nonqualified variable annuity contracts and nonqualified variable life insurance contracts as well as variable annuity contracts that are pension plan contracts within the meaning of § 818(a). Taxpayer intends to allow trustees of qualified pension or retirement plans that intend to be an arrangement within the meaning of § 1.817-5(f)(3)(iii) (“Plans”) to acquire shares in the Funds.

ISSUE

Whether satisfaction of the requirements of § 1.817-5(f)(2)(i) by each Fund is prevented by reason of beneficial interests in the Fund that are held by a pension or retirement plan that is intended to be an arrangement within the meaning of § 1.817-5(f)(3)(iii).

LAW

Under § 817(h), a segregated asset account upon which a variable annuity or life insurance contract is based must be adequately diversified in order for the variable contract to be treated as an annuity under § 72 or as a life insurance contract under § 7702.

Section 817(h)(4) and § 1.817-5(f) provide that in certain cases diversification may be satisfied under a "look-through" rule. If a "look-through" rule applies with respect to a beneficial interest in a regulated investment company, for example, the diversification requirements are applied by taking into account the assets held by the regulated investment company. One of the requirements for applying the "look-through" rule under § 1.817-5(f)(2)(i) is that all of the beneficial interests in a regulated investment company, partnership or trust be held by one or more insurance companies.

In determining whether this requirement is satisfied, § 1.817-5(f)(3)(iii) provides that beneficial interests held by the trustee of a qualified pension or retirement plan are disregarded.

Rev. Rul. 94-62, 1994-2 C.B. 164, holds that, solely for purposes of § 1.817-5(f)(3)(iii), the term "qualified pension or retirement plan" includes (i) a plan described in § 401(a) that includes a trust exempt from tax under § 501(a); (ii) an annuity plan described in § 403(a); (iii) an annuity contract described in § 403(b), including a custodial account described in § 403(b)(7); (iv) an individual retirement account described in § 408(a); (v) an individual retirement annuity described in § 408(b); (vi) a governmental plan within the meaning of § 414(d) or an eligible deferred compensation plan within the meaning of § 457(b); (vii) a simplified employee pension of an employer that satisfies the requirements of § 408(k); (viii) a plan described in § 501(c)(18); and (ix) any other trust, plan, account, contract, or annuity that the Internal Revenue Service has determined in a letter ruling to be within the scope of § 1.817-5(f)(3)(iii).

HOLDING

Based on the facts and representations made by Taxpayer, we hold that:

A. Satisfaction of the requirements of § 1.817-5(f)(2)(i) of the regulations by each Fund shall not be prevented by reason of beneficial interests in the Fund that are held by a Plan provided that each Fund satisfies the following terms and conditions:

1. At the time each Plan first applies to acquire a beneficial interest in a Fund, its application (or a writing associated therewith) will identify (a) the name of the Plan, (b) the Plan sponsor (if it is an employer-sponsored plan), and (c) the Plan administrator (if there is a plan administrator other than the employer) or the custodian or trustee (if it is an IRA or other non-employer sponsored plan).

2. The Plan’s application will include a written representation, signed by a representative of the Plan sponsor, administrator, custodian, or trustee, as applicable, that the Plan is described in at least one of the qualification categories listed in Rev. Rul. 94-62, and that it is not aware of any provision of the Plan document, or any event in the operation of the Plan, that would result in the Plan’s failure to satisfy the qualification requirements applicable to the Plan’s qualification category.

3. The Plan’s application to acquire beneficial interests will be accepted only if the Fund has no knowledge of any facts inconsistent with the representations in paragraphs 1 and 2 above.

4. The Plan’s representative will agree that, in the event the Plan loses (or fails initially to attain) qualified status, the Plan will (i) immediately notify the Funds of such loss of (or failure to attain) qualified status, and (ii) redeem the Plan’s beneficial interest in all

Funds within 90 days of such notification. The Plan's representative will further agree that, if the Plan does not redeem its interest in all Funds within said 90 days, then the Funds will be authorized to redeem the interests as soon as reasonably practicable after the 90-day period. In such a circumstance, the Funds are required to redeem the Plan's interest within 90 days. A Plan's agreement will not require notification of loss (or failure to attain) qualified status in the event the Plan has undertaken to correct a qualification defect under the Service's correction procedures, including the Employee Plans Compliance Resolution System. If relief is not obtained, a Plan must notify the Funds within 90 days of determining that its correction efforts have failed. In such a circumstance, the Funds are required to redeem the Plan's interest within 90 days.

5. The Plan's representative will agree that the Plan's beneficial interest in a Fund will be redeemed by the Fund within 90 days after the Fund ascertains (other than by notification by the Plan as set forth in paragraph 4 above) that the Plan has lost its qualified status. In such a circumstance, the Fund is required to redeem the Plan's interest within 90 days.

6. In 2009 ("solicitation year"), each Fund will solicit representatives of the Plans that held beneficial interests in the Fund on the preceding December 31st, to re-affirm their qualified status (i.e., solicit new written representations equivalent to the initial representations described in paragraph 2). Each Fund may solicit all, substantially all, or a random sampling of the Plans. Each Fund may exclude from the solicitation Plans ("excluded Plans") that first acquired beneficial interests in the Fund in the calendar year ending on that preceding December 31st. Each Fund will repeat this verification process every three years thereafter. Each Fund will maintain a list of non-responding Plans and such list will be made available to the IRS during any examination of Fund. A single solicitation on behalf of all Funds in which the Plan held a beneficial interest on the preceding December 31st is permitted.

7. If, by April 30th of the solicitation year set forth in paragraph 6, the Fund fails to receive re-affirmation of qualified status from Plans that held, in the aggregate, at least 50% of the total Plan investments in that Fund on the preceding December 31st (at least 75% if 4 or fewer Plans held interests in the Fund), then all non-responding Plans as of that April 30th will be involuntarily redeemed within 90 days after that April 30th. Excluded Plans will be included in the numerator and denominator of the testing fraction used under this paragraph 7. Plans that have redeemed their interests in all Funds on or before April 30th of the solicitation year (and before responding to the solicitation) will be excluded from the numerator and denominator of the testing fraction used under this paragraph 7. This condition will be deemed satisfied if the 50% test (75% test, if applicable) is met at the time all non-responding Plans have been redeemed (75% test will be used if the number of Plans remaining at the time all non-responding Plans have been redeemed is 4 or fewer).

8. The solicitation condition in paragraph 6 may be made more frequently than every three years, e.g., annually, ("alternate solicitation year"). If the 50% test (75% if

applicable) in paragraph 7 is met by April 30th of the alternate solicitation year, the Fund will repeat this verification process every third year thereafter (unless the Fund uses an alternate solicitation year in the next 2 years). If the 50% test (75% if applicable) in paragraph 7 is not met by April 30th of the alternate solicitation year, the Fund does not have to redeem any non-responding Plans in the alternate solicitation year.

9. Records will be maintained for each Fund identifying each investing Plan, including copies of the written representations made by each Plan (including those within the meaning of paragraph 10 below). These records will be available to the IRS during any examination of the Fund. The Fund will indicate to any Plan purchaser that the Fund's records of such Plans will be made available to the IRS.

10. Any written solicitation, communication, or representation required under these terms and conditions may be provided through any written medium acceptable to a Fund that is permitted under applicable law or regulation (e.g., electronic mail).

11. Taxpayer and the Funds will establish procedures designed to assure that all Plan applications and agreements are complete, properly executed, and retained. If Taxpayer or a Plan subsequently discovers that a Plan's application and agreement (including its representation of qualified status) with respect to investments in any Fund or Funds does not satisfy all of the terms and conditions required under paragraph A or has been lost or destroyed, the requirements set forth in paragraph A will be deemed to have been satisfied if a Plan representative executes a new application and agreement (including a new representation of qualified status) that satisfies such requirements with respect to its investments in that Fund or Funds within 90 days after Taxpayer or any of the Funds makes such discovery. If such a Plan fails to provide such new documentation within that 90-day period, the Plan's investments in that Fund or Funds will be redeemed within 30 days thereafter. The relief under this paragraph 11 will only be available for inadvertent errors that occur on an isolated basis.

B. A Fund must satisfy these terms and conditions with respect to any Plan currently holding a beneficial interest in a Fund. The Fund has 90 days from the date of this ruling letter to comply.

C. A Plan's application and agreement (including its representation of qualified status) to accept the terms and conditions set forth above with respect to its investments in a Fund may be set forth in a single agreement that applies to the Plan's investments in more than one Fund, provided that each Fund to which the agreement applies is identified in the agreement (or an exhibit or attachment thereto). In the event that a Plan that has a beneficial interest in a Fund subsequently applies to acquire a beneficial interest in one or more additional Funds not included in any prior application and agreement, each new Fund must comply with the above terms and conditions. Thus, for example, a new representation of qualified status, as well as the Plan's various agreements, must by obtained. If a Plan representative executes such a new agreement during a solicitation year and on or before April 30th of that solicitation year,

that agreement will be treated under paragraph A7 above as a re-affirmation of the Plan's qualified status with respect to all Funds in which the Plan held beneficial interests on the preceding December 31st provided that each Fund to which the agreement applies is identified in the agreement (or an exhibit or attachment thereto).

No opinion is expressed or implied regarding compliance with § 817 and the regulations there under involving the use of insurance-dedicated mutual funds as part of tiered fund structures commonly known as "master-feeder" or "fund-of-funds" structures.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

/S/

DONALD J. DREES, JR.
Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)