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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:1
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Date:
March 19, 2015

Legend

X =

Y =

Z =

Trust =

State =

Portfolio1 =

Portfolio2 =

Portfolio3 =

n1 =

n3 =

Dear :

This letter responds to a letter dated December 23, 2014, and subsequent correspondence, requesting rulings under sections 7701 and 7704 of the Internal Revenue Code.

FACTS

According to the information submitted, X is the parent of a consolidated group that includes Y, Z, and other subsidiaries. Y is a life insurance company, licensed in 49 states and the District of Columbia to provide life insurance, annuity, mutual fund, and other investment products. Z is a life insurance and annuity company that provides life insurance, annuity, and other investment products in all 50 states and the District of Columbia. Trust is an open-end management investment company (mutual fund) organized as a State business trust.

Trust consists of a series of segregated portfolios of assets (Portfolios), including Portfolios1 – 3 (Electing Portfolios), each with separate investments. Trust issues shares of each Portfolio (Shares) to support Y and Z's life insurance contract and variable annuity contracts. Shares of the Portfolios may only be purchased by domestic life insurance companies, either directly or through separate accounts of such companies, or other permissible owners under § 1.817-5(f)(3). Shares of the Portfolios are currently offered to n1 separate accounts of Y and n2 separate accounts of Z (Separate Accounts). Premiums received by Y and Z for variable life insurance and annuity contracts are allocated to their respective Separate Accounts. Shares in the Portfolios are not currently sold to other insurance companies.

Y and Z offer variable annuity contracts and variable life insurance contracts that have the Portfolios as investment options. The holders of these contracts (Contract Holders) are permitted to allocate the premiums paid among the portfolios when they purchase the contract. They may also allocate subsequent premiums among the Portfolios when those premiums are paid. Contract Holders may change the allocation of premiums or transfer funds between the Portfolios at any time. The Separate Accounts, at the direction of the Contract Holders, invest in the Portfolios. The Separate Accounts may purchase additional Shares or redeem their Shares at any time. The benefits that Y and Z pay to a particular Contract Holder are determined by the investment return and market value of the Portfolios to which the Contract Holder has allocated premiums and transfer funds. However, the benefits under the variable contracts can vary significantly from the value of the Shares, especially if 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 and it cannot be sold at face value.

The Contract Holders have no legal, equitable, direct, or indirect interest in the assets held in the Portfolios, and they cannot make claims against the income, gains, losses, or distributions of the Portfolios. Rather, the Contract Holders can only make contract-based claims against Y and Z, to collect cash (in the form of death benefits, annuities, or cash surrender values) under their variable contracts. Public access to investments in the Portfolios is available exclusively through the purchase of a variable life or annuity contract, unless the investor is a permissible owner under § 1.817-5(f)(3).

X intends that each Electing Portfolio elect to be treated as a partnership for federal tax purposes by filing Form 8832, *Entity Classification Election*. Following this election, the interests in each Electing Portfolio will continue to be owned by the Separate Accounts. X seeks a ruling that each Electing Portfolios will be classified as a partnership, as of the effective date of its election, as long as it has two or more members, provided such Portfolio does not make an election to be treated otherwise. Additionally, X seeks a ruling that, as of the effective date of its election, an Electing Portfolio will not be treated as a publicly traded partnership taxable as a corporation as defined in section 7704.

X makes the following representations:

1. Trust is a business trust that has never held itself out to be a state law corporation.

2. Each Electing Portfolio will have at least two members, Y and Z, investing through their Separate Accounts, and will elect pursuant to § 301.7701-3 to be treated as a partnership for federal tax purposes.

3. The Shares will only be sold to Separate Accounts of domestic life insurance companies or other permissible owners under § 1.817-5(f)(3). In no event will Shares be sold to more than 100 domestic life insurance companies.

4. The assets of the Separate Accounts will be adequately diversified within the meaning of section 817(h) and § 1.817-5(b).

5. Y and Z are and will be treated as the owners of the Shares in the Portfolios for federal tax purposes, unless the Shares are sold to other permissible owners under § 1.817-5(f)(3).

6. Allocations of taxable income, gain, loss, deduction, and credit of the Electing Portfolios will be made in accordance with section 704(b) and (c), and except as required by section 704(c), each holder of a Share will be allocated a proportionate share of each item of the Electing Portfolio's income or loss.

7. Each Electing Portfolio will operate as a separate business entity for federal tax purposes and, as a business entity with more than one member, will file its own

federal tax return. For federal income tax purposes, all interests in each Electing Portfolio will be owned by Y and Z and not by the variable contract holder.

8. Each Electing Portfolio will consist of a separate pool of assets, liabilities, and stream of earnings. The owners of Shares of an Electing Portfolio may (with respect to said Shares) share in the income only of that Portfolio and, correspondingly, will be limited to the assets of that Portfolio upon the redemption of shares in, or the liquidation or termination of, such Electing Portfolio. The payment of the expenses, charges, and liabilities of an Electing Portfolio will be limited to that Portfolio's assets. The creditors of an Electing Portfolio are limited to the assets of that Portfolio for recovery of expenses, charges, and liabilities.

9. Each Electing Portfolio will have its own investment objectives, policies, and restrictions. Votes of the owners of Shares of the Electing Portfolios may be conducted by each Electing Portfolio separately with respect to matters that affect only that particular Portfolio, except to the extent the Investment Company Act of 1940 requires all Shares to be voted as a single class of shares.

10. The Shares are not and will not be traded on an established securities market and, accordingly, no owner of Shares will have the opportunity to engage in transactions involving the Shares on an established securities market. The Shares are not and will not be regularly quoted by any person (such as a broker or dealer) who is making a market in the Shares and, accordingly, no owner of Shares will have the opportunity to participate in any market in the Shares.

11. No person now regularly makes available to the public (including customers or subscribers) any bid or offer quotes with respect to the Shares nor will any person make such quotes available in the future. No person now stands ready, or will stand ready in the future, to effect buy or sell transactions at such quoted prices, either on that person's own behalf or on behalf of others; accordingly no owner of the Shares will have the opportunity to engage in transactions involving Shares based upon bid/offer quotes.

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

13. There is no plan or intention that any redemption of Shares by an Electing Portfolio will be combined with the issuance of Shares in the Electing Portfolio to a new partner.

14. Other than the right of an owner of a variable contract to allocate premiums or contract value among one or more subaccounts of Separate Accounts, no Contract Holder possesses, or will possess, under current law, control over the

investment options of any subaccount of the Separate Accounts or Portfolio. No Contract Holder has, or will have, any authority to make investment decisions concerning the assets of any subaccount or any Portfolio thereof, nor is any Contract Holder permitted (nor will any Contract Holder be permitted) to select or recommend particular investments or investment strategies with respect to any subaccount or any Portfolio. None of the subaccounts or Portfolios currently solicits, nor will they be permitted in the future to solicit, any Contract Holder (or prospective Contract Holder) to communicate with them about the selection, quality, or rate of return of any specific investment or group of investments held in any subaccount or Portfolio. Nothing prevents a Contract Holder (or prospective Contract Holder) from initiating an unsolicited communication, but any such communication will be disregarded when making investment decisions for a Portfolio. Investments in Separate Accounts are, and will be, available solely through the purchase of a variable contract, and are not otherwise publicly available.

15. Shares of the Electing Portfolios are not, and will not be, transferrable without first obtaining the consent of the trustees of Trust. The trustees may withhold consent if the trustees determine that the transfer may (i) result in a person who is not a domestic life insurance company or an eligible shareholder (as permitted in § 1.817-5(f)) becoming a shareholder, (ii) otherwise cause an Electing Portfolio to cease to be an eligible entity to which the “look-through” rules of § 1.817-5(f) apply, (iii) cause an Electing Portfolio to be treated as a publicly-traded partnership as defined in section 7704(b); or (iv) result in a violation of the 1940 Act, the Securities Act of 1933, or other applicable law. Notwithstanding the foregoing, a shareholder will be permitted to transfer Shares of which it is the record owner without first obtaining the consent of the Trustees if the transfer is made (i) to a successor that is a domestic life insurance company or an eligible shareholder (as permitted in § 1.817-5(f)), and (ii) in connect with a merger, consolidation, or sale of substantially all assets or similar transaction to which the shareholder is a party.

LAW AND ANALYSIS

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.

Section 7704(a) provides that except as provided in section 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) of the Procedure and Administration Regulations provides that for purposes of section 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 section 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 section 7704(b) and § 1.7704-1, interests in a partnership that are not traded on an established securities market (within the meaning of section 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 the purposes of section 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 partners 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.
Section 1.7704-1(h)(1) provides that for purposes of section 7704(b) and this section, except as otherwise provided in § 1.7704-1(h)(2), interests in a partnership are not readily tradable on a secondary market or the substantial equivalent thereof if (i) all interests in the partnership were issued in a transaction (or transactions) that was not required to be registered under the Securities Act of 1933; and (ii) the partnership does not have more than 100 partners at any time during the taxable year of the partnership.

Rev. Proc. 2015-3, § 3.01(114), 2015-1 I.R.B. 129, provides that the Service will not issue a ruling on whether interests in a partnership that are not traded on an established securities market (within the meaning of section 7704(b) and § 1.7704-1(c)(1). Rulings specifically pertaining to portfolios supporting variable contract arrangements of life insurance companies do not fall within the intended scope of the no rule area.

CONCLUSION

X represents that each Electing Portfolio will have at least 2 members and will elect pursuant to § 301.7701-3 to be treated as a partnership. Provided that each Electing Portfolio has 2 or more members and files Form 8832, *Entity Classification Election*, with the appropriate Service Center, each Electing Portfolio will be properly classified as a partnership for federal tax purposes.

The Shares in each Electing Portfolio are interests in the capital or profits of the Electing Portfolios. Therefore, if the Electing Portfolios are partnerships for federal tax purposes, the Shares would be partnership interests for purposes of section 7704(b). See § 1.7704-1(a)(2)(i)(A). The sale of Shares to other insurance companies or to the separate accounts of other insurance companies does not fall within the definition of trading on an established securities market as defined in section 7704(b)(1) and § 1.7704-1(b). Additionally, Shares may only be sold to the Separate Accounts of Y and Z, the separate accounts of other life insurance companies, and other persons specified in § 1.817-5(f)(3), 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 respects to the Shares and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) the owners of Shares do not have a readily available, regular, and ongoing opportunity to sell or exchange the interests through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the

partnership; and (iv) prospective buyers and sellers do not otherwise have the opportunity to buy, sell, or exchange shares 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 each Electing Portfolio that is classified as a partnership will not be treated as a publicly traded partnership.

Except as specifically set forth above, no opinion is express 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

David R. Haglund
David R. Haglund
Chief, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes