Internal Revenue Service

Number: **200726012**
Release Date: 6/29/2007
Index Number: 7701.00-00, 7704.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-135946-06

Date:
March 16, 2007

Legend

X =

Y =

Z =

D1 =

State1 =
State2 =
State3 =

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Fund 8 =

Fund 9 =

Fund 10 =

Fund 11 =

Fund 12 =

Fund 13 =

Fund 14 =

Fund 15 =

Fund 16 =

Fund 17 =

Fund 18 =

Fund 19 =

Fund 20 =

Fund 21 =

Fund 22 =

Fund 23 =

Dear :

This is in response to a letter dated July 26, 2006, together with subsequent correspondence, submitted on behalf of X by its authorized representative requesting entity classification rulings under §§ 7701 and 7704 of the Internal Revenue Code.

FACTS

The information submitted states that X is a State1 life insurance company that issues variable life insurance policies and variable annuity contracts, which qualify as variable contracts under § 817(d). X conducts a conventional life insurance business in the District of Columbia, American Samoa and all states except for State2. X is wholly-owned by Z, but X is not currently part of Z's consolidated group. Y, a wholly-owned subsidiary of X, is a State2 life insurance company that conducts a conventional life insurance business in State2 and issues variable life insurance policies and variable annuity contracts which qualify as variable contracts under § 817(d). X currently invests purchase payments and premiums through separate accounts ("Separate Accounts"), and subaccounts thereof, individually investing in Funds 1-23 (the "Funds"). Each Fund is a series of a corporation organized under the laws of State1, which is registered under the Investment Company Act of 1940, as amended, as an open-end management investment company. The Funds are all regulated investment companies within the meaning of § 851. In accordance with a restructuring plan, a State3 business trust ("Trust") will be organized and will register as an open-end management investment company. Trust will comprise separate series of portfolios ("Portfolios") organized such that there will be a Portfolio corresponding to each Fund. On behalf of each Portfolio, Trust will issue separate, transferable units of direct beneficial interest ("Units") in that Portfolio. Shortly after the organization of Trust and the Portfolios, each Portfolio will acquire all or substantially all of the assets and assume all of the liabilities of a corresponding single Fund in exchange for Units in that Portfolio. Immediately thereafter, the Units received by each Fund will be distributed to its shareholders in liquidation and termination of that Fund. The current shareholders of all the Funds except for Fund 23, X and Y through their respective Separate Accounts, will therefore each become a member of each Portfolio corresponding to one of Funds 1-22. The current shareholder of Fund 23, X through its Separate Accounts, will become a member of the Portfolio corresponding to Fund 23.

The Portfolios will support X's variable contracts through Units acquired by the Separate Accounts of X. The Separate Accounts are segregated asset accounts that either (i) invest solely in shares of a single fund or (ii) consist of a number of subaccounts, each of which invests solely in shares of a single fund. The performance of each Separate Account and subaccount is independent of the performance of other Separate

Accounts, subaccounts, and other assets of X. X currently has 23 Separate Accounts, 20 of which have been established for purchase payments received in connection with variable annuity contracts and three of which have been established for premium payments received in connection with variable life insurance policies. X is in the process of deactivating 13 of its Separate Accounts (all 13 of which have been established for purchase payments received in connection with variable annuity contracts) and consolidating Security and Exchange Commission filings previously made by those 13 Separate Accounts under one primary Separate Account. Following that deactivation and consolidation of Separate Accounts, X will have 10 Separate Accounts, seven of which have been established for purchase payments received in connection with variable annuity contracts and three of which have been established for premium payments received in connection with variable life insurance policies. The Separate Accounts may purchase additional Units or have Units redeemed at any time. The Portfolios may also sell Units, solely in exchange for cash, to segregated asset accounts of other life insurance companies and other persons that are permissible owners of such units, consistent with the application of the "look-through" rule provided in § 1.817-5(f) of the Treasury Regulations.

Each Portfolio will have separate investments and, under the Trust agreement, the manager of each Portfolio will be permitted to take advantage of market variations to improve the investments of the Unit holders. Each Portfolio will generally invest in equity and/or debt securities and generally seek to provide its Unit holders with either capital growth/appreciation, current income, or total return through some combination of capital growth/appreciation and current income.

The variable contract holder may specify in which Separate Account and/or subaccount the premium or payment is to be invested. The benefits X pays to the contract holder will be determined by reference to the investment return associated with, and the net asset value of, the relevant Portfolio supporting the variable contract. However, the benefits under the variable contracts could vary significantly from the value of the Units in the relevant Portfolios, especially where a contract holder dies before his or her life expectancy. 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 will be owned by the insurance company issuing the variable contract for federal income tax purposes. The contract holder will only have claims against the insurance company issuing the variable contract and not against the income, gains, losses or distributions of the Portfolios.

X requests a ruling that each Portfolio will be classified as a partnership, and not a publicly traded partnership, after Units are distributed and if, as and when that Portfolio has more than one member.

X makes the following representations:

1. Each variable annuity contract and variable life insurance policy sold by X or Y (or X's subsidiaries prior to a restructuring which occurred as of D1) qualifies, and will qualify, as a variable contract under § 817(d).

2. No variable contract holder possesses, or will possess, under current law, control over the investment options of the Separate Accounts or subaccounts of X or Y. No variable contract holder has, or will have, any authority to make investment decisions concerning the assets of any Separate Account or subaccounts thereof, nor is any variable contract holder permitted (nor will any variable contract holder be permitted) to select or recommend particular investments or investment strategies. Investments in Separate Accounts and subaccounts thereof are, and will be, available solely through the purchase of a variable contract, and are not otherwise publicly available. For federal income tax purposes, each interest in a fund (including each Unit in a Portfolio) held by a Separate Account or subaccount of X or Y is, and will be, owned by the issuer of the applicable variable contract, and not by the variable contract holder.

3. Trust will be a business trust and will not hold itself out to be a state law corporation. Under the trust agreement, there will be a power to vary the investments of each Portfolio, and pursuant to that power, the manager of each Portfolio will be permitted to take advantage of market variations to improve the investments of the Unit holders.

4. Each Fund is currently a separate regulated investment company as defined in § 851(a).

5. Each Portfolio (other than the Portfolio corresponding to Fund 23) will have at least two members.

6. In respect to each Portfolio, Units will not be held by more than 100 holders

7. In respect to each Portfolio, Units will only be issued to segregated asset accounts of life insurance companies and other persons that are permissible owners of Units, consistent with the application of the "look-through" rule of § 1.817-5(f).

8. X, Y, other life insurance companies, and other permissible owners of such Units consistent with § 1.817-5(f) will be treated as the owners of the Units in the Portfolios for federal income tax purposes and, accordingly all of the distributive shares of income, gains, 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 will be made solely to, and accounted for solely by, such Unit holders.

9. The assets of X's segregated asset accounts, Y's segregated asset accounts and the segregated asset accounts of other life insurance companies that purchase Units will be diversified within the meaning of § 817(h).

10. 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.

11. Segregated asset accounts of life insurance companies, other than X and Y, and other permissible owners of such Units consistent with § 1.817-5(f) that acquire Units in a Portfolio will acquire such Units solely in exchange for cash.

12. The Units will not be traded on an established securities market.

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

14. No person will regularly make available to the public (including customers or subscribers) bid or offer quotes with respect to Units or stand ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others.

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

16. 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.

17. Prospective buyers and sellers will 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 provisions of § 1.7704-1(c)(2) described in representations 13, 14 and 15 above.

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), 62 S. Ct. 479, 86 L. Ed. 560.

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 will be a power under the trust agreement to vary the investments of the Portfolios and thus the Unit holders. Therefore, the Portfolios will be 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 (except the Portfolio that will correspond to Fund 23, which will initially only have X as a member). With respect to each Portfolio, provided that the Portfolio has 2 or more members and does not make an entity classification election pursuant to §301.7701-3 to be treated as something other than a partnership for federal tax purposes, the 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 or (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 will be interests in the capital or profits of the Portfolios. Therefore, the Units will be 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 and other permissible owners of such Units consistent with § 1.817-5(f) will not fall within the definition of trading on an established securities market as defined in § 7704(b)(1) and § 1.7704-1(b). Units may only be sold to the segregated asset accounts of other insurance companies and other permissible owners of such Units consistent with § 1.817-5(f). Additionally, (i) Units will not be regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) no person will regularly make available to the public (including customers or subscribers) bid or offer quotes with respect to the Units or will stand ready to effect buy or sell transactions at the quoted

prices for itself or on behalf of others; (iii) the Unit holder will 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; and (iv) prospective buyers and sellers will 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 with respect to each Portfolio, if, as and when that Portfolio becomes a partnership due to transfers of Units to the segregated asset accounts of X, Y, other insurance companies, or other permissible owners of such Units consistent with § 1.817-5(f), the Portfolio will not be a publicly traded partnership.

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.

In accordance with the power of attorney on file with this office, a copy of this letter will be sent to X's first and second authorized representatives.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

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