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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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April 27, 2007

Legend

Taxpayer =
State 1 =
State 2 =
Parent =
Fund Companies =

State 3 =
Investment Manager =

Dear :

This is in response to the letter submitted by your authorized representative dated February 9, 2007, requesting a ruling on whether certain regulated investment companies qualify for look-through treatment as described in § 1.817-5(f) of the Income Tax Regulations.

Facts:

Taxpayer is a life insurance company under § 816 of the Internal Revenue Code incorporated under the laws of State 1 and redomiciled in State 2. Taxpayer is an indirect wholly-owned subsidiary of Parent. Taxpayer joins in the filing of a consolidated federal income tax return with Parent and other affiliated corporations on a calendar-year basis using an accrual method of accounting.

The subjects of this ruling request are certain funds (each a "Fund" and together the "Funds"). Each Fund is a separate series of the Fund Companies and is treated as a separate corporation for federal income tax purposes pursuant to § 851(g). Each Fund qualified as a regulated investment company under § 851 in its most recent taxable year and intends to qualify as such in all subsequent taxable years. The shares of each Fund are registered with the SEC under the Securities Act of 1933, and the Funds are registered under the 1940 Act as open-end management investment companies.

Investment Manager, a wholly owned indirect subsidiary of Parent and an affiliate of Taxpayer, is the investment manager of Fund Companies and each Fund. The Fund Companies are organized as State 3 corporations and are registered with the Securities and Exchange Commission under the Investment Company Act of 1940 as an open-end management investment company.

The Funds serve as investment media for variable contracts within the meaning of § 817(d). The variable contracts supported by the Funds may include contracts issued by Taxpayer, its affiliates, and unaffiliated life insurance companies. The contracts include nonqualified variable annuity contracts and nonqualified variable life insurance contracts that are subject to the diversification requirements of § 817(h), as well as variable annuity contracts that are pension plan contracts within the meaning of § 818(a).

The Funds may be offered to other regulated investment companies that qualify for look-through treatment under § 1.817-5(f) (in accordance with Rev. Rul. 2005-7, 2005-6 I.R.B. 464). The Funds are currently not held by other regulated investment companies that are not also Funds of the Fund Companies.

The Funds are also held by a large number of investors that are qualified pension or retirement plans (each a “Plan” and together the “Plans”). The Plans are qualified pension or retirement plans within the meaning of Revenue Ruling 94-62, 1994-2 C.B. 164. The Funds were purchased by the Plans other than through the purchase of a variable contract. It is intended that the Plans qualify as a type of investor permitted by § 1.817-5(f)(iii). With the exception of the shares purchased by the Plans, the shares purchased by other regulated investment companies in accordance with Rev. Rul. 2005-7, and any shares purchased in accordance with § 1.817-5(f)(3)(i) or (ii), all shares of the Funds are held by segregated asset accounts solely as underlying investments for variable annuity and variable life insurance contracts.

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 segregated asset accounts of 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, 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 (“IRS”) has determined in a letter ruling to be within the scope of § 1.817-5(f)(3)(iii).

In Rev. Rul. 2005-7, a segregated asset account funding a variable contract invests in a regulated investment company that holds shares in another regulated investment company. Except for the former regulated investment company's investment in the later regulated investment company (and except as permitted by § 1.817-5(f)(3)), all the beneficial interests in the regulated investment companies are held by one or more segregated asset accounts of one or more insurance companies, and public access to the funds is available exclusively through the purchase of a variable contract. The revenue ruling holds that, in determining whether the segregated asset account is adequately diversified under § 817(h) and § 1.817-5, the segregated asset account is treated as owning a pro rata portion of each asset of the regulated investment companies.

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 that is intended to be an arrangement within the meaning of § 1.817-5(f)(3)(iii), 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 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 of (or failure to attain) qualified status in the event the Plan has undertaken to correct a qualification defect under IRS 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 of such notice by the Plan.

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 2010 ("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. Each Fund will maintain records identifying each investing Plan or regulated investment company within the meaning of paragraph 11a, including copies of the written representations made by each investor (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).

11a. Each Fund will not sell a beneficial interest in such Fund to another regulated investment company which intends to qualify for look-through treatment under § 1.817-5(f) (such as insurance-dedicated mutual funds as part of tiered fund structures commonly known as "master-feeder" or "fund-of-funds" structures) unless each Fund obtains a representation from the other regulated investment company that either it will not sell any interest in said regulated investment company to a Plan or it has obtained a letter ruling from the IRS substantially identical to the terms and conditions of this letter ruling. If the Fund ascertains that this representation is inaccurate (i.e., the regulated investment company inaccurately represented that it will not sell any interest in said regulated investment company to a Plan or the regulated investment company inaccurately represented that it has obtained a letter ruling from the IRS substantially identical to the terms and conditions of this letter ruling), the Fund is required to redeem the regulated investment company's interest within 90 days. The regulated investment company will agree that, in the event the Fund ascertains that the regulated investment company's representation is inaccurate, the regulated investment company's beneficial interest in the Fund will be redeemed by the Fund within 90 days.

11b. In 2010 ("solicitation year"), each Fund will solicit all representatives of the regulated investment companies that held beneficial interests in the Fund on the preceding December 31st, to re-affirm their representation required in paragraph 11a. Each Fund may exclude from the solicitation regulated investment companies ("excluded regulated investment companies") 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 regulated investment companies and such list will be made available to the IRS during any examination of Fund.

11c. If, by April 30th of the solicitation year set forth in paragraph 11b, the Fund fails to receive re-affirmation of the representation required by paragraph 11a from 80% of the regulated investment companies that held an investment in that Fund on the preceding December 31st, then all non-responding regulated investment companies as of that April 30th will be involuntarily redeemed within 90 days after that April 30th. Excluded regulated investment companies will be included in the numerator and denominator of the testing fraction used under this paragraph 11c. Regulated investment companies 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 11c. This condition will be deemed satisfied if the 80% test is met at the time all non-responding regulated investment companies have been redeemed.

12. Taxpayer and the Funds will establish procedures designed to assure that all Plan and regulated investment company applications and agreements are complete, properly executed, and retained. If Taxpayer, Fund, Plan, or regulated investment company subsequently discovers that a Plan's or regulated investment company's application and agreement (including, if appropriate, 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 or regulated investment company representative executes a new application and agreement (including, if appropriate, a new representation of qualified status) that satisfies such requirements with respect to its investments in that Fund or Funds within 90 days after such discovery. If such a Plan or regulated investment company fails to provide such new documentation within that 90-day period, the Plan's or regulated investment company's investments in that Fund or Funds will be redeemed within 30 days thereafter. The relief under this paragraph 12 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 or regulated investment company currently holding a beneficial interest in a Fund. The Fund has 180 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 be obtained. If a Plan representative executes such a new agreement during a solicitation year 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).

The rulings contained in this letter are based upon information and representations submitted by the 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/S/

Donald J. Drees, Jr.
Senior Technician Reviewer, Branch 4
(Financial Institutions & Products)