Internal Revenue Service

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Washington, DC 20224

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Taxpayer	=
Parent	=
State A	=
Subsidiary	=
Separate Account	=
X	=
State B	=

Dear :

This is in response to the letter submitted by your authorized representative, requesting a ruling on whether assets held in certain variable contract segregated asset accounts are to be treated for federal income tax purposes as owned by Taxpayer.

FACTS

I. TAXPAYER

Taxpayer is a life insurance company taxable under § 816(a) of the Internal Revenue Code (the "Code") and is licensed to conduct an insurance business in 49 states and the District of Columbia. Taxpayer is a wholly owned subsidiary of Parent and is a stock life insurance company organized under the laws of State A. Taxpayer and its wholly owned subsidiary, Subsidiary, file a consolidated income tax return on a calendar year basis.

II. THE CONTRACTS

Taxpayer issues deferred and immediate variable annuity contracts (the "Contracts"). The Contracts currently offer a fixed investment option and a menu of variable investment options. Only Taxpayer can add or remove investment options under the Contracts.

The portion of a premium, less any applicable state and local taxes related to the premium (a "net premium"), allocated by the owner of a Contract to the fixed investment option under the Contract is held in Taxpayer's general account. The portion of a net premium allocated to the variable investment options under a Contract is held in the Separate Account, which is a separate account registered with the Securities and Exchange Commission (the "SEC") as a unit investment trust under the Investment Company Act of 1940, as amended (the "1940 Act").

III. THE LIFECYCLE INSURANCE FUNDS

The assets of the Separate Account are allocated among sub-accounts (the "Sub-Accounts") that correspond to the variable investment options under the Contracts. Some Sub-Accounts (the "Lifecycle Sub-Accounts") represent an investment strategy based on the approximate year of a Contract holder's retirement. Each Lifecycle Sub-Account invests all of its assets in shares of a corresponding mutual fund (a "Lifecycle Insurance Fund"). There are currently X Lifecycle Insurance Funds. Each Lifecycle Insurance Fund is a State B business trust, a regulated investment company as defined in § 851 of the Code ("RIC"), is taxable as a separate corporation under § 851(g), and is registered with the SEC under the 1940 Act as an investment company. Shares of the Lifecycle Insurance Funds are registered with the SEC under the Securities Act of 1933, as amended (the "1933 Act"). In addition to their use in connection with the Contracts, the Lifecycle Insurance Funds also support variable annuity contracts issued by Subsidiary and may, in the future, support variable annuity contracts issued by other, unaffiliated life insurance companies.

Taxpayer represents that the assets supporting the Contracts are maintained by Taxpayer in the Separate Account, which is divided into the multiple Sub-Accounts, each of which meets, and will continue to meet, the diversification requirements of § 817(h) of the Code and § 1.817-5(b) of the Income Tax Regulations (the "Regulations"). Taxpayer also represents that, except as otherwise permitted by § 1.817-5(f)(3) of the Regulations, all the beneficial interests in each of the Lifecycle Insurance Funds are held by one or more insurance companies and that public access to each of the Lifecycle Insurance Funds is available exclusively through the purchase of a variable contract.

The specific assets held by each Lifecycle Insurance Fund are determined by an investment manager ("Investment Manager") and are subject to change at any time. A Contract owner has the ability to allocate premiums and transfer dollars among the various Lifecycle Sub-Accounts, but all investment decisions regarding the Lifecycle

Insurance Funds are made by the Investment Manager in its sole and absolute discretion. A Contract owner is not able to direct a Lifecycle Insurance Fund's investment in any particular asset, and there is no agreement or plan between Taxpayer and a Contract owner, or between the Investment Manager and a Contract owner, regarding such an investment. A Contract Owner has no knowledge of the present assets invested by a Lifecycle Insurance Fund and has no knowledge of the specific investment techniques of the Investment Manager.

A Contract owner has no legal, equitable, direct, or indirect ownership interest in any of the Lifecycle Insurance Fund assets. Rather, the Contract owner only has a contractual claim against Taxpayer to collect cash under the terms of the Contract.

The Lifecycle Insurance Funds currently invest exclusively in shares of other insurance-dedicated RICs (the "Lower-Tier Insurance Funds") for which Taxpayer or one of various companies affiliated with Taxpayer (collectively, the "Group") serves as the investment manager. The Taxpayer proposes to allow the Lifecycle Insurance Funds to invest not only in Lower-Tier Insurance Funds, but also to invest some or all of their assets in (1) certain Group-managed RICs (the "Public Funds") that are open for direct investment by the general public, and/or (2) certain Group-managed RICs and partnerships (the "Central Funds") that are not open for direct investment by the general public, but instead are available exclusively to certain Group-managed entities and accounts (e.g., RICs), with some of those entities and accounts being open for direct investment by the general public.

IV. PROPOSED INVESTMENT IN PUBLIC FUNDS

Public Funds are Group-managed RICs that are available for direct investment by the general public. The variety of Public Funds is more extensive than the existing line of Lower-Tier Insurance Funds, thus providing a broader range of investment styles, investment objectives, and asset mixes than are available in connection with the Lower-Tier Insurance Funds. Accordingly, Taxpayer believes that allowing the Lifecycle Insurance Funds to invest some or all of their assets in Public Funds would give the Investment Manager greater discretion and flexibility in managing the Lifecycle Insurance Funds, with the accompanying potential of achieving better performance results and greater investment risk diversification for Contract owners.

In making any investments in Public Funds, the Investment Manager will use its sole and absolute discretion regarding the nature and extent of the investments. Any investments in Public Funds will be made in accordance with the investment diversification requirements of § 817(h) of the Code and the Regulations thereunder. The percentage of a Lifecycle Insurance Fund's assets invested in any Public Fund will not be fixed in advance of any Contract owner's investment and could be changed by the Investment Manager at any time.

V. PROPOSED INVESTMENT IN CENTRAL FUNDS

Central Funds are RICs or partnerships that Group has established for exclusive use by certain entities and accounts for which Group acts as investment adviser. Each Central Fund is registered with the SEC under the 1940 Act as an open-end management investment company. Shares of some, but not all, of the Central Funds are registered with the SEC under the 1933 Act. Shares of the Central Funds are not available for direct purchase by the general public. However, some of the entities and accounts that invest in the Central Funds (e.g., the Public Funds) allow direct investment by members of the general public. In this respect, public access to the Central Funds is available indirectly without purchasing a variable contract (e.g., through the Public Funds).

Group funds generally utilize Central Funds for reasons relating to portfolio management. In particular, use of Central Funds allows Group to pool segments of their portfolios ("Sub-Portfolios") with the same investment objectives and strategies into a common vehicle in order to take advantage of operational efficiencies and the expertise of an investment manager of that common vehicle who focuses on that particular Sub-Portfolio. Taxpayer believes that allowing the Lifecycle Insurance Funds to invest some or all of their assets in shares of Central Funds would broaden the investment options of the Lifecycle Insurance Funds and allow them to take advantage of the similar operational efficiencies and expertise.

A subset of the Central Funds in which the Lifecycle Insurance Funds would have the discretion to invest is comprised of Central Funds that Group has created specifically for its lifecycle funds and certain other funds (the "Lifecycle Central Funds"). The Lifecycle Central Funds have the same basic structure as all other Central Funds, in that they are available exclusively to other Group-managed entities and accounts. In the case of a Lifecycle Central Fund, however, the other Group-managed entities or accounts that invest in it are primarily (and in many cases entirely) publicly available RICs that are funds of funds and that follow a "lifecycle" investment strategy (the "Lifecycle Public Funds"). Taxpayer expects that the process of establishing Lifecycle Central Funds and making them available as investment options for the Lifecycle Insurance Funds will occur gradually over several years, but Taxpayer expects that the investments in Lifecycle Central Funds could eventually represent a significant portion of the assets of a Lifecycle Insurance Fund, quite possibly exceeding the investments in other Central Funds, Public Funds, or Lower-Tier Insurance Funds.

In making any investments in Central Funds, the Investment Manager will use its sole and absolute discretion regarding the nature and extent of the investments. Each Lifecycle Insurance Fund's investment in Central Funds will be made in accordance with the investment diversification requirements of § 817(h) of the Code and the Regulations thereunder. The percentage of a Lifecycle Insurance Fund's assets invested in any

Central Fund will not be fixed in advance of any Contract owner's investment and could be changed at any time by the Investment Manager.

VI. TAXPAYER'S REPRESENTATIONS

A Contract owner cannot, and will not be able to, direct a Lifecycle Insurance Fund's investment in any particular asset, and there will be no agreement or plan between Taxpayer, the Investment Manager, or a sub-adviser and a Contract owner regarding such investment.

A Contract owner does not have, and will not have, (1) current knowledge of the specific assets of a Lifecycle Insurance Fund; (2) knowledge of the specific methodology used, or the specific factors taken into consideration, by the Investment Manager when determining the particular Lower-Tier Insurance Funds, Public Funds, and Central Funds in which a Lifecycle Insurance Fund will invest; or (3) current knowledge of the specific allocation of the Lifecycle Insurance Fund's assets among those funds.

Neither Taxpayer nor the Investment Manager solicits or will solicit Contract owners or prospective Contract owners to communicate about the selection, quality, or rate or return of any specific investment or group of investments held in any Lifecycle Insurance Fund, Lower-Tier Insurance Fund, Central Fund, or Public Fund. While a Contract owner or prospective Contract owner may nevertheless attempt to initiate such an unsolicited communication, it would not result in discussions with the Contract owner regarding the items listed above and it would be disregarded when making any investment decisions.

If a Lifecycle Insurance Fund invests 100% of its assets in Public Funds, Central Funds, or any other entities that are not eligible for look-through treatment under § 1.817-5(f) of the Regulations, said investment will be allocated among at least five such entities in order to satisfy the diversification requirements of § 817(h) of the Code and § 1.817-5(b) of the Regulations. If a Lifecycle Insurance Fund invests less than 100% of its assets in Public Funds, Central Funds, or any other entities that are not eligible for look-through treatment under § 1.817-5(f) of the Regulations, said investment will be allocated among as many entities and other assets as necessary in order for the Lifecycle Insurance Fund to satisfy the diversification requirements of § 817(h) of the Code and § 1.817-5(b) of the Regulations.

REQUESTED RULING

A Lifecycle Insurance Fund's investment in Public Funds and/or Central Funds will not cause the Contract owners to be treated as the owners of shares of the Lifecycle Insurance Fund for federal income tax purposes.

LAW

Section 61(a) of the Code provides that the term "gross income" means all income from whatever source derived, including gains derived from dealings in property, interest and dividends.

Section 817(d) of the Code defines a "variable contract" as a contract that provides for the allocation of all or part of the amounts received under the contract to an account that, pursuant to state law or regulation, is segregated from the general asset accounts of the company and that provides for the payment of annuities, or is a life insurance contract.

Section 817(h)(1) of the Code provides that, for purposes of subchapter L and § 7702(a) (relating to the definition of life insurance contract), a variable contract (other than a pension contract), that is otherwise described in § 817 and that is based on a segregated asset account, shall not be treated as a life insurance or annuity contract for any period (and any subsequent period) for which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified.

Section 817(h)(4) of the Code provides, in certain situations, a "look-through" rule for meeting the diversification requirements. If all of the beneficial interests in a regulated investment company or trust are held by one or more (A) insurance companies (or affiliated companies) in their general account or in segregated asset accounts, or (B) fund managers (or affiliated companies) in connection with the creation or management of the regulated investment company, the diversification requirements of § 817(h) are applied by taking into account the assets held by such regulated investment company or trust.

Section 1.817-5 of the Regulations sets forth the diversification requirements for variable contracts. Generally, the investments of a segregated asset account will be considered to be "adequately diversified" for purposes of § 817(h) and § 1.817-5 if no more than 55 percent of the value of the total assets of the account is represented by any one investment, no more than 70 percent by any two investments, no more than 80 percent by any three investments, and no more than 90 percent by any four investments. See Treas. Reg. § 1.817-5(b)(1).

Section 1.817-5(f) of the Regulations provides a look-through rule for the application of the diversification requirements of § 1.817-5. Section 1.817-5(f)(1) provides that, if the look-through rule applies, a beneficial interest in an investment company, partnership, or trust will not be treated as a single investment of a segregated asset account; instead, a pro rata portion of each asset of the investment company, partnership, or trust will be treated, for purposes of § 1.817-5, as an asset of the segregated asset account. Section 1.817-5(f)(2)(i) provides that the look-through rule of § 1.817-5(f) shall apply to an investment company if all the beneficial interests in the investment company (other than those described in § 1.817-5(f)(3)) are held by one or more segregated asset accounts of one or more insurance companies and public access to such investment company, partnership, or trust is available exclusively (except as otherwise permitted under § 1.817-5(f)(3)) through the purchase of a variable contract.

Section 817 of the Code was enacted by Congress as part of the Deficit Reduction Act of 1984 (Pub. L. No. 98-369) (the "1984 Act"). In the legislative history of the 1984 Act, Congress expressed its intent to deny annuity or life insurance treatment to any variable contract if the assets supporting the contract include funds publicly available to investors:

> The conference agreement allows any diversified fund to be used as the basis of variable contracts so long as all shares of the funds are owned by one or more segregated asset accounts of insurance companies, but only if access to the fund is available exclusively through the purchase of a variable contract from an insurance company. . . . In authorizing Treasury to prescribe diversification standards, the conferees intend that the standards be designed to deny annuity or life insurance treatment for investments that are publicly available to investors . . .

H.R. Conf. Rep. No. 98-861, at 1055 (1984).

Approximately two years after enactment of § 817(h), the Treasury Department issued proposed and temporary regulations prescribing the minimum level of diversification that must be met for an annuity or life insurance contract to be treated as a variable contract within the meaning of § 817(d). The preamble to the regulations stated as follows:

> The temporary regulations . . . do not provide guidance concerning the circumstances in which investor control of the investments of a segregated asset account may cause the investor, rather than the insurance company, to be treated as the owner of the assets in the account. For example, the temporary regulations provide that in appropriate cases a segregated asset account may include multiple sub-accounts, but do not specify the extent to which policyholders may direct their investments to particular sub-accounts without being treated as owners of the underlying assets. Guidance on this and other issues will be provided in regulations or revenue rulings under section 817(d), relating to the definition of variable contracts.

51 FR 32633 (Sept. 15, 1986). The text of the temporary regulations served as the text of proposed regulations in the notice of proposed rulemaking. See 51 FR 32664 (Sept. 15, 1986). The final regulations adopted, with certain revisions not relevant here, the text of the proposed regulations.

A long standing doctrine of taxation provides that "taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed—the actual benefit for which the tax is paid." Corliss v. Bowers, 281 U.S. 376 (1930). The incidence of taxation attributable to ownership of property is not shifted if the transferor continues to retain significant control over the property transferred, without regard to whether such control is exercised through specific retention of legal title, the creation of a new equitable but controlled interest, or the maintenance of effective benefit through the interposition of a subservient agency. Frank Lyon Company v. U.S., 435 U.S. 561 (1978); Commissioner v. Sunnen, 333 U.S. 591 (1948); Helvering v. Clifford, 309 U.S. 331 (1940); Christoffersen v. U.S., 749 F.2d 513 (8th Cir. 1984) (reversing 578 F. Supp. 398 (N.D. Iowa 1984)).

Rev. Rul. 77-85, 1977-1 C.B. 12, considers a situation in which the individual purchaser of a variable annuity contract retains the right to direct the custodian of the account supporting that variable annuity to sell, purchase, and exchange securities or other assets held in the custodial account. The purchaser also is able to exercise an owner's right to vote account securities either through the custodian or individually. The Service concludes that the purchaser possesses "significant incidents of ownership" over the assets held in the custodial account. The Service reasons that if a purchaser of an "investment annuity" contract can select and control the investment assets in the separate account of the life insurance company issuing the contract, then the purchaser is treated as the owner of those assets for federal income tax purposes. Thus, any interest, dividends, or other income derived from the investment assets is included in the purchaser's gross income.

In Rev. Rul. 80-274, 1980-2 C.B. 27, the Service, applying Rev. Rul. 77-85, concludes that, if a purchaser of an annuity contract can select and control the certificates of deposit supporting the contract, then the purchaser is considered the owner of the certificates of deposit for federal income tax purposes. Similarly, Rev. Rul. 81-225, 1981-2 C.B. 12, which was clarified and amplified by Rev. Rul. 2003-92, 2003-2 C.B. 350, concludes that investments in mutual fund shares to fund annuity contracts are considered to be owned by the purchaser of the annuity if the mutual fund shares are available for purchase by the general public. Rev. Rul. 81-225 also concludes that, if the mutual fund shares are available only through the purchase of an annuity contract, then the sole function of the fund is to provide an investment vehicle that allows the issuing insurance company to meet its obligations under its annuity contracts and the mutual fund shares are considered to be owned by the insurance company. In Rev. Rul. 82-54, 1982-1 C.B. 11, the purchaser of certain annuity contracts can allocate premium payments among three funds and has an unlimited right to reallocate contract value among the funds prior to the maturity date of the annuity contract. Interests in the funds are not available for purchase by the general public, but are instead only available through purchase of an annuity contract. The Service concludes that the purchaser's ability to choose among general investment strategies (for example, between stock, bonds, or money market instruments) either at the time of the initial purchase or subsequent thereto, does not constitute control sufficient to cause the contract holders to be treated as the owners of the mutual fund shares.

In Christoffersen v. U.S., the Eighth Circuit considered the federal income tax consequences of the ownership of the assets supporting a segregated asset account. The taxpayers in Christoffersen purchased a variable annuity contract that reflected the investment return and market value of assets held in an account that was segregated from the general asset account of the issuing insurance company. The taxpayers had the right to direct that their premium payments be invested in any one of six publicly traded mutual funds. The taxpayers could reallocate their investment among the funds at any time. The taxpayers also had the right upon seven days notice to withdraw funds, surrender the contract, or apply the accumulated value under the contract to provide annuity payments. The Court of Appeals held that the taxpayer, not the insurance company that issued the annuity contract, owned the mutual fund shares for Federal income tax purposes. Thus, the taxpayers were required to include in gross income any gains, dividends, or other income derived from the mutual fund shares.

In Rev. Rul. 2003-91, 2003-2 C.B. 347, a variable contractholder does not have control over segregated account assets sufficient to be deemed the owner of the assets. The variable contracts at issue are funded by a separate account that is divided into 12 sub-accounts. The issuing insurance company can increase or decrease the number of sub-accounts at any time, but there will never be more than 20 sub-accounts available under the contracts. Each Sub-account offers a different investment strategy. Interests in the sub-accounts are available solely through the purchase of a Contract. The investment activities of each sub-account are managed by an independent investment advisor. There is no arrangement, plan, contract, or agreement between the contractholder and the issuing insurance company or between the contractholder and the independent investment advisor regarding the availability of a particular sub-account, the investment strategy of any sub-account, or the assets to be held by a particular sub-account. Other than a contractholder's right to allocate premiums and transfer funds among the available sub-accounts, all investment decisions concerning the sub-accounts are made by the issuing insurance company or the independent investment advisor in their sole and absolute discretion. A contractholder has no legal, equitable, direct, or indirect interest in any of the assets held by a sub-account but has only a contractual claim against the issuing insurance company to collect cash in the form of death benefits or cash surrender values under the contract. The Service concludes that based on all the facts and circumstances, the contractholder does not have direct or indirect control over the separate account or any sub-account asset, and therefore the contractholder does not possess sufficient incidents of ownership over the assets supporting the variable contracts to be deemed the owner of the assets for federal income tax purposes.

In Rev. Rul. 2003-92 the purchasers of variable annuity and variable life insurance contracts are able to allocate their premiums among 10 different sub-accounts. Each sub-account invests in a partnership. None of the partnerships is a publicly traded partnership under § 7704 of the Code and all of the partnerships are exempt from registration under the federal securities laws. Interests in each partnership are sold in private placement offerings and are sold only to qualified purchasers that are accredited investors or to no more than one hundred (100) accredited investors. In the ruling, the Service holds that the purchasers of the variable annuity and variable life insurance contracts are the owners for federal income tax purposes of the partnership interests that fund the variable contracts if interests in the partnerships are available for purchase by the general public. The Service further holds that if the purchasers of the variable annuity and variable life insurance contracts are considered the owners of the partnership interests that fund the variable contracts, the contract purchasers must include any interest, dividends or other income derived from the partnership interests in gross income in the year in which the income is earned.

ANALYSIS

The determination of whether the owner of a Contract possesses sufficient incidents of ownership over Lifecycle Insurance Fund assets to be deemed the owner of the assets depends on all of the relevant facts and circumstances.

All investment decisions regarding the Lifecycle Insurance Funds are made by the Investment Manager in its sole and absolute discretion. A Contract owner is not able to direct a Lifecycle Insurance Fund's investment in any particular asset, and there is no agreement or plan between Taxpayer and a Contract owner, or between the Investment Manager and a Contract owner, regarding such an investment.

The investment strategies of the Lifecycle Insurance Funds are sufficiently broad to prevent the owner of a Contract from making particular investment decisions through investment in a Lifecycle Insurance Fund. Only Taxpayer can add or remove investment options under the Contracts.

Shares of each Lifecycle Insurance Fund will be available only to one or more segregated asset accounts of one or more insurance companies or to investors described in § 1.817-5(f)(3) for the purpose of funding variable contracts. Thus, Lifecycle Insurance Fund shares are not sold directly to the general public.

Based on all the facts and circumstances, a Contract owner does not have direct or indirect control over the Separate Account or any Sub-Account asset. Taxpayer represents that the owners of the Contracts do not possess investment control and sufficient other incidents of ownership over the assets in the Lifecycle Sub-Accounts to be considered the owner of those assets for federal income tax purposes. The owner of a Contract will not be treated as the owner of the investments underlying the Contract by reason of a Lifecycle Insurance Fund's investment in Public Funds and/or Central Funds. Therefore, the assets of each Lifecycle Sub-Account will be treated for federal income tax purposes as owned by Taxpayer and not by the owner of a Contract. So long as the Contracts continue to satisfy the diversification requirements of § 817(h) and Taxpayer's and Contract owner's future conduct is consistent with the facts of this ruling request, the Contract owner will not be required to include the earnings on the assets held in Public Funds and/or Central Funds in income under § 61(a).

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

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

Sincerely,

/S/

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